



A.S.No.254 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 14.07.2025

Pronounced on: 25.07.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.254 of 2022
& C.M.P.No.9320 of 2022

S. Sathyanarayanan Rao (died),
S/o.Late.M.Srinivasa Rao.

1. S.Muralidharan,
S/o. M.Srinivana Rao, aged 74 years,
residing at No.15, IV Main Road, New Colony,
Chrompet, Madras 600 044.

2. Sutha Rao,
W/o.Late.Sathyanarayanan Rao,
aged about 78 years.

3. S.Srinath
S/o. Late.Sathyanarayanan Rao,

4. Sridhar S.Rao,
S/o. Late.Sathyanarayanan Rao, aged about 48 years.

5. Mrs.Srimathi alias Priya,
D/o. Late. Sathyanarayanan Rao,
W/o. Prabhakar, Hindu

Appellants 2 to 5 are residing No.13, Rajiv Nagar B Cross Road,
7th Block Barasankari III Stage, 7 Main Road, 4 Phase,
Bangalore 560 085. ... Appellants/Plaintiffs.

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/versus/

Gururaja Rao aged about 69 years (Died)

S/o. Late. M. Srinivasa Rao,
Residing at No.2436, 9th Main (BSK),
Bana Sankari, Second Stage,
Bangalore 560 070.

2. M. Jagadesan, aged about 67 years,
Residing at No.11, 7th Main Road, New colony,
Chrompet, Madras 600 044.

3. Poornima G.Rao
W/o Late Gururaja Rao,

4. M/s.Anusha G.Rao
D/o.Late.Gururaja Rao,

5. Deepica G.Rao,
D/o.Late.Gururaja Rao,

6. Lekha G.Rao
D/o.Late.Gururaja Rao,

Respondents 3 to 6
Residing at No.2436, 9th Main (BSK) Bana Sankari,
Second Stage, Bangalore 560 070. ...Respondents/Defendants

* R1 Died. R3 to R6 LR's of the deceased 1st respondent *vide* court order dated 07.04.2025 made in C.M.P..No.8649 and 8650 of 2025 in A.S.No.254 of 2022 (NSKJ)

Prayer:- Appeal Suit has been filed under Section 96 of the Civil Procedure Code, to order of the Sessions Judge, Mahila Court Chengalpattu in O.S.No.459 of 2004 dated 5th April 2022, is even otherwise illegal, incompetent and without jurisdiction and in any event liable to be set aside.

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For Appellants : Mrs.V.Srimathi

For Respondents : Mr.V.V.Giridhar

J U D G M E N T

The appeal is against the judgement of the trial Court dismissing the suit filed to declare the registered deed of partition dated 02.09.1994, entered between the children of Late.Srinivasa Rao, as null and void on the ground of being inequitable, sham and nominal and inoperative and to pass a preliminary decree of partition by metes and bounds, allotting 2/3rd share in the 'A' schedule property to the plaintiffs.

2. Brief facts:

On 28.04.1955, Late K.Srinivasa Rao purchased three grounds and 1440 sq.ft totalling 8640 sq.ft of vacant land from Chrome Leather Factory under a registered sale deed. During his life time, he settled 4135 sq.ft of vacant land to one of his sons, by name Muralidaran, under a registered settlement deed dated 23.04.1979. The said K.Srinivasa Rao died on 08.09.1993, leaving behind his



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three sons and two daughters and the remaining portion of the land after settling a portion to one of his son.

3. Muralidaran earlier filed O.S.No.393 of 1995 before the District Munsif Court, Tambaram (which was later transferred to the Mahila Court, Chengalpattu, to be tried along with O.S.No.459 of 2004 already transferred and pending on the file of Mahila Court, Chengalpattu) for an injunction stating that, from his father Srinivasa rao, he got the 'A' schedule property and put up construction over it and residing in it. After the demise of his father, there was partition between the sons and daughters of Srinivasa Rao and the partition deed was executed on 02.09.1994. As per the said partition deed, the 'C' schedule property was allotted to Muralidaran. To the North of his share, the other brother Gururaj Rao was allotted land. A compound wall was constructed dividing their properties on the backyard. When Muralidaran attempted to construct a wall as per the measurements mentioned in the partition deed, the defendant Gururaj Rao is preventing. Hence, Muralidaran sought an injunction to restrain Gururaj Rao and his agents from interfering with the construction of the partition wall.



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4. Soon after filing the above suit for permanent injunction, the said Muralidaran, along with his another brother by name Satyanarayana Rao, also filed a suit in O.S.No.436 of 1996 on the file of Sub Court, Poonamallee (which was later transferred to Mahila Court, Chengalpattu and renumbered as O.S.No.459/2004.) seeking a declaration that the partition deed dated 02.09.1994 as null and void. They both also prayed for division of the property into three shares and allot one share each to the two plaintiffs and one share to the defendant. It was alleged that Gururaja Rao had entered into a sale agreement to sell 5,300 sq.ft of land and building, which was allotted to him under the partition deed dated 02.09.1994, to one Jagadeesan and had registered a power of attorney deed. To avoid multiplicity of proceedings, the plaintiffs impleaded Jagadeesan as the second defendant and their brother Gururaja Rao as the first defendant

5. Based on the pleadings, issues in both cases were framed separately. However, since the parties and the subject properties were one and the same, joint trial of both the suits in O.S.No.459 of 2004 and O.S.No.189 of 2009 was ordered. Common evidence was recorded in the comprehensive suit,



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O.S.No.459 of 2004.

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6. Muralidaran (the second plaintiff in O.S.No.459 of 2004 and First plaintiff in O.S.No.189 of 2009) was examined as PW-1 and through him, 31 documents were marked as Ex.A1 to Ex.A31. Gururaja Rao (the defendant in both the suits) was examined as D.W-1 and one Rajendiran was examined as DW-2. Ex.B1 to Ex.B9 were marked on the side of the defendants.

7. The trial Court dismissed the suit in O.S.No.459 of 2004 filed by Muralidaran and his brother Satyanarayan Rao, filed for partition and declaration that the earlier partition deed dated 02.09.1994 as null and void. However, allowed the suit in O.S.No.189 of 2009 filed by Muralidaran and granted the relief of injunction.

8. The appeal A.S.No.254 of 2022 is filed by Muralidaran and the legal heirs of S.Satyanarayanan Rao against the dismissal of the suit in O.S.No.459 of 2004, on the ground that the trial Court failed to consider the following factors:-

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(i) The reading of the pleadings on the whole will disclose the fraud committed by the first defendant (Gururaja Rao) on the other brothers and sisters by deceitfully getting them signed to the partition deed dated 02.09.1994 even without allowing them to read and understand the contents of the deed, which is marked as Ex.A3.

(ii) The division of the property as per the impugned partition deed suffers from several infirmities. Firstly, the measures as per the partition deed Ex.A3 apparently exceed the actual measurement of land as per the title deed (Ex.A1). Secondly, the inequitable partition giving lion's share to the defendant is suspectable.

(iii) The building on the landed property is indivisible. The amenities attached to the property is common and the area given to the second plaintiff includes a part of the building given to the defendant. Without access to the rear position, the partition is made. Hence, it was not given effect and continued to be in joint possession without division.

(iv) The earlier suit for injunction was filed to protect the possession of the property in possession of the plaintiff. Whereas, the subsequent suit filed as a comprehensive suit. There is no inconsistency between the two suits. The



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declaration relief was added by way of amendment. The amendment dates back to the date of suit. The trial Court erred in holding that the suit to declare the partition deed as null and void is barred by limitation. The said finding is palpably unsound.

(v) Ex.A3 was not intended to divide. It was a sham and nominal document for accommodating the defendant to avail loan for his business. Further, the Commissioner's report clearly show the aggression of the first defendant, exceeding his share of the property. A *Will* by Srinivasa Rao dated 20.04.1986 was not produced by the defendant and despite its non-production, the trial Court had commented about the will.

9. Per contra, the Learned Counsel for the respondent submitted that the trial Court rightly observed that the plaintiff had admitted the validity of the partition deed marked as Ex.A3 and based on that deed, earlier filed the suit O.S.No.189 of 2009 seeking an injunction. While so, contrary to his own admission, the challenge to the very same partition deed in the later suit is totally unacceptable and untenable.



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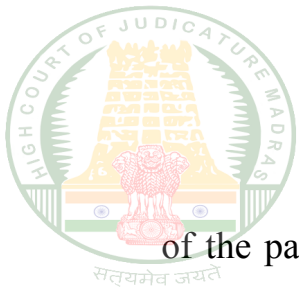
10. In the plaint averment in O.S.No.189 of 2009, the legal notice Ex.A4, the admission of the plaintiff during the cross-examination about the enjoyment of the portion as per partition deed dated 02.09.1994 were considered by the trial Court before dismissing the suit.

11. Heard the learned counsel for the appellant and the Learned Counsel for the respondent.

Point for determination:-

Whether the appellant is entitled for a share in the 'A' schedule property, after accepting the partition deed dated 02.09.2994 and to challenge the same as invalid?

12. The appellants/plaintiffs and the other legal heirs of Srinivasa Rao had accepted and acted upon the partition deed dated 02.09.1994. After few years, the said partition deed was challenged only in the year 1996. Later suit was initially filed for partition alone. The prayer for declaration by way of amendment was added later. Till then, the plaintiffs themselves admitting the valid execution



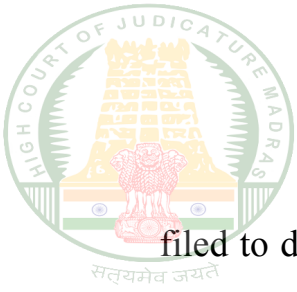
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of the partition deed and been enjoying the property based on the partition deed.

The second appellant had also wanted a protective order of injunction to maintain wall of partition based on the partition deed dated 02.09.1994, at the same time wanted the partition deed to be declared as null and void.

13. That apart, the plaint, as it is laid and the reliefs sought suffer from serious legal infirmities.

Primarily, the case of the parties to the litigation is that the suit property is the self earned property of Late.Srinivasa Rao who purchased 8,640 sq.ft of land under Ex.A1 dated 28.04.1955. During his lifetime, he settled 4,135 sqft of land in favour of the 2nd plaintiff (Muralidharan) under Ex.A2 dated 23.04.1979. The remaining extent of land with Srinivasa Rao till his death. The partition deed Ex.A-3, which is challenged in the suit, is a registered deed. The parties to the partition deed are Satyanarayanan Rao, Muralidaran, Vanigopal, Gururaja Rao and Indumathi Ragunathan. They are the sons and daughters of Late Srinivasa Rao. However, when coming to challenge the partition deed, the plaintiffs had not made the two daughters as parties to the proceedings. The suit



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filed to declare a document as null and void, without impleading all the parties to the document suffers the ill of non-joinder of necessary parties.

Secondly, the relief of partition, seeking to allot 1/3 share to each of the sons, excluding the daughters, has to be dismissed due to the omission of female heirs in the partition suit filed in respect of the self earned property of the deceased father.

14. In addition, it is appalling to note that the appellants, for their convenience in one suit accept the partition deed as a valid document and seek an injunction against the defendant to restrain him from disturbing the construction of the compound wall, to divide the property as per the partition deed. Contrarily, in the other suit, they seek allotment of 1/3rd share on the ground that the partition deed is not equitable, but only a sham and nominal document. Above all, both side admit Srinivasa Rao left a *Will*, but none of them want to enforce it.

15. The averment is also found to be factually incorrect. Atleast between the second plaintiff and the first defendant, who are the parties



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contesting, the Court finds that the second plaintiff, Muralidaran, had already been settled with 4135 sq.ft of land during the lifetime of his father. He had constructed a house on that land and enjoying it. Taking note of the earlier settlement while dividing the remaining land in the partition deed Ex.A-3, the second plaintiff, Muralidaran, was allotted only 1,019 sq.ft and the first defendant, Gururaja Rao allotted 5,300 sq.ft. The other son, Satyanarayanan Rao and the two daughters namely, Vanigopal and Indumathi Ragunathan were each given Rs.10,000/-. The parties have accepted the division and acted upon. If the plea of inequitable is to be accepted, naturally the parties aggrieved must be the daughters of Srinivasa Rao. However, they have neither challenged the partition, nor the plaintiffs thought fit to implead them as a parties in the partition suit though they are necessary and property parties.

16. For the incurable infirmities pointed above, the judgement and decree of dismissal passed by the trial Court in O.S.No.459 of 2004 is hereby confirmed.



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17. As a result, the Appeal Suit No.254 of 2022 stands dismissed with costs. Consequently, connected Miscellaneous Petition is closed.

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Index :Yes/No.

Neutral citation :Yes/No.

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To,

1. The Sessions Judge, Mahila Court, Chengalpattu.

2.The Section Officer, V.R.Section, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

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Pre-delivery judgment made in
Appeal Suit No.254 of 2022

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