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S.A.No.949 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	07.01.2025
Pronounced on	29.01.2025

CORAM

THE HONOURABLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.949 of 2009

and

M.P.No.1 of 2009

1. C.Loganayaki (Died)
2. Chennappan
3. Guberan
4. Uma
5. Pramila
6. C.Purushothaman

[Appellants 2 to 6 brought on record as LR's of the deceased sole appellant viz., C.Loganayaki vide order of Court dated 24.09.2020 made in C.M.P.No.10517, 10520 and 10523 of 2020 in S.A.No.949 of 2009]

... Appellants

Vs.

1. Sabira Bi
2. Chotima Bi
3. Habiba Bi (Died)
4. Fathima Bi (Died)
5. Ahmed Basha (Died)



S.A.No.949 of 2009

6. Usman
7. Muthulip
8. Hakim
9. Amalulla
10. Habija
11. Munira

[R3 died. R7 to R11 are brought on record as LR's of the deceased R3 vide order of the Court dated 26.04.2024 made in CMP Nos.7239, 7241 and 7291 of 2024 in S.A.No.949 of 2009]

12. Mumthaj
13. Idhayathullah
14. Aanarkali
15. Najira Banu
16. Thahira Banu
17. Mubina
18. Shan Basha
19. Mohamed Kasim

[R5 Died. RR12 to 19 are brought on record as LR's of the deceased R5 vide order of Court dated 26.04.2024 made in CMP Nos.7289, 7290 and 7244 of 2024 in S.A.No.949 of 2009]

... Respondents

Prayer: Second Appeal is filed under Section 100 of the Civil Procedure Code, to allow the above second appeal by setting aside the judgement and decree passed by the Sub-Court, Dharmapuri in A.S.No.72 of 2002 dated 28.08.2006 dismissing the appeal and confirming the judgement and decree passed by the District Munsif Court, Harur in O.S.No.599 of 1995 dated 30.09.2002, allowing the suit for partition and separate possession filed by the respondents 1 to 4 herein.

For Appellants

: Mr. Sathia Chandran



S.A.No.949 of 2009

For R1 & R2 : No appearance

For R3, R4 & R5 : Died

For R6 & R7 to R11 : No appearance

For R12 to R16 : Mr.Saravanakumar

JUDGEMENT

The instant Second Appeal has been filed against the judgement and decree passed by the learned Subordinate Judge, Dharmapuri in A.S. No. 72 of 2002, dated 28.08.2006.

2. The appellant herein is the third defendant, the respondents 1 to 4 are the plaintiffs, and the respondents 5 and 6 are the first and second defendants before the Trial Court. After the demise of the respondents 3, 4, and 5, their legal heirs were brought on record.

3. For the sake of convenience, the parties will be referred to according to their litigative status before the Trial Court.



S.A.No.949 of 2009

WEB COPY

4. The brief facts which give rise to the instant Second Appeal are that, the plaintiffs 1 to 3 and the defendants 1 and 2 are the daughters and sons of one deceased Budan Sahib and Fathima Bi, the fourth plaintiff. The plaintiffs 1 to 4 and the defendants 1 and 2 are governed by Mohammedan Law of succession. It is the case of the plaintiffs that the suit property belongs to their family, and that they are entitled to 1/8th share each, and the defendants 1 and 2 are entitled to 2/8th share each, in the suit property.

5. The said suit was resisted by the third defendant, who is the alleged subsequent purchaser. The other legal heirs of the late Budan Sahib, viz., the first and second defendants, did not file any written statement, and they were set ex parte. The third defendant, viz., C. Loganayaki, would submit that, the suit property is not the family property of the plaintiff, and that the said property was in the occupation and enjoyment of the second defendant, viz., Usman, and that on 11.02.1989, she purchased the said property from him. He would further state that, ever since the purchase, she has been in actual physical possession and enjoyment of the property. It is her specific submission that since the suit property absolutely belongs to the second defendant, the suit property is not amenable to partition. Hence, she prayed



S.A.No.949 of 2009

to dismiss the suit.

WEB COPY

6. Before the Trial Court, the plaintiffs have examined PW1 to PW4 and marked as many as 19 documents as Exs. A1 to A19. On behalf of the defendants, DW1 to DW18 were examined, and Exs. B1 to B3 were marked.

7. The Trial Court has framed as many as nine issues and ultimately found that the plaintiffs are entitled to a decree as prayed for. However, the Trial Court found that the suit was under-valued, and directed the plaintiff to pay the deficit Court fee within three weeks from the date of the order. However, the plaintiffs did not aggrieve with the said finding. Hence, the third defendant alone preferred the first appeal. The First Appellate Court, on re-appreciation of evidence and documents, has ultimately concurred with the finding of the Trial Court.

8. Aggrieved with the judgment of the First Appellate Court, the third defendant preferred the instant Second Appeal.

9. I have heard Mr.S.Sathia Chandran, the learned counsel for the appellants, and Mr.S.Saravanakumar, the learned counsel for the twelfth to



S.A.No.949 of 2009

sixteenth respondents.

10. The learned counsel for the appellants/third defendant would vehemently contend that, the Trial Court and the First Appellate Court have not considered the oral and documentary evidence in its right perspective and has only proceeded based upon presumption and assumption. It is also the specific contention of the learned counsel that, there is no proof to show the suit property as the ancestral property of the plaintiffs. It is also contended that the Revenue Records submitted by the plaintiffs are not related to the suit property. It is the further submission of the learned counsel that the issuance of patta in her name, would vindicate her title over the suit property. He would further contend that, both the Courts below have not considered the material aspect of their contention. It is the further submission that the First Appellate Court did not formulate points for determination before arriving at conclusion. Accordingly contended that, the judgement of the First Appellate Court has got an inherent infirmity. Hence, prayed to allow the instant Second Appeal.

11. Per contra, the learned counsel for the respondents 12 to 16, who are the legal heirs of the first defendant, would vehemently contend that



S.A.No.949 of 2009

contrary to the specific case of the subsequent purchaser qua the third defendant denying the plaintiff's ownership, the plaintiffs had submitted as many as 13 documents to substantiate their right over the suit. It is the further contention of the learned counsel that the title deed relied upon by the third defendant is an unregistered sale deed, and he would also contend that the Revenue Records cannot be a document of title. He would also contend that there are no grounds to interfere with the concurrent findings of both the Courts below. Hence, prayed to dismiss the instant Second Appeal.

12. I have given my anxious consideration of the submissions made on either side.

13. The foremost contention raised by the learned counsel for the third defendant is that, the First Appellate Court did not follow the mandatory procedure as contemplated under Order XLI, Rule 31 of CPC. As rightly submitted by the learned counsel for the appellants, the First Appellate Court has formulated only an omnibus point for determination. However, while looking at the order, the First Appellate Court had taken cognizance of the oral and documentary evidence and made substantial compliance with the



S.A.No.949 of 2009

provisions under order 41 Rule 31, by answering all the issues dealt by the Trial Court. Therefore, merely because there was an omnibus point for determination, in the above background, it cannot be a reason to interfere with the order of the First Appellate Court.

14. The learned counsel for the appellants would further contend that the entire finding of the Trial Court is based upon presumption and assumption, as the plaintiffs did not submit any concrete evidence to show their right over the property. In this regard, it is relevant to refer to the pleadings of the third defendant. According to the third defendant, the deceased Budan Sahib and his legal heirs qua plaintiff and the defendants 1 and 2 had never lived in Poiyyapatti Village, and that they were residing somewhere else. But in contrast to the above contention, the plaintiffs had produced the Revenue Records and demonstrated that they have got property in Poiyyapatti Village, curiously those Revenue Records are related to the suit property. The third defendant, having taken a defence that the plaintiffs' family ever resided and do not have any property in Poiyyapatti Village, after producing the Revenue Records, developed her case and contended that those Revenue Records do not relate to the suit property.



S.A.No.949 of 2009

WEB COPY

15. As rightly observed by the Trial Court, when the plaintiffs were able to substantiate through the Revenue Records about their right over the suit property, the third defendant, who took a defence that the plaintiffs' family did not have property in Poiyyapatti Village, failed to prove that those Revenue Records are not related to the suit property. In this view of the matter, the findings rendered by the Trial Court, that the Revenue Records starting from 1964, would clinchingly prove the plaintiffs' case, is liable to be accepted. Here, though the third defendant had independently set up title by virtue of a sale deed dated 11.02.1989, the said sale deed is an unregistered sale deed. Accordingly, the same cannot be relied upon to prove the title over the suit property. Apart from that, even the Revenue Records relied by the third defendant, which came into existence just prior to the date of filing of the suit, cannot be the basis for the title, as the Revenue Records relied by the plaintiffs were prior in point of time.

16. In our case, there is concrete evidence that the deceased Budan Sahib has paid the kist receipts since 1964, and the revenue records stand in his name. In such view of the matter, mere sale by Usman, viz., the second



S.A.No.949 of 2009

defendant, will in no way confer any right over the property to its entire extent. Apart from that, even for a moment, if it is accepted that the said Usman had sold the property to the third defendant, as this Court already stated, the said sale deed admittedly an unregistered one, which become inadmissible, therefore, the same would in no way be helpful to the third defendant to prove her title.

17. The learned counsel for the appellants would contend that by virtue of the UDR patta [Ex.B5] issued during 1991, and its confirmation by the Revenue Divisional Officer [Ex.B10], it would be sufficient to prove title over the suit property. But I am in disagreement with the above submission. Those document may be sufficient to prove possession, but this Court deciding a partition suit, filed by the legal heirs of Budan Sahib. Therefore, to grant the relief of partition, the possession of the third party is not a bar. Accordingly, I do not find any perversity in the order of the First Appellant Court. Further, in view of the above discussion, there are no substantial questions of law arising in this Second Appeal.



S.A.No.949 of 2009

WEB COPY

18. In the result, this Second Appeal is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

29.01.2025

kv

Index : Yes/No

Speaking order /Non Speaking Order

Neutral Citation : Yes/No

To

1. The Sub-Court,
Dharmapuri.

2. The District Munsif Court,
Harur.



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S.A.No.949 of 2009

C.KUMARAPPAN, J.

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S.A.No.949 of 2009

29.01.2025