



S.A.No.603 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2025

CORAM

THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

S.A.No.603 of 2023

and C.M.P.Nos.19276 and 26308 of 2023

1. Thilaga

2. Tamilarasi

...Appellants
/ Defendants 2 and 3

Vs.

1. Mangalam

2. Kolanji

3. Pichaiammal

...1st Respondent / Plaintiff

... 2nd Respondent / 1st Defendant

...3rd Respondent / 4th Defendant

PRAYER:- This Second Appeal is filed under Section 100 of Code of Civil Procedure, 1908, to set aside the decree and judgment dated 14.12.2022 in A.S.No.31 of 2018 on the file of the Principal District Judge, Ariyalur and reversing the decree and judgment dated 05.09.2018 in O.S.No.112 of 2007 on the file of the Subordinate Judge, Ariyalur.

For Appellants : Mr.K.Shakespeare
For R1 : Mr.P.Valliyappan
Senior Counsel
for M/s.P.V.Law Associates

For R2 & R3 : No appearance



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JUDGMENT

Aggrieved by the judgment dated 14.12.2022 passed in A.S.No.31 of 2018 by the Principal District Court, Ariyalur, the defendants no.2 and 3 Thilaga W/o Kolanji and her daughter Tamilarasi D/o. Kolanji have preferred this Second Appeal.

2. The parties are indicated herein as per their litigative status and ranking before the Trial Court.

3. According to the plaintiffs, the suit properties originally belonged to Velu @ Velusamy and they are his separate properties. Velu had two wives. Velu's first wife is Gundumani. As she had no issues, the said Velu married Marudhaayi for the second time and through her the plaintiff Mangalam and the 1st defendant Kolanji @ Kolanjiappan were born. After the second marriage, a daughter – Pichaiammal (D4) was born to Velu through his 1st wife Gundumani. Velu died intestate before 32 years and his first wife also passed away.

4. The 1st defendant's wife is the 2nd defendant. The 3rd defendant is the daughter of the defendants no.1 and 2. The 2nd defendant failed to take



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care of the 1st defendant, her husband and she went to Ariyalur and settled there permanently. Because of that, the 1st defendant got frustrated and had been living a wayward life. Partition has not taken place in the family and the properties have been kept in common and it is in the joint possession and enjoyment of the plaintiffs and the 1st defendant. The 2nd defendant, who is a mighty person threatened the plaintiff through goondas in order to grab the entire property. Hence, the suit was laid for the relief of partition of 1/3rd share each for the plaintiffs no.1 and 2.

5. The 2nd defendant, interalia would contend that Marudhayi is the first wife of Velu and it is incorrect to state that the first plaintiff Pichaiammal was born to Gundumani after Velu @ Velusamy got married for the second time. Except Marudhaayi, Velu did not get marry any person. Suit properties are the ancestral properties of Velu @ Velusamy, father of Kolanji. When Velusamy was alive, through oral partition the suit properties were allotted to Kolanji. The said Kolanji has been enjoying all the properties in his personal capacity and patta has been changed in the name of Kolanji. Before 8 years, he went to Kerala for work and he did not return to his native. The 2nd defendant Thilaga has been in possession and enjoyment of the suit properties on behalf of her husband and her daughter minor Tamilarasi.



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6. The said Marudhaayi is the mother-in-law of the 2nd defendant and the 1st plaintiff is her sister-in-law. The plaintiffs have no right or enjoyment in the suit properties. Taking advantage of the absence of her husband, Marudhaayi and Mangalam are taking steps to sell the properties in favour of a Cement Company. She issued legal notice on 10.05.2007 and filed a suit in O.S.No.133 of 2007 for the relief of permanent injunction before the District Munsif Court, Ariyalur. There is no relationship between Velusamy's family and the 4th defendant Pichaiammal. Patta Nos.292 and 393 stands in the name of Kolanji in respect of the suit properties. It is incorrect to state that Velusamy married Gundumani.

7. The Trial Court framed relevant issues. At trial, to substantiate the plaint details, plaintiff Mangalam has examined herself as P.W.1 and three documents were marked. Patta Passbook issued in the name of Kolanjiappan son of Velu is Ex.A2-registered release deed dated 29.05.1982 executed by Pichaiammal-the first plaintiff (transposed as D4) in favour of the 1st defendant is Ex.A2. Ex.A3 is the certified copy of Ex.A2 as Ex.A2. On the defendant's side, the 2nd defendant Thilaga has been examined as D.W1 and four documents were marked. Computer generated patta dated



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17.01.2018 in the name of Kolanjiappan in respect of the first six items of the suit properties is Ex.B1. Ex.B2 is the Computer generated patta dated 17.01.2019 in the name of the first defendant Kolanji in respect of Item No.8 and 9 of the suit properties. Ex.B3 is house tax receipt issued in the name of V.Kolanjiappan for the assignment year 2012 to 2013 dated 25.03.2013. Ex.B4 is the registered sale deed 06.01.1997 executed by Marudhayiammal wife of Velu @ Velusamy and her son Kolanjiyappan in favour of Mangalam wife of Ramasamy; in respect of- i) Dry Survey No.187/7 out of 0.66 cents, an extent of 0.18 cents and ii) Dry Survey No.187/8, 0.42 cents of Nallampathai Village, Govindapuram Majira, Ariyalur Taluk. Totally an extent of 0.60 cents is dealt with under Ex.B4 .

8. The following substantial questions of law arise for consideration:-

a. Has the appellate Court erred in law by reversing the finding of ouster by trial Court, based on misconception that patta in the name of one shall be construed as possession by other heirs?

b. Is the Appellate Court right in deciding the suit outside scope of pleadings by misconstrued Ex.A2/A3 to hold the release in favour of the first defendant by the 1st plaintiff /4th defendant (transposed) disproved the oral partition pleaded by the defendants, when such is not the case of plaintiff/1st



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respondent?

c. Whether the lower Appellate Court committed illegality by holding possession of appellants even in absence of proof of joint possession by 1st respondent/plaintiff shall be construed as joint possession in law?

d. Has the learned Appellant Judge misconstrued the revenue records and evidence to conclude joint possession?

9. In consideration of available evidence and after hearing the arguments advanced by both sides, the Trial Court as mentioned in Ex.A2 settlement deed (Ex.A3 certified copy), Velu @ Velusamy married three women. Other legal heirs of Velu have not been added as parties to the suit and the other observations of the Trial Court is that, the plaintiff has omitted to mention about Ex.B4 sale deed. 1st plaintiff has admitted the title and possession of the first defendant, who purchased the property under Ex.B4 and hence, the plaintiffs were non-suited.

10. Aggrieved, the plaintiffs preferred an appeal before the Principal District Court, Ariyalur, in A.S.No.31 of 2018. The First Appellate Court in consideration of the case records and after hearing the arguments of the



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appellant and the respondents no.2 and 3 (Thilaga and Tamilarasi) held that, pattas have been changed in the name of the 1st defendant as he is the male member of the family and since because of the patta stands in the name of male member of the family, it cannot be construed as separate possession and passed preliminary decree in favour of the 1st plaintiff by granting 1/3rd share in the suit properties.

11. Aggrieved, the defendants no.2 and 3 wife and daughter of the 1st defendant Kolanji have preferred this Second Appeal.

12. Originally, the 1st plaintiff Mangalam who is the daughter of Velu @ Velusamy and Marudhaayi, sister of the 1st defendant Kolanji filed the suit for partition along with her step-sister Pichaiammal, who was born through Gundumani. In fact, Pichaiammal daughter of Gundumani and Velu @ Velusamy filed this suit for partition. Thereafter, the 1st plaintiff was transposed as 4th defendant as per the order dated 28.08.2017 passed in I.A.No.390/2017 by the Trial Court. Except the transposition details, other details found in the plaint and the share details were not suitably amended. Ex.A2 is the registered release deed dated 29.05.1982 executed by Pichaiammal (4th defendant herein) in favour of the 1st defendant Kolanji.



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These details are not pleaded in the plaint. Law is well settled that in the absence of pleadings, related evidence need not be looked into.

13. Plaintiff Mangalam has examined herself as P.W.1 and filed the proof affidavit in line with the plaint details. P.W.1 has stated in her proof affidavit that the said Pichiammal was born to her father Velu @ Velusamy through first wife Gundumani. Though those details have not been admitted by the 2nd defendant herein, no acceptable evidence contra to the evidence of P.W.1 is available from the defendant's side. The cross examination of P.W.1 explicates that Velu @ Velusamy got married one Panjali and she died without any issues.

14. The 2nd defendant Thilaga wife of Kolanji would contend that long before, the suit properties were allotted to the 1st defendant through oral partition that took place between Velu @ Velusamy and Kolanji and since then, her husband Kolanji has been in possession and enjoyment of the suit properties. It is her further evidence that at present her husband Kolanji's whereabouts are not known. On behalf of her husband, the suit properties are in possession and enjoyment of herself and her daughter. Patta standing in the name of the 1st defendant Kolanji have been filed as Ex.B1 and Ex.B2.



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It is an admitted fact that the suit properties are the ancestral properties of Velusamy. Velusamy died before 32 years. Ex.A1 is the patta passbook issued in the name of Kolanjiappan.

15. From the pleadings and evidence of P.W.1, it is made clear that 4th defendant-Pichaiammal is the daughter born to Velu @ Velusamy through his wife Gundumani. The 1st plaintiff and the 2nd defendant have examined themselves and they have not examined any independent witnesses. In the absence of pleadings in respect of the Ex.A2-Release Deed, the evidence of P.W.1 need not be looked into. Rather, oral partition pleaded by the 2nd defendant, is not proved.

16. Defendants no. 2 and 3 have not stated in clear terms about the other issues of Velusamy. In these circumstances, based on the evidence of D.W.1-Thilaga to the effect that Ex.B4 - sale deed was executed by Kolanji in favour of Mangalam and no sale consideration was passed on her husband. As per Section 114 of the Indian Evidence Act, 1872, as the document is a registered one, there is a presumption that governmental action is reasonable and done in public interest. It is for the party challenging its validity to show that it is not so and heavy burden lies upon the person who



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pleads so and he has to discharge the said burden to the satisfaction of the Court by proper and adequate material. On the other hand, the Court also cannot lightly assume that the action taken by the Government is unreasonable and against public interest. When law requires act to be done in a particular manner and there is no evidence to the contrary, presumption arises that they have been performed in the manner provided in law. Therefore, Ex.B4 - sale deed will not exclude the plaintiff from the claim. Date of death of Velusamy is not given either by the plaintiff or by the defendants no.1 and 2.

17. In such a view of the matter, it is decided that the plaintiff Mangalam, the 1st defendant Kolanji and the 4th defendant Pichiammal are the children of Velusamy.

18. Evidence of P.W.1 the daughter of Velu @ Velusamy has to be placed on high pedestal than the evidence of D.W.1 Thilagam wife of Kolanji in respect of paternity of Pichaiammal.

19. As the said Velusamy died leaving behind his legal heirs. i). Pichaiammal (D4) ii). Kolanji (D1) and iii). Mangalam (1st Plaintiff), the



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1st plaintiff is entitled for 1/3rd share in the suit properties. The First Appellate Court has allowed the appeal preferred by the plaintiff by passing preliminary decree of 1/3rd share in the suit properties. This Court does not find any good reason to upset the finding of the First Appellate Court. The substantial questions of law are answered in favour of the plaintiffs.

20. Based on the aforesaid observations and discussions, this Second Appeal is liable to be dismissed and thereby dismissed. Sequel to this, the judgment and decree dated 14.12.2022 passed by the Principal District Court, Ariyalur in A.S.No. 31 of 2018 stands confirmed. There is no order as to costs. Consequently, connected Civil Miscellaneous Petitions stand closed.

.07.2025

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No
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R.KALAIMATHI, J.

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Copy to

1. The Principal District Judge, Ariyalur
2. The Subordinate Court, Ariyalur.

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