



S.A. No.956 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 09.06.2025

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

S.A.No.956 of 2008

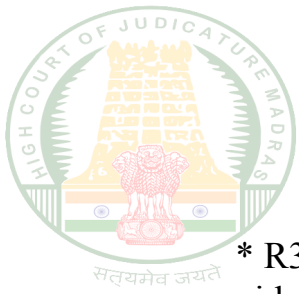
Soodamani

Vs

... Appellant

- 1.Rajamanickam (Died)
- 2.Ponmudi
- 3.Kalyani (Died)
- 4.Murugan
- 5.Aranganathan
- 6.K.Kamsala
- 7.Sub-Registrar,
Kullanchavadi,
Cuddalore Taluk,
Cuddalore District.
- 8.The District Registrar
Cuddalore Taluk,
Cuddalore District.
- 9.Senthamarai
- 10.Vasugi
- 11.Elavarasi
- 12.Parasakthi
- 13.Aruputha
- 14.Bharathamani
- 15.Sivagnanamuthu
- 16.S.Sankar

... Respondents



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* R3 died, R4 (already on record) is recorded as LR of the deceased R3 vide Court order dt.25/04/2024 and memo dated 17.04.2024 (SR.No.14768) made in S.A.No.956 of 2008 (CKJ).

**R1 died, RR9 to 15 are brought on record as LRs of the deceased R1 vide court order dated 16.08.2024 made in CMP.No.9042 of 2024 in SA.No.956 of 2008. (TVTSJ).

*** R16 is Impleaded vide Court order dt. 04.09.2024 made in CMP.No.15066 of 2024 in S.A.No.956 of 2008. (TVTSJ)

PRAYER: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree of the learned II Additional Subordinate Judge, Cuddalore dated 31.01.2008, passed in A.S.No.72 of 2006 dismissing the appeal, confirming the judgment and decree of the Principal District Munsif, Cuddalore in O.S.No.451 of 2002, dated 07.07.2006.

For Appellant	:	Mr.R.Gururaj
For R2,R6 & R9 to R15	:	Ms.R.Meenal
For R7 & R8	:	Dr.S.Surya, AGP
For R1	:	Died
For R3 to R5	:	Died
For R16	:	Mr.K.S.Jeyaganeshan



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JUDGMENT

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The appellant has filed this Second Appeals against the Judgment and decree of learned II Additional Subordinate Judge, Cuddalore, dated 31.01.2008 made in A.S.No.72 of 2006, dismissing the appeal, confirming the Judgment and decree of the Principal District Munsif, Cuddalore in O.S.No.451 of 2002, dated 07.07.2006.

2. For the purpose of convenience, the parties herein are referred to as they are ranked in the suit.

3. The appellant herein is the plaintiff in suit O.S. No. 451 of 2002, filed against eight defendants, seeking partition of 1/3rd share in the B-Schedule properties. The A-Schedule represents the genealogy of the B-Schedule properties, with consequential relief sought. Defendants 7 and 8 remained ex parte, while the other defendants (respondents 1 to 6) contested the suit.



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4. Upon hearing both sides, the learned trial Judge dismissed the suit, holding that the suit properties were not ancestral properties belonging to the plaintiff's father. It was held that the properties had already been sold in 1953 by the plaintiff's father to the 1st defendant. Subsequently, the 1st defendant sold the properties to other defendants. Hence, the suit was dismissed.

5. Challenging that decision, the plaintiff preferred A.S. No. 72 of 2006 before the II Additional Subordinate Judge, Cuddalore. The learned First Appellate Judge also analysed the entire evidence and ultimately held that the suit properties are not joint family properties. It was found that the plaintiff's father had already sold them earlier in the year 1953, and that the plaintiff is not entitled to claim 1/3rd share in the B-Schedule properties, as there were no properties available for partition at the time of filing the suit. Therefore, the appeal was dismissed. Aggrieved by the concurrent findings, the present Second Appeal has been filed.



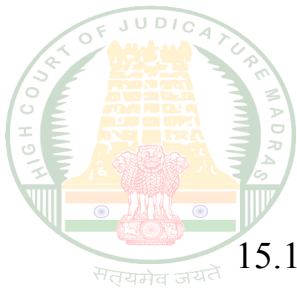
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6. Brief facts of the case as follows: One Muthuveeran and Kathappan are brothers. Muthuveeran had a son named Vinayathan. Vinayathan had three daughters: the plaintiff Soodamani, Kannammal (now deceased, whose legal heirs are D1 and D2), and Kalyani (D3), as well as a son, D4. The plaintiff states that the B-Schedule properties were allotted to her grandfather Muthuveeran during a partition with his brother Kathappan. Upon Muthuveeran's death, his only son Vinayathan inherited the B-Schedule properties as ancestral property. After his demise, his three daughters are entitled to the properties, and hence the plaintiff seeks 1/3rd share.

7. The 1st defendant, while admitting the relationship between the parties, denied that the suit properties were ancestral properties. He stated that the B-Schedule properties were originally purchased via two sale deeds dated 02.03.1948 and 29.07.1948, one in the name of Muthuveeran and another in the name of his son, Vinayathan. Since Vinayathan predeceased his father, Muthuveeran managed the entire property and sold it on

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15.12.1953 for valuable consideration to the 1st defendant. The 1st defendant remained in possession until 1970, when he sold the properties to one Ambalavanan, who in turn sold them to defendants D5 and D6. Thus, since 1953, the defendants have perfected their title. He contended that the properties were not ancestral and that the plaintiff's claim was untenable.

8. The 1st defendant also referenced a previous suit (O.S. No. 240 of 1976) filed against Kathappan's family, which was decreed in his favour as they remained ex parte. Further, he pointed out that the plaintiff had filed a complaint in 1981 before the Legal Services Authority at Virudhachalam and was informed that the properties had already been sold. Therefore, the present suit was not maintainable in law, hence prays to dismiss the appeal.

9. Defendant D5 stated that after purchasing Items 1 and 2, mutation and revenue records were effected in his name, and he has been in possession and enjoyment of the suit properties. The learned trial Judge, upon considering the pleadings and perusing the sale deeds marked as Exs. B1 to B4, dated from 1944 to 1951, concluded that the properties were not



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ancestral but self-acquired properties of Muthuveeran and Vinayathan.

Based on Ex. B5, the court found that Muthuveeran, after the death of his son, sold the properties to D1 in 1953, and that D1 had been in possession of the properties ever since. The plaintiff, being aware of the facts, filed the suit with a false claim. Hence, the suit was dismissed.

10. The First Appellate Court confirmed the findings of the Trial Court. It held that the properties were self-acquired and not joint family or ancestral properties. Therefore, the plaintiff is not entitled to any share.

11. The learned counsel for the appellant argued that the courts below failed to properly appreciate the evidence of P.W.1 and did not fully consider the evidence from the defendants. It was contended that the properties were joint family properties, and Muthuveeran alone had no right to sell them. The appellant also submitted that the judgment in O.S. No. 792/2004 could not extinguish her rights, and that there was no limitation for filing a partition suit.



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12. This Court admits this Second appeal on the following substantial questions of Law.

"A. Were not the lower courts wrong in failing to see that as between co-owners ouster has to be pleaded but that there is no such pleading or issue?"

B. Were not the lower Courts wrong in overlooking the fact tha 1st defendant was the eldest male member of the family, the only educated person, the son-in-law and hence was in the position of a trustee?"

C. Were not the lower Courts wrong in failing to see that there is no limitation to file a suit for partition?"

13. The relationship between the parties is admitted. As the daughter of Vinayathan, the plaintiff claims 1/3rd share, contending that the properties were ancestral and were allotted to Muthuveeran during a partition with his brother. However, the 1st defendant, who is the husband of one of the daughters, contended that the properties were self-acquired by Muthuveeran and his son. After the demise of Vinayathan, Muthuveeran sold the properties to D1 in 1953.

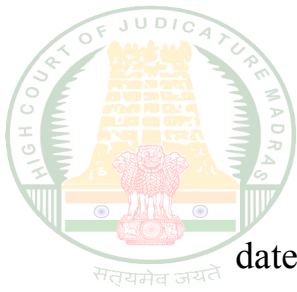


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14. On a perusal of the sale deeds marked as Exs. B1 to B5, it is evident that the properties were acquired between 1944 and 1951 by Muthuveeran and his son, and thus they are not ancestral properties. Moreover, the plaintiff did not challenge these sale deeds for decades. Since there was no ancestral nucleus, the claim for partition does not arise. After the death of his son, Muthuveeran sold the properties, which were enjoyed by D1 until 1973, and thereafter sold to others. Furthermore, the plaintiff did not challenge the 1953 sale at any point in time. In the absence of ancestral properties, no plea of ouster or limitation would arise. As rightly pointed out by the respondent's counsel, since the properties were sold in 1953 and the plaintiff has not objected until now, there is no property available for partition.

15. The objections raised by the appellant that the 1st defendant, being the elder son-in-law, misappropriated the properties are not sustainable. The sale was executed by her own father in 1953, during his lifetime, for valid consideration. The sale deed has not been set aside to



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date. Accordingly, substantial Question of Law 1 is answered in favour of the respondents. The claim that 1st defendant was entrusted with the property is unfounded. As there were no joint family properties, and no ancestral nucleus existed, there is no question of limitation or right to partition, accordingly questions of law B and C are answered.

16. In light of the above, the second appeal is devoid of merits. The findings of the courts below are affirmed. Accordingly, the Second Appeal is dismissed. No cost.

09.06.2025

Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order

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To

1. The II Additional Subordinate Judge, Cuddalore.
2. The Principal District Munsif, Cuddalore.
3. The Section Officer, VR Section, High Court of Madras.

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T.V.THAMILSELVI, J.

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