



S.A.No.389 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.11.2025

Coram:

THE HONOURABLE MR.JUSTICE P.DHANABAL

S.A.No.389 of 2015

and

M.P.Nos.1 and 2 of 2015

1. Senthamarai

2. Rani

.. Appellants

Vs.

1. Raja @ Rajendran

2. Tmt.Selvanayaki

.. Respondents

Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 31.01.2014 passed in A.S.No.46 of 2010 on the file of the Subordinate Court, Ariyalur, reversing the judgment and decree dated 12.07.2010 passed in O.S.No.371 of 2005 on the file of the District Munsif Court, Jayankondam.

For appellants : M/s.M.Dhamodharan

For respondents: Mr.P.Dinesh Kumar for M/s.K.A.Vimal Kumar for R-1

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Second appeal dismissed against R -2,
vide order of Court, dated 16.12.2022

JUDGMENT

This Second Appeal has been preferred as against the judgment and decree passed by the first appellate Court in A.S.No.46 of 2010 on the file of the Subordinate Court, Ariyalur, reversing the judgment and decree dated 12.07.2010 passed in O.S.No.371 of 2005 on the file of the District Munsif Court, Jayakondam.

2. For the sake of convenience and brevity, the parties in this appeal are referred to as they are ranked in the Original Suit before the trial Court as plaintiff and defendant.



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3. The case of the plaintiffs is that the first plaintiff married the first defendant and the second plaintiff was born to the first plaintiff and the first defendant. The second defendant is the sister of the first defendant and the third defendant is the mother of the first defendant. The suit properties are ancestral properties and originally they belonged to the father of the first defendant and the second defendant and the husband of the third defendant, due to misunderstanding between the first defendant and the first plaintiff, the plaintiffs are residing separately. Since the properties are ancestral properties, the first plaintiff is entitled to 1/3 share over the properties. Therefore, the present suit is filed for partition and separate possession of the properties.

4. The case of the defendants before the trial Court is that the suit is false and the properties are not ancestral properties and the first defendant has sons and daughters and they are also the shareholders of the properties. Therefore, the suit is not maintainable. As per the community customs and usage, the first



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plaintiff was divorced and thereafter, the first defendant married one Deivamani and he has got four children through the second marriage.

5. Based on the above said pleadings, the trial Court framed the following issues:

(i) Whether the second defendant is entitled to preliminary decree of 1/4 share over the properties;

(ii) Whether the first plaintiff is entitled to maintenance of Rs.500/- per month ? and

(iii) To what other relief the plaintiffs are entitled to ?

The trial Court also framed additional issues as below:

(i) Whether the plaintiffs are entitled to 1/4 share over the properties ?

(ii) Whether the first plaintiff is entitled to charge over the properties ?



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6. On the side of the plaintiffs, the first plaintiff was examined as P.W.1 and Ex.A-1 was marked. On the side of the defendants, the first defendant was examined as D.W.1 and Exs.B-1 to B-7 were marked.

7. After hearing both sides and after perusal of the records, and analysing the evidence adduced on both sides, the trial Court decreed the suit by granting preliminary decree of 1/4 share over items 1 to 3 of the suit properties and dismissal of the suit against item Nos.4 and 5 of the properties. The trial Court also granted maintenance of Rs.500/- p.m. to be paid by the first defendant to the plaintiffs and created charge over the properties.

8. Aggrieved by the judgment and decree of the trial Court, the first defendant preferred First Appeal in A.S.No.46 of 2010 before the first appellate Court and after hearing both sides, the first appellate Court framed the following points for determination:



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and

(i) Whether the judgment and decree of the trial Court is sustainable ?

(ii) Whether the First Appeal is to be allowed or not ? and

(iii) Whether the appellant is entitled to the relief as prayed for ?

9. After analysing the evidence adduced on both sides including the judgment of the trial Court, the first appellate Court partly allowed the First Appeal and modified the judgment and decree of the trial Court in respect of the share entitled to by the second plaintiff and declared that the second plaintiff is entitled to 1/12 share over the properties and the first appellate Court confirmed the judgment and decree of the trial Court in respect of 4th and 5th items of the suit properties, where the trial Court dismissed the suit. Aggrieved by the said judgment and decree of the first appellate Court, the plaintiffs have preferred the present Second Appeal before this Court.



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10. While admitting the Second Appeal on 10.07.2015, this Court framed the following substantial questions of law:

(i) Having regard to the scope whether the judgments and decrees of the Courts below are sustainable in law where the first and second plaintiffs are entitled to get permanent injunction on the 1/4th share of the suit properties ?

(ii) Are not the judgment and decree of the Courts below are vitiated for total consideration of the second appellant/plaintiff claim is based on the Hindu undivided family properties ? and

(iii) Whether the judgment and decree of the Courts below are vitiated for the second wife's children are entitled to get equal share, even the first defendant and his second wife are alive ?

11. Learned counsel for the appellants/plaintiffs submitted that the first plaintiff is the daughter of the second plaintiff and the first defendant. The first defendant married the first plaintiff and their marriage is the first marriage and



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the suit properties are ancestral properties of the first defendant and therefore, in all the properties, the second plaintiff is entitled to 1/4th share and the first plaintiff is entitled to maintenance of Rs.500/- and the plaintiffs are entitled to charge over the properties for maintenance.

11.1. It is further contended by the learned counsel for the appellants that the trial Court, after considering the evidence adduced by both sides, held that the items 1 to 3 properties are ancestral properties of the first defendant and thereby, the trial Court granted preliminary decree by dividing the properties into four equal shares and allotted one such share to the second plaintiff. As far as the item Nos.4 and 5 of the properties are concerned, the suit was dismissed, and no appeal was filed as against the same. The trial Court also awarded maintenance of Rs.500/- to the first plaintiff and created charge over the properties for the maintenance amount.



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11.2. However, the first defendant preferred First Appeal (Appeal Suit) before the first appellate Court and the first appellate Court, without considering the evidence adduced on the side of the plaintiffs, erroneously allowed the First Appeal and decided that the second plaintiff is entitled to 1/12 share over the properties and therefore, the judgment and decree of the first appellate Court are liable to be set aside.

11.3. Further, since the properties belong to Hindu undivided family (HUF), the second plaintiff is entitled to share over the properties, but however, the first appellate Court allotted share to the children of the first defendant, born through the second wife when the father is alive. Therefore, according to the learned counsel for the appellants, the judgment and decree passed by the first appellate Court are liable to be set aside.



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12. Learned counsel for the first respondent submitted that the properties are not joint family properties of the first defendant. In fact, the plaintiffs failed to produce any document to show that the suit properties are joint family properties of the plaintiffs and defendants. In fact, originally, Chinna Pillai had four sons and the first defendant is one of the grand-sons of Veerasamy, who is the son of Chinna Pillai. The said Veerasamy has one son and one daughter and they are the first and second defendants. The third defendant is the wife of Veerasamy. Since Veerasamy obtained the properties through his mother Chinna Pillai, it is his separate properties and the properties cannot be divided during his lifetime, but however, the trial Court, without considering the same, passed preliminary decree by dividing items 1 to 3 of the suit properties into four by holding that item Nos.1 to 3 are ancestral properties of Veerasamy. Aggrieved by the judgment and decree of the trial Court, the first defendant preferred Appeal Suit (First Appeal) and the first appellate Court, instead of dismissing the suit in its entirety, allowed the First Appeal and allotted 1/12 share to the second plaintiff. Moreover, both the Courts below have granted permanent injunction



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without any such relief sought for by the plaintiffs. The plaintiffs are not entitled to any share over the properties, since the properties are separate properties of the first defendant got through his grand-mother. Even though the first defendant has not preferred any cross-appeal, he is entitled to establish that the second plaintiff is not entitled to any share over the properties. Therefore, the second appeal has to be dismissed by holding that the plaintiffs are not entitled to any share over the suit properties.

13. This Court heard both sides and perused the materials available on record.

14. In this case, there is no dispute with regard to the relationship between the parties. It is admitted fact that the first plaintiff is the wife of the first defendant and the second plaintiff was born to the second defendant through the first plaintiff, and the third defendant died.



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15. According to the plaintiffs, the suit properties are ancestral properties and the said Veerasamy is the grand-father of the second plaintiff and he is entitled to properties ancestrally, since the suit properties are ancestral, the second plaintiff is entitled to 1/3rd share over the suit properties and the first defendant is entitled to 1/3 share and the second defendant is entitled to 1/3 share over the suit properties. The third defendant died intestate during the pendency of the suit, thereby, the properties have to be divided into half and the defendants 1 and 2 are equally entitled to 1/2 share and 1/2 share of the first defendant is divided into half. Therefore, the plaintiffs are entitled to 1/4th share of the properties.

16. According to the defendants, the properties are separate properties of the said Chinna Pillai. From Chinna Pillai, the father of the first defendant Veerasamy inherited the properties and through Veerasamy, the defendants 1 to



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3 are entitled to the properties. Therefore, the plaintiffs have no right over the properties.

17. This Court also perused the judgment and decree of the trial Court as well as the first appellate Court. The trial Court, after analysing the evidence adduced on both sides, rendered a finding that the items 1 to 3 of the properties are ancestral properties of Veerasamy, and therefore, the second plaintiff is entitled to 1/4th share. However, the trial Court dismissed the suit in respect of item Nos.4 and 5 of the properties, as they are separate properties of the first defendant and during the life-time of the first defendant, the second plaintiff cannot claim any share. The first appellate Court also dismissed the relief in respect of the item Nos.4 and 5 of the properties. However, the first appellate Court came to the conclusion that the second plaintiff is entitled to 1/12 share and the first appellate Court also rendered a finding that the properties are ancestral properties, and thereby, allotted the shares to the second plaintiff,



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along with the children born through the second wife. The first appellate Court failed to consider that during the lifetime of the first defendant, the children born through the second wife, are not entitled to any share. No doubt, they are entitled to share over the separate properties of the first defendant, but they are not entitled to any share during his lifetime. Both the Courts below have rendered finding that the properties are ancestral properties of Veerasamy and allotted shares.

18. When the first defendant has preferred First Appeal as against the judgment of the trial Court, and the first appellate Court also rendered same findings in respect of the nature of the properties, but he failed to prefer appeal or any cross-objection as against the findings of the first appellate Court. Therefore, the contention of the learned counsel for the defendants that the properties are separate properties of Chinna Pillai and through Chinna Pillai,



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Veerasamy had acquired the properties and the defendants 1 and 2 inherited the same through Veerasamy, is not acceptable.

19. However, the first appellate Court divided the ancestral properties of the ancestral properties of the first defendant along with the children born through the second wife, when the father is alive. Therefore, the properties of Veerasamy have to be divided into three parts to defendants 1 to 3. The first defendant is the husband of the first plaintiff. The third defendant, being the mother of the defendants 1 and 2, during the pendency of the suit, died intestate and thereby, the properties of the third defendant will have to be divided into two parts and the defendants 1 and 2 are equally entitled to the properties of the third defendant.

20. The second plaintiff being the daughter of the first defendant, is entitled to share over the properties of the first defendant on his 1/3rd share.



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Though the third defendant died and the properties are derived from the mother of the first defendant, which is his separate properties, thereby, the properties are to be divided into 6 parts and the second plaintiff is entitled to 1/6 share and the first defendant is entitled to 2/6 share and the second defendant is entitled to 3/6 share over the properties. The plaintiffs are entitled to 1/6 share and the first defendant is entitled to 2/6 and the third defendant is entitled to 3/6.

21. As far as the first substantial question of law is concerned, namely "having regard to the scope whether the judgments and decrees of the Courts below are sustainable in law where the first and second plaintiffs are entitled to get permanent injunction on the 1/4th share of the suit property?, " is concerned, it is admitted fact that there is no prayer in the suit for the relief of permanent injunction in respect of the properties. No Court fee is paid for that relief. Without any relief, the trial Court granted the relief of permanent injunction and the first appellate Court also confirmed the judgment and decree



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in respect of the permanent injunction. Therefore, the Courts below ought not to have granted the relief of permanent injunction, in the absence of any specific prayer and pleadings. Therefore, the plaintiffs are not entitled for the relief of permanent injunction of 1/4th share.

22. As far as the second substantial question of law, namely, "Are not the judgment and decree of the Courts below are vitiated for total consideration of the second appellant/second plaintiff's claim, which is based on the Hindu undivided family properties?", is concerned, according to the plaintiff, the properties are ancestral properties of the first defendant, and thereby, the first plaintiff is entitled to 1/4th share over the properties. This Court, in the previous paragraph, decided that the said Veerasamy is the owner of the properties and after demise of Veerasamy, the legal heirs of Veerasamy, namely defendants 1 to 3 are equally entitled to share over the suit property. During the pendency of the suit, the mother of the defendants 1 to 3 died intestate, and therefore, her share



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over the properties will have to be divided into two parts. Therefore, defendants

1 and 2 are equally entitled to the share in the properties of their mother - third

defendant. The second plaintiff is entitled to properties of the share of the first

defendant. The properties derived by the first defendant, through his deceased

father Veerasamy, is his separate properties, and therefore, the Courts below

have failed to consider the same and the first appellate Court has erroneously

divided the share of the second plaintiff, along with the children born to the first

defendant through the second wife during the life-time of the second defendant.

Therefore, the first plaintiff is entitled to 1/6 share over the suit properties.

23. As far as the third substantial question of law, namely "whether the

judgment and decree of the Courts below are vitiated for the second wife

childrens are entitled to get equal share, even the first defendant and his second

wife, are alive?, is concerned, it is admitted fact that the marriage between the

first plaintiff and the first defendant is the first marriage and the second plaintiff

was born through the first wife to the first defendant and during the lifetime of

the first plaintiff, the first defendant contracted in second marriage and through

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the second marriage, he has got four children. The first appellate Court erroneously granted share to the children of the second wife, along with the second plaintiff and the same is not permissible, when the first defendant is alive. Therefore, the judgment and decree passed by the first appellate Court are liable to be modified to the effect that the second plaintiff is entitled to 1/6 share over the suit properties. The third substantial question of law is answered accordingly.

24. In the result, this Second Appeal is partly allowed. The judgment and decree passed by the first appellate Court are modified to the effect that the second plaintiff is entitled to 1/6th share over items 1 to 3 properties and the relief of permanent injunction, is set aside. In other respects, the judgment and decree passed by the first appellate Court are confirmed. Considering the nature of the suit and the relationship between the parties, there is no order as to costs. Consequently, the miscellaneous petitions are closed.

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Speaking Order: Yes/no

Neutral Case Citation: Yes/no

CS

To

1. The Subordinate Judge, Ariyalur.
2. The District Munsif, Jayankondam.
3. The Record Keeper, V.R.Section, High Court, Madras.



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