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S.A. No.1470 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2025

CORAM

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

S.A.No.1470 of 2010

and

M.P.No.1 of 2010

- 1.Kandasami
- 2.Mariappan (Died)
- 3.Sengottaiyan
- 4.Selvarasu
- 5.Sambunathi
- 6.Kanthayi

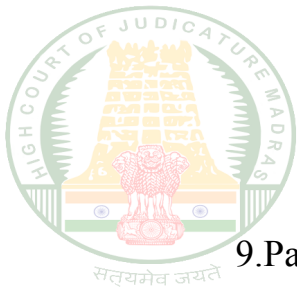
... Appellants

(Appellant 3 to 6 brought on record as LR's of the deceased 2nd appellant viz. Mariappan vide Court order dated 30.07.2021 made in CMP.No.11761 of 2021 in S.A.No.1470 of 2010)

Vs

1. Pappathi
- 2.Mathammal
- 3.Paramasivam
- 4.Ammasi (Died)
- 5.Thangamani
- 6.Kandasami
- 7.Govindammal
- 8.Srirangan

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9.Pazhaniyammal

10.Palanisamy

11.Pappathi

12.Rasiponnu

... Respondents

(R4 died, RR5 to 12 are brought on record as LR's of the deceased R4 vide Court order dt.12.06.2023 made in CMP.No.11757/2021 in S.A.NO.1470 of 2010.)

PRAYER: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 30.11.2006 in A.S.No.53 of 2006 on the file of Principal District Judge, Salem, confirmed the judgment and decree dated 30.01.2006 in O.S.NO.401 of 1999 on the file of Subordinate Judge, Mettur.

For Appellants : M/s.P.Jagadeesan
For Respondents : Mr.V.Sekar for R1 & R2
R4- Died
R3, R5 to R12 - No appearance

JUDGMENT

The appellants have filed this Second Appeal against the judgment and decree dated 30.11.2006 in A.S.No.53 of 2006 on the file of Principal District Judge, Salem, confirmed the judgment and decree dated 30.01.2006 in O.S.NO.401 of 1999 on the file of Subordinate Judge, Mettur.



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2. Heard M/s.P.Jagadeesan, learned counsel for the appellants, Mr.V.Sekar, learned counsel appearing for the respondents 1 & 2, and perused the material available on record.

3. For the sake of convenience, the parties herein are referred to as they were ranked in the suit.

4. The appellants herein are the unsuccessful defendants 2 and 3 in the suit O.S. No. 401 of 1999. The original plaintiff, Arumugam, filed a suit for partition against his brother, Paramasivam (D1), and another brother, Kandha Goundar, who passed away, leaving behind his legal heirs (D2 to D4). The plaintiffs sought the allotment of a one-third share in the suit property, asserting that it was ancestral joint family property. He claimed that the three brothers constituted a Hindu Undivided Joint Family and that no partition had been effected by metes and bounds. After issuing a notice demanding an amicable partition, he alleged that his brother and the legal heirs of the deceased brother evaded the demand, compelling him to file the suit for partition.



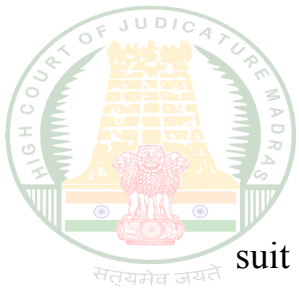
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5. The first defendant remained ex-parte. Defendants 2 to 4 contested the suit by filing a written statement, denying the existence of joint family property as alleged in the plaint. They contended that the 1st plaintiff had already parted with his share of the property in favour of his two brothers, namely D1 and Kandha Goundar (father of D2 to D4), for valuable consideration through two registered documents dated 28.01.1957 and 23.01.1971. They also asserted that the plaintiffs had handed over possession and relinquished his share 30 years earlier for valid consideration. Therefore, they argued that the plaintiffs had no right to claim a share in the suit property and prayed for the dismissal of the suit.

6. Before the trial court, both the parties adduced oral and documentary evidence. On the side of the plaintiffs P.W.1 & P.W.2 were examined and Ex.P1 to Ex.P5 were marked. On the side of the defendants, D.W.1 & D.W.2 were examined and Ex.B1 to Ex.B3 were marked.

7. The original plaintiff, Arumugam, passed away, his two daughters (plaintiffs 2 and 3) contested the case and provided evidence. The learned trial judge framed four issues, the foremost of which were: (i) Whether the



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suit property was ancestral joint family property. (ii) Whether the plaintiff had already relinquished his right over the property through two registered documents, as alleged by the defendants.

8. After analyzing the evidence, the learned trial judge held that the suit property was indeed ancestral property. The plaintiff's father, Mariappan, had three sons—Arumugam (plaintiff), Paramasivam (D1), and Kandha Goundar (father of D2 to D4). As legal heirs, each of them was entitled to one-third share. Since the first defendant, Paramasivam, remained ex-parte, the court drew an adverse inference against him.

9. The contesting defendants (D2 to D4) argued that the 1st plaintiff had already released his share through a release deed dated 23-01-1971. However, they failed to produce the said document before the court. Though D.W.1 gave evidence supporting this claim, they instead produced another sale deed dated 25.01.1957, marked as Ex. B-1. Upon perusal of this document, it was found that the 2nd and 3rd plaintiffs and their mother had jointly sold certain property to Paramasivam (D1) and KandhaGoundar. However, the document did not contain any survey number or property



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description that matched the suit property. Therefore, the document did not bind the plaintiffs.

10. Given the ex-parte status of Paramasivam and the failure of the contesting defendants to substantiate their claims, the trial court ruled in favour of the plaintiffs. The court decreed the suit, allotting one-sixth share to each of the plaintiffs.

11. Challenging this judgment, defendants 2 and 3 preferred an appeal (A.S. No. 53 of 2006) before the Principal District Judge, Salem. Both parties contested the appeal. During the appellate proceedings, the appellants filed I.A. No. 169 of 2006 under Order XLI, Rule 27, seeking to introduce the original sale agreement executed by the first plaintiff in favour of their father, Kandha Goundar, as additional evidence. The plaintiffs objected to this, and the matter was tried along with the appeal.

12. The learned first appellate judge framed two issues for consideration:

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(i) Whether the unregistered sale deed dated 23-01-97 could be received as additional evidence.

(ii) Whether the judgment passed by the trial court was sustainable.

13. The learned first appellate judge, with regard to additional documents, held that the document in question is unregistered. However, since the value of the property mentioned in the document is Rs. 1,500/-, it requires valid registration as per Section 17 of the Registration Act.

14. The counsel appearing for the contesting defendants argued that even unregistered documents could be admissible for collateral purposes, such as proving possession of the property. However, the learned first appellate judge observed that if a document is not properly stamped, the required stamp duty could be paid with a penalty for any purpose. However, the contesting defendants claim that through the said unregistered alleged release deed, they have acquired extinguishment of rights or ownership, which cannot be legally claimed. Furthermore, regarding the possession of



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the property, even a bare perusal of the alleged unregistered document shows that no survey number is mentioned. The extent of the property mentioned is only 47 cents in Karkalvadi village and in Natchukadu, whereas the suit property measure 13 acres and 18 cents. Therefore, the unregistered and insufficiently stamped document is inadmissible as evidence. Consequently, it was not included as additional evidence.

15. While deciding the right of the plaintiff, the learned first appellate judge held that as per Exhibit B1 (a sale deed), the plaintiff, Arumugam, and his mother sold the property under Exhibit B1 on 25.01.1957 to Kandha Gounder and Paramasivam. However, no survey number was mentioned, and the total extent of the property in Exhibit B1 is 3 acres and 0.5 cents. The property mentioned in Exhibit B1 belonged separately to the plaintiffs' mother, Vairakkal, and was situated in Bomminayakam Patti of Karkalvadi village. Thus, it is entirely different from the suit property. Therefore, the contesting defendants failed to establish that the original plaintiff, Arumugam, relinquished his share through a release deed or conveyed his share in the joint family property to his two brothers. Since



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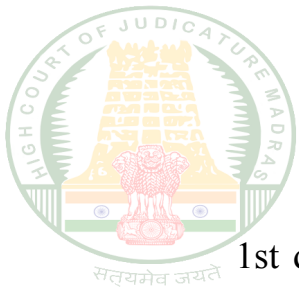
this claim was not proved, and the plaintiffs, on the other hand, substantiated their claim for one-third share in the suit property, the appellate court confirmed the findings of the trial court and dismissed the appeal.

16. Challenging the concurrent findings of the courts below, the 2nd and 3rd defendants preferred this appeal and raised following grounds.

i) The lower courts ought to have held that the plaintiffs are not in possession and enjoyment of the suit property. There is no joint possession in respect of the suit property and the plaintiffs are not entitled for partition and separate possession.

ii) The lower Courts failed to hold that burden of proof that the suit property is the joint family property and the plaintiffs are in possession of the suit property are heavily on the plaintiffs, which they failed to discharge their burden.

Iii). The lower courts ought to have held that the 1st plaintiff along with his mother, has sold his entire share in the suit property infavour of the



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1st defendant and the father of the defendants' 2 to 4 under the sale deed dt.25.1.1957 which is marked as Ex.A-1. Thus the plaintiffs have no share in the suit property.

iv. The lower courts failed to see that the I st plaintiff has executed a release deed dt.23.01.1971 (Ex.A-2) and thereby relinquished his share in the joint family property, infavour of 1 st defendant and the father of the defendants 2 to 4 Kanda Gounder and hence the plaintiffs are not entitled to claim any share in the suit property.

v. The lower Appellate court erred in dismissing I.A. No.169 of 2006, the petition to receive the release deed dt.23.01.1971 as additional evidence in the appeal, without properly considering the facts and circumstances of the case.

vi. The lower appellate Court failed to see that the release deed dt.23.1.1971 is a very vital document which will throw more light on the dispute between the parties.

Vii. In any event, the release deed dt.23.1.1971 could atleast be received in evidence for the collateral purpose of proving the nature of possession of the suit property by the defendants.



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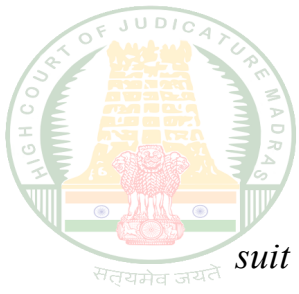
viii. The lower courts ought to have seen that the 1st plaintiff has not even chosen to give any rejoinder to the reply notice issued by the defendants 2 to 4 stating that the 1st plaintiff has relinquished his rights over the suit property.

ix. The lower courts erred in commenting upon the defendants for non examination of the 1st defendant and drawn an adverse inference against the defendants. In this case, the defendants have examined other defendants to prove their case. Hence, the non examination of the defendant would not be fatal to the defendants' case.

17. This Court admits the second appeal on 03.12.2010 on the following substantial questions of law:

“ A. Whether or not the Lower Appellate Court right in dismissing the application to receive the release deed dated 23.01.1971, ignoring that the said document is a vital document to decide the real dispute between the parties?

B. Whether the plaintiffs are entitled to partition of any share in the



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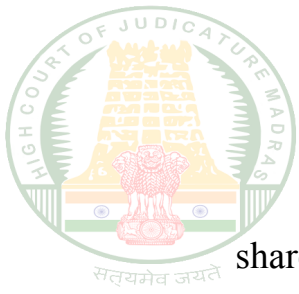
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suit property even after the first plaintiff had sold his share in the suit property in favour of the first defendant and the father of defendants 2 to 4 and subsequently relinquished the balance of his share in the suit property under the release deed dated 23.01.1971?

C. Whether or not the release deed dated 23.01.1971 could be received in evidence for collateral purposes of proving the exclusive possession of the defendants over the suit property? ”

18. The learned counsel for the appellants argues that the alleged unregistered release deed dated 23-01-1971 is a vital document to prove the real dispute between the parties and should have been admitted for collateral purposes, specifically to prove the exclusive possession of the properties by the defendants. However, the learned first appellate judge, without proper consideration, erroneously dismissed the application, holding it inadmissible. The appellants contend that this ruling is illegal and should be set aside. Furthermore, the counsel submits that since the 1st plaintiff had already released his share, he is not entitled to claim one-third

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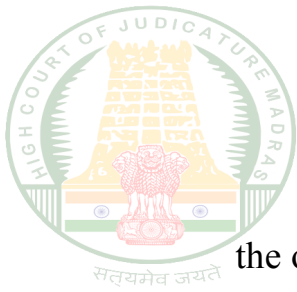
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share. However, the courts below erroneously granted him such a share without properly appreciating the records. Therefore, he prays to set aside findings of the courts below.

19. Additionally, the appellants argue that the plaintiffs have failed to establish that, at the time of filing the suit, the suit property was part of the joint family estate. The plaintiffs have also not proved that they were in joint possession of the property, a necessary requirement for partition. Despite this, the courts below granted them one-third share, which the appellants contend is a misinterpretation of facts and law. They argue that the judgment is perverse and should be set aside.

20. In response, the learned counsel for respondents 1 and 2 (plaintiffs 2 and 3) argues that the contesting defendants have not denied the nature of the property nor established that the original plaintiff, Arumugam, relinquished his share in favour of the contesting defendants. Furthermore, Exhibit B1 does not pertain to the suit property. The plaintiffs have successfully proved that the suit property is joint family property and that their father, the original plaintiff, did not release his share in favour of

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the other sharers or sell the suit property.

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21. Moreover, the alleged release deed relied upon by defendants 2 and 3 is unregistered, and the property mentioned therein do not match the suit property. Therefore, the courts below rightly disregarded the alleged release deed and granted the plaintiffs their rightful share in the suit property. As a result, the respondents contend that the appeal has no merit and should be dismissed.

22. Considering both parties' submissions, the contesting defendants challenge the plaintiffs' claim on two grounds. It is an undisputed fact that the original plaintiff, Arumugam, the first defendant, Paramasivam, and their deceased brother, Kandha Gounder (whose legal heirs are defendants 2 to 4), were brothers. The plaintiffs argue that the suit property is ancestral joint family property. After their father's demise, the plaintiff and his two brothers jointly constituted a Hindu Joint Family property. When the plaintiff demanded an amicable partition, his brothers refused. Consequently, after issuing a legal notice, he filed the present suit.

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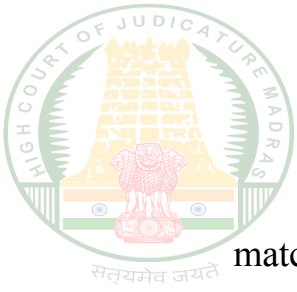
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23. In response, the contesting defendants claim that the plaintiff, Arumugam, had already released his share in favour of his two brothers and had sold a portion of the property through a sale deed about 30 years ago. Therefore, they argue that his right has already been extinguished, and the partition suit is not maintainable.

24. To prove the alleged release, the contesting defendants did not produce any release deed before the trial court. The trial court made an observation to this effect. However, during the first appeal, they produced an alleged unregistered release deed as an additional document and requested the first appellate court to admit it. The learned appellate judge, upon examination, found that the property mentioned in the document was valued at Rs.1,500/-, which required valid registration. Since it was not registered, the document was held inadmissible.

25. The contesting defendants insisted that the document could still be received for collateral purposes. However, the learned first appellate judge rejected this argument as well, noting that the suit property does not

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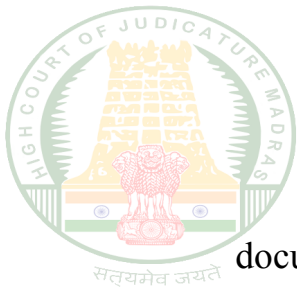
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match the property described in the alleged unregistered release deed.

Further, in the alleged unregistered documents, admittedly, no survey number was mentioned, nor was any proof provided that it related to the suit property. An extent of 13 acres was shown as the suit property in Survey No. 242/1A1 and 241/1A of Karkalvadi, Village Omalur. However, no survey number was mentioned, and the description of the property did not tally with the suit property. At most, it contained only 47 cents, whereas the suit property measured 13 acres and 18 cents.

26. Therefore, the first appellate judge rightly dismissed the application to receive the alleged release deed, which requires no interference by this court. Apart from this, the said document is also unregistered, in admissible in evidence want of registration under Section 17 of Registration Act, thus question of law "A" is answered.

27. Another defense raised by the defendants is that, through a sale deed (Exhibit B1), the plaintiffs, along with their mother, sold the property in favour of D1 and the father of the 2nd defendant, namely, Kandha Kounder. However, as per the description found in Exhibit B1, the



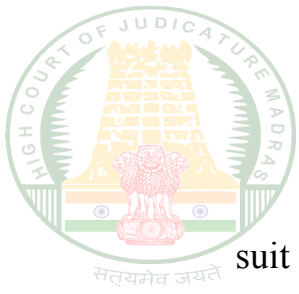
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document was executed for an extent of 3 acres, but the suit property was not mentioned. The property described in Exhibit B1 are entirely different from the suit property, and it is a self-acquired property of the plaintiffs' mother, Vairakal, which has no connection with the suit properties.

28. Accordingly, the courts below rightly held that through Exhibit B1, the defendants failed to establish that the plaintiffs had already sold their share in favour of their other brothers. Therefore, the defendants could not prove that the plaintiffs had parted with their share by receiving valid consideration through a sale deed or that they had already relinquished their remaining share. Consequently, the contentions of the defendants were rightly disbelieved by the courts below, and no interference is required. Accordingly, Question of Law B is answered.

29. The suit property was claimed as joint family property by the plaintiffs. In the written statement, the defendants did not specifically rely on this contention. Instead, they pleaded that the plaintiffs had already released their share for valid consideration, which itself indicates that the



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suit property is joint family property in nature. There is no proof by the defendant that he is excessive possession of suit property. Hence, the alleged unregistered release deed not to be consider even for collateral purpose. Thus, question of law "C" is answered. As discussed above, the first plaintiff proved his claim. Since he has now passed away, his daughters, plaintiffs 2 and 3, are entitled to a total of one-third (1/3) share in the suit property (one-sixth (1/6) each).

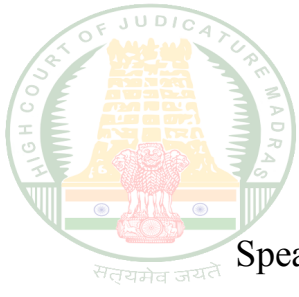
30. Accordingly, the appeal is dismissed as devoid of merit. The findings of the trial court are confirmed. Since the suit has been pending since 1999, more than 25 years, the trial court is directed to dispose of any final decree application, if filed, without unnecessary adjournments and to conclude the case within a period of three months. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

04.04.2025

Index : Yes/No

Neutral Citation : Yes/No

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Speaking/Non Speaking order

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To

1. The Principal District Judge, Salem.
2. The Subordinate Judge, Mettur.
3. The Section Officer, VR Section, High Court of Madras.

T.V.THAMILSELVI, J.

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