



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 03.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.No.941 of 2010 and
M.P.No.1 of 2010 and
C.M.P.No.9072 of 2022

R.Madhanagopal

... Appellant / Plaintiff

Vs.

1.G.C.Radhakrishnan
2.R.Nandha Kumar
3.R.Kothandaraman
4.R.Chandrakala
5.T.K.Venkataperumal
6.Nirmala
7.Lokanath
8.Vasanthalakshmi
9.T.K.Ramakrishnan

... Respondents / Defendants

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 08.07.2009 passed in A.S.No.23 of 2007 by the learned Sub-Ordinate Judge at Maduranthakkam, Kanchipuram District, confirming the decree and judgment dated 24.02.2006 passed in O.S.No.155 of 2001 by the learned District Munsif, Maduranthakkam, Kanchipuram District.



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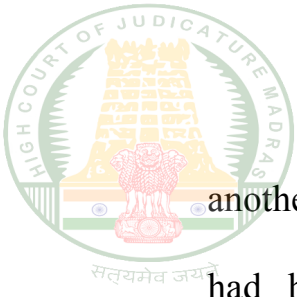
For Appellant : Mr.N.Nagusah

For Respondents : Mr.A.Thiagarajan for R5 & R6
Mr.N.Kannan, for R7
No appearance for R1 to R4, R8 & R9

JUDGMENT

This Second Appeal has been filed to set aside the judgment and decree dated 08.07.2009 passed in A.S.No.23 of 2007 by the learned Sub-Ordinate Judge at Maduranthakkam, Kanchipuram District, confirming the decree and judgment dated 24.02.2006 passed in O.S.No.155 of 2001 by the learned District Munsif, Maduranthakkam, Kanchipuram District.

2. The plaintiff in O.S.No.155 of 2001 on the file of the District Munsif Court, Maduranthakkam, is the appellant herein. The said suit has been filed seeking a preliminary decree for partition and separate possession of the suit by dividing it by five equal parts and to allot one part to the plaintiff. The suit property has been described as a vacant land at Maduranthakkam Taluk, Coodalore Village and had been described in the schedule. In the plaint, it had been contended that the plaintiff is the eldest son of the first defendant and the defendants 2 to 4 are the other sons and daughters of the first defendant. It had been further stated that there is yet



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another daughter, but she had not been impleaded as a party to the suit. It had been contended that the properties are ancestral properties and therefore, the plaintiff is entitled for partition and separate possession. In the written statement filed by the fifth defendant who is a subsequent purchaser, the claim of the plaintiff that the properties are ancestral properties had been specifically denied. It had been stated that the suit itself had been engineered by the first defendant and it was a collusive suit. It has been further stated that only to frustrate the purchase, the suit has been filed with *malafide* intention.

3. The Trial Court by judgment dated 24.02.2006 had given a very specific finding that the properties were not ancestral properties and that the properties solely vested with the first defendant and that, the fifth defendant was a *bonafide* purchaser and therefore, declined to grant the relief of partition to the plaintiff and dismissed the suit. Thereafter, the plaintiff had filed A.S.No.23 of 2007 which came up for consideration before the Sub Court at Maduranthakkam. By Judgment dated 08.07.2009, the First Appellate Court had dismissed the Appeal Suit again holding that the suit properties were vested with the first defendant alone and that the fifth

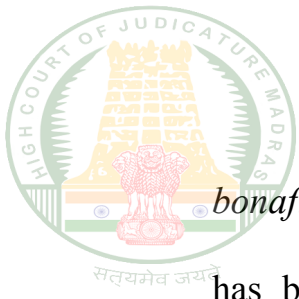


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defendant in the suit was a *bonafide* purchaser. It had also been found that the suit was collusive in nature. Thereafter, the plaintiff has filed this Second Appeal. The Second Appeal has not yet been admitted.

4. The learned counsel for the appellant / plaintiff has filed a memo, when the matter is taken up for arguments stating that the appellant has not responded to the notice issued by the learned counsel. It is clear that the appellant has taken a conscious decision to some how prevent the Court from disposing this Second Appeal. No substantial question of law arises for consideration. The facts had been settled by the Courts below. The first fact which had been determined is that the suit schedule properties are not ancestral properties and they are the properties of the first defendant / father. It had been therefore held that during the life time of the father, the plaintiff as a son cannot seek partition and separate possession. These are findings on fact which are concurrent and no ground has been made in the Second Appeal to reverse those findings.

5. The further finding that has been returned on fact is that the property has been lawfully purchased by the fifth defendant and he is a



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bonafide purchaser. Again, it is a finding on fact. The third finding which has been returned is that the suit is collusive in nature and has been engineered only by the first defendant. That again shows that the plaintiff has not come to Court with clean hands. He has not come forward to give instructions to the learned counsel, when the matter is taken up after nearly 15 years from the date on which it was filed.

6. On perusal of the records it is seen that the matter came up for first instance on 05.08.2010, when notice regarding admission to the respondents was directed. Thereafter, the bundle was kept in the almirah and was not listed before any Court for the past 15 years. It is clear that the appellant has used this Court as a platform to some how deny the lawful right of the fifth defendant / purchaser. One further aspect is that the appellant has not come forward to give instructions to the learned counsel.

7. The appellant has not come to the Court with clean hands and as a matter of fact, he has come to the Court with unclean hands. Hence, he deserves no right.



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8. In view of the same, this Second Appeal stands dismissed with costs to the fifth defendant. The fifth defendant / Mr.T.K.Venkataperumal is entitled for the costs of the suit, for the First Appeal and the Second Appeal. Consequently, connected miscellaneous petitions are closed.

Speaking order / Non-speaking order

03.07.2025

Index : Yes / No

Neutral Citation : Yes / No

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WEB COPY To

- 1.The Sub-Ordinate Judge,
Maduranthakkam, Kanchipuram District.
- 2.The District Munsif,
Maduranthakkam, Kanchipuram District.



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C.V.KARTHIKEYAN, J.

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