



S.A.No.7 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2025

CORAM:

THE HONOURABLE **Mrs.JUSTICE R.KALAIMATHI**

S.A.No.7 of 2023

and

CMP.No.185 of 2023

1.Mageswari

2.Mahalakshmi

3.Jagadeswari

4.Vijayalaksmi

5.Dhanalakshmi

.. Appellants/Plaintiffs

vs.

1.Palanivel

2.Vijaya Praba

3.Senthil

4.Shanthi

Kandasamy alias Kanthavel(died)

5.Jayarani alias Unnamalai (died)

6.Mohana

7.Siranjeevi

(Memo dt.17.06.2025 recorded.

R5 died, RR6 to 8 already on record

are recorded as legal heirs of the

deceased R5 vide Court order dated



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19.06.2025 made in S.A.No.7/2023

& CMP.No.185/2023)

8.Sivakumar

.. Respondents/Defendants

PRAYER: This Second Appeal is filed under Section 100 of C.P.C., to set aside the judgment and decree passed in A.S.No.2 of 2018 dated 26.11.2019 on the file of the Subordinate Court, Uthangarai, reversing the judgment and decree in O.S.No.97 of 2009 dated 31.07.2017 on the file of the District Munsif cum Judicial Magistrate, Uthangarai.

For Appellants : Mr.S.P.Vishnu Prasath
for M/s.V.Nicholas

For R1 to R4 & R6 to R8 : Mr.C.Mariappan

JUDGMENT

Aggrieved by the reversal findings made in A.S.No.2 of 2018 dated 26.11.2019 by the Subordinate Court, Uthangarai, the plaintiffs have preferred this appeal.



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WEB COPY 2. Parties are indicated herein as per their litigative status and ranking before the Trial Court.

3. According to the plaintiffs, plaintiffs 1 to 5 are the sisters, Originally, the suit properties belonged to Muruga Gounder, who is the paternal grandfather of the plaintiffs. His wife is Akkammal. They had one daughter Meenakshiammal, who is the mother of the plaintiffs herein. Muruga Gounder had illicit intimacy with one Kannammal w/o.Ramanathan, resident of Aananthur. Defendants 1 and 5 are the children born to Muruga Gounder through the said Kannammal. Muruga Gounder had given some properties to the said Kannammal and defendant Nos.1 to 5 and they are in possession and enjoyment of the suit properties.

3.1. Muruga Gounder had illicit intimacy with one Muniammal, wife of Nanjan of Puliyampatti village. They had a son by name Sivaprakasam through the said Muniammal. Muniammal was also given some

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properties by Muruga Gounder. Muruga Gounder was a wealthy person

and had illicit intimacy with several women. As per the advise of the

village elders, Muruga Gounder gave the suit properties to Akkammal

and his daughter Meenakshi through an oral partition in the year 1984.

Akkammal and Meenakshi had been in possession and enjoyment of the

said properties. Soon after the partition, Muruga Gounder died.

Akkammal died in the year 1985. After the demise of Akkammal, the only

legal heir Meenakshiammal, succeeded the estate and being in

enjoyment of the suit schedule properties. Patta was also mutated in the

name of Meenakshiammal. In the course of such enjoyment, on

20.01.2006, Meenakshiammal executed a gift deed in favour of the

plaintiffs and handed over the possession of the suit properties to the

plaintiffs herein. Since then, the plaintiffs have been in possession and

enjoyment of the suit schedule properties.

3.2. Defendants No.1 and 5 are the brothers. The second

defendant is the wife of the first defendant. The third defendant is the

daughter of defendant Nos 1 & 2. The fourth defendant is a third party.

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The sixth defendant is the wife of 5th defendant, namely Kandasamy @

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Kandavel. The seventh defendant is the daughter of defendant Nos.5 &

6. The defendants' own properties nearer to the suit properties. The plaintiffs are females and the defendants have residing away from the suit properties. As the plaintiffs refused to sell the suit properties to the defendants, they started to give troubles to the plaintiffs. Hence, the plaintiffs caused to issue notice on 20-12-2008, calling upon the defendants from any way in interfering with their peaceful possession and enjoyment of the suit property. Subsequently, the 5th defendant alone issued a reply notice with false contents on 29-12-2008. Hence the suit for declaration of title and for permanent injunction.

4. Per contra, defendant Nos.1, 3 & 4 would *inter alia* contend that the suit is bad for non-joinder of necessary parties and mis-joinder of unnecessary parties. Meenakshiammal had no right to execute the settlement deed by excluding co-shares, and the Settlement Deed dated 20.01.2006 is a void document. The plaintiffs have no title to the suit properties. Muruga Gounder executed a Will dated 26.03.1984 registered 5/20



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at the Office of the Sub-Registrar at Poochampalli in Doc.No.15 of 1984

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in favour of defendant Nos.1 & 5 in respect of the properties owned by him. After the life time of Muruga Gounder, the Will executed by Muruga Gounder came into force, and defendant Nos.1 & 5 have become owners of the suit properties. The plaintiffs have knowledge about the execution of Will by Muruga Gounder and with malafide intention, the suit has been filed. No patta was issued in the name of Meenakshi Ammal on 21.10.1987 and the same is invalid. The first defendant executed a Will in favour of his daughter third defendant on 04.05.2007.

4.1.They would further contend that Akkammal and Meenakshiammal do not have partition rights over the suit property in the year 1980. Meenakshiammal married prior to 1970. The suit properties are self-acquired properties of Muruga Gounder. Muruga Gounder executed a Settlement Deed dated 02.02.1974, registered at the Office of the Sub-Registrar at Uthangarai in Doc.No.163 of 1974 in favour of Meenakshiammal. The first defendant is in possession and enjoyment of the property situated in S.F.No.79/2B for an extent of Acre 1.40 1/2 cents.

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5. The fifth defendant would aver that Muruga Gounder executed a Will in favour of defendant Nos.1 & 5 in respect of the properties owned by him. The suit schedule properties were in possession of Meenakshiammal, and defendant Nos.1 & 5. In order to defeat the interest of the fifth defendant, Meenakshiammal had fabricated a settlement deed in favour of the plaintiffs.

6. Based on the divergent pleadings, the trial Court framed relevant issues. At trial, to substantiate the plaint details, on the side of the plaintiffs, two witnesses have been examined and nine documents have been marked. Ex.A1 is the Proceedings of the Tahsildar dated 21.10.1987 pursuant to the application filed by the mother of the plaintiffs, Smt.Meenakshiammal. Ex.A2 is the Gift Deed executed by Meenakshiammal in favour of the plaintiffs, (her daughter), in respect of the first six items of the suit properties. Ex.A3 is the Patta dated 23.05.2008, granted in the name of the fifth plaintiff in respect of the first

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six items of the suit properties for a total extent of Hectare 2.30.5 ares.

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On the side of the defendants, three witnesses have been examined and eight documents have been marked. Ex.B1 dated 02.02.1974 is Gift Deed executed by Muruga Gounder in favour of his daughter Meenakshiammal. Ex.B2 dated 26.03.1984 is Will executed by Muruga Gounder in favour of defendant Nos.1 & 5.

7. The trial court, upon consideration of oral and documentary evidence and after hearing the arguments advanced by either side, concluded that Ex.A1- based on Proceedings, separate patta was granted in the name of Meenakshiammal, and relying upon both sides oral and documentary evidence, held that the settlement deed executed by Meenakshiammal in favour of the plaintiffs is a valid document and decreed the suit.

8. Aggrieved, defendant Nos.1, 3 & 4 preferred appeal before the Sub-Court, Uthangarai in A.S.No.2 of 2018. The First Appellate Court, upon consideration of material records and after hearing the arguments



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advanced by either sides, held that the plaintiffs do not have absolute title

over the suit properties and thereby dismissed the suit.

9. The following substantial questions of law arise for consideration:

- i) Whether the judgment and decree of the first appellate court holding that there could not be a partition in respect of the separate properties of a person and consequently dismissing the suit are not perverse?
- ii) Though the defendants had knowledge about the Settlement Deed - Ex.A2, did not challenge the same , but the Trial Court, without looking into the said aspect, is it correct on the part of the First Appellate Court in dismissing the plaintiff's' suit?

10. From a careful perusal of the entire material records, the following details are not in dispute. Muruga Gounder married Akkammal and they had only one daughter Meenakshiammal Plaintiff Nos.1 to 5 are the daughters of Meenakshiammal. Muruga Gounder had illicit intimacy with one Kannammal, wife of Ramanathan of Anandhur and through her, the first defendant, Palanivel(DW1) and the fifth defendant,

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Kandasamy @ Kandavel were born to them. Muruga Gounder had illicit

intimacy with Muniyammal, wife of Nanjan of Puliampatti village, and

through them, they had a son by name, Sivaprakasam (P.W.2). Muruga

Gounder executed a Settlement Deed dated 02.02.1974 in favour of

Meenakshiammal (Ex.B1). Muruga Gounder executed a registered Will

(Ex.B2) dated 26.03.1984 in favour of Palanivel (D.W.1) and Kandasamy

@ Kandavel, fifth defendant. The plaintiffs have not stated about the

execution of the Settlement Deed by Muruga Gounder in favour of their

mother Meenakshiammal in Ex.B1 dated 02.02.1974.

11. The case of the plaintiffs is that the suit properties were allotted to Akkammal and his daughter Meenakshiammal through an oral partition

in the year 1984, and soon after the said partition, Muruga Gounder died

and Akkammal died in the year 1985. After the demise of Akkammal, her

only legal heir, namely plaintiffs' mother, Meenakshiammal, succeeded to

the suit properties, and she had been in possession and enjoyment of the

said properties. Evidencing her possession, Meenakshiammal was

granted patta in respect of the suit properties. On 20.01.2006,

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Meenakshiammal executed a Settlement Deed in favour of her daughters, plaintiffs, and they have filed a suit for declaration of title and for permanent injunction.

12. The fourth plaintiff, Vijayalakshmi, one of the daughters of Meenakshiammal, has examined herself as P.W.1. She has filed her proof affidavit in line with the plaint details. Muruga Gounder's son born through one Muniyammal, wife of Nanjan of Puliyampatti, has been examined as P.W.2(Sivaprakasam)

13. It is the evidence of P.W.2 that the suit properties were allotted to Meenakshiammal in a partition in the year 1984 ,and Muruga Gounder gave about six acres of land to him at Kottavur village in the oral partition. It appears that the said Sivaprakasam sold out the properties allotted to him by Muruga Gounder as per the evidence of D.W.1 Palanivel.

14. It is the evidence of D.W.1 that he came to know about the Settlement Deed - Ex.A2 after six months from the date of execution. He

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was examined as D.W.1 on 15.02.2017. He has spoken about the properties got through the Will (Ex.B2) executed by Muruga Gounder.

During his cross examination, he would state that எனது தந்தை வாய்மொழியாக 6 1/2 ஏக்கர் கொடுத்தார். அதில் தனியாக மீனாட்சி அம்மாள் 1½ ஏக்கர் அனுபவிக்கிறார். சிவப்பிரகாசம் அந்த சொத்தை விற்றுவிட்டார். எப்போது அவர் விற்றார் என்று நியாபகம் இல்லை. என் அப்பா சிவப்பிரகாசத்திற்கு வாய்வழியாக விற்ற சொத்தை அவர் இப்போது வைத்திருக்கவில்லை. நானும், தங்கவேலும் அந்த சொத்தில் எந்த உரிமையும் கேட்டது இல்லை. உரிமையும் இல்லை.

15. On the other hand, when he was posed a question that Muruga Gounder also allotted the suit properties in favour of his daughter Meenakshiammal, was denied by him. D.W.1 got around acres 11.12 cents through Ex.B2 - Will. P.W.2 is the son-in-law of DW1- Palanivel. D.W.3 is the brother's wife of D.W.1-Tr.Palanivel (Jayarani & Kandasamy). Kandasamy who has arrayed as 5th defendant died during the pendency of the suit. It is pertinent to note that after the death of his father, there is no property available for partition.



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16. Ex,A.1 is the proceedings issued by the Special Tahsildar of

the Updated Register scheme, Uthangarai in Na.Ka.No.1806/87/ dated

21.10.1987 wherein, the plaintiffs' mother Meenakshiammal had given an

application to grant patta in her name in respect of the suit properties and

some other properties.

17. On perusal of entire proceedings, it appears that plaintiffs' mother Meenakshiammal produced a copy of Will- Ex.B2 executed by her father, Muruga Gounder, in favour of first defendant, Palanivel and the 6th defendant Kandasamy @ Kandavel and Sivaprakasam (PW2) and the remaining properties which were kept by her father belonged to her , and she requested to grant patta in her name.

18. It appears that during the enquiry, she had also produced the title deeds in the name of Muruga Gounder, patta and Ex.B2-Will. As per the evidence of DW1, Muruga Gounder died in the year 1984. After the demise of Muruga Gounder, Ex.B2 - Will executed by Muruga Gounder

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came into force, and revenue documents have been mutated in the name

of first defendant - Palanivel and the fifth defendant - Kandavel (D.W.1).

DW1 would state that as per Ex.B2 – Will, he got the properties to an extent of Acre 11.12 cents, and he has sold some items of the suit property and he has settled some of the suit properties in the name of his family members. Muruga Gounder settled four items of property in the name of his daughter Meenakshiammal as per Ex.B1 - Settlement Deed. As per Ex.A1 - Proceedings, Muruga Gounder' son Sivaprakasam was allotted 6 acres of land. The said Sivaprakasam has been examined as PW2. He would support the case of the plaintiffs. Admittedly, there is no document to prove the same. As per Ex.A1 - Proceedings , it is evident that Patta No.151 stood in the name of Sivaprakasam. He was enjoying four items of properties to an extent of Hectares 2.25 ares, equal to 5.50 acres.

19. In this regard, DW1 would state that Sivaprakasam sold the properties allotted by his father orally to third parties. DW1 also would further state that he does not have any right in the properties allotted to

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Sivaprakasam by her father, Muruga Gounder. Ex.B2 - Will is not in

dispute as per Ex.A1- Proceedings. In their plaint, in the suit schedule, nine items of properties have been given.

20. On a thorough perusal of Ex.B2, the item No.1, 4 to 9 are not dealt with. Item No.2 is S.No.79/2A – 0.03 Ares; Item No.3 is S.No.79/2B – 0.54.5 Ares and the total extent is 0.57.5 Ares, equal to Acre 1.42 cents. 2nd and 3rd items of suit properties are allotted are found in Ex.B2- Will, in 'A' schedule, which is allotted to first defendant - Palanivel. S.No.79/2 is 6th item (S.No.79/2 Punja Acre 1.42 cents இது புராஷம்) Ex.A3- patta is granted to the plaintiffs in respect of first six items of suit properties. In respect of 2nd item of suit property namely, S.No.79/2A, patta has been granted in the name of Palanivel and Kandavel under Ex.B4. Ex.B.5 is the patta granted in the name of Kandavel are not related to the suit properties. Ex.B6 is the patta stands in the name of Kandavel. As per Ex.A2 – Settlement Deed dated 20.01.2006, Muruga Gounder's only daughter Meenakshiammal had executed the settlement deed in favour of her daughters, plaintiffs 1 to 5, in respect of the suit

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properties.

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21. During the cross examination of DW1, at the first instance, though he feigned ignorance about Ex.A2. At a later point of time, he has acceded to fact that he came to know about Ex.A2 – Settlement Deed after six months from the date of execution of Ex.A2. D.W.1 has filed a proof affidavit on 15.12.2017. He would state that at the time of death of his father, no property was available for partition. The fact that the suit properties were allotted to Meenakshiammal through oral partition stands proved by the evidence of P.W.2-Sivaprakasam S/o.Muruga Gounder. Therefore, Meenakshiammal has got exclusive right to deal with the properties. However, the suit 2nd and the 3rd items have been found in Ex.B2 – Will dated 26.03.1984 in 'A' schedule as 6th item. As regards the 2th and 3rd item of suit properties, Meenakshiammal does not have any right to deal with the properties.

22. It is the candid evidence of DW1 that after the death of his
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father Muruga Gounder, there was no property available for partition and

this portion of evidence strengthened the case of the plaintiff. But the

First Appellate Court has misconceived, the entire case and held that all

the legal heirs of Muruga Gounder are entitled to get a share in the suit

property. The fact remains that Meenakshi Ammal is his only daughter.

23. It is an admitted fact that all the properties are the self acquired properties of Muruga Gounder. On a through perusal of the Ex.A1 – proceedings, properties allotted to Meenakshiammal under Ex.B1- Settlement Deed, and properties allotted to Palanivel and Kandavel through Ex.B2 – Will, have not been dealt with properly. Probably Muruga Gounder was owning a vast extent of land in various survey numbers. Therefore, based on the aforesaid observations and discussions, Meenakshiammal has got the right to deal with item Nos.1, 4 to 9 alone.

24. In such circumstances, the Judgment and decree of the First Appellate Court needs to be interfered with. This Second Appeal is allowed in part. Sequel to this, judgment and decree dated 26.11.2019
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passed in A.S.No.2 of 2018 by the Subordinate Court, Uthangarai,

stands set aside. In the result, i) The plaintiffs are entitled for the relief of

declaration of title and for permanent injunction in respect of suit item

Nos.1, 4 to 9 only. In respect of suit items No.2 & 3 suit stands dismissed.

ii) Considering the relationship between the parties to the appeal,

there is no order as to costs. Consequently, connected miscellaneous

petition is closed.

26.09.2025

Index : Yes/No

Internet : Yes/No

Speaking : Non speaking order

Neutral Citation : Yes/No

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To

1. The Subordinate Court, Uthangarai.

2. The District Munsif-cum-Judicial Magistrate,
Uthangarai.



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R.KALAIMATHI,J.

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