



S.A.No.610 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2025

CORAM:

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

S.A.No.610 of 2023
and
C.M.P.No.19333 of 2023

S.Sakthivel

... Appellant/ Defendant

Vs.

N.Raja

... Respondent/ Plaintiff

PRAYER: This Second Appeal is filed under Section 100 of C.P.C. against the judgment and decree dated 26.11.2021 made in A.S.No.89 of 2019 passed by the Additional Sub-Court, Kallakurichi, thereby confirming the Judgment and Decree dated 23.07.2019 passed in O.S.No.39 of 2017 by the Principal District Munsif Court at Kallakurichi.

For Appellant : Mr.Digvijayapandian

for M/s.TN Bhuvaneswaran

For Respondent : Mr.R.Raja Prasanna

JUDGMENT

This Second Appeal has been preferred by the sole defendant against the Judgment and Decree dated 26.11.2021 made in A.S.No.89 of 2019 passed by the Additional Sub-Court, Kallakurichi.



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

3. According to the plaintiff, his father Narayanasamy Udayar purchased 0.4½ cents from one Thangavel Udayar and his son Ramasamy through a registered sale deed dated 02.02.1972. Defendant Sakthivel's father is Samidurai. The above said Thangavel is the brother of Samidurai. The vendor Thangavel executed the sale deed sold his share without mentioning the boundary details.

3.1. Plaintiff is in possession and enjoyment of the suit property – 0.07 ½ cents. Narayanasamy, father of the plaintiff executed a registered Will in favour of the plaintiff in respect of suit property and other properties [inclusive of his ancestral properties] and other properties on 27.03.1985. The said Will is the last Will executed by the father of plaintiff. His father Narayanasamy passed away on 23.06.1999. Thereafter, the said Will came into force and the plaintiff has been in possession and enjoyment of the suit property and the other properties. Revenue Records are mutated in the name of plaintiff and the joint patta is granted in the name of plaintiff and other persons in Patta No.345.

3.2. The plaintiff, defendant and one Periyasamy orally divided the suit survey number property in east-west extent abutting the road. The total extent of the suit survey number property is 0.15 cents. Plaintiff, defendant and

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Periyasamy have access to the road from the western portion of said property.

Southern most of 0.05 cents in suit survey number was allotted to the plaintiff and the northern portion of 0.05 cents was allotted to Periyasamy and the northern most 0.05 cents was allotted to both the plaintiff and the defendant. The plaintiff sold the southern most portion of 0.2 ½ cents to one Bakkiyam through a registered sale deed dated 14.05.2002.

3.3. The defendant is trying to do construction in the suit property from 12.01.2017 by encroaching into the 0.02½ cents of the plaintiff's land. Hence, the plaintiff caused to issue legal notice on 01.02.2017 to the defendant. Hence the plaintiff is constrained to file the suit for the relief of declaration and for consequential permanent injunction restraining the defendant, his men and agents from in any way interfering with the plaintiff's peaceful possession and enjoyment of the suit property and for mandatory injunction for a direction to the defendant to demolish the super structure if any and to hand over possession of suit A schedule property as vacant site.

4. Per contra, the defendant would *inter-alia* contend that his grandfather is Kesappa Udayar. He had two brothers namely Sellamuthu Udayar and Karuppu Udayar. His grandfather and his two brothers divided their family properties [in east-west direction] through oral partition. Out of 0.15 cents in suit survey number, each got 0.05 cents. After the demise of Kesappa Udayar, his son Samidurai Udayar was in possession and enjoyment



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of 0.05 cents. The defendant's father Samidurai died intestate leaving behind his legal heir, his son Sakthivel (defendant) and the defendant has been in possession and enjoyment of said 0.05 cents.

4.1. The extent, boundaries and location details of the suit properties mentioned in plaint are denied by the defendant. The defendant does not admit the sale deed dated 02.02.1972, as the plaintiff has no right over the suit properties. The defendant denies the fact that the plaintiff's father executed a registered Will in favour of the plaintiff with regard to the suit property to an extent of 0.07½ cents on 27.03.1985. All other details mentioned in the plaint are denied by the defendant.

4.2. The suit property and the other properties are ancestral properties. Northern most 0.05 cents was allotted to defendant's grandfather Kesappa Udayar. Middle portion of 0.05 cents was allotted to Sellamuthu. Southern most 0.05 cents was allotted to the share of plaintiff's grandfather Karuppu Udayar. Therefore, the said three grandfathers enjoyed their shares and died intestate leaving behind their son Samidurai (defendant's father), Periyasamy (S/o.Sellamuthu Udayar) and the plaintiff's father late Narayanasamy. After the demise of defendant's father Samidurai, this defendant is entitled to the northern 0.05 cents and he has been in possession and enjoyment of northern most 0.05 cents. So also, after the death of Sellamuthu Udayar, his only son Periyasamy inherited his father's portion namely middle portion of 0.05 cents.



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4.3. More so, upon the death of plaintiff's father Narayanasamy, plaintiff succeeded 0.05 cents of land and he has sold 0.02½ cents to one Bakkiyam, wife of Periyasamy through a registered sale deed dated 14.05.2002. On that score, the plaintiff is only entitled to 0.02½ cents. Plaintiff does not own the other extent of 0.02½ cents in the suit property. Defendant has put a welding shed (asbestos sheet) in the suit property and he has been doing business in the said property. He obtained service connection in the welding shop in S.C.No.847. The defendant has got two sisters, Tmt.Rajeswari and Tmt.Madheshwari Dandapani and they are residing at their husband's residence. After the death of defendant's father Samidurai, his sisters have got 1/3rd share in the property of his father Samidurai. His sisters received a sum of Rs.4,70,000/- from the defendant and they have jointly executed a release deed dated 24.08.2016 in his favour. The defendant is in possession and enjoyment of the said property for the past 30 years.

4.4. The Officers of Corporation Bank were searching for land for the Bank. The plaintiff met the Bank Officers and offered to purchase his share of land 0.02½ cents for the purpose of construction of a building for the Bank. They are in need of 0.05 cents of land and they rejected the proposal of the plaintiff. The Bank Officer inspected the defendant's land of 0.05 cents and selected and decided to construct a building in the suit property for the Bank. Based on the above said details, plaintiff has filed a vexatious suit with false allegations against the defendant.



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5. Based on the divergent pleadings, the trial Court framed the relevant issues. At trial, to substantiate the plaint details, on the plaintiff's side, plaintiff has examined himself as PW1 and seven documents have been marked. Ex.A1 is the original sale deed dated 02.02.1972 executed by Thangavel Udayar, S/o.Kesappa Udayar and his son Ramasamy in favour of Narayanarasamy (father of the plaintiff Raja). Ex.A2 is the certified copy of the Will dated 27.03.1985 executed by Narayansamy in favour of his son Raja (Plaintiff). Exs.A3 and A7 are the joint pattas standing in the name of Narayanasamy and others in Patta No.345. On the defendant's side, defendant and one Rajasekar have been examined as DW1 and DW2 and eight documents have been marked. Ex.B4 is the Adangal Register. Ex.B5 is A-Register.

6. The sum and substance of the plaintiff's case is that B-schedule property measuring to an extent of 0.05 cents belonged to Kesappa Udayar and the A-schedule property measuring 0.02½ cents (portion of B-schedule property) belonged to the plaintiff as per Ex.A2 Will. Suit is filed for the relief of declaration of title and for consequential permanent injunction and is alternate for relief of partition.

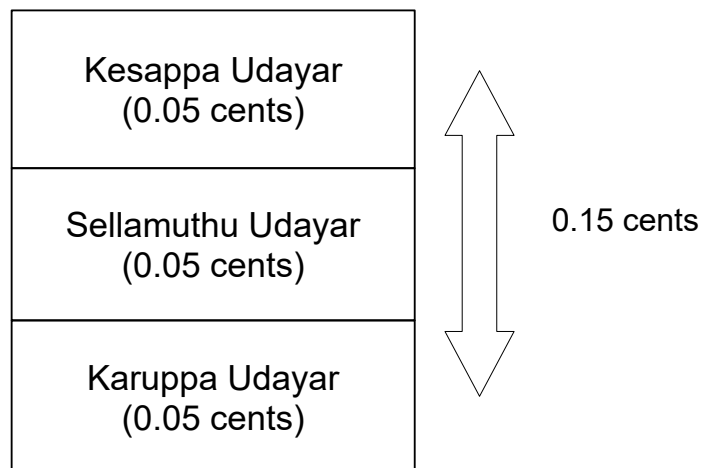


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7. Whereas, the defense case put-forth by the defendant is that the northern most 0.05 cents was originally allotted to Kesappa Udayar and after the life time of Kesappa Udayar, his son Samidurai has been in possession and enjoyment of the suit property and thereafter, in the capacity of son of Samidurai and having obtained release deed from his two sisters, the defendant has been in possession and enjoyment of the suit property.

8. The defendant does not even admit the fact that his father had a brother by name Thangavel. For a clear understanding of lie and location of the property and to understand about the facts, it is necessary to draw a rough plan and genealogical tree. Accordingly, based on both sides cases, the below said rough plan is drawn:

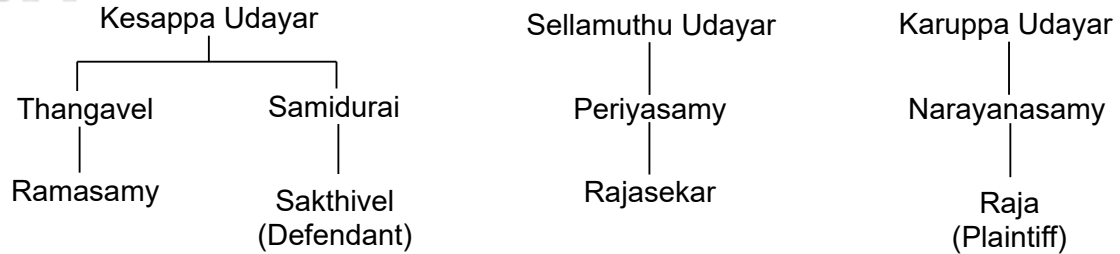




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Genealogical Tree

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9. From a careful perusal of entire case records, it is clear that the plaintiff Raja (S/o.Narayanasamy) and defendant Sakthivel (S/o.Samidurai) are cousin brothers. Plaintiff's grandfather Karuppa Udayar and defendant's grandfather Kesappa Udayar are brothers. Plaintiff would state that among his father and his two other brothers, an extent of 0.15 cents in suit survey number was orally divided equally and they were in possession and enjoyment of the suit property. Whereas, the defendant would rather state that their paternal grandfather namely Kesappa Udayar, Karuppa Udayar along with their brother Sellamuthu Udayar orally divided the above said properties equally and they were in possession and enjoyment of the suit property. As per Ex.A1, sale deed dated 02.02.1972, plaintiff's father had purchased 0.04½ cents out of 0.26 cents in S.No.72/1, from Thangavel Udayar, S/o.Kesappa Udayar. The fact that defendant's father had yet another brother, by name Thangavel was not even mentioned in the written statement. But, DW1 Sakthivel and DW2 Rajasekar, S/o. Periyasamy, S/o.Sellamuthu Udayar would



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accede to the fact that Sakthivel's father Samidurai had brother by name Thangavel. Probably, in order to avoid the sale deed Ex.A1, defendant has taken a stand that his father Samidurai is the only son of Kesappa Udayar, which is totally incorrect. The above said fact namely in Survey No.72/1, a total extent is 0.26 cents is not at all stated in the plaint. It is also not the case of the plaintiff.

10. Ex.A2 Will is not disputed by the defendant. In Ex.A2 Will, it has been mentioned as "இதன் மத்தியல் 0.15 சென்டில் பொதுவில் பாதி 0.07½ செண்ட்".

11. The plaintiff's father owned 0.05 cents in the suit survey number. As per Ex.A1, he has purchased 0.04½ cents out of 0.26 cents, from the defendant's senior paternal uncle, Thangavel Udayar. On the other hand, instead of mentioning the total extent as 0.09½ cents, why it is mentioned in the Will as "இதன் மத்தியல் 0.15 சென்டில் பொதுவில் பாதி 0.07½ செண்ட்". Both the plaintiff and the defendant would state that the total extent is 0.15 cents. But in Ex.A1 sale deed, it is mentioned as 0.26 cents.

12. That apart, had it been true, Thangavel, S/o.Kesappa Udayar would have executed the sale deed only to an extent of 0.02½ cents. Ex.A1 sale deed is a vital document.



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13. As per Ex.A1 sale deed, plaintiff is entitled to an extent of 0.02 ½ cents alone and not more than that as per the case put-forth by the plaintiff and the defendant. As the property is purchased as undivided share in order to advance the cause of justice, the plaintiff is entitled for the preliminary decree for partition of half-share in B-schedule property out of 0.05 cents. The trial Court has dealt with the case succinctly. Whereas, the First Appellate Court has elaborately dealt with and concurred with the findings of the trial Court. In such circumstances, this Court does not find any valid reason to upset the findings of the First Appellate Court. This Court also does not find any perversity or infirmity in the findings of the First Appellate Court. No substantial question of law arises for consideration.

14. Above being the position, this Second Appeal stands dismissed. Sequel to this, the judgment and decree dated 26.11.2021, passed in A.S.No.89 of 2019 by the Additional Subordinate Court, Kallakurichi stands confirmed. No costs. Consequently, connected miscellaneous petition stands closed.

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Internet:Yes
Index:Yes/No
Speaking/Non speaking order
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To

- 1.The Additional Sub-Court,
Kallakurichi.
- 2.The Principal District Munsif Court,
Kallakurichi.



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R.KALAIMATHI, J.,

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