



S.A.No.296 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 08.08.2025

CORAM:

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

S.A.No.296 of 2009 and
M.P.No.1 of 2009

- 1 Pattani Parambath Rethika
- 2 Pattani Parambath Renuka
- 3 Pattani Parambath Ragesh

... Appellants

vs.

- 1 Pattani Parambath Kasturi (died)
(Memo Recorded (8867).
R1 died, R2 to R4 already on Record are
recorded as Legal Heirs of R1)
- 2 Jayaprakash
Rep. by the Power agent Sreeja
- 3 Sreeja
- 4 Prashanth
Chanolyil Venuopalan (died)
- 5 Yeshodhara Venugopalan
- 6 Sasimohan
- 7 Santhosh
(R5, R6 & R7 were set exparte in both
trial Court & also the First Appellate Court
recorded vide Court Order dated 13.06.2025)

..Respondents



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PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the Decree and Judgment dated 17.11.2008 in A.S.No.13 of 2007 on the file of the II Additional District Judge, Puducherry, confirming the Decree and Judgment dated 20.04.2006 in O.S.No.29 of 2005 on the file of the Subordinate Judge, Mahe.

For Appellants : Mr.P.V.Sanjeev
For Respondents : Mr.M.Senthil Vadivu for R4
Mr.K.S.Karthik Raja for R2 & R3

JUDGMENT

The first, second and third defendants in O.S.No.29 of 2005 on the file of the Sub Court at Mahe are the appellants herein. O.S.No.29 of 2005 had been filed by the respondents 1 to 4 herein seeking a Judgment and Decree to pass a preliminary Decree of partition of the plaint schedule property by dividing it into 24 equal shares and allotting 11 ½ shares to the plaintiffs and also to allot the house and well as given in the plaint schedule property to the plaintiffs and for costs of the suit.

2. It is an admitted case that the other 11 ½ shares in the suit property vests with the first second and third defendants and one residual share out of 24 parts vests with the 4th - 7th defendants. It is also to be noted that initially only 4 defendants had been impleaded as defendants and consequent to the death of the 4th defendant, 5th to 7th defendants had



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been further impleaded. It is also to be noted that the 4th to 7th defendants were set exparte during the trial proceedings and also before the first Appellate Court. By Judgment dated 20.04.2006, the learned Sub Judge at Mahe had partly Decreed the suit with respect to granting 11 ½ shares out of 24 shares to the plaintiffs with respect to the land alone and dismissed the suit with respect to the claim of the house and well which was situated in the said land. It was specifically held that the title over the house and well was vested with the 1st to 3rd defendants.

3. This Judgment necessitated the plaintiffs to file A.S.No.13 of 2007 before the II Additional District Court, Puducherry. By Judgment dated 17.11.2008, the Appeal Suit was allowed and the Judgment and Decree of the trial Court in so far as denying the right of the plaintiffs to the house and well was set aside and the suit was Decreed in entirety as claimed.

4. Challenging that portion of the first Appellate Court Judgement, the present Second Appeal had been filed by the 1st to 3rd defendants.

5. O.S.No.29 of 2005, Sub Court, Mahe:



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In the plaint, the plaintiffs contended that the husband of the 1st plaintiff / father of the 2nd to 4th plaintiffs, Divakaran and the husband of the first defendant / father of the 2nd and 3rd defendants Cheriya Krishnan were both brothers and were both entitled to an undivided 11 ½ shares each out of 24 shares in the suit schedule property which is primarily land.

5.1. It is to be noted that one residual share was stated to be entitled to the 4th defendant who died during the pendency of the suit and her legal heirs had been impleaded as 5th -7th defendants. In the plaint, it had been contended that the property originally belonged to Chanoliyil Nalupurayil Sreemathy and others and they had sold 23/24 shares in the plaint schedule property in favour of Divakaran and Cheriya Krishnan by document number 324/1972 which entitled the husband of the first plaintiff and the husband of the first defendant, Divakaran and Cheriya Krishnan respectively to be equally entitled to a total of 23 shares out of 24 shares in the suit schedule property. It was under these circumstances, partition was sought for 11 ½ shares in the suit property. It must also be mentioned over the land in the suit property there was a house and well and it had been contended that the plaintiffs were entitled for the house and the well. The plaintiffs had issued a lawyer's notice prior to the



institution of the suit and since there was failure to respond to the notice, the suit had been filed.

5.2 A written statement had been filed on behalf of the defendants admitting to the fact that the plaintiffs and the 1st to 3rd defendants equally have 11 ½ share out of 24 shares and the fourth defendant has one share out of 24 shares. It had however been contended that the father of the first defendant, Cheriya Krishnan was entitled for the house and well and had conveyed to the 1st to 3rd defendants the house and well by a Sale deed, dated 16.12.2002 and registered as document No.950/2002 in the office of the Sub Registrar, Mahe. It had therefore been contended that the plaintiff is not entitled over the house and well. An additional written statement had also been filed with respect to the residual 1/24th share which fell to the share of the 4th defendant, but the 4th defendant remained exparte and thereafter the legal representatives also remained exparte.

5.3. On the basis of the pleadings, the learned trial Court Judge had framed the following issues:

- 1. Whether the property described in the schedule of the plaint is in existence and its measurements are correct?*



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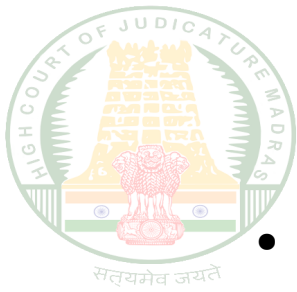
2. *Whether P.P.Divakaran and Cheriya Krishnan, Venugopal are the owners of the suit property and the same devolved upon the plaintiffs and defendants?*
3. *Whether the building existing in the suit property was constructed from the joint family funds of the plaintiffs and the defendants?*
4. *Whether the plaintiffs and defendants are having right over the suit property and as such are they entitled to share over the same? If so, what is the extent?*
5. *Whether the plaintiffs and defendants are entitled for a preliminary Decree for partition as prayed for?*
6. *To what other relief the parties are entitled?*

5.4 During trial, the plaintiffs did not examine any witness, but marked Ex.A1 to Ex.A5.

- Ex.A1 is a Sale Deed, dated 07.08.1972 by C.N.Sreemathi & others in favour of both Divakaran and Cheriya Krishnan.
- Ex.A2 dated 16.12.2002 is the Assignment Deed by Cheriya Krishnan in favour of the defendants 1 to 3.

5.5. The defendants also did not examine any witnesses, but marked Ex.B1 to Ex.B6

- Ex.B1 is the certified copy of the Ex.A2.
- Ex.B2-Ex.B5 are Electricity Bill payment receipts.



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- Ex.B6 is the Encumbrance Certificate.

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5.6. On analysis of the documentary evidence presented, the learned Sub Judge, Mahe, came to the conclusion that the plaintiffs and the first – third defendants were both entitled to an undivided 11 ½ shares out of 24 shares in the suit schedule property. But with respect to the house and well, the learned Sub Judge gave a specific finding that it devolved only on the first, second and third defendants owing to appreciation of Ex.A2 / Ex.B1, Sale Deed executed by Cheriya Krishan in favour of the first, second and third defendants who were none other than his wife and two children. In that particular sale deed, there has been a conveyance of not only land of 11 ½ share out of 24 shares, but also of the house and the well.

5.7. Taking that factor into consideration, the suit was partly Decreed granting right of the plaintiffs to 11 ½ share out of 24 share, over the land but denying the claim of the plaintiffs to the house and well.

6. A.S.No.13 of 2007, II Additional District Judge at Pondicherry:



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Aggrieved by the denial of grant of right over the house and well, the plaintiffs then filed the aforementioned Appeal Suit which came up for consideration before the II Additional District Judge, Pondichery, By Judgment dated 17.11.2008, the learned II Additional District Judge, Pondicherry, held that no evidence had been let in by either side with respect to the title of the house and well and further held that since the defendants claimed the house and well, the burden falls on them to prove title and it was held that they had failed to prove the title and therefore, the Judgment and Decree of the trial Court denying the right of the plaintiffs to the house and well was set aside and Decree was granted to the plaintiffs entitling them to also house and well in the suit schedule property.

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Aggrieved by the Judgment of the first Appellate Court, the first second and third defendants have filed the present Second Appeal.

8. The Second Appeal had been admitted on the following three substantial questions of law on 03.11.2022:



1. *Whether the Appellate Court was correct in not accepting the documents Exhibits B1 to B5 filed by the appellants / defendants 1 to 3 and also Exhibit A2 which were marked by consent. Particularly when the appellants have proved the ownership of the house well vide sale deed dated 16.12.2002, registered as Document No.950/2002, SRO, Mahe (marked as Exhibits B1 and A2)*
2. *Whether the Appellate Court was not perverse by holding that the respondents /plaintiffs also are entitled to get the house and well in the absence of any oral or documentary evidence whatsoever on the side of the respondents/ plaintiffs.*
3. *Whether the Appellate Court was justified and right in ignoring the documentary evidence of appellants / defendants 1 to 3 Exhibits B1 to B5 and also A2 which clearly established that the appellants / defendants 1 to 3 exclusively have title over the house and well. Further the house tax receipts are also in the name of Cheriya Krishnan?*

9. All the three substantial questions of law were revolved around interpretation of Ex.A2 / Ex.B1 which had been marked by consent and Ex.B2 to Ex.B5.



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10. The learned counsel for the appellants argued that the first

Appellate Court had wrongly shifted the burden on the appellants herein/ the first – third defendants to prove title, when it was the burden of the plaintiffs who had sought exclusive right over the house and well to establish that they had an existing right in manner known to law over the house and well. The learned counsel took the Court through Ex.A2 / Ex.B1 which is a Sale deed / Assignment Deed executed by Cheriya Krishnan, the husband of the first defendant / father of the second and third defendants whereby he had conveyed his undivided 11 ½ shares of the land out of 24 parts of the land and also the house and well situated over the land for valuable consideration of Rs.2,50,000/- to the appellants herein. It had been therefore contended by the learned counsel that this fact had been properly appreciated by the trial Court, but overlooked and ignored by the first Appellate Court. It had therefore been contended that the Judgment of the first Appellate Court requires interference so far as the house and well alone is concerned.

11. The learned counsel for the respondents however disputed this contention and stated that the defendants have not proved title by any document that they are entitled for the house and well. The learned



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counsel pointed out that Ex.B2 to Ex.B5 are only Electricity bills and they would not confer any title. Therefore it is contended that the first Appellate Court had rendered a proper finding that since the defendants had failed to establish their right over the house and land and had correctly reversed the findings in that regard of the trial Court.

12. I have carefully considered the arguments advanced on either side and perused the materials and the substantial questions of law 1, 2 and 3.

13. All the three substantial questions of law are taken up together since they revolve around interpretation Ex.A2 / B1 which is the sale deed dated 16.12.2002 registered as document No.950/2002 in the office of the Sub Registrar Office at Mahe. This Sale deed had been executed by the husband of the first appellant / father of the second and third appellants Cheriya Krishanan. There is no dispute about the validity of this document. As a matter of fact, the first – third respondents had also marked a copy of the sale deed as Ex.A1 during trial. Both Ex.A2 /



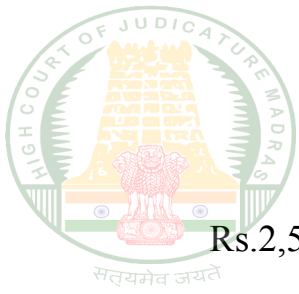
Ex.B1 had been marked with consent and therefore it is to be taken that

the parties to the suit had admitted to the said document not only about its content but also about the execution and subsequent registration. In

Ex.A2/Ex.B1, the vendor had stated as follows:

Whereas the consideration of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand) is agreed upon and decided as the absolute jenm sale value for the eleven and a half out of twenty-four share rights that I have in the scheduled property with the plantations, the house bearing No.MMC.I/368, the well, possession and all other rights and appurtenances in them; and this full amount of Rupees Two lakhs fifty thousand, I, having received from you today in cash to my satisfaction, I hereby sell, transfer, convey and assign possession to you the eleven and a half out of twenty – four share rights that I have in the scheduled property, with the absolute jenm title right, plantations, the house bearing No.MMC.I/368, the well, possession, conduct and enjoyment and all other absolute rights and appurtenances in them; and the share rights that I have in the scheduled property duly vacated by me are handed over real and direct possession to you today.

14. It is seen that Cheirya Krishanan, the husband of the first appellant / father of the second and third appellants for consideration of



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Rs.2,50,000/-, had transferred by way of the document, 11 ½ out of 24 shares in the land and also very importantly, the house bearing No.MMC.I/368 and the well, possession and other rights and appurtenances in them. The intention of the vendor was clear and categorical. He not only conveyed his 11 ½ shares out of 24 shares in the land but also conveyed the house and the well on the said land. The plaintiffs / first – third respondents have not questioned this conveyance in favour of the appellants herein. As a matter of fact, they have admitted to the said document and the document had been marked by them as Ex.A2 and had consented to the certified copy being marked as Ex.B1 by the appellants.

15. It is thus seen that in this document, the property had been properly described, the consideration had been stated, the party who conveys and the party who purchases have also been clearly given and there was complete consensus between the vendor and the purchasers. The property had been conveyed for lawful consideration. The property had also been properly identified. Hence, I hold that in view of this particular reasoning, the three substantial questions of law will have to be necessarily answered that the first appellant Court had been perverse in



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holding that the first – third defendants are not entitled for the house and well, when it had been specifically conveyed to them. The plaintiffs had also not tendered any oral evidence and therefore they are now estopped from claiming any right over the house and well. I hold that the Judgment of the first Appellate Court will necessarily have to be set aside so far as grant of right to the plaintiffs over the house and well.

16. Accordingly, the Judgment and Decree of the first Appellate Court is set aside and the Judgment and Decree of the trial Court in O.S.No.29/2005 on the file of the Sub Court, Mahe dated 20.04.2006 is restored and confirmed. The Second Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

08.08.2025

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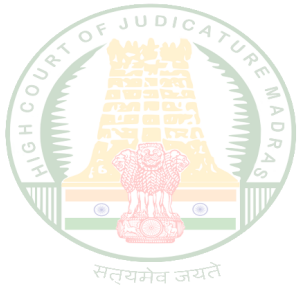
Index : Yes/No

Speaking / Non-speaking order

Neutral Citation : Yes / No

To

1. The II Additional District Judge, Puducherry
2. The Subordinate Judge, Mahe.
2. The Section Officer, VR Section, High Court, Madras.



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C.V.KARTHIKEYAN, J.

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