



S.A.No.447 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	31.07.2025
Pronounced on	19.09.2025

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A.No.447 of 2019

Govindaraj

...Appellant

Vs.

1. Pothiyappan
2. Jaya
3. Dilli
4. Babu
5. John

...Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 14.12.2017 passed in A.S. No.40 of 2014, on the file of the Principal Sub Court, Tindivanam, confirming the Judgment and decree dated 23.07.2014 passed in O.S. No.127 of 2007, on the file of the District Munsif cum Judicial Magistrate, Vanur.

For Appellant : Ms.V. Srimathi
For Respondents : Mr.M. Venkatakrishnan for R2 to R5
R1 died

JUDGMENT



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In this Second Appeal, challenge is made to the decree and judgment dated 14.12.2017 passed in A.S. No.40 of 2014, on the file of the Principal Sub Court, Tindivanam, confirming the Judgment and decree dated 23.07.2014 passed in O.S. No.127 of 2007, on the file of the District Munsif cum Judicial Magistrate Court, Vanur.

2. The appellant is the plaintiff in O.S. No.127 of 2007 on the file of the District Munsif cum Judicial Magistrate Court, Vanur, and he filed the said suit for permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit properties and for costs.

3. For the sake of convenience, the parties are referred to as per their ranking in the trial court.



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4. The case of the plaintiff is that one Sadayan and his wife Pachaiammal had two children, namely Venkatachalam and Palani. The said Palani had one son namely Deivasigamani and daughters namely Shanthi, Sowndariya & Renuka. The suit property is situate in Thenkodipakkam Village. One Sadayan purchased the 1st item of the suit property measuring 0.39 cents on 02.08.1937 from one Muthuveera Gounder, the 2nd item of the suit property measuring 0.64 cents on 06.04.1930 from the said Muthuveera Gounder and Balarama Gounder and, in the 2nd item, land measuring 0.20 cents in the name of his wife Pachaiammal on 18.07.1958. Hence, the total extent of the 2nd item of the property is 0.84 cents. The said Sadayan died intestate 45 years back. After the death of Sadayan, his sons Venkatachalam and Palani have partitioned the property orally in the presence of village pachayatars. The suit property was allotted to the share of Palani and he settled 0.84 cents of property in the name of his daughter Renuka on 20.03.2006. The said Renuka was in possession of the property by paying kist for the said property. Thereafter, she retained 0.6-1/2 cents of land and executed a sale deed in the name of the plaintiff on 19.02.2007 with regard to the



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5. The defendants together resisted the claim of the plaintiff stating that the said Sadayan had purchased 0.39 cents of property from Muthuveera Gounder. However, the sale deed in favour of the plaintiff is not valid and the sale deed has not been executed for valid consideration. It is further stated that the said Sadayan has not purchased 0.64 cents of land from Muthuveera Gounder and Balarama Gounder, but he has purchased 0.25 cents alone; that it is false to state that the 2nd item measuring an extent of 0.20 cents has been purchased by Sadayan in the name of his wife Pachaiammal on 18.07.1958 and that the same has been



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purchased by Sadayan's wife out of her own income. Sadayan and Pachaiammal had children namely Rukmani, Venkatachalam, Pavunambal, Pandurangan, Palani, Amitrhammal & Ammaniammal and they were not impleaded in the suit as necessary parties. Hence, the suit is bad for non joinder of necessary parties. The suit property is in old S.No.35/1 and the new survey number is 2/2 measuring an extent of 2.56 cents. Sadayan has purchased 0.25 cents in the year 1930 from Muthuveera Gounder and Balarama Gounder and he has purchased 0.39 cents in the year 1937 from Muthuveera Gounder. So the total extent which was purchased by Sadayan is only 0.64 cents and the property purchased in the name of his wife is only 0.20 cents. They have joint patta for 0.84 cents of property. The 1st defendant had purchased 0.41 cents of property on two dates, i.e. 09.12.1991 and 09.04.2007 and he had also purchased land from Rukkumani, Parasuraman and Iyyanar measuring an extent of 1.05 cents. A joint patta was granted with respect to 1.46 cents. Out of the total extent of 2.56 cents, Namili Gounder had 0.26 cents. Therefore, out of 2.30 cents patta No.580 stands in the name of Rukkumani to the extent of 1.46 cents and the remaining 0.84 cents



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WEB COPY stands in the name of Sadayan, Pandurangan, Palani & Venkatachalam.

Further, 0.20 cents which has been purchased in the name of Pachaiaammal has been partitioned by her daughters pavunambal, Amirthammal & Rukkumani. The said Sadayan & Pachaiaammal had a well in the property and were cultivating the lands. Out of 0.20 cents, 0.6-1/2 cents was allotted to the share of Rukkumani. The said Rukkumani has sold the property along with 1/3 share in the well in favour of her daughter Jaya, who is the 2nd defendant herein. The total extent available is 0.77-1/2 cents and this 0.77-1/2 cents was sold by Renuka and Munusamy who is the son of Pavunambal and Amirthammal to the plaintiff on 19.02.2007. After purchase, the 1st defendant has obtained patta in Patta No.715 for 1.46 cents of land. The said Jaya has obtained patta in Patta No. 719 for 0.6-1/2 cents of land. The 1st item of the suit property is in the 2nd item itself. The sale deed dated 04.07.2007 is sham and nominal. The 1st defendant is cultivating the property purchased by him as well as the property purchased by the 2nd defendant. Hence the suit is liable to be dismissed.



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WEB COPY 6. The trial court, based on the materials, decreed the suit in favour of the plaintiff as follows:

"2) That the plaintiff is entitled to declaration of title with respect to 0.39 cents of property in 1st item and 0.38 cents of property alone in 2nd item. Totally 0.77 cents.

3) That the plaintiff is entitled to permanent injunction restraining the defendant, his men or his agents from interfering with the plaintiff's peaceful possession and enjoyment with respect to 0.39 cents of property in 1st item and 0.38 cents of property alone in 2nd item. Totally 0.77 cents of property."

7. Aggrieved by this the plaintiff had preferred an appeal in A.S. No.40/2014 before the Principal Subordinate Court, Tindivanam. The first appellate court, vide its judgment and decree dated 14.12.2017, dismissed the appeal. Challenging the same, the present second appeal



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has been preferred by the plaintiff.

8. The following substantial questions of law were raised in the memorandum of second appeal.

"1. Whether the courts below are right in relying upon documents that have come into existence after the filing of the suit?

2. When the plaintiff had established and proved that his vendor is the absolute owner of the item No.2 of the property and when the defendants have claimed only in respect of 6½ cents, are the courts below justified in restricting the declaratory decree to 38 cents in item No.2 of the schedule?

3. Whether the courts below are right in giving predominance to revenue records and ignoring the title deeds under Ex.A1, Ex.A2, Ex.A4, Ex.A6 and Ex.A9?

4. Whether the courts below have ignored the



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5. Under the Hindu law of succession prevailing prior to 1955, whether the daughters are entitled to any share in ancestral agricultural holdings?

6. When it is admitted that Sadayan is the owner, are the courts below right in recognising the claim of purchases through his daughter?

9. The first respondent died during the pendency of the second appeal and a memo dated 06.08.2025 has been filed stating that his legal heirs are already on record as respondents 2 to 5. The said memo is recorded.

10. The learned counsel appearing for the appellant/plaintiff



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submits that the courts below erred in decreeing only 0.38 cents in the suit 2nd item and by dismissing the remaining extent in the said item. The plaintiff has derived title under Ex.A6 sale deed dated 19.02.2007 with respect to the 2nd item. While so, the courts below have committed serious error in dismissing the suit for the remaining extent of 0.39½ cents in the 2nd item. In fact, the respondents/defendants had clearly admitted in their written statement that the plaintiff has got title to the suit 2nd item to an extent of 77½ cents. The courts below failed to take note of the fact that the oral partition that took place between the legal heirs of Sadayan and Pachaiaammal was established by examining P.W.2 to P.W.4 and the same was also admitted by the defendants. Her further contention is that as per Ex.A1, Ex.A2 and Ex.A14, a new survey number is assigned as 2/2 for the land measuring 2.56 cents. Moreover, the courts below failed to take note of the fact that Ex.B7, Ex.B8 and Ex.B12, patta and adangal of the year 2013 are subsequent to the suit. The defendants failed to file subsequent revenue records. Hence prayed for setting aside the judgment and decree passed by the courts below.



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11. On the other hand, the learned counsel for the respondents 2 to 5 submits that the said Saddayan has not purchased 0.64 cents of land from Muthuveera Gounder and Balarama Gounder, but, he has purchased only 0.25 cents alone in the 2nd item and 0.39 cents in 1st item. Therefore, the total extent purchased by Sadayan is only 0.64 cents. In the 2nd item, 0.20 cents of land was purchased by Sadayan in the name of his wife Pachaiammal and that they had joint patta for 0.84 cents. On the other hand, the 1st defendant had purchased 0.41 cents of property on 09.12.1991 and again purchased 1.05 cents of land on 09.04.2007 from Rukmani, Parasuraman and Iyyanar and a joint patta was issued in his favour with respect of 1.46 cents. The further contention of the 1st defendant is that out of the total extent of 2.56 cents, Namili Gounder had 0.26 cents and therefore, in the remaining 2.30 cents patta was issued in the name of Rukmani with regard to 1.46 cents and for remaining 0.84 cents, the patta stood in the name of Sadayan, Pandurangan, Palani and Venkatachalam. His further contention is that out of 0.20 cents, 6½ cents was allotted to the share of Rukmani and she sold the property along with 1/3 share in the well in favour of her daughter Jaya, who is the 2nd



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defendant herein. Hence the total cents available is 0.77½ cents. After purchase, the 1st defendant has obtained patta for 1.46 cents and the 2nd defendant has obtained patta for 6½ cents. It is contended that the sale deed dated 04.07.2007 executed by Palani and his son Deivasigamani in favour of the plaintiff is sham and nominal. The 1st defendant alone is cultivating the land purchased by him and the 2nd defendant. The courts below had rightly held that the plaintiff is entitled to 0.39 cents of property in 1st item and 0.38 cents of property alone in 2nd item and granted declaratoy relief and permanent injunction to that extent, which warrants no interference by this court.

12. Heard on both sides. Records perused.

13. According to the plaintiff, the 1st item of the suit property measuring 0.39 cents was purchased by Sadayan on 02.08.1937 under Ex.A1 and the 2nd item of the property measuring 0.64 cents was purchased by Sadayan on 06.04.1930 from Muthuveera Gounder and Balarama Gounder and further 0.20 cents of land in the 2nd item of the



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property was purchased by Sadayan in the name of his wife Pachaiaammal on 18.07.1958 under the sale deed marked as Ex.A2 and Ex.A3 respectively. It is the contention of the plaintiff that the total extent of the 2nd item of the property is 0.84 cents and that during the oral partition between the sons of Sadayan, the suit property was allotted to the share of Palani and the said Palani settled the above 0.84 cents in favour of his daughter Renuka on 20.03.2006. The said Renuka after retaining 6½ cents executed a sale deed for the remaining extent of 0.77½ cents of property. It is further contented on the side of the plaintiff that the extent of property in S.No. 35/1 (New S.No.2/2/) is 2.56 cents in which 0.84 cents was owned by Sadayan and his wife and the same was sold to the plaintiff. The remaining extent of land is only 1.72 cents in the above survey number. Therefore, deduction of 39½ cents from the 2nd item by the courts below is unsustainable. On the other hand, the defendants' contention is that the said Sadayan has not purchased 0.64 cents of land from Muthuveera Gounder and Balarama Gounder and that he had purchased only 0.25 cents alone in the 2nd item and 0.39 cents in the 1st item and another 0.20 cents in the name of his wife in the 2nd item,



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which proves that the said Sadayan and his wife Pachaiaammal together possessed only 0.84 cents of property and that alone was sold to the plaintiff. Therefore, the said Palani, Son of Sadayan has no right to execute the settlement deed in favour of his daughter Renuka with respect to 0.84 cents. It is not in dispute that suit property in old S.No.35/1 (new S.No.2/2) is measuring an extent of 2.56 cents. On a perusal of the records it is seen that under Ex.A2, the said Sadayan, out of 2.56 cents, has purchased 0.25 cents alone in the 2nd item of the suit property from Muthuveera Gounder and Balarama Gounder and he had also purchased 0.39 cents from Muthuveera Gounder. Therefore, the total extent purchased by Sadayan is 0.64 cents and the property purchased in the name of his wife is 0.20 cents and a joint patta was assigned in their favour only for 0.84 cents of property. Whereas the 1st defendant has purchased 0.41 cents of property under Ex.B4 on 09.12.1991 and 1.05 cents of property under Ex.B5 on 09.04.2007. So the total extent of property purchased by the 1st defendant is 1.46 cents for which patta has been granted and the same is marked as Ex.B7. Thereafter, the 2nd defendant has purchased 6½ cents under Ex.B6 for which patta was also



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issued in her favour. Hence, the total extent of land in possession of the defendants is 1.52 cents and thus the courts below had come to the conclusion that the plaintiff is entitled for declaration of title only for 0.77 cents in the entire suit property and has granted declaratory relief and permanent injunction in respect of the above 0.77 cents both in 1st and 2nd item of the suit property. Since the plaintiff failed to establish that he is entitled for the entire 2nd item of the property, the courts below concurrently held that the plaintiff is entitled for only 0.77 cents (0.39 cents of property in 1st item and 0.38 cents in 2nd item of the suit property) of land. No perversity or infirmity is found in the findings rendered by the courts below. Therefore, I do not see any question of law much less a substantial question of law in order to enable me to entertain this appeal.

14. In the result,



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i. The Second Appeal is dismissed. No costs.

ii. the decree and judgment dated 14.12.2017 passed in A.S. No.40 of 2014, on the file of the Principal Sub Court, Tindivanam, confirming the Judgment and decree dated 23.07.2014 passed in O.S. No.127 of 2007, on the file of the District Munsif cum Judicial Magistrate, Vanur, is upheld.

19.09.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To

1. The Principal Subordinate Judge, Tindivanam
2. The District Munsif cum Judicial Magistrate, Vanur.
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J.
bga

Pre-delivery judgment in
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