



WEB COPY

S.A. No. 1351 of 2011



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-11-2025

CORAM

THE HONOURABLE DR.JUSTICE R.N.MANJULA

Second Appeal No. 1351 of 2011

1. Anandan
S/o Karuppan

2. Ponnusamy
S/o Karuppan

3. Arasan
S/o Karuppan

4. Sadayan
S/o Karuppan

5. Thulasimani
S/o Karuppan

6. Sellammal
W/o Thandavarayan

7. Govindammal
D/o Thandavarayan

8. Velu
S/o Thandavarayan.
All are residing at Peelamedu Village,
Sankarapuram Taluk,
Villupuram District.

...Appellant(s)

Vs



1. Periasamy
S/o Vadamalai

2. Shanmugam
@elumalai, S/o Vadamalai

3. Thangavel (died)
S/o. Veeramuthu.
R3 died, R4 already on record, who is
Class-II legal heir of the deceased R3
vide Court order dated 20.02.2025
made in S.A. No 1351 of 2011 - RKMJ

4. Arasan
S/o Veeramuthu

5. Selvaraj
S/o Kaveri

6. Periasamy
S/o Thandavarayan
All are residing at Peelamedu Village,
Sankarapuram Taluk,
Villupuram District.

...Respondent(s)

PRAYER

The Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree of the learned Subordinate Judge, Kallakurichi, made in A.S.No.47 of 2010 dated 26.07.2011 confirming the judgment and decree of the learned District Munsif, Sankarapuram, made in O.S.No.1185 of 2009 dated 31.03.2010.



For Appellant(s): Mr. P. Dinesh Kumar
for Mr. J. Ramakrishnan

For Respondent(s): Mr. D. Murugan
for Mr. R. Kumaravel for R5

R1 to R4 and R6 - Given up

JUDGMENT

The plaintiffs, who are the appellants, have preferred this Second Appeal challenging the judgment and decree of the learned Subordinate Judge, Kallakurichi, made in A.S.No.47 of 2010 dated 26.07.2011, confirming the judgment and decree of the learned District Munsif, Sankarapuram, made in O.S.No.1185 of 2009 dated 31.03.2010.

2. The plaintiffs had filed a suit in O.S.No.1185 of 2009 for declaration of title and permanent injunction in respect of the suit property. The trial Court had partly decreed the suit in respect of the 2nd item of the suit property and the suit has been dismissed in respect of all other items of the suit property. The First Appeal preferred by the plaintiffs challenging the dismissal of the suit was also dismissed by the First Appellate Court confirming the judgment of the trial Court.



3. The short facts pleaded in the plaint are as follows:

The suit items 1 and 2 in S.No.141/9, measuring 53 cents and 6 acres 60 cents in S.No.144/2 of Peelamedu Village, originally belonged to Sadayan and Veeramuthu and others. Sadayan had a son by name, Karuppan, and Karuppan had six sons, and one of the sons, by name, Thandavarayan died on 18.06.2002. The plaintiff Nos. 1 to 5 are the existing sons of late Karuppan and the legal heirs of Thandavarayan, have been impleaded as plaintiffs 6 to 9. Veeramuthu had three sons by name, Vadamalai, Thangavelu and Arasan. Out of them, Vadamalai died 15 years ago and the defendants 1 and 2 are his sons. Thangavelu and Arasan have been impleaded as defendants 3 and 4.

3.1. So, the two branches of Sadayan and Veeramuthu have got an equal share in the suit properties in S.Nos.141/9 and 144/2. Even, when the father of the plaintiffs, Karuppan, was alive, a partition was effected in which the northern half of both of the properties was allotted to Veeramuthu/ the defendant's branch and the southern half of both of the properties was allotted to Karuppan/ the plaintiffs' branch. Pursuant to the said partition, the plaintiffs' father, Karuppan, had dug a well in the southern portion of 26 ½ cents in the first item and has been in enjoyment of the same by obtaining a service connection in Service Connection No.464. The service connection has been obtained in the name of the first plaintiff. Karuppan had purchased an extent of 43 1/3 cents adjacent to his southern half share of 1 acre and 30 cents in



S.No.144/2, by virtue of a Sale Deed dated 06.12.1977 from the 3rd defendant, and annexed it along with his half share in S.No.144/2. So Karuppan is entitled to the total extent of 1 acre and 70 1/3 cents in S.No.144/2 and that has been subdivided and given a new survey number as S.No.144/2A and that has been shown as item No.2 of the suit property. Both the suit properties have been in possession and enjoyment of Karuppan branch. After the demise of Karuppan on 15.07.1987, the plaintiffs and their deceased brother, Thandavarayan, inherited the same. After the demise of Thandavarayan, his legal heirs viz., plaintiffs 6 to 9 have inherited their share.

3.2. The defendants 1 and 2 have filed a suit in respect to the first item of suit property along with other properties in [S.No.144/2B](#) for seeking relief of declaration and permanent injunction. The above suit is numbered as O.S.No. 327/2002, and that has been dismissed on 24/10/2002. Thereafter, the 4th defendant had taken steps to transfer the patta in his name, and an enquiry was pending. As no action has been taken by the Thasildhar, the 2nd plaintiff has given an application to the Collector, and still the same is pending. The 5th defendant proclaimed that he had purchased the suit property from the defendants 1 and 2 through a sale deed dated 25.10.2004, and on the strength of the said sale deed, the 5th defendant denied the title of the plaintiffs.



4. The written statement of the defendants, in brief:-

It is false to state that the suit properties originally belonged to Sadayan and Veeramuthu. It is false to state that Karuppan is the son of Sadayan. The relationship between Sadayan and Veeramuth is father and son. It is true that Veeramuthu had three sons by names: Vadamalai, Thangavelu and Arasu and that Vadamalai died 15 years ago. It is true to state that the defendants 1 and 2 are the sons of Vadamalai. The partition in respect of those properties as alleged by the plaintiffs is also not proved. The suit properties were originally owned by Sadayan, who had two sons by names Pavadai and Veeramuthu. Pavadai died before marriage without leaving any legal heirs. Veeramuthu had three sons by names, Vadamalai, Thangavelu and Arasu, and out of them, Vadamalai died. The 1st and 2nd defendants are the legal heirs of Vadamalai. Pavadai and Veeramuthu had executed a mortgage deed in favour of Marinayakar on 2/7/2025. Vadamalai and Arasu had sold the suit item 1 in favour of one Marimuthu on 19.01.1978, and thereafter on 14/06/1978, the son of Vadamalai, namely Periyasamy and Arasu had repurchased the property from Marimuthu. The third defendant has been living with their brothers without any marriage. And later he sold 43 cents in the suit second item in favour of Karuppan on 6/12/1977. Apart from 43 cents sold to Karuppan, the rest of the properties are in enjoyment of Periyasamy, Ezhumalai and Arasu. From them, the 5th defendant has purchased the above properties on 25.11.2004. So the suit has



been dismissed in respect of all other properties except 43 cents purchased by Karuppan from the 3rd defendant. The 5th defendant purchased a total extent of 2 acres and 17 cents in the suit item 1, on 25.11.2004.

5. On the basis of the above pleadings, the trial Court has framed the following issues:-

- “1. jhth brhj;Jf;fs; thjpfSf;F ghj;jpakhdjh>
2. jhth brhj;Jf;fs; thjpfspd; jdpj;j mDgtj;jpy; cs;sjh>
3. thjpfSf;F tHf;fpy; fpilf;Fk; ghpfhu';fs; vd;d>”

6. During the course of the trial on the side of the plaintiff, three witnesses have been examined as PW1 to PW3 and Exs.A1 to A15 were marked. On the side of the defendants, two witnesses have been examined as DW.1 and DW.2, and Ex.D1 to Ex.D10 were marked.

7. After the conclusion of the trial and on considering the evidence available on record, the trial court has decreed the suit only in respect to 43 cents in the second item of the suit. The suit has been dismissed in respect of the relief claimed by the plaintiff. The first appeal preferred by the plaintiff in [A,S.No.47 of 2010](#) was also dismissed by confirming the judgement of the trial Court. The second appeal filed by the appellants/plaintiffs has been admitted on



the following substantial questions of law:-

1. *Are not the Ex.A1 to Ex.A16 which includes the revenue record, sufficient enough to prove the plaintiffs' claim regarding previous partition, right and the possession of the plaintiffs over the suit properties and as such whether the adverse findings of the Courts below are sustainable in law?*
2. *Having regard to the scope of Section 115 of Indian Evidence Act whether the defendants have not stopped under law from disputing the plaintiffs' claim, overlooking the recitals contained under Ex.A1 which clinchingly proved the plaintiff's claim regarding partition and allotment?*
3. *Whether the adverse findings of the trial court in non suiting the plaintiffs for want of title deeds particularly in a case where the plaintiffs tracing their right under the partition from their ancestral properties?*
4. *In the light of Section 11 of Civil Procedure Code, the ultimate dismissal of earlier suit filed by defendants 1 and 4 under Ex.A7, is not operate as Resjudicata as against the respondents and as such the judgements and decrees of the Courts below are sustainable?*

8. The substantial questions of law on which the appeal has already been admitted are re-framed as follows, in view of further submissions made by the learned counsel appearing for both sides:-



WEB COPY

“Having regard to the scope of Sections 3 and 13 of the Indian Evidence Act whether the First Appellate Court is right in law to hold that the appellants have not proved the relationship of the parties based on the evidence available?”

9. The learned counsel for the appellant submitted that the second plaintiff was examined as P.W.1, who is an illiterate person and he is not able to give the right genealogy about the relationship between the plaintiffs and others. Both the Courts below failed to appreciate the evidence in the form of the earlier plaint filed by the respondents 1 and 4 / defendants 1 and 4 in O.S.No.327 of 2002 marked as Ex.A6. In the plaint, Ex.A6, the defendants 1 and 4 have stated that the father of the plaintiffs 1 to 5, Karuppan is the prior agnates of defendants 1 and 4 and further, in the description of the property, the 2nd item has been shown as S.No.144/2B for 87 cents. The persons, who have denied the relationship of the ancestors of the plaintiffs, can be their own other branches of relatives namely, defendants 1 and 4 and not the 5th defendant, who is the third party purchaser. The Court below, without considering the plaint averments made by the defendants 1 and 4 in their own suit in O.S.No.327 of 2002, had partly dismissed the suit solely relying on the evidence of P.W.1, who is an illiterate person. The plaintiffs have proved the title by producing Ex.A4, patta in the name of the father of the plaintiffs 1 to 5 and kist receipts to prove their title and possession of the suit property, but, the Courts below have not appreciated the same.



10. Through Ex.A1, the father of the plaintiffs, Karuppan, had purchased 1/3 share of one of the sons of Veeramuthu and hence, Karuppan became entitled to 1 acre 73 1/3 cents that is shown as suit item No.2. Ex.A2, patta, would show that the father of the plaintiffs 1 to 5, had patta for 1 acre 73 cents in S.No.144/2A. Vadamalai and Arasan, who are the sons of Veeramuthu, have sold through Ex.B2, Sale Deed, dated 19.01.1978, only their two shares of 87 cents in S.No.144/2. With regard to item No.1, the vendors of Ex.B1 do not have the title to whole of 53 cents, but, the particulars of properties in the sale deed contains 53 cents in S.No.141/9, which is not correct. Hence, Marimuthu cannot acquire title in respect of 53 cents, because his vendors themselves did not have the title for 53 cents. The above property has been repurchased by the defendants 1 and 4, sons of Vadamalai, vide Ex.B3, Sale deed, dated 14.06.1982. So they also cannot be entitled to the whole of 53 cents in S.No.141/9. The 5th defendant had purchased the very same properties involved in Ex.B3 by joining with the 2nd defendant. As the 5th defendant had purchased from his vendors, the extent of properties is more than what his vendors themselves are entitled to and hence, he cannot acquire title over the same. The 4th defendant has also sold more extent of the property viz., 1 acre 35 cents in S.No.144/2 and 26 ½ cents in S.No.141/9 to the 5th defendant. Since the 4th defendant is also not entitled to 1 acre and 35 cents, the 5th defendant cannot have title for more than what his vendor is entitled to. He therefore, submitted



that these facts are not properly appreciated by both the trial Court and the first appellate Court.

WEB COPY

11. The learned counsel for the contesting respondent would submit that the arguments of the appellants now made before this Court did not find place in the pleading before the trial Court. Without making pleading, the plaintiffs have produced the evidence and that cannot be looked into. P.W.1 had stated in his evidence that there is no connection between the Sadayan's family and Veeramuthu's family. Sadayan has got no relationship with Karuppan and Karuppan's father name is Muthu. In Karuppan's Sale Deed Ex.A1 itself, his father name is shown as Muthu and not Sadayan. Hence, he submitted that the trial Court and the Lower Appellate Court had rightly appreciated the evidence and had partly decreed the suit only to an extent of 43 cents purchased by Karuppan and hence, the Second Appeal is to be dismissed.

12. Heard the leaned counsel appearing for the appellants and the learned counsel appearing for the contesting 5th respondent and perused the materials on record.

13. There is no dispute with regard to the fact that the suit property originally belonged to Sadayan and Veeramuthu and items 1 and 2 are the suit properties situate in S.No.141/9 measuring 53 cents and 2 acres and 60 cents in



S.No.144/2. It is also not in dispute that the properties have been equally divided between Sadayan and Veeramuthu and thus, Sadayan got 1 acre and 30 cents in southern part of S.No.144/2 and 26 ½ cents in southern side of S.No.141/9. The other of the northern side has been given to Veeramuthu. There is no dispute with regard to the above basic facts.

14. While the appellants claim that Karuppan is the son of Sadayan, it is the claim of the contesting 5th respondent that Sadayan had two sons, by names, Paavadai and Veeramuthu and hence, Karuppan is no way related to Sadayan. The case of the 5th respondent is that as Paavadai died without any legal heirs, his brother namely, Veeramuthu alone became entitled to his half share also. So, it is stated by the 5th respondent that Veeramuthu's three sons namely, Vadamalai, Thangavelu and Arasu are entitled to the whole of the suit properties as the legal heirs of Paavadai and Veeramuthu.

15. On the other hand, it is the claim of the appellants that Sadayan has got another son by name Karuppan and that was not considered by the trial Court and the First Appellate Court. The second plaintiff, who was examined as P.W.1, could not trace back the relationship between the parties and he had stated in his evidence that there is no connection between Sadayan's branch and Karuppan.



16. The learned counsel for the respondent also relied on the Sale Deed of Karuppan, which was marked as Ex.A1, where Karuppan's father name is shown as Muthu. In the Sale Deed dated 06.12.1977, Karuppan had purchased 43 1/3 cents. But, it is the contention of the learned counsel for the appellant that the father of Karuppan, who is called as Muthu @ Sadayan and the patta granted in the name of Karuppan, which is marked as Ex.A4, would clearly show that the father of Karuppan is Sadayan. He also invited the attention of this Court to Ex.A6, which is the plaint filed by defendants 1 and 4 in the other case involved in O.S.No.327 of 2002. The defendants 1 and 4 are the vendors of the 5th defendant and the sons of Veeramuthu. The 5th defendant cannot have any objection with regard to the above-said facts. In the plaint pleadings filed in O.S.No.327 of 2002, the defendants 1 and 4 are the plaintiffs and they have stated that Karuppan is one of their prior agnates. In fact, there are pleadings to the effect that the properties were comprised in Patta Nos.93 and 537 and the names of the prior agnates, Karuppan and in the name of the plaintiffs. The word 'plaintiffs' therein would indicate the defendants 1 and 4 of this suit. The above suit has been filed by defendants 1 and 4 for claiming the reliefs of declaration and permanent injunction in respect of the following properties:-

Description of properties

In Kallakurichi Taluk now Sankarapuram Taluk, Peelamedu Village

(1) Patta No.93 – Dry R.S.141/9, 0-21-5 Hectares (0.53 cents)

Asst. Re.0.59



**(2) Patta No.537 – Dry R.S.144/2B, 0-36-5 Hectares
(formerly – R.S.144/2, 2 acres 60 cents in this 0-87 cents) – Asst.Re.1.01**

WEB COPY

17. The above suit got dismissed. The learned counsel for the respondent submitted that without making any pleadings in respect of the pleadings made in the other suit in O.S.No.327 of 2002, the appellants cannot rely on Ex.A6 and claim that the 5th defendant's predecessor in title and accepted that Karuppan is their agnate. He further submitted that the plaint cannot be considered as evidence and hence, no evidentiary value can be given to Ex.A6. The pleading of the appellants in their plaint is that they alone have got title in respect of the suit properties and have derived the title from Karuppan, who is said to be the son of Sadayan. When the pleadings are made by the plaintiffs to that effect, anything relevant to prove the above facts can only be considered as relevant facts and hence, the reliance of Ex.A6 cannot be considered as something irrelevant and not connected to the pleadings made by the appellants.

18. So far as the position of law that plaint cannot be considered as evidence has application to the cases where the plaint of the very same case is relied as an evidence without substantiating the plaint averment. In the instant case, Ex.A6 is not the plaint filed by the appellants in this case itself, but, it is the plaint filed by defendants 1 and 4 in the other case in O.S.No.327 of 2002. The filing of the above suit has not been denied by the defendants, who are also



parties to the suit. In fact, the plaintiffs in O.S.No.327 of 2002 are the defendants 1 and 4 in the present case. The contesting 5th respondent derives his title from all the sons of Veeramuthu, who are inclusive of defendants 1 and 4 and hence, he can only derive title to the extent of the title of his vendors. But, the defendants 1 and 4 remained *ex parte* and the contesting 5th respondent derives his title only from the above defendants along with their *pangaalis* defendants 2 and 3. Cannot know better about the family relationship between the defendants 1 to 4 and Karuppan. When the defendants 1 and 4 remained *ex parte*, their plaint, which has been marked as Ex.A6, can very well be relied by the appellants as their important evidence to prove the relationship of Karuppan and the defendants 1 to 4. So, there cannot be any disagreement on the fact that the plaint filed by the co-defendants in the present suit to be considered as a relevant evidence.

19. When Karuppan is admitted to be the prior agnate of defendants 1 to 4, it has got the relevancy to the fact pleaded by the appellants that Karuppan is also a son of Sadayan as that of Veeramuthu and Paavadai. When Veeramuthu is considered as a son of Sadayan and the partition is said to have been taken place between Sadayan and Veeramuthu, it is difficult to understand why the other son Karuppan or Paavadai were not included in the partition. But, there is no partition deed produced to show that a typical partition has occurred between all the family members of Sadayan. But, the contesting 5th respondent did not have



any disagreement about the fact that half of the suit properties alone has been given to Veeramuthu branch and they did not deny their relationship with Sadayan also. So there can be a family arrangement between one of the sons of Sadayan and Sadayan and in which the suit properties could have been divided equally between themselves. This conclusion can be arrived only because there was no dispute between the parties as to the division of half share between Sadayan and Veeramuthu. Much significance has been given to P.W.1's cross examination, where he has stated that there is no relationship between Veeramuthu and his grand father Sadayan @ Muthu. If P.W.1's evidence in the above cross examination is taken as the gospel for the purpose of accepting the relationship between the parties, it would affect even the defendants relationship with Sadayan. Because, in the written statement of the defendants, they have clearly admitted the fact that the suit properties originally belonged to Sadayan and Veeramuthu and that Sadayan and Veeramuthu are father and son.

20. Even if the respondents might deny relationship between Sadayan and Karuppan, they cannot deny the relationship between Sadayan and Veeramuthu. If the evidence of P.W.1 is relied, it cannot give meaning either to the pleading made by the plaintiffs or the admissions made by the defendants in the written statement. So, it could be true that P.W.1 is an illiterate person, who did not have the clarity of what is being stated by him in the Court with regard to the relationship between the parties. But, the defendants 1 and 4, who have filed the



suit vide Ex.A6 plaint, have made a categorical statement in the pleadings that Karuppan is the prior agnate and that would only substantiate the fact that Karuppan could be the agnate and there is no reason to exclude the above evidence or extend any benefit thereof to the appellants, in their attempt to prove the relationship between Karuppan and Sadayan.

21. No doubt, in Ex.A1, Sale Deed, the father's name of Karuppan has been shown as Muthu. But, quite contrary to the above documents for the properties purchased by Karuppan, Patta has been issued in Ex.A2, wherein Karuppan's father name is shown as Sadayan. Even though the sale deed has been executed by the vendor in favour of Karuppan on 06.12.1977, there was no practise in those days that both the vendor and the purchaser would sign the sale deed as how it is in vogue today. The defendants did not have dispute in respect of Ex.A1 and the trial Court has also given the limited decree only for the extent of the properties conveyed in favour of Karuppan i.e. 43 1/3 cents.

22. The claim of the appellants is that 43 1/3 cents purchased by Karuppan has been annexed with his half share of 1 acre 30 cents in S.No.144/2 (subdivided as S.No.144/2A) and thus, Karuppan became entitled to the total extent of 1 acre and 73 1/3 cents and for which, the patta is held by him. So, the drafting of the sale deed by the vendors, could have been the reason for describing the father's name of Karuppan only as Muthu without mentioning it



by including Muthu @ Sadayan. So, with Ex.A1 and the confusing evidence of P.W.1 alone, both the trial Court and the First Appellate Court cannot arrive at a conclusion that Karuppan did not have the half share of Sadayan branch and that Veeramuthu branch alone is entitled to the whole of Veeramuthu's half and the half of Sadayan.

23. As the 5th defendant is the subsequent purchaser from Veeramuthu's branch, his entitlement would be limited to the half share of Veeramuthu in the suit properties and not more than that. If the 5th defendant had purchased the whole of the shares of Veeramuthu's branch, there cannot be any quarrel to hold that he is entitled to the property for which, Veeramuthu is entitled to.

24. The learned counsel for the respondent submitted that if the advantage of draft man's error or omission is given to the appellants as already observed in respect of Ex.A1, Sale Deed, the same benefit is available in respect of Ex.A6 document also. Ex.A6 is the plaint filed by the defendants 1 and 4 and not by the 5th defendant. Every plaint will be drafted by the counsel, only by getting instructions from the client. If it is presumed that the drafting of the plaint is advocates' own hand work only, then no person will come to an advocate's office to draft a plaint with the facts of his case. Further, only because the instructions are given and the plaint is drafted to the satisfaction of the plaintiff, the plaintiff endorses his signature after making a verification to that effect in



the plaint itself. Hence, the learned counsel for the contesting 5th respondent cannot claim that Ex.A6 can also be ignored as drafting error or omission.

WEB COPY

25. As the appellants have derived their title for half of S.No.144/2, i.e., 1 acre and 30 cents, subdivided as S.No.144/2A and 26 ½ cents, which is half of the 53 cents in S.No.141/9 that cannot be denied by the defendants unless they can show that any of the defendants had purchased the above share from Karuppan's branch. Since Karuppan has also purchased 43 ½ cents in S.No.144/2 from the 3rd defendant, he become entitled to 1 acre 73 1/3 cents in S.No.144/2A and 26 ½ cents in S.No.141/9, which are the suit properties.

26. As the trial Court and the First Appellate Court have appreciated the evidence without taking into consideration of the defendants 1 and 4 admission in their plaint filed in the earlier suit in O.S.No.327 of 2002, which is marked as Ex.A6, the judgment of the First Appellate Court is liable to be set aside and thus, the substantial question of law is answered in favour of the appellant. The defendants among themselves or any of the defendants in favour of the third party had encumbered more than what they are entitled to and hence, they can not pass title in favour of the purchaser in respect of the excess for which, they themselves did not have the title.



27. In the result, the Second Appeal stands allowed. There shall be no order as to costs.

07-11-2025

ASI

Index : Yes / No
Speaking / Non-speaking order
Internet : Yes
Neutral Citation : Yes / No

To

1. The Subordinate Judge, Kallakurichi.
2. The District Munsif, Sankarapuram.



WEB COPY

S.A. No. 1351 of 2011



Dr. R. N. MANJULA, J.

ASI

Second Appeal No. 1351 of 2011

07-11-2025