



WEB COPY

SA No. 345 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-04-2025

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THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

SA No. 345 of 2025

AND

CMP NO. 10514 OF 2025

1. Duraisamy

2. Saraswathi

Appellants

Vs

1. Latha

2.Minor. Sarvarikha

Rep by her next friend/mother 1st

Respondent Latha

3.Baby

Respondents

PRAYER :- Second Appeal filed under Sec.100 of Civil Procedure Code, praying to set aside the decree and judgement dated 03.12.2024 passed in AS No.19/2021 on the file of the Principal District Judge, Namakkal modifying the decree and judgement dated 10.02.2021 passed in OS No.67/2018 by the Subordinate Court at Paramathy.

For Appellants: Mr. R.Nalliyappan

JUDGMENT

The appellants, who are the defendants 1 and 2 in the suit filed seeking for



the relief of partition and permanent injunction before the trial court in O.S. No.20 of 2014 on the file of Subordinate Judge, Paramathi and the same was partly decreed by the trial court. Against which, they preferred an appeal in A.S.No.19 of 2021 on the file of Principal District Judge, Namakkal and the same was allowed in part and the findings of the trial court is modified. Now, challenging the modified findings of first appellate court, the defendants 1 and 2 preferred this Second Appeal.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.

3. Before the trial court, the plaintiffs have filed a suit seeking for the relief of partition claiming share of 5/18 share in the suit property stating that all the suit properties are ancestral properties and 1st plaintiff's husband viz., Dhanasekar is one of legal heir of son of 1st defendant and all the properties are ancestral properties of 1st defendant family and with the help of income derived from it, he purchased item Nos.1 and 2 in the year 1990. Subsequently, defendants 1 and 3 along with Dhanasekaran had sold a portion of ancestral property to third parties. Out of the said sale proceeds, the 1st defendant purchased 3rd item of suit property, for which he produced the document.

4. Before the trial court, the defendants contested the suit that it is a self-acquired property and after the demise of Dhanasekaran, the 1st plaintiff had



released her share by receiving the cash and executed Ex.B2 release deed.

Therefore, they contended that plaintiffs, who are daughter-in-law and granddaughter of 1st defendant have no right to claim any share in the suit property.

5. Admittedly, Ex.B2 claimed as an undertaking document as well as release deed, but it is an unregistered document. It is settled proposition that if a person confers any right and title, sufficient document is required, but Ex.B2 claimed as release deed by defendant is unregistered, inadmissible in evidence. Therefore, the trial court has held that it cannot be accepted and the share claimed by the plaintiff is also modified. Accordingly, the trial court granted 1/3rd share in item Nos.1 to 3 by way of preliminary decree and in respect of item No.4, it is a self-acquired property of 2nd defendant. Therefore, in respect of item no.4 share was not given. Challenging the said findings, they preferred an appeal in A.S. No. 19 of 2021, wherein also the first appellate judge has rightly dismissed the above suit and on considering the nature of suit property, finally concludes that from the income derived from the joint family property, the other two items were purchased by 1st defendant. Therefore, all the properties are ancestral properties of the 1st defendant's family, wherein the 1st plaintiff Dhanasekaran is also one of co-sharer. Now, he died leaving behind his legal heirs, the plaintiffs, his wife and daughter, who are also entitled to 1/3rd



share belongs to Dhanasekaran. Hence, the findings rendered by the courts below needs no interference and in paragraph 13 and 14, the first appellate judge has elaborately discussed about the nature of property and granted 5/18th share in item nos.1 to 3 instead of 1/3rd share. Accordingly, the first appellate judge has modified the share, which needs no interference. However, as on date, no appeal is preferred by plaintiff. Hence, there is no substantial question of law involved for consideration of this Second Appeal, since because the defendants have not proved that it is a self-acquired property. Accordingly, this Second Appeal is dismissed as no merit and findings of first appellate judge in A.S.No. 19 of 2021 is confirmed. Suit is decreed partly. Plaintiff allotted with 5/18 share in item Nos. 1 to 3, against item No.4, suit dismissed. The trial court is directed to pass final decree within a period of three months from the date of receipt of copy of judgment on filing such application. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

30-04-2025

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1. Principal District Judge, Namakkal.

2. Subordinate Judge, Paramathy.



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3. Section Officer, VR Section, Madras High Court.

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