



S.A. No.551 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 05.06.2025

CORAM

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

S.A.No.551 of 2010

1.Padmavathy (died)

2.Parimala

... Appellants

* 1st appellant died. Appellant 2 and RR1 and 2 are LR's of the deceased appellant viz.Padmavathi ammal as per memo dated 27.03.2017 and vide court order dated 28.01.2022 made in S.A.No.551 of 2010 (RPAJ).

Vs

1.Kanniappan

2.Vasanthi

... Respondents

PRAYER: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree of the first appellate court, passed in A.S.No.34 of 2008 dated 29.06.2009 on the file of Principle District Court, Tiruvallur and confirm the decree and judgment of the trial Court in O.S.No.36 of 2004, dated 02.08.2007 on the file of Subordinate Court, Ponneri.

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For Appellants : Mr.K.Prabhakaran
For R1 : Mr.A.Palaniappan
For R2 : Mr.JRK.Bhavanantham

JUDGMENT

The appellant has filed this Second Appeals against the Judgment and decree of learned Principal District Court, Tiruvallur, dated 29.06.2009 made in A.S.No.34 of 2008, which confirmed the Judgment and decree of the learned Subordinate Judge, Ponneri, in O.S.No.36 of 2004, dated 02.08.2007.

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

3. The appellants herein are the plaintiffs in suit O.S. No. 36 of 2004 on the file of the Subordinate Court, Ponneri. They filed the suit for partition, claiming each $\frac{1}{4}$ th share in the entire suit property. The suit was filed against two defendants the 1st defendant being the son, and the 2nd

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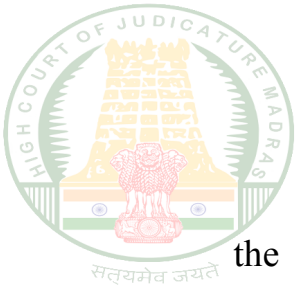
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defendant and the 2nd plaintiff being daughter of the 1st plaintiff. The mother and one of the daughters, Parimala, being the plaintiffs, filed the suit for partition against D1 and D2.

4. The 1st defendant contested the suit, claiming that the suit property was not ancestral property, but his self-acquired property standing in his name. However, after considering the evidence on both sides, the learned trial judge held that the suit property was purchased by selling ancestral property. Therefore, the property that stand in the name of the 1st defendant are deemed to be joint family property. Accordingly, the suit was decreed by allotting $\frac{1}{4}$ th share to each of the plaintiffs.

5. Against this judgment, an appeal in A.S. No. 34 of 2008 was filed. The learned first appellate judge analyzed the entire evidence on record and held that a portion of the property had not been included. It was also observed that during the lifetime of the 1st plaintiff, Padmavathy, W/o Parthasarathy, the property at No. 13, Kamarajar Road, Kaladipet, Sathankadu Village, Chennai 600 019, were inherited by D2 and D3, and



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the 1st defendant was given the property at Door No. 46, Village Street, Sathangadu Village.

6. Further, the appellate court found that the plaintiffs had not sought any prayer for the cancellation of the sale deed made by the 1st defendant in favor of one Segar. Since the suit was filed in 2004 and the sale took place in 1993, the suit is barred by limitation, having not been filed within 12 years from the date of the sale. Accordingly, the suit was dismissed, and the appeal was allowed. Challenging the reversal of findings by the first appellate judge, the plaintiffs have preferred this second appeal.

7. Brief Facts of the Case: The 1st plaintiff and Parthasarathy were husband and wife. They had two daughters and one son, namely, the 2nd plaintiff and 2nd defendant (daughters), and the 1st defendant (son). The plaintiffs submit that Parthasarathy was given 1½ acres of land in S. No. 219/1 at Thiruvotriyur Village through a Will executed by his father, Kuchinayakar.



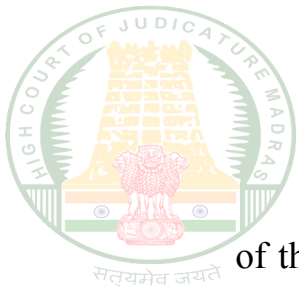
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8. After the demise of Kuchinayakar, the Will was acted upon, and

Parthasarathy became the absolute owner of the said property. The property was later sold, and out of the sale proceeds, the suit property was purchased in the name of the 1st defendant, who was a minor at the time and had no independent income. Therefore, the plaintiffs claim that the suit property is a joint family property. After the demise of Parthasarathy, his legal heirs, namely, the 1st plaintiff and the three children are entitled to $\frac{1}{4}$ th share each. Accordingly, the plaintiffs claim $\frac{1}{4}$ th share each in the suit property.

9. The 1st defendant contested the suit by stating that the property in S.No. 219/1 allotted to his father was ancestral property, and he was jointly entitled to it along with his father. At the time of the sale in 1967, he was a minor. The property was sold by his father on behalf of the family, and with the sale proceeds, the suit property was purchased in the name of the 1st defendant on 17.07.1967. He claimed to be the absolute owner of the property after attaining majority and stated that he had been in possession and enjoyment of the property. He further stated that he sold two portions

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of the suit property through two sale deeds in favor of one Segar, covering about 2,755 sq. ft. The remaining extent was leased and rented out. In an earlier suit, O.S. No. 120 of 2000, the plaintiffs had admitted the 1st defendant's ownership of the suit property. Hence, he argued that the plaintiffs are not entitled to any share. Even in the year earlier suit itself the plaintiffs aware that the defendant alone the owner of the property, as absolute owner the defendants made interference, colluding with other daughters filed a suit prayed for dismissal. The trial court framed issues.

10. Before the trial Court both the parties adduced oral and documentary evidence. On the plaintiffs side, Ex.P.1 to Ex.P5 documents were marked, and the plaintiffs were examined as P.W.1. & P.W.2. On the defendants side, 1st defendant was examined as D.W.1 and Ex.B.1 to Ex.B7 documents were marked.

11. The learned trial judge held that the property was purchased out of the sale of ancestral property through a Will dated 05.06.1962, which allotted the ancestral property to Parthasarathy. Since the suit property was

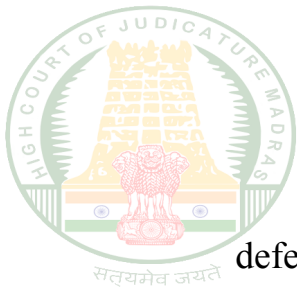


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purchased in the name of the 1st defendant using such proceeds, the learned trial judge concluded that they are joint family property. Furthermore, DW1 (the 1st defendant) admitted that the property was sold for the welfare of the joint family, and that the suit property was bought using those proceeds. Accordingly, the plaintiffs were each granted $\frac{1}{4}$ th share. It was also observed that the subject matter of O.S. No. 120 of 2000 (which involved S.No. 173/1) was not related to the present suit. Therefore, the principle of res judicata was held not to bar the present claim.

12. However, in appeal A.S. No. 34 of 2008, the learned first appellate judge held that since the plaintiffs had not challenged the sale made by the 1st defendant in favor of Segar (executed in 1983), the suit filed only in 2004 was barred by limitation. The court relied on Ex.B4, a certified copy of the plaint in O.S. No. 254 of 1992, where in Paragraph 5 it was stated that the suit property was exclusively given to the 1st defendant, and another house property was given to the plaintiffs. Based on this admission, the appellate court concluded that the plaintiffs and their mother had acknowledged that the suit property was given exclusively to the 1st



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defendant. Moreover, the plaintiffs failed to include all the property for partition, particularly the property involved in O.S. No. 120 of 2000. Thus, the appellate court allowed the appeal and dismissed the suit. Challenging the reversal findings of the 1st appellate court, the plaintiffs preferred this second appeal.

13. During the pendency of the proceedings, the mother (1st plaintiff) passed away, leaving behind her daughters and son, who are already parties to the suit proceedings.

14. The learned counsel for the appellants challenged the findings of the 1st appellate court on following grounds:

(i) The learned appellate Judge erred in not appreciating oral and documentary evidence adduced before the trial Court.

(ii) The learned appellate Judge erred in reversing the judgment of the trial Court, relying on the averments made by the appellants contained in a plaint in an earlier suit without considering the judgment rendered in the earlier suit in which the said Court dismissed the said plea.



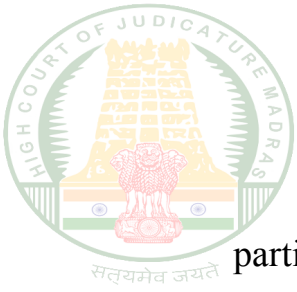
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(iii) The learned appellate judge erred in holding that the 2nd appellant did not question the alienation of a portion of the suit property as soon as she attained majority for getting the fact that the alienated portion of property was not the subject matter of the suit under appeal.

(iv) The learned appellate judge did not take into account that the suit for partition is for the property available with the 1st respondent and not for the property alienated by him and erred in reversing the judgment of the trial Court.

(v) The learned appellate judge has not taken into consideration the admission made by the 1st respondent that the suit property was purchased from the sale proceeds of a joint family property with an extent of about 1.5 acres and therefore admittedly the suit property is a joint family property and the appellants have a share in the property as rightly held by the trial Court.

(vi) The appellate Court erroneously applied the Principal of limitation under entry 127 of Limitation Act which is totally inapplicable to the present case since the suit is not for the property alienated during minority but only with respect to the property not sold and still available for



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partition.

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(vii) The appellate Court has dealt with a plea of limitation neither pleaded by the appellants nor by the respondents and came to an erroneous conclusion and reversed the judgment of the trial Court."

15. This Court admitted this second appeal on 06.07.2010, on following substantial questions of law:

"A. Whether Article 127 in the first schedule in the limitation act has any application in a suit for partition as mentioned in the judgment of the appellate Court?

B. Whether a minor who attained majority is barred from seeking a partition of her share in the unsold property beyond three years from attaining majority?

C. Whether a property purchased from the sale proceeds of a joint family property in the name of a male member of a joint family or the self acquired property of the person in whose name it was purchased?"

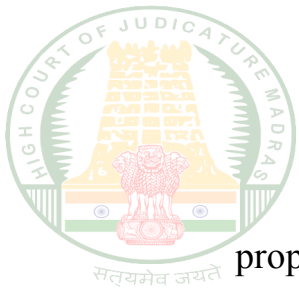


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16. The learned counsel for the respondents argued that the 1st defendant had proven that the suit property was purchased by his father after selling ancestral property. As such, the property was purchased in 1967 for the benefit of the joint family, and later held by the 1st defendant as his absolute property, with the knowledge of other legal heirs. The 1st defendant sold part of the property to Segar in 1993, and since no challenge was made to the sale deeds within the limitation period, the suit is barred.

17. Furthermore, it was argued that in earlier proceedings, the plaintiffs admitted that other property had been allotted to them and that the suit property were exclusively given to the 1st defendant. The first appellate court rightly considered all these aspects and dismissed the suit, which does not warrant any interference.

18. The relationship between the parties is admitted. It is also an admitted fact that ancestral property was bequeathed to Parthasarathy, the father of the 2nd plaintiff and defendant, through a Will. This ancestral property was subsequently sold, and using the sale proceeds, the suit

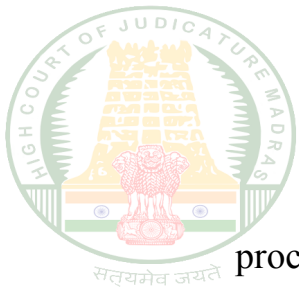


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property was purchased. It is further admitted that Parthasarathy sold the said property and , from the sale proceeds, purchased the present suit property in the year 1967. According, to the plaintiffs, the suit property was purchased in the name of the 1st defendant by utilizing the sale proceeds of the ancestral property. Therefore, they contend that the suit property assumed the character of ancestral property. As a result, the daughters are claiming 1/4th share each in the suit property along with their mother. However, since the mother passed away during the pendency of the proceedings, the plaintiffs are now claiming 1/3rd share each in the suit property.

19. During cross examination, DW.1 also admitted that his father, on behalf of the joint family, sold the ancestral property and purchased the suit property in his name at a time when he (D.W.1) was a minor. However, he claims that the property is his self-acquired property. As rightly observed by the trial Court, the suit property was purchased using the sale proceeds of the ancestral property. Therefore, the suit property assumes the character of joint family property. The defendant relied on the earlier suit



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proceedings, but since that suit did not end in favour of the plaintiffs, it would not bind either of the parties in the present case. Hence, the findings of the first appellate judge that the suit property is the separate property of the 1st defendant is erroneous and is liable to be set aside.

20. Furthermore, the plaintiffs are not challenging the allegation made by the 1st defendant and are claiming a share only in the remaining extent of the property. Therefore, the suit would not be affected by the plea of limitation. However, the first appellate Judge failed to take note of this aspect and erroneously held that the suit is barred by limitation. Accordingly, questions of law 1 and 2 are answered in favour of the plaintiffs. Consequently, the findings of the first appellate judge are set aside, and the suit is decreed. During the pendency of the proceedings, the 1st plaintiff passed away. Therefore, the 2nd plaintiff, defendant 1 and 2 are each entitled to 1/3rd share in the suit property. Accordingly, a preliminary decree is passed.



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21. If any final decree application is filed, the trial Court is directed to dispose of the same within a period of three months, considering that the suit, originally filed in the year 2004, has been pending for more than 20 years.

22. Accordingly, the Second Appeal is allowed. There shall be no order as to costs.

05.06.2025

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

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To

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



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T.V.THAMILSELVI, J.

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