



S.A.No.112 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **28.05.2025**

CORAM

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

S.A.No.112 of 2011

and

M.P.No.1 of 2011

1.Sankar
2.Sarangapani
3.Shanmugham

...Appellants/Plaintiffs

Vs.

1.Karunakaran
2.Prabakaran
3.Manokaran
4.Raniammal

...Respondents/Defendants

Prayer: This Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 30.10.2010 made in A.S.No.40 of 2009 on the file of the Court of the Subordinate Judge, Gingee, confirming the judgment and decree dated 15.07.2009 made in O.S.No.458 of 2000 on the file of the Court of the Principal District Munsif, Gingee.



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For Appellants : Mr.Chellamuthu Rangaraju
for Mr.T.Dhanasekarn
For Respondents : Mr.P.Raja
for M/s.V.Murugesan for R1 & R4

JUDGMENT

Aggrieved by the findings given in A.S.No.40 of 2009 dated 30.10.2010 on the file of the Subordinate Court, Gingee, the plaintiffs herein have preferred this Second Appeal.

2. The parties are indicated herein as per their litigative status and ranking before the trial Court.

3. According to the plaintiffs, the suit property total extent of 5 acres 41 cents in which 3.50 acres in S.No.18/4 and other properties originally belonged to one Veerappa Udayar. He had two wives namely Viruthambal and Meenatchi. Ranganathan, Balaraman, Elumalai, Subramani and Andal were born through his first wife. Whereas, Pachiyappan, Mani and Manickam were born through second wife/ Meenatchi.



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3.1. The said Pachaiyappan died 10 years back. The defendants

1 to 3 are the sons of Pachaiyappan and fourth defendant is wife of Pachaiyappan. The said Veerappa Udayar died intestate. The sons enjoyed the properties by way of oral partition. The above said Subramani executed a sale deed in favour of the plaintiff's brother Rajendran on 17.07.1995 in respect of 0.28 cents out of 1.14 acres for consideration of Rs.25,000/-. The said suit property and some other properties were allotted to the plaintiffs by way of partition deed dated 20.11.1995 that took place between the plaintiffs and his father Rajendran. The joint patta No.177 in respect of the suit property was granted in the name of one Ellappa Udayar and Veerappa Udayar's seven sons. The plaintiffs were only paying the kist for the suit property. On the north western side of the suit property in S.No.23/1, the plaintiffs have one well with motor pumpset. On the south of the suit property one Vitalnath' land and the plaintiffs' land are situated. The plaintiffs laid a pipe line in the year 1996 in the suit property for drawing water through motor pumpset. The suit properties belong to the plaintiffs only. The defendants have no right or title over the same. As the defendants were trying to disturb the peaceful possession and enjoyment of the plaintiffs, the suit was laid.



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4. Contending contra, it has been stated by the defendants that the suit property does not belong to the plaintiffs. The suit properties were never enjoyed by one Subramani. The suit properties were allotted to the sons of Veerappa Udayar and his second wife Meenatchi. They were enjoying the same. One of the sons viz., Mani executed a sale deed in favour of Pachaiyappa Udayar in respect of his share on 31.12.1985. Manickam also sold his share to Pachaiyappa Udayar. The said Pachaiyappa Udayar enjoyed the property in S.No.18/14 to an extent of 3.47 acre. After his demise, the defendants who are sons and wives have been enjoying the suit properties. The plaintiffs have no right or title in the suit property.

5. Based on the divergent pleadings, the trial Court framed the relevant issue. At trial, to substantiate plaint details on the Plaintiff's side, three witnesses were examined and Ex.A1 to Ex.A12 were marked. Ex.A2 dated 17.07.1995 is the sale deed executed by Subramani son of Veerappa Udayar in favour of Rajendran son of Krishnan in respect of the suit property. Ex.A3 dated 20.11.1995 is a partition deed executed among sons of Krishnan Udayar namely 1) Rajendran, 2) Sankar, 3) Sarangapani and 4) Shanmugam. Ex.A5 dated 03.02.1983, is joint patta standing in the name of Ellappa Udayar his sons, Pachaiyappa Udayar, Ranganathan Udayar & Subramani Udayar.



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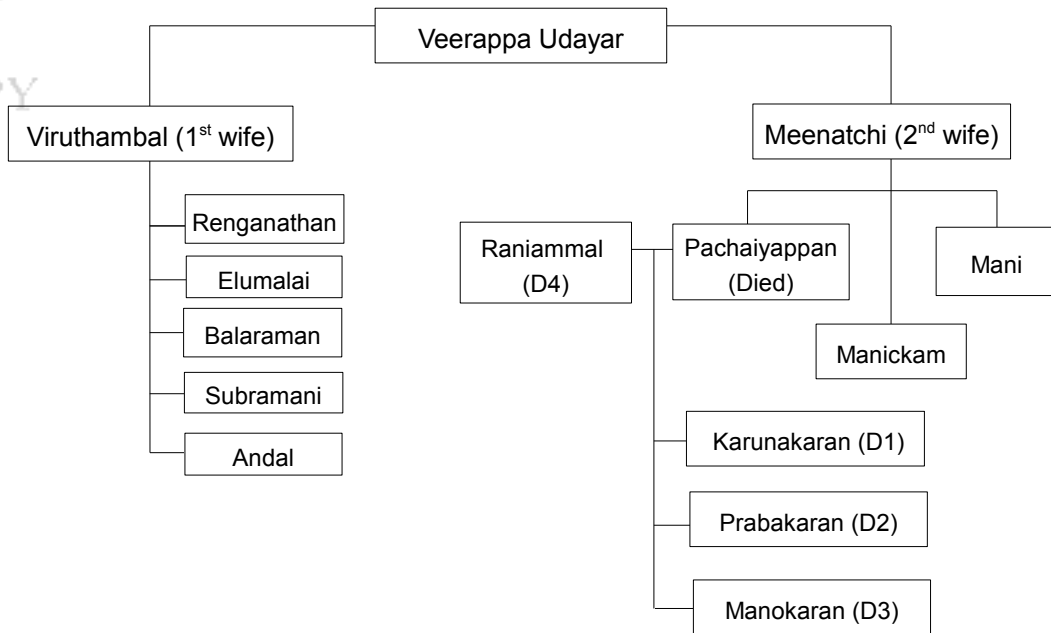
On the defendants' side two witnesses were examined (fourth defendant/Rani and Balaraman son of Veerappa Udayar) and three documents have been marked Ex.C1 and Ex.C2 as plan and report of the Advocate Commissioner.

6. Upon consideration of oral and documentary evidence and after hearing the arguments of both sides, the Trial Court concluded that out of 1.14 acres, as to the specific purchases made were not clearly established and the suit was dismissed in entirety. Aggrieved, the plaintiffs preferred an appeal in A.S.No.40 of 2009. Upon perusal of the entire case records and after hearing the arguments advanced on both sides, the first Appellate Court concluded that the property was purchased before the partition. No specific portion can be culled out. Therefore, the plaintiffs are not entitled for permanent declaration and dismissed the Appeal by confirming the judgment and decree of the trial Court.

7. In S.No.18/4, the total extent is Acres 5.41 cents and it belonged to one Veerappa Udayar. Out of which 1.14 acre was kept in common and 4.27 acres of land was divided between the two wives of Veerappa Udayar. The necessary Genealogical tree is drawn for better understanding:



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8. The said Subramani, son of Veerappa Udayar purchased the share of his brother Ranganathan and sold it to one Rajendran son of Krishnan Udayar, the brother of the plaintiffs herein. As per the partition deed Ex.A3, the suit property was allotted to plaintiffs. The plaintiffs' brother Rajendran purchased the suit property from Subramani to an extent of 0.28 cents which is an undivided share out of an extent of 1.14 acres as mentioned supra, along with the share in the well and pumpset with the service connection.

9. The property purchased under Ex.A2 is the common land which was being enjoyed by all the legal heirs of Veerappa Udayar. The plaintiffs claim is that they have right to take water from the well through



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pipeline which is passing through the common land of 1.14 acre. As long as the said right is enjoyed in common, the plaintiffs cannot claim any right as such.

10. It is the evidence of PW1 that the suit property is being enjoyed by him and thereby he made an attempt to lay pipeline in the year 2000. Vendor in Ex.A2 sale deed one Subramani son of Veerappa Udayar has been examined as PW2. He would admit during his cross examination that in Ex.A2, the boundary details are given for the entire extent of 1.14 acres. All the witnesses PW1 to PW3 have uniformly admitted the fact that the total extent of 1.14 acres is kept in common and it was not divided by metes and bounds. The Advocate Commissioner has also endorsed the same view, in his report Ex.C1.

11. On a careful perusal of the oral evidence of plaintiffs' witnesses, Ex.A2 sale deed which is the prime document for the plaintiffs, the details in Ex.A2 and in the plaint are given for the entire extent of acre 1.14 which is kept in common. Out of the said property, the plaintiffs' brother Rajendran had purchased 0.08 cents. The plaintiffs case is that as per the partition deed executed between brothers under Ex.A2, the suit property fell to the share of the plaintiffs. When a larger extent is kept in common and not allotted to specific persons, the



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plaintiffs claim for a declaration of title and for permanent injunction is not sustainable in law.

12. It is pertinent to note that under Ex.A2, PW2/ Subramani did not sell any vaikkal right to the plaintiffs' brother Rajendran. Based on aforesaid discussion, the first Appellate Court has dealt with the issue in a proper prospective and dismissed the appeal which does not warrant interference by this Court. This Court also does not find any good reason to upset the findings of the First Appellate Court. No substantial question of law arise for consideration.

13. It is made clear that the plaintiffs' brother Rajendran had purchased 0.28 cents of the suit property out of 1.14 acres which is a common property. Ex.A2 sale deed is also admitted by PW1/ Raniammal w/o.Pachaiyappa Udayar. The plaintiffs are at liberty to file a partition suit against the legal heirs of Veerappa Udayar in order to get a clear cut portion of 0.28 cents out of 1.14 acres.

14. Based on the aforesaid discussion and observation, this Second Appeal is dismissed confirming the judgment and decree dated 30.10.2010 passed by the Subordinate Judge, Gingee, in A.S.No.40 of 2009. There is no order as to costs. Consequently, connected



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Miscellaneous Petition is closed.

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
dna

To

The Subordinate Court, Gingee.



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