



S.A.Nos.360 and 366 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 24.07.2025
CORAM**

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A. Nos.360 & 366 of 2022

S.A. No.360 of 2022

1. Ayyamuthu
2. Perumal
3. Pachamuthu
4. Velusamy

...Appellants

Vs.

1. Muthu
2. Periasamy
3. Kuppayee

... Respondents

S.A. No.366 of 2022

1. Ayyamuthu
2. Perumal
3. Pachamuthu
4. Velusamy
5. Vanitha
6. Kamala



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7. Alagammal

...Appellants

Vs.

1. Muthu

2. Periasamy

... Respondents

Prayer in S.A. No.360 of 2022 : Second Appeal filed under Section 100 CPC, 1908 against the judgment and decree dated 10.07.2019 passed by the Subordinate Judge, Sankagiri in A.S. No.3 of 2014, confirming the judgment and decree dated 07.01.2014 passed by the District Munsif, Sankagiri, in O.S.No.388 of 2004.

Prayer in S.A. No.366 of 2022 : Second Appeal filed under Section 100 CPC, 1908 against the judgment and decree dated 08.07.2019 passed by the Subordinate Judge, Sankagiri in A.S. No.6 of 2015, confirming the judgment and decree dated 07.01.2014 passed by the District Munsif, Sankari, in O.S.No.77 of 2012.

Appearance in both the appeals

For Appellants : Ms.D. Sathya

For Respondents : Mr.C. Prakasam



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COMMON JUDGMENT

O.S. No.388/2004 was filed by the appellants/plaintiffs against the defendants for the relief of declaration of title and consequential relief of permanent injunction in respect of the properties situate in Kannantheri Village, Sankari Taluk, Magudanchavadi SRD, Salem District in S.F. No.264/2 to an extent of 0.02.0 Acre 0.05, Asst Rs.0.08, S.F. No.264/3 to an extent of 1.04.0, Acre 2.57, Asst.Rs.4.07 and S.F. No.264/4 to an extent of Acre 1.90, Asst. Rs.3.00.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court in O.S. No.388/2004.

3. The case of the plaintiffs in a nutshell is as follows:

3.1. Originally, the suit properties are ancestral properties of plaintiffs. The 1st plaintiff is father of plaintiff No.2 to 4. The great grandfather of the 1st plaintiff by name Perumal Gounder and his brother



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WEB COPY by name Kootha Gounder jointly purchased the property in the year 1904 through Doc. No.883/1904 for valid and valuable consideration. Subsequently the said Perumal Gounder and Kootha Gounder sold the property in favour of Chinnammal, wife Kootha Gounder through Doc.No. 1578/39 on 23/6/1939 for valid and valuable consideration. Patta also stands in the name of above said Chinnammal. The above said Chinnammal sold the property to one Pachiyammal, wife of Perumal Gounder / grandmother of 1st plaintiff through Doc. No.912/1950 dated 15/3/1950 for valid and valuable consideration. On the same day, i.e., 15/3/1950 the said Pachiyammal along with his son by name Kootha Gounder pledged the property to the one Angammal, wife of Algappa Gounder through Doc.No.913/1950 dated 15/3/1950 and the above said mortgage loan was discharged on 21/1/1952 and the same was endorsed on the back side of Doc. No.913/1950.

3.2. The plaintiffs further submit that the said Pachiyammal /grandmother of 1st plaintiff also purchased one portion of land in S.F.No.264/4 from Ponnappa Gounder, son of Kootha Gounder through



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Doc. No.207/1953, dated 25/2/1953 for valid and valuable consideration and that the remaining portion in S.F.No.264/4 was enjoyed by Pachiyammal and Chinnappan. After the demise of Chinnappan, the entire property of S.F.No.264/4 to an Extent of 1.90 Acre was enjoyed by the predecessor of the 1st plaintiff. From the year 1954, the 1st plaintiff and predecessor of the 1st plaintiff had enjoyed the entire land till today.

3.3. The plaintiffs further submits that the said Perumal Gounder had two sons by name Kootha Gounder and Chinnappan. The said Chinnappan was a bachelor. Hence the entire property goes to the family of Kootha Gounder. The said Kootha Gounder had six sons by names Periyasamy, Pachamuthu, Alagappan, Iyamuthu, Muthu, Manickam. The above named members of the 1st plaintiff family entered into a partition in the year 1993 through Doc.No.P124/1993 and the same was originally registered as Doc.No.95/1994. In the said partition the 1st plaintiff was allotted "D" schedule property in S.F.No.264/2 an extent of 0.05cents, S.F.No.264/3 an extent of 0.46 cents and 0.26 cents and in S.F.No.264/4 an extent of 0.25 cents of land. Subsequently, the 1st



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WEB COPY plaintiff and his brother entered into Parivarthana deed on 30/11/1995 regarding the SF.No.264/3, as per which the 1st plaintiff was allotted 48 cents of land. The plaintiffs further submit that on 10/12/1997 the 1st plaintiff also got 50 cents of land in SF.No 264/3 from his own brother Alagappan and others through Doc No. 1921/1997 for valid and valuable consideration.

3.4. On 15/12/1997, the 1st plaintiff purchased 0.49 cents of land in S.F.No.264/3 with specific boundary and 0.37 cents of land with specific boundary and 15 cents of land S.F.No.264/4 with specific boundary. Totally 1.01 acre of land was purchased through Doc. No. 1955/97 for valid and valuable consideration.

3.5. On 18/10/1995, the 1st plaintiff pledged his property in S.F.No.264/3 and 264/4 in favour of Alagammal, wife of Muthu and the same was registered as 1603/1995 and the same was discharged through receipt No.89/1997 on 29/1/1997.



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WEB COPY 3.6. On 15/12/1997, the 1st plaintiff also pledged his property in favour of one Alagammal, wife of Muthu through Doc. No. 1953/1997 and the same was discharged through Doc. No.48/BK1/2001 on 11/1/2001.

3.7. The 1st plaintiff also got patta in his favour in the year 1999. After receiving the patta the 1st plaintiff was shocked and immediately he gave several complaints before the Collector Salem.

3.8. According to the plaintiffs all the above said documents are in favour of the plaintiffs. The plaintiffs are enjoying the suit property peacefully without any hindrance. Actually, the 1st plaintiff borrowed a loan from the wife of 1st defendant and mother of 2nd defendant on 18/10/1995 and 15/12/1997 by pledging the property in S.F.No.264/4. Subsequently the 1st plaintiff was not able to pay the interest in time, hence he handed over the possession of the abovesaid property to the family of the defendants as usufructory mortgage and the same was discharged by him. According to the plaintiffs, they are alone in



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possession and enjoyment over the suit properties and that the defendants are trying to grab the entire properties from the plaintiffs. Hence, the plaintiffs were constrained to file the above suit.

4. The claim of the plaintiffs was resisted by the defendants stating that the plaintiffs grandmother Pachaiammal purchased only 40 cents of land in survey number 264/4 out of 1.90 acres with specific boundaries from Ponnappa Gounder as per the sale deed dated 25.02.1953. The remaining portion of the property in S.No. 264/4 to an extent of 1.50 acres of land out of 1.90 acres was purchased by the defendants by virtue of sale deed dated 25.02.1953 and ever since the date of purchase, the defendants are in long continuous, uninterrupted possession and enjoyment of the said property. The defendants further submitted that they are not concerned with the properties in S.Nos.264/2 and 264/3 respectively. It is further submitted that the S.No.264/4 was sub divided into 264/4A and 264/4B. 40 cents in S. No. 264/4A belong to the plaintiffs. 1.50 acres in S.No.264/4B belong to the defendants. The defendants have constructed a tiled house bearing old door No.34A and



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New No.120 in S.No.264/4B and regularly paying house tax to the panchayat and obtained service connection in Service No.1243 for their house. The revenue records stand in the name of the defendants for the said property. Hence, prayed for dismissal of the suit.

5. The defendants in O.S. No.388/2004 filed the suit in O.S. No.77/2012 for the relief of declaration of title and for permanent injunction in respect of the property comprised in S.No.264/4B to an extent of 1.50 acres of land. Since the pleadings and subject matter in the above two suits are one and the same between the same parties, it is not necessary to dwell with the facts of the case elaborately.

6. Both the suits were tried together by the trial court. Before the trial court, the first plaintiff in O.S. No.388/2004 was examined as P.W.1 and 17 documents were marked on the side of the plaintiffs. On the side of the defendants, the first defendant in O.S.No.388/2004 was examined as D.W.1 and 3 more witnesses were examined as D.W.2 to D.W.4. Nineteen documents were marked on the side of the defendants. The trial



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WEB COPY court, upon considering the materials on record, vide its order dated 07.01.2014, dismissed the suit in O.S. No.388/2004 and decreed the suit in O.S. No.77/2012, against which the plaintiffs in O.S.No.388/2004 who are the defendants in O.S. No.77/2012 preferred appeal suits in A.S.Nos. 3/2014 and 6/2015 before Sub-Court, Sankagiri. The appeal suits were also dismissed by the first appellate court confirming the judgment and decree passed by the trial court. Aggrieved by this, the plaintiffs in O.S. No.388/2004 who are defendants in O.S. No.77/2012 have preferred the present second appeal.

7. Heard on both sides. Perused the records.

8. The learned counsel appearing for the appellants would submit that the courts below erred in raising the presumption under Section 90 of the Indian Evidence Act in respect of the documents marked as Ex.B1 and Ex.B2. Since Ex.A1 and Ex.A2 marked on the side of the appellants were also thirty year old documents, the courts below ought to have applied the presumption of its validity under Section 90 of the Indian



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Evidence Act 1872. Her further contention is that the respondents are estopped from denying the title to the suit properties, when their predecessors are mortgagees under Ex.A8 mortgage deed executed by the appellants. The learned counsel would submit that these are the substantial questions of law arising in these second appeals.

9. On a perusal of the judgment and decree passed by the trial court as well as the first appellate court, it is seen that the courts below have rendered categorical findings that the appellants herein failed to establish that they are absolute owner of the property comprised in S.No.264/4 to an extent of 1.90 acres and that they are in possession and enjoyment of the same. The courts below accepted the documents marked as Ex.B1 and Ex.B2 on the side of the respondents applying Section 90 of the Indian Evidence Act, 1872. The above documents were marked on the side of the respondents without any objections and there was no rebuttable evidence to discard the above documents. Moreover, it is not in dispute that the properties in S.No.264/4 was subdivided into 264/4A to an extent of 40 cents and as 264/4B to an extent



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of 1.50 acres and patta was issued in favour of the appellants and the respondents. It is also not in dispute that in the partition, which took place in the year 1993, only 40 cents of land was partitioned between the plaintiffs' family. The trial court and the first appellate court has rightly held that if really the plaintiffs' family was owning a total extent of 1.90 acres of land in S.No.264/4, the same would have been partitioned. Since the appellants failed to establish the factum of mortgage and their possession and title in the suit property in S.No.264/4 to the remaining extent of 1.50 acres of land, the trial court has rightly decreed the suit partly in respect of S.No.264/2, 264/3 and in 264/4 only to the extent of 40 cents and dismissed the suit in O.S. No.388/2004 for the remaining extent of property in S.No.264/4 and decreed the suit in O.S. No.77/2012 in favour of the respondents in respect of 1.50 acres of land in S.No.264/4B and the first appellate court also confirmed the judgment and decree passed by the trial court. I do not find any reason to interfere with the well reasoned judgments rendered by the trial court and the first appellate court. It is well settled that an appeal under Section 100 of the Code of Civil Procedure lies on substantial question of law. The



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questions framed in the memo of appeal are not event questions of law, much less than substantial question of law. These Second Appeals, therefore, are not maintainable and are devoid of any force.

10. In the result,

1. Both the Second Appeals are dismissed. No costs.
2. The judgment and decree dated 10.07.2019 passed by the Subordinate Judge, Sankagiri in A.S. No.3 of 2014, confirming the judgment and decree dated 07.01.2014 passed by the District Munsif, Sankagiri, in O.S.No.388 of 2004 is upheld.
3. The judgment and decree dated 08.07.2019 passed by the Subordinate Judge, Sankagiri in A.S. No.6 of 2015, confirming the judgment and decree dated 07.01.2014 passed by the District Munsif, Sankari, in O.S.No.77 of 2012 is upheld.

24.07.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga



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To

1. The Subordinate Judge, Sankagiri
2. The District Munsif, Sankagiri,
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J
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