



SA. No.546 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2025

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A No. 546 of 2006 & S.A No. 1170 of 2008

S.A No. 546 of 2006 :

Boologammal

... Appellant

Vs

1.Lakshmana Pillai

2.Chittibabu

...Respondents

PRAYER in S.A No. 546 of 2006: This Second appeal has been filed under Section 100 CPC, against the judgment and decree of the Subordinate Judge, Kancheepuram in A.S No. 28 fo 2001 dated 30.04.2003 confirming the judgment and decree in OS No. 841 of 1998 dated 17.11.2000.

For Appellant :Mr.K.Kalyanaraman

For Respondents:Mr.C.K. Chandrasekaran



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S.A No. 1170 of 2008:

Krishnan

... Appellant

Vs.

1. Lakshmana Pillai(Died)
- 2.Ramu
- 3.Raja
- 4.Chittubabu
- 5.Kannan
- 6.Boologammal
- 7.Sankar
- 8.Mohan
9. Usha
10. V. Srinivasan
- 11.Muniyan
- 12.Prakash
- 13.Suresh
- 14.Sujatha
- 15.Rakha

(R1 Died, R9 to R15 brought as legal heirs of the deceased R1 vide court order dated 02.03.2023 made in CMP No.3010 of 2023 in S.A No. 1170/2018)

..Respondent

PRAYER in S.A No. 1170 of 2008 : This Second appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 19.11.2007 in A.S No. 78 of 2006 on the file of the Sub Judge, kanchipuram, confirming the judgment and decree in OS No. 978 of 1998 dated 30.11.2005 on the file of the Additional District Munsif, Kanchipuram partly decreeing the suit.

For Appellants : Mr.S.Kalyanaraman



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For R2, R3 &R5 : Mr.C.K. Chandrasekaran,
for Mr.M.Balasubramanian.

For R4 : Mr.G.Mutharasan

For R6 :MR.C.R.Kamalakaran

R9 to R15 Not appeared

R1 died

COMMON JUDGMENT

The Second appeal in S.A No. 546 of 2006 filed against the judgment and decree of the Subordinate Judge, Kancheepuram in A.S No. 28 of 2001 dated 30.04.2003 confirming the judgment and decree in OS No. 841 of 1998 dated 17.11.2000, on the file of the District Munsif, Kancheepuram.

2. The Second appeal in S.A, No.1170 of 2008 filed against the judgment and decree dated 19.11.2007 in A.S No. 78 of 2006 on the file of the Sub Judge, kanchipuram, confirming the judgment and decree in OS No. 978 of 1998 dated 30.11.2005 on the file of the Additional District Munsif, Kanchipuram partly decreeing the suit.

3. The appellants in S.A No. 1170 of 2008 is the plaintiff in OS No. 978 of 2008 on the file of the Additional District Munsif, Kancheepuram,



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who filed the said second appeal challenging the concurrent findings of the courts below in respect of B & C schedule properties.

4. Before the Trial Court the appellant krishnan filed the suit claiming lawful share in A, B and C schedule ancestral properties against his father/first defendant and 8 other defendants. The defendants 1, 7 to 9 contested the suit and other defendants remains exparte. The first defendant contested the case and not admitted that the suit properties are ancestral in nature, more particularly the first defendant contended that B Schedule property is self acquired property belongs to the defendants 1 to 5 by way of acquisition and also contended that C schedule property also a separate property. On Considering the both side submissions the Trial Court held that plaintiff proved that A schedule property is ancestral property and granted 1/9 share therein. In respect of B & C schedule property, it held that the plaintiff failed to prove that it is a ancestral properties but on the other side, first defendant proved that B schedule property is a self acquired property and in respect of C schedule property plaintiff has not proved that it is ancestral property. Therefore, against B and C schedule property the suit was dismissed. Against which, plaintiff Krishnan filed the appeal in AS No. 78 of 2006 on the file of the Subordinate Court, Kanchipuram, wherein the first appellate Court after considering the oral and documentary evidence



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held that plaintiff not produced substantial evidence to prove their common ancestral nucleus to purchase the B schedule property but the first defendant produced relevant sale deeds Ex.B3 to Ex.B5 and proved that it is a separate property thereby confirming the findings of the Trial Court. In respect of C schedule property the plaintiff relied only Ex.A1 which is insufficient to conclude that it is ancestral property thereby plaintiff not entitled to any share in C schedule property accordingly confirmed the findings of the Trial court and dismissed the appeal. Challenging the concurrent findings the plaintiff Krishnan preferred the second appeal in S.A No. 1170 of 2008.

5. The learned counsel for the appellant argued that since the plaintiff proved that A schedule property is ancestral property, there is a presumption of joint family ancestral nucleus. Therefore, the burden is upon the defendants to prove that they have separate income to purchase the property for themselves or other sons. Defendants 2 to 6 remained ex parte and did not contest the case. Thereby, the court should have drawn presumption against the defendants and should have held that the property was purchased with the help of A schedule income from ancestral nucleus. In respect of dismissing the plaintiff's claim in respect of B schedule property, the findings of the trial Court is liable to be set aside.

6. Further, he submitted that in respect of C schedule property, the



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court below failed to take note of the fact that during the cross-examination, DW1 admitted that the originally C schedule property was sold in the name of his father. But the court below failed to appreciate the said aspects and also failed to take note of the fact that the first defendant had attempted to sell the property through a land broker ignoring that it stands in the name of the plaintiff's grandmother. Thereby, C schedule property is to be considered as joint family property. In spite of that, court below dismissed the suit in respect of C schedule, which is liable to be set aside. Hence, he prays to allow this appeal. This court admitted appeal on the following questions of law.

7. Whether the courts below were right in holding that B and C schedule properties are not a joint family properties overlooking material admission of DW1 that the patta in respect of the C schedule property originally stood in the name of his father and that in respect of certain items of C schedule property sale agreements were finalized through a broker.

8. By way of reply, the learned counsel for the defendants submitted that sale deed in respect of B schedule property stands in the name of defendants 1 to 5. Hence, the burden is heavily upon the plaintiff to prove



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that those properties were purchased out of joint family funds, but he failed to prove the same with any material evidence before the trial court. Thereby, the trial court rightly held that it was not established by the plaintiff that it is joint family property. Mere existence of ancestral property alone is not sufficient to prove that the other properties are joint family properties. Further, he argued that already the courts below are appreciated the facts and the same cannot be revisited in the second appeal unless it is perverse in nature. Thereby, he argued that there is no merit in the appeal, hence he prayed to dismiss the appeal as not maintainable. For the sake of convenience, the parties are denoted as per the suit.

9. The defendants 7, 8 & 9 in OS No. 978 of 1998, who are legal heirs of the deceased Govindapillai filed suit in number OS No. 841 of 1998 before the District Court, Kanchipuram in respect of suit property as described in the plaint schedule in survey number 98/1A1, with four boundaries, 56x60, Kanchipuram street, stating that it is ancestral property of GovindaPillai, who was the absolute owner. He had three sons, Kannipillai, Lakshmanapillai and deceased Seenupillai but there was no partition effected between them. During her lifetime, Seenupillai's wife (the



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mother) demanded partition. The first defendant/Lakshmanapillai promised to effect the partition but with bad intention, encumbered and sold the property in favour of his two sons, as if he alone was the owner of the property, which is illegal.

10. The suit was contested by the first defendant, namely Lakshmanapillai, stating that other legal heirs of Govindapillai, namely Kannipillai and Seenupillai(first plaintiff husband) conveyed their rights to them through a court sale. Thereafter, he sold the property to his two sons, who put up separate constructions on that property. Ever since 1966, it was not considered as ancestral property. Considering the both side submissions and materials available on record, the trial court held that based on Exhibit B1, brothers of the first defendant gave a sketch-like family arrangement, which is unregistered document through which they gave up their rights over the property. Based on Exhibit B2, dated 07.11.1996, the first defendant sold the property to the second defendant at that time the first plaintiff's husband was alive but he had not raised any objection and also to the construction put up by the subsequent defendants. Therefore, it is the exclusive property of the first defendant. In the year 1977, the first defendant got possession in respect of the property. Exhibits B2 and B3 support his contention. All these years, the subsequent defendants enjoyed



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the property as absolute owners. Accordingly, the suit was dismissed, it was held that it was not ancestral property. Challenging the same, plaintiffs filed AS No. 28 of 2001 but the first appellate confirmed the findings of the court. Against which, plaintiffs filed the second appeal.

11. The parties are the same in both the suits. However, the suit property in OS No. 546 of 1998 is not the same as that of the suit property in OS No. 841 of 1998. To avoid further multiplicity of proceedings, this Court hear both suits jointly and dispose of this case through this common judgement.

12. The brief facts of the case are as follows:

The plaintiff claims lawful right in the A, B, and C schedule suit properties.

- A schedule property is a tiled house in Door No. 37.
- B schedule property is a site property.
- C schedule property is a house site property allotted according to the plaintiff.

13. According to the plaintiff Krishnan, all the properties belongs to his grandfather Govindapillai, who had three sons, namely Lakshmanapillai,



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Kannipillai, Seenupillai and the said KanniPillai, died leaving behind his wife Dhanalakshmi Ammal/sixth defendant and they had no issues and sixth defendant also died intestate. Seenupillai died leaving behind his wife and two sons/defendants 7 to 9. Therefore, Lakshmanapillai and Seenupillai are legal heirs and Kannipillai are entitled to have a share in the ancestral property. As per his contention, the suit property is ancestral property of his Grandfather Govindapillai, who had three sons, namely Lakshmanapillai, kannipillai, Seenupillai. Seenupillai predeceased Govindapillai, leaving behind his legal heirs. Therefore, Lakshmanapillai and Kannipillai and the legal heirs of Seenupillai are entitled to have a share in the ancestral property. Govindapillai, the first defendant/Lakshmanapillai, defendants 2 to 5 are the legal heirs of Govindapillai. Defendants 7 to 9 are the wife and sons of another branch, Seenupillai.

14. In respect of A schedule property, It is contended that suit property is the ancestral property of Govindapillai, though the first defendant claimed it as absolute property, after redemption of mortgage, he himself admitted that it is ancestral property belonging to his father, which belongs to his father's brothers also. He redeemed the mortgage, but it was treated as ancestral property. There is no finding in the earlier proceedings



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that it belongs to the first defendant as absolute property. The trial court held that it is a ancestral property, and Lakshmanapillai and Seenupillai's branch is entitled to each half share. A preliminary decree was passed in respect of A schedule property by granting a lawful share to the appellant in respect of each schedule property. Other defendants are also entitled to get their share by paying sufficient court fee. An appeal was not preferred against the first defendant. Therefore, in respect of A schedule property, the preliminary decree passed by the trial court is confirmed. The appellant is challenging the findings of the court below in respect of B and C schedule properties.

15. In respect of B schedule property, it is submitted that it was purchased from joint family nucleus. However, there is no material evidence produced to show that there was joint family nucleus through which B schedule property was purchased. The B schedule property was purchased in the name of defendants 1, 2, and 5. On the other hand, the first defendant submits that item number 1 of the B schedule property was purchased by the 3rd defendant, the 2nd item was purchased by the 4th defendant, the 3rd item was purchased by the 2nd defendant. Item number 5 belongs to him. Item number 5 is temple property, in which the 7th defendant enjoys the same. Item No.6 was purchased by the 4th defendant. Before the trial court,



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he has marked the sale deeds as Exhibit B1, B2, B3, B4, B5. As rightly pointed out by the contesting defendant, there is no evidence on the side of the plaintiff that there was a joint family nucleus to purchase the B schedule property.

16. The learned counsel for the plaintiff argued that the first defendant and other defendants 2 to 5 remained ex parte, and they did not enter into the witness box to prove that those properties were purchased through separate income. However, It is a settled principle that whoever claims that a property is purchased out of joint family nucleus, who is bound to prove that it was purchased through joint family nucleus but the plaintiff failed to do so. Therefore, the sale deeds stand in the name of defendants 1 to 5, and the issue regarding the character of the property needs no interference. Neither the plaintiff nor defendants 7 to 9 have any right or claim over it. Accordingly, findings rendered by the Court below in respect of B schedule property needs no interference.

17. In respect of C schedule property, it is described as ancestral property in the plaint schedule. According to the plaintiff, C schedule



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property is ancestral property of Govindapillai, and all were jointly possessed, and enjoyed it. After the death of Govindapillai, they possessed and enjoyed it, in which, the plaintiff claims a lawful share. However, the first defendant disputed this claim in their written statement, In the written statement, the first defendant stated that plaintiff separated from the family in the year 1992 and given Rs. 30,000/-, though that he would not claim any share in the suit property. The first defendant has specifically denied the plaintiff's entitlement to claim a share in the A and B schedule properties. But in respect of C schedule property, the plaintiff's claim was not specifically denied by the first defendant. During the trial he took a stand that the property stands in his name. However, he could not prove that it is not joint family property through material evidence, therefore the plaintiff is entitled to claim a share in the C schedule property. Further, as per D.W.1, it is clear that the trial court failed to take note of the fact that DW1 admitted that C schedule property stands in the name of his father and also not specifically denied the plaintiff's claim in the written statement. Considering the deposition filed by the appellant, it clearly reveals that during cross examination, D.W.1 deposed that in the year 1996 alone he obtained patta in his name and also admits that C schedule originally stands in the name of his father. Now patta stands in his name. Therefore, C schedule property



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originally stands in the name of his father/Govindapillai is an admitted fact but the Court below failed to consider the admission made on the side of the first defendant. When the facts are not properly appreciated by the Courts below, this Court is empowered to interfere with the same. Accordingly, findings in respect of C schedule property is set aside. Furthermore, as rightly pointed by the counsel for the plaintiff, in the written statement his silence over the C schedule property silence indicates that he has no objection to the plaintiff's claim nor he has separate right over the C schedule property. Therefore, the findings rendered by the Trial Court in respect of C schedule property is liable to be set aside. Accordingly, second appeal 1170 of 2008 is partly allowed. In respect of C schedule property plaintiff along with defendant 1 to 5 Lakshmanpillai branch entitled to half share and the legal heirs of Seenupillai branch namely defendants 6, 7 to 9 entitled to half share. So also in A schedule property Lakshmanapillai branch is entitled to half share, Seenupillai entitled to half share.

18. In respect of Second appeal No. 546 of 2006. As per the Ex.B1, Ex.B2 it is exclusive property of the defendants. Furthermore, in the comprehensive suit OS No. 978 of 1998 pertaining to the S.A No. 1170 of 2008, wherein the appellant in S.A No. 543 of 2006 arrayed as defendants 7 to 9 and contested the said suit, in that suit, the suit property in S.A No.



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546 of 2006 is not shown as suit property nor it was mentioned as ancestral property of Govindapillai these appellants are also party in that suit as defendants 7, 8 and 9, have not raised any objection nor filed any application to include suit properties in the present appeal as one of the items, which itself shows that suit property was exclusive property of defendants 1 to 2 herein. Even though in the present appeal it is alleged that Ex.A1 is unregistered document but during the life time of Seenupillai, he has not raised any objection to the defendants. Therefore, the objection raised by the appellants in S.A No. 546 of 2006 is unsustainable one. Between Seenupillai and brothers there was arrangement. Accordingly, other brothers executed coordsheet/Ex.B1 in favour of Lakshmanapillai therefore with regard to arrangement made in the family, EX.B1 can be taken as collateral purpose and the same was rightly appreciated by the Court below needs no interference. There is no question of law involved in this case. Even though it was unregistered document it can be taken into consideration for the collateral purpose for family arrangement made in the family. Accordingly, S.A No. 546 of 2006 is dismissed.



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19. In the result, S.A No. 546 of 2006 is dismissed and S.A No. 1170 of 2008 is partly allowed. Suit partly decreed. No costs. Pending petition(s), if any, is/are closed.

29.08.2025.

pbl

To

1. The Subordinate Judge, Kancheepuram.
2. The Additional District Munsif, Kanchipuram.
3. The Section Officer,
V.R Section.



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T.V.THAMILSELVI,J.

Pb1

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