



S.A.No.863 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 24.06.2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Second Appeal No.863 of 2013

1. Rajagopal (Died)
2. Ulaganathan
3. Vethavalli
4. Mangaiyarkarasi
5. Srinivasan
6. Danalakshmi

.. Appellants

[Appellants 2 to 6 brought on record as LR's of the deceased sole Appellant viz., G. Rajagopal vide Court order dated 01.07.2021 made in C.M.P.No. 7982 of 2021 in S.A. No. 863 of 2012]

Versus

1. Pandarinathan (Died)
2. Kesavaraj
3. Bhuvaneshwari
4. Vani
5. Thilakavathi
6. Latha
7. Mageshwari
8. Vijayaraghavan
9. Parthiban
10. Sasikaladevi
11. Prathap
12. Krishnaveni
13. Minor Gopinath
14. Minor Jayapal
15. Minor Rangaraj

.. Respondents



S.A.No.863 of 2013

[Minor Respondents 13 to 15 are represented by guardian S. Vijayalakshmi]

[Respondents 2 to 15 brought on record as LR's of the deceased first Respondent vide Court order dated 16.04.2021 in CMP No.10721 to 10723 of 2018 in S.A.No.863 of 2013]

Second Appeal filed under Section 100 of Code of Civil Procedure as against the judgment and decree dated 21.06.2013 passed in A.S.No. 78 of 2001 by the learned Subordinate Judge, Ariyalur in reversing the well considered judgment and decree dated 16.07.2001 made in O.S.No. 269 of 1996 by the learned Principal District Munsif, Ariyalur.

For Appellants	:	Mrs. V. Srimathi
For Respondents 2 to 15	:	Mr. P. Valliappan
		Senior Counsel
		for M/s. P. V. Associates

JUDGMENT

This Second Appeal had been filed challenging the judgment and decree dated 21.06.2013 passed in A.S.No. 78 of 2001 by the learned Subordinate Judge, Ariyalur in reversing the well considered judgment and decree dated 16.07.2001 made in O.S.No. 269 of 1996 by the learned Principal District Munsif, Ariyalur.

2. The brief facts, which are necessary for the disposal of this Second Appeal, are as follows:-

2.1. The suit is filed by one Pandarinathan, son of Govindasamy Naidu against his brother Rajagopal in O.S.No.269 of 1996 on the file of the



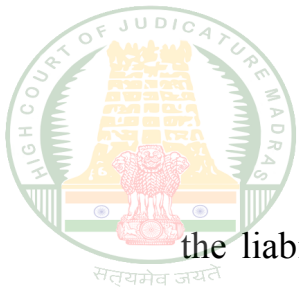
S.A.No.863 of 2013

learned Principal District Munsif, Ariyalur, seeking the relief of (i) mandatory injunction to remove the construction put up in the suit scheduled property by the Defendant; (ii) to recover possession of the suit schedule property; (iii) for damages for use and occupation of the suit scheduled property by the Defendant; and costs.

2.2. The suit property measures 14 x 120 feet with specific boundaries at Ariyalur District, Ariyalur Taluk, Keelapaloor Village bounded on the South by Trichy Road, North by Lake, West by the house of Rajendran and East by the house belonging to Rajappa in which the vacant site measures 14 x 120 feet.

2.3. The Plaintiff claims the property as per the oral family arrangement which was reduced into writing on 09.09.1958 in which the suit scheduled property was allotted to the share of the Plaintiff.

2.4. The Defendant who is none other than the brother of the Plaintiff disputed the claim of the Plaintiff in the plaint. It is the claim of the Defendant in the written statement that the family arrangement dated 09.09.1958 was with regard to the debt unpaid on the date of death of their father. Therefore,



S.A.No.863 of 2013

the liability towards debt left by their father was divided equally among the sons and the family arrangement which was reduced into writing dated 09.09.1958 did not contain any immovable properties. The properties were partitioned only in the year 1962 and for which, a partition arrangement was reduced into writing on 28.06.1962. The witnesses to the partition arrangement are not alive. The Defendant has been in continuous enjoyment of the properties for more than 35 years. Therefore, the Defendant claims ouster against the Plaintiff. The Defendant further claims that the suit is not maintainable and for dismissal of the suit.

2.5. On perusal of the plaint and written statement, the learned District Munsif, Ariyalur, had framed the following issues:

(i) Whether the properties in the family were partitioned orally and subsequently reduced into writing on 09.09.1958 whereby the Plaintiff was allotted the suit property?

(ii) Whether the partition was a oral partition that took place in the year 1962 and whether it was reduced into writing on 28.06.1962 thereby the suit property was allotted to the Defendant?

(iii) Whether the suit property was enjoyed by the Defendant based on the permission granted by the Plaintiff?



S.A.No.863 of 2013

(iv) Whether the Plaintiff is entitled to relief of declaration to the title to the suit property?

(v) Whether the Plaintiff is entitled to the relief of mandatory injunction against the Defendant?

(vi) Whether the Plaintiff is entitled to the recovery of damages for use and occupation of the suit property by the Defendant?

(vii) To what other relief the Plaintiff is entitled to?

2.6. The Plaintiff examined himself as P.W-1 and marked Ex.A-1 and Ex.A-2. The Defendant examined himself as D.W-1 and examined one other person by name Raghavan as D.W-2. The Defendant had marked documents as Ex.B-1 to Ex.B-8. At the time of instituting the suit, the Plaintiff had sought appointment of Advocate Commissioner. Advocate Commissioner was appointed. He had visited the suit properties and filed his report along with plan which was marked as Ex.C-1 and Ex.C-2.

2.7. The learned Principal District Munsif, Ariyalur, on consideration of the materials available through evidence of Plaintiff as P.W-1 and the documents of the Plaintiff as Ex.A-1 and Ex.A-2 and the evidence of the Defendant as D.W-1 and D.W-2 and the documents marked on the side of the



S.A.No.863 of 2013

Defendant as Ex.B-1 to Ex.B-8, by judgment dated 16.07.2001 dismissed the suit in O.S.No.269 of 1996. Aggrieved by the same, the Plaintiff had preferred appeal in A.S.No.78 of 2001 before the learned Sub Judge, Ariyalur. In the Appeal, the learned Sub Judge reversed the finding given by the learned Principal District Munsif in O.S.No.269 of 1996. dated 16.07.2001.

3. Aggrieved by the same, the Defendant in the suit in O.S.No.269 of 1996 and the Respondent in the appeal in A.S.No.78 of 2001 had filed this Second Appeal.

4. During the pendency of Second Appeal, the Appellant and the Respondent died and the legal heirs of the Appellant and Respondent were brought on record as Appellants 2 to 6 and Respondents 2 to 15.

5. The learned Counsel for the Appellants submitted that the Defendant before the learned Principal District Munsif in O.S.No.269 of 1996 and the Respondent before the learned Sub Judge in A.S.No.78 of 2001 is the original Appellant in this Second Appeal. This Second Appeal had been preferred by the Defendant to set aside the judgment and decree granted by the learned Sub Judge, Ariyalur, in A.S.No.78 of 2001, dated 21.06.2013 thereby granting the



S.A.No.863 of 2013

relief of declaration of title, mandatory injunction, for removal of the structure put up by the Defendant, for recovery of vacant possession and for payment of damages for use and occupation by the Plaintiff and for costs.

6. The learned Counsel for the Appellants submitted that the learned Principal District Munsif had on proper appreciation of evidence arrived at a conclusion that Ex.A-1 marked on the side of the Plaintiff was not a document related to partition of the immovable properties in the family of the Plaintiff and Defendant. It was only an arrangement between the family members in the year 1958 whereby the liabilities and debts that remained to be paid by their deceased father was divided among the members, and not the properties in the family. Whereas the documents relied by the Defendant as Ex.B-1 was the family arrangement reduced into writing dated 28.06.1962 and Ex.B-4 which is the patta in favour of the Defendant issued by the Revenue Authorities, based on which the claim of the Plaintiff was negated by the learned Principal District Munsif, Ariyalur by judgment dated 16.07.2001 in O.S.No. 269 of 1996.

7. It is the contention of the learned Counsel for the Appellants that the learned first Appellate Court in the judgment in A.S.No.78 of 2001 by



S.A.No.863 of 2013

reassessment of evidence available before the learned Principal District Munsif through P.W-1, D.W-1 and D.W-2, Ex.A-1 and Ex.A-2 and Ex.B-1 to Ex.B-8 had reversed the finding of the learned Principal District Munsif, Ariyalur, in O.S.No. 269 of 1996, dated 16.07.2001.

8. The learned Counsel for the Appellants further submitted that the learned Sub Judge had on analysis of Ex.A-1 and Ex.B-1 stated that both the documents were unregistered documents and arrived at a conclusion that on comparison of Ex.A-1 and Ex.B-1, Ex.A-1 is found cogent to claim title to the suit properties by the Plaintiff. How he arrived at such conclusion is not stated by cogent reasoning by the learned first Appellate Court Judge. Therefore, the finding arrived by the learned first Appellate Judge reversing the finding of dismissal of the suit of the Plaintiff by the learned Principal District Munsif, Ariyalur and granting a decree is perverse. Therefore, it has to be set aside.

9. The learned Senior Counsel Mr. P. Valliappan appearing for the Respondents submitted that the original records are available before this Court. Ex.A-1 is the document of the year 1958 which was a family arrangement in the family of the Plaintiff and the Defendant and one other brother. The learned Senior Counsel for the Respondents invited the attention



S.A.No.863 of 2013

of this Court to the recitals in Ex.A-1 which is an oral family arrangement which was arrived at in the presence of the Panchayatdars and subsequently reduced into writing on 09.09.1958.

10. He further submitted that in Ex.A-1, it is stated as “ பாகப்பிரிவினை ஒப்பந்தம் ”. It was written in manuscript wherein various loans had been mentioned in a tabular column. It is the submission of the learned Senior Counsel for the Respondents that in the last portion of the document Ex.A-1, the only property left intestate by the father of the Plaintiff and Defendant was stated to be the only property left by their father and it was divided among the brothers.

11. Further, the learned Senior Counsel for the Respondents invited the attention of this Court to the examination in chief of Defendant as D.W-1 in which he had voluntarily admitted that Ex.A-1 is a oral partition in the family of the Plaintiff and Defendant. That was subsequently reduced into writing and in which the only property left by their father was divided among themselves. The Defendant himself had admitted in the chief examination. Further, the learned Senior Counsel submitted that when the Defendant admitted that the property was allotted to the Plaintiff and Defendant and other



S.A.No.863 of 2013

brothers, he cannot claim ouster. The Plaintiff in paragraph 4 in the plaint, had clearly stated that he was living in Neiveli, due to his avocation, was unable to attend to the property, therefore, he had permitted his brother, the Defendant to enjoy the property as a permissive occupier by paying the taxes and other dues to the authorities concerned. When that be so, the Defendant claiming ouster is unacceptable in the eyes of law. Ouster is claimed on the basis of denial of title. The Plaintiff had asserted his title by filing a suit in O.S.No. 227 of 1990 regarding the property which was decreed on 10.07.2001 and the same was marked as Ex.A-2. When the Plaintiff had asserted his title against a different individual in a different suit other than the Defendant in O.S. No. 269 of 1996 which shows the Plaintiff was in enjoyment and ownership of the property.

12. The learned Principal District Munsif had not considered or perused Ex.A-1. The learned Principal District Munsif had described Ex.A-1 in the judgment as a document obtained by the Plaintiff's brother regarding the liability of their father to be paid to various creditors. He failed to peruse the document in detail. Had he perused the documents in detail, he could have deciphered that the document also contained partition among the brothers, which was also reduced into writing. Not only liabilities but also assets in the family were divided. He failed to consider those facts and took Ex.B-1 to



S.A.No.863 of 2013

Ex.B-4 for granted. Ex.B-4 is the joint patta, not an exclusive patta in the name of the Defendant. Ex.B-1 is claimed to be a partition deed dated 28.06.1962 as per the Defendant. There cannot be two partitions in the family. What is claimed by the Plaintiff is the partition in the year 1958. The partition that is earlier in date i.e., 1958 is to be taken. There cannot be a subsequent partition for the same properties. Therefore, the so-called document under Ex.B-1 dated 28.06.1962 ought to have been rejected. The learned Principal District Munsif was carried away by the submission of the learned Counsel for the Defendant before the trial Court, that Ex.A-1 is only with regard to liabilities and not with regard to assets, and Ex.B-1 was the partition in the year 1962.

13. The learned Senior Counsel for the Respondents invited the attention of this Court to the wordings in Ex.A-1, the wordings in Ex.B-1, and the wordings in Ex.P-4. When the Defendant as D.W-1, had in his examination in chief admitted that the assets and liabilities were partitioned orally in the presence of the Panchayatdars and elders in the family and subsequently reduced into writing on 09.09.1958 which was not at all considered by the learned Principal District Munsif but was considered by the learned first Appellate Court Judge.



S.A.No.863 of 2013

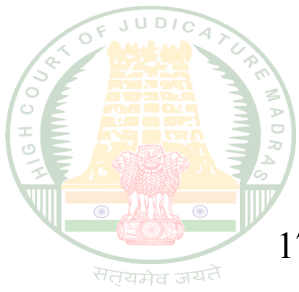
WEB COPY14. The learned Senior Counsel for the Respondents submitted that the learned first Appellate Court Judge, on proper re-appreciation of evidence, had clearly stated that the Defendant as D.W-1, had admitted that in the year 1958 there was a oral partition. Therefore, the submission of the learned Counsel for the Appellant that the judgment of the first Appellate Court Judge is perverse as no reasoning was given for accepting Ex.A-1 and rejecting Ex.B-1, is to be rejected.

15. Further, the learned Senior Counsel for the Respondents invited the attention of this Court to the discussion of the evidence under Ex.B-6, Ex.B-2 and Ex.A-2 by the learned first Appellate Court Judge who rejected the evidence of the Defendant that the properties were allotted in the family partition in favour of the Defendant. The learned Sub Judge, Ariyalur had discussed that Ex.A-1 itself contains the partition of the assets as well as liabilities in the family. Therefore, the Appellate Judge had arrived at the conclusion that the claim of the Plaintiff had been proved through cogent evidence under Ex.A-1 and Ex.A-2, and Ex.B-1 to Ex.B-8 does not support the claim of the Defendant. The claim of the Defendant for ouster was also rejected by the learned Sub Judge, Ariyalur.



S.A.No.863 of 2013

WEB COPY16. It is the claim of the learned Senior Counsel for the Respondents that to prove ouster is very difficult. Here the Defendant claims ouster by continuous enjoyment of the scheduled property for 35 years whereas it was otherwise. The Plaintiff had asserted his rights under Ex.A-2. When the Plaintiff claims that the property had been in permissive occupation of the Defendant and that the Defendant did not hand over possession, he had approached the Court seeking recovery of possession and or mandatory injunction to remove the construction put up by the Defendant. The learned Sub Judge, Ariyalur, had on the basis of the materials available before the learned Principal District Munsif, on re-assessment of the same materials, rejected the claim of the Defendant and decreed the suit as prayed for which is found justified in the light of Ex.A-1 and Ex.A-2. As far as partition is concerned, there can be only one partition in the family. There cannot be subsequent partition. When the 1958 document under Ex.A-1 is the earliest partition, the claim of partition in the year 1962 and denial of partition in 1958 was rejected by the learned Sub Judge, Ariyalur in A.S.No.78 of 2001, dated 21.06.2013. It is a well reasoned judgment that does not warrant any interference by this Court. Therefore, this Second Appeal is to be dismissed.



S.A.No.863 of 2013

17. On 06.08.2013, when this Second Appeal was taken up for admission, the following substantial questions of law were framed for consideration of this Second Appeal and they are as follows:-

- (a) Whether the lower appellate Court is right in decreeing the suit, when the Plaintiff had failed to prove his entitlement over the suit property?
- (b) In the absence of production of the original of Ex.A-1, is the lower appellate Court justified in accepting the document as true and genuine and on that basis decreeing the suit?
- (c) Whether the Respondent is not estopped by acquiescence in making a claim over the property after having accepted that the structure had been put up by the Appellant?

18. Heard the learned Counsel Mrs.V.Srimathi for the Appellants and the learned Senior Counsel Mr.P.Valliappan for the Respondents.

19. Perused the typed set containing plaint, written statement and deposition of the Plaintiff as P.W-1, the depositions of Defendants as D.W-1 and D.W-2 and the copies of the documents marked as Ex.A-1 and Ex.A-2, Ex.B-1 to Ex.B-8, Ex.C-1 and Ex.C-2, the judgment dated 16.07.2001 passed



S.A.No.863 of 2013

in O.S.No.269 of 1996 by the learned Principal District Munsif, Ariyalur and the judgment dated 21.06.2013 passed in A.S.No. 78 of 2001 by the learned Sub Judge, Ariyalur.

20. On consideration of the rival submissions and on perusal of the oral and documentary evidence produced before this Court, the judgment of the learned Principal District Munsif, Ariyalur in O.S.No. 269 of 1996, dated 16.07.2001 and the judgment of the learned Sub Judge, Ariyalur in A.S.No. 78 of 2001, dated 21.06.2013, particularly, original document produced before this Court under Ex.A-1, it is found that the learned Principal District Munsif, Ariyalur, had failed to peruse the document under Ex.A-1 carefully. It is true that it states about various debts and loans availed by their deceased father. On the date of Ex.A-1 the only property left intestate by their father was equally divided among the sons. Also the debts were equally divided. Therefore, it is a list of oral arrangement in the family of the Plaintiff and Defendant, including other brothers who are not parties to the suit, whereby the debts and assets – the only property available in the family were partitioned orally and subsequently reduced into writing on 09.09.1958, which is treated as an unregistered partition deed by the Appellate Judge, learned Sub Judge, Ariyalur and treated as a list of liabilities by the learned Principal



S.A.No.863 of 2013

District Munsif, Ariyalur. This shows that the learned Principal District

Munsif had not perused it carefully. Also, the original deposition was made available before this Court. In the deposition, as rightly pointed out by the learned Senior Counsel for the Respondents, D.W-1, in his examination in chief had admitted that Ex.A-1 came into existence in the year 1958, whereby the liabilities and assets in the family were partitioned equally and were reduced into writing subsequently on 09.09.1958. As per the provisions of Indian Evidence Act, admission is the best evidence. Examination in chief is the voluntary narrative by the witness. Cross-examination is the question or clarification sought by the opponent Counsel from the witness concerned. Here, the Defendant, as D.W-1, voluntarily admitted Ex.A-1 in his examination in chief. Further, as rightly pointed out by the learned Senior Counsel for the Respondents, when the Plaintiff claims that he is living away from the property and had permitted the Defendant to enjoy the property as permissive occupier, the claim of ouster by the Defendant in the written statement is found to be unacceptable, particularly, when Ex.A-2 the suit filed by the Plaintiff to assert his right in the property was proved by grant of decree in O.S. No. 227 of 1990. Ex.B-4 is the joint patta, not in exclusion of the Plaintiff. When the Plaintiff in the plaint had clearly stated that he had permitted the Defendant to pay taxes and other dues to the authorities



S.A.No.863 of 2013

concerned, even if the Defendant pays taxes in his own name, it is to be considered as taxes paid on the instructions of the Plaintiff. On consideration of the judgement of the learned Principal District Munsif, Ariyalur in O.S.No.269 of 1996, dated 16.07.2001 and the judgment of the learned Sub Judge, Ariyalur in A.S.No.78 of 2001 dated 21.06.2013, the judgment of the learned Sub Judge, Ariyalur in A.S.No.78 of 2001, dated 21.06.2013 is found to be acceptable in the light of the re-appreciation of evidence and materials available before the learned Principal District Munsif, Ariyalur through the evidence of P.W-1, D.W-1 and D.W-2, the documentary evidence under Ex.A-1 and Ex.A-2, Ex.B-1 to Ex.B-8, Ex.C-1 and Ex.C-2. The learned Principal District Munsif, Ariyalur, had failed to consider the admission made by D.W-1 in his examination in chief and the document under Ex.A-1, which is the earliest document regarding partition. When the partition had taken place in the year 1958, there cannot be a subsequent partition in the year 1962 as claimed by the Defendant. Further, the Plaintiff had claimed that the property is in Ariyalur and the Plaintiff was residing at Neiveli, therefore, he had permitted the Defendant to enjoy the property as a permissive occupier. Therefore, the claim of putting up construction by the Defendant is considered as with the permission of the Plaintiff. Therefore, the learned Sub Judge, Ariyalur, had on re-appreciation of evidence arrived at a conclusion that the



S.A.No.863 of 2013

claim of the Plaintiff had been proved by the Plaintiff before the trial Court and decreed the suit.

21. In the light of the above discussion, the substantial questions of law are answered as follows:

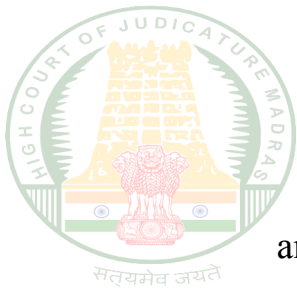
Substantial Question of Law – (a) :

Whether the lower appellate Court is right in decreeing the suit, when the Plaintiff had failed to prove his entitlement over the suit property?

The learned Sub Judge, Ariyalur, had logically deduced, on re-appreciation of evidence that the claim of the Plaintiff had been proved by the Plaintiff before the trial Court. Therefore, the Appellate Court is right in decreeing the suit. The Plaintiff had not failed to prove his entitlement over the suit property. **The substantial question of law (a) is answered against the Appellants and in favour of the Respondents.**

Substantial Question of Law (b):

(b) In the absence of production of the original of Ex.A-1, is the lower appellate Court justified in accepting the document as true



S.A.No.863 of 2013

and genuine and on that basis decreeing the suit?

WEB COPY The document under Ex.A-1 in original is produced before the trial Court, before the first Appellate Court as well as before this Court in Second Appeal. Therefore, the Appellate Court is justified in accepting the document under Ex.A-1 as true and genuine and thereby rightly had granted the decree in favour of the Plaintiff. **The substantial question of law (b) is answered against the Appellants and in favour of the Respondents.**

Substantial Question of Law (c):

(c) Whether the Respondent is not estopped by acquiescence in making a claim over the property after having accepted that the structure had been put up by the Appellant?

The first Respondent in the Second Appeal (original Plaintiff before the learned Principal District Munsif) had not been ousted. He had asserted his right by filing a suit in O.S.No. 227 of 1990 against a third party when his title was denied by the him. Therefore, the claim of ouster was rightly rejected by the learned Sub Judge, Ariyalur. The claim of acquiescence by the Defendant is not accepted as he is a permissive occupier as per the plaint averments. The first Respondent (Plaintiff) is not estopped by acquiescence. **The substantial question of law (c) is answered against the Appellants and in favor of the**



S.A.No.863 of 2013

Respondents.

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In the result, **this Second Appeal is dismissed.** The judgment and decree dated 21.06.2013 passed in A.S.No. 78 of 2001 by the learned Subordinate Judge, Ariyalur, decreeing the suit in favour of the Plaintiff is confirmed. No costs.

24.06.2025

srm

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-speaking Order



S.A.No.863 of 2013

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To

1. The Subordinate Court,
Ariyalur.
2. The Principal District Munsif,
Ariyalur.
3. The Section Officer,
V.R. Section,
High Court Madras.



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S.A.No.863 of 2013

SATHI KUMAR SUKUMARA KURUP, J.

srm

Judgment made in
S.A.No.863 of 2013

24.06.2025