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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.08.2025

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

S.A.No.333 of 2012

and

M.P.No.1 of 2013

1.Saminathan
2.Malarmani
3.Vembu

...Appellants

Vs.

1.Paramasivam
2.Ramasami
3.Lakshmi
4.Dhanabakkiam
5.Chinnaponnu

..Respondents

Prayer: The Second Appeal filed under Section 100 of CPC, against the judgment and decree made in A.S.No.6 of 2006 dated 31.01.2011 on the file of the Sub Court, Ariyalur, reversing the judgment and decree made in O.S.No.7 of 2001 dated 27.09.2005 on the file of the District Munsif Court, Ariyalur.



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For Appellant(s) : Mr.C.Parthiban

For Respondent (s): Mr.S.Kamadevan for R1

JUDGMENT

The plaintiffs in O.S.No.7 of 2001 on the file of the District Munsif Court, Ariyalur, are the appellants herein.

2.The said Suit had been filed seeking partition and separate possession of 5/16th share in the suit schedule properties which are five items and vacant land.

3.The 1st plaintiff / Anjugam is the daughter of Duraisamy and Govindammal. Duraisamy had died before institution of the suit. They had three daughters. The first daughter Alamelu had died before the suit and her two sons and one daughter namely, Paramasivam, Ramasamy and Lakshmi were the 2nd, 3rd and 4th defendants. Govindammal was the 1st defendant. Dhanabakkiyam, the second daughter of Govindammal was the 5th defendant. Since Anjugam died during the pendency of the Suit, her legal representatives were brought on record.



4. It is seen from the judgment of the trial Court that the 1st, 3rd,

4th and 5th defendants did not question the claim of the plaintiffs to seek partition of the suit schedule properties. The 3rd defendant had actually filed a written statement admitting that the properties could be subjected to partition. However, the 2nd defendant did not admit to partition and claimed title on the basis of Settlement Deeds executed in his name with respect to Item Nos.1, 2, 3 and 5. Item No.4 had been sold by Govindammal even during her life time. Settlement Deeds had been executed by her in favour of the 2nd defendant, Paramasivam.

5. The trial Judge by Judgment dated 27.09.2005 had decreed the Suit for partition. The Settlement Deeds had been marked during the course of trial as Exs.B1, B2 and B3. But however, since the other defendants had not objected for partition, the learned trial Judge had decreed the Suit for partition overlooking the documents marked as Exs.B1, B2 and B3 / Settlement Deeds. It must also be noted that the 1st defendant Govindammal, executant of the Settlement Deeds, had taken a conscious decision to remain *ex parte* and therefore, it should be taken that she had not questioned the Settlement Deeds executed by her.



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6.This judgment of the trial Court was taken in appeal by the 2nd defendant in A.S.No.6 of 2006 before the Sub Court at Ariyalur. By judgment 31.01.2011, the Appeal Suit had been allowed. The learned first Appellate Court had held that the Settlement Deeds stares in the face of the plaintiffs and unless the same is set aside, there cannot be claim for partition and separate possession. The fact that Govindammal had sold Item No.4 property even during her life time was also a significant factor. Pointing out all these aspects, the first Appellate Court had allowed the Appeal Suit.

7.The present Second Appeal had been filed by the 2nd, 3rd and 5th plaintiffs. The Second Appeal had been admitted on the following Substantial Questions of Law:

“(i)Whether the judgment of the learned Sub Judge in A.S.No.6 of 2006 reversing the well-considered judgment of the learned District Munsif, Ariyalur in O.S.No.7 of 2001 is untenable regarding the plaintiff's claim for 5/16th share in the suit properties?



(ii) Whether the first Appellant Court ought to have held that the suit properties are the joint family properties and not the separate properties of the first Defendants / Govindammal?

(iii) Whether the judgment of the first Appellate Court is vitiated by failure to follow the Order 41 Rule 31 of the Civil Procedure Code?

(iv) Whether the finding of adverse possession in favour of the second defendant is erroneous that ouster has not been proved by the defendants?"

Substantial Question Nos.1 & 2:

8. Both these questions surround whether the suit properties are joint family properties of Duraisamy or whether Govindammal had a right to deal with the said properties. The trial Court had held that the properties are joint family by answering issue No.1 in that regard, but primarily the judgment of the trial Court flowed on the basis of the no objection raised by the 1st 3rd and 4th defendants in the Suit who admitted to partition. They would naturally benefit by obtaining a share in the properties. But the 2nd defendant had however taken a very strong stand that Settlement Deeds had been executed which had been marked as Exs.B1, B2 and B3 and therefore,



his title to the properties should be affirmed. There is no evidence produced by the plaintiffs that the properties are ancestral in nature or joint family properties. The plaintiffs had not established that particular fact. The learned trial Judge had been moved by granting a decree of partition more out of sympathy than on the basis of any legal ground. Any Court of law should go strictly in accordance with the evidence presented before it in the nature of documents or the oral evidence and analyse the evidence available and then render a judgment.

9. In this case, Exs. B1, B2 and B3 are Settlement Deeds validly executed and registered in manner known to law. No relief had been sought by the plaintiffs to set aside the Settlement Deeds. They stare in the face of the plaintiffs. So long as the Settlement Deeds are in force, the properties covered under the Settlement Deeds can never be the subject of partition. The settlor had been impleaded as the 1st defendant in the Suit. She had not raised any objection that she was either coerced or influenced to execute the Settlement Deeds. She remained *ex parte*. The Settlement Deeds being registered documents are admissible and had been acted upon and the 2nd defendant had laid a claim that he is entitled to the properties under the Settlement Deeds.



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10.I hold that the first Appellate Court had properly considered the documents on record and had come to a correct conclusion that Govindammal had right to execute the Settlement Deeds. Additionally, it must also be noted that item No.4 property had been sold by Govindammal even during her life time. She had thus asserted her right over the properties and had executed a Sale Deed and Settlement Deeds. I therefore answer the 1st and 2nd Substantial Questions of Law that the first Appellate Court had properly analysed the evidence produced that Govindammal / 1st defendant had every right to deal with the properties as her separate properties.

Substantial Question No:3

11.This question is with respect to non compliance of Order 41 Rule 31 of CPC. Order 41 Rule 31 prescribes the manner in which the first Appellate Court should write a judgment which prescribes points for determination should be first framed and thereafter give the reasons for answering the points. An overall perusal of the judgment of first Appellate Court shows that the reasons why the judgment of the trial Court had been



given and those reasons are that they were on the basis of Exs.B1, B2 and B3 namely the Settlement Deeds executed in favour of the 2nd defendant by the 1st defendant. Though points for consideration had been framed, it may not have been properly worded, but that is different from total non compliance of the stipulations under Order 41 Rule 31 of CPC. The points had been framed, but could have been framed in a better manner. That would not vitiate the judgment necessitating interference and to set aside the judgment. I hold that points for determination had been framed by the first Appellate Court to the extent to which, the first Appellate Court thought were necessary to determine the issues in the case. The question No.3 is answered accordingly.

Substantial Question No:4

12. There is no evidence of the 2nd defendant claiming title by adverse possession. The 2nd defendant claims title on the basis of the Settlement Deeds executed in his favour by the 1st defendant. This Substantial Question of Law is redundant and the facts on record do not give rise to the said question of law being framed. I hold there is no issue of ouster presented in the pleadings by either the plaintiffs or by the defendants. The 2nd defendant claims right on basis of title, on the basis of



Settlement Deeds. The said Substantial Question of Law is answered accordingly.

13.In the result, the Second Appeal stands dismissed. No costs.

Consequently, connected Civil Miscellaneous Petition is closed.

07.08.2025

Index :Yes/No
Internet :Yes/No
Speaking order : Yes/No

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To

- 1.The District Munsif Court, Ariyalur.
- 2.The Sub Court, Ariyalur.
- 3.The Section Officer,
VR Section, Madras High Court.



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C.V.KARTHIKEYAN,J.

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