



A.S.No.148 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 24.04.2025

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

A.S.No.148 of 2025 and
C.M.P.No.3215 of 2025

Karupuchetty @ Vaiyapuri (Died)

1. Chinnusamy
2. Chinnapillai
3. Sidhuraj
4. Mariappan

... Defendants 3 to 6 / Appellants

-VS-

1. Papathi
2. Backiam
3. Kandappan

... Plaintiffs/Respondents 1 & 2
... 2nd Defendant /3rd Respondent

4. The Registrar General
High Court,
Chennai-600 104.

... 4th Respondent

(R4 suo motu impleaded by an order dated 18.02.2025)

Prayer: Appeal Suit is filed under Section 96 r/w Order XLI Rule 1 of CPC to set aside the judgment and decree dated 24.08.2024 made in O.S.No.118 of 2016 by the learned I Additional District Judge, Salem, by allowing the appeal and dismiss the suit as prayed for.



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For Appellants : Mr.M.R.Vivekanathan

For R1 & R2 : Mr.A.Manogaran

For R3 : Court Notice Returned

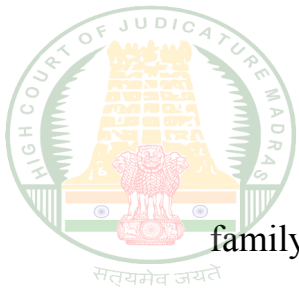
For R4 : Mr.S.Arjun Suresh

J U D G M E N T

Challenging the judgment and decree of the Trial Court, granting preliminary decree in favour of the plaintiffs, the present appeal came to be filed by the 3rd defendant.

2. The parties are arrayed as per their own ranking before the Trial Court.

3. The case of the plaintiffs is that the 1st plaintiff is the wife of one Sengodan and the 2nd plaintiff is the daughter. The defendants 1 to 4 and the said Sengodan are brothers and their father Chinnathambi died on 15.01.2002 and their mother Chinnapillai also died on 22.03.2004. The said Sengodan predeceased his father Chinnathambi and his mother Chinnapillai on 27.12.1992. The suit property was a Hindu undivided ancestral joint



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family properties and therefore, according to the plaintiffs, they are entitled to 1/5th share in the property.

4. The 3rd defendant has filed a written statement, which has been adopted by the defendants 1, 2 & 4, wherein it is the stand of the 3rd defendant that the 1st plaintiff is not the wife of the deceased Sengodan and the 2nd plaintiff was not born to Sengodan. The 1st plaintiff left the place of the defendants 1 to 3 about 40 years ago and she was never in joint possession and enjoyment of the suit property along with the defendants at any point of time. The 1st plaintiff has immoral character and the plaintiffs were not the legal heirs of Sengodan and therefore, they are not entitled to claim any share in the suit property.

5. The Trial Court, based on the above pleadings framed the following issues:

- i) Whether the plaintiffs are entitled to have a share of 1/5 in the suit properties?
- ii) Whether the plaintiffs are entitled to the relief of Preliminary decree as prayed for?



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iii) Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for?

iv) To what other reliefs?

6. On the side of the plaintiffs, 1st plaintiff examined herself as P.W.1 and P.W.2 to P.W.4 were examined and Ex.A1 to Ex.A8 were marked. On the side of the defendants, D.W.1 to D.W.3 were examined and Ex.B1 & Ex.B2 were marked.

7. The Trial Court, after appreciation of the material documents and evidence, decreed the suit in favour of the plaintiffs. Challenging the judgment and decree of the Trial Court, the present appeal has been filed.

8. Learned counsel for the appellant would mainly submit that the Trial Court has not properly appreciated the evidence and in fact, the relationship between the 1st plaintiff and Sengodan has not been established. In the legal heir certificate (Ex.B4) obtained in the year 1991, the plaintiffs' name do not find incorporated in it, whereas the plaintiffs have later fraudulently obtained another legal heir certificate (Ex.A8) on 17.10.2017. The Trial Court has not considered all these aspects.



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9. Learned counsel for the respondents 1 & 2 would contend

that from the evidence of P.W.2 to P.W.4, there is no dispute with regard to the relationship between the plaintiffs and Sengodan. Ex.A6 and Ex.A7 / Aadhar Cards of the plaintiffs clearly prove the fact that the deceased Sengodan is the husband of the 1st plaintiff and father of the 2nd plaintiff and there is an evasive denial. He would further contend that the plea of ouster has not been established to deny the share.

10. In the light of the above, the short point involved for consideration in this appeal is as to whether the 1st plaintiff was not the wife of Sengodan and the 2nd plaintiff was not the daughter of the said Sengodan?

POINT:

11. It is the specific case of the plaintiffs that the 1st plaintiff married Sengodan and the 2nd plaintiff was born to her through Sengodan. It is further case of the plaintiffs that the said Sengodan died in the year 1992 and he predeceased his father Chinnathambi and mother Chinnapillai and therefore, there is no dispute with regard to the legal heir certificate



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produced by the plaintiffs. The defendants and Sengodan were born to Chinnathambi.

12. Whereas the 3rd defendant has taken a stand that the 1st plaintiff is not the wife of Sengodan. If the evidence of P.W.1 is carefully perused, the defendants have not denied the 1st plaintiff's status as wife of Sengodan in the cross examination. The relationship of P.W.1 with that of Sengodan is not disputed and P.W.2 to P.W.4 also supported the version of P.W.1. In fact, in the written statement filed by the defendants, except evasive denial, there is no specific denial made in their written statement. Therefore, in the absence of any specific denial, evasive denial cannot be taken to be a denial at all.

13. Be that as it may, when the evidence of P.W.1 to P.W.4 clearly indicates that the 1st plaintiff was the wife of Sengodan and merely because the 1st plaintiff is not in a position to produce documents like Ration Card, etc., it cannot be a ground to hold that the 1st plaintiff is not the wife of Sengodan, especially, when P.W.1 to P.W.4 have clearly spoken about her



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relationship with Sengodan and their evidence is not disputed in the cross examination. Further, a reading of the written statement makes it clear that the only grievance of the defendants appears to be that the 1st plaintiff left the place of the defendants 40 years ago to Ayyampalayam, Sennipalayam Village and she was not in joint possession and enjoyment of the suit property. From the pleadings itself, it is found that the plaintiffs moved from defendants voluntarily long back and P.W.1 to P.W.4 clearly deposed that there was a marriage between the 1st plaintiff and Sengodan. Ex.A8 / legal heir certificate obtained in the year 2017 has also been filed along with Ex.A6 & Ex.A7 / Aadhar cards of the plaintiffs, in which the name of Sengodan finds place. Though it is stated by the learned counsel for the appellants that the legal heir certificate has been fraudulently obtained, no material has been placed to show that there was a fraudulent act on the part of the plaintiff in obtaining Ex.A8. Ex.B1 / legal heir certificate of Chinnathambi.

14. It is stated by the defendants that though a legal notice had been issued by the 1st plaintiff in the name of one Chinnathayee claiming



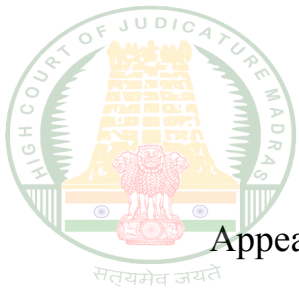
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right over suit properties some 17 years ago, a proper reply had been given to the said legal notice long back. It is pertinent to mention here that merely because the plaintiffs had not taken steps thereafter, their rights cannot be defeated. Moreover, the plea of ouster has not been established by the defendants in their written statement to deny the share to the plaintiffs. As long as there is no plea of ouster, merely because co-owners are not claiming partition immediately, the rights of other co-owners cannot be defeated. Merely because the name of Sengodan does not find mentioned in Ex.B1 / legal heir certificate of Chinnathambi obtained as early as on 30.04.1999, it cannot be said that the plaintiffs are not legal heirs of Sengodan.

15. At this juncture, it is brought to the notice of this Court that the Revenue Divisional Officer, Sangakiri, vide proceedings dated 20.09.2024, revoked the legal heir certificate of Chinnathambi / Ex.B1 issued by the Tahsildar, which is not disputed by the defendants and therefore, Ex.B1 will not have any serious repercussion. Accordingly, the point is answered.

16. In the result, finding no merits in the appeal, the instant



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Appeal Suit is dismissed. The judgment and decree of the Trial Court is

hereby confirmed. No costs. Consequently, connected Miscellaneous

Petition is closed.

24.04.2025

Index: Yes / No

Internet: Yes / No

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To:

1. The I Additional District Judge,
Salem.
2. The Registrar General
High Court,
Chennai-600 104.
3. The Section Officer,
V.R.Section,
High Court,
Madras.



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N.SATHISH KUMAR,J.,
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