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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :17.06.2025

Pronounced on :02.07.2025

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Appeal Suit No.17 of 2022

and

C.M.P.No.607 of 2022

1.Mr.Sivaguru, 36 years old,
S/o Ramadoss Naidu,
No.6, Main Road, Karasur,
Kadaperikuppam Post,
Villianur Commune,
Puducherry 605 502.

.. Appellant/3rd Defendant

/versus/

1.Mr.Venkatachalam,
S/o Ramadoss(late), aged 41 years,
No.6, Main Road, Karasur,
Kadaperikuppam (Post),
Vazhudavur (Via), Villianur Commune,
Puducherry 605 502.

..Respondent/Plaintiff

Rajalakshmi (died)

2.Mrs.Uma, 38 years old,
W/o Selvanarayanan,



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No.6, Main Road, Karasur,
Kadaperikuppam Post,
Villianur Commune,
Puducherry 605 502.

3.Mrs.Sarasu,
W/o Rajkumar,
Thiyalganampattinam,
Pothanayakan Kuppam,
Kurinjipadi(Taluk),
Cuddalore 607 302.

.. Respondents/Defendants
2 and 4

Appeal Suit has been filed under Section 96 of C.P.C., to set aside the judgment and decree passed in O.S.No.11 of 2015, dated 05.02.2021 by the Hon'ble II Additional District Judge at Puducherry and allow this appeal with cost.

For Appellant :Mr.C.R.Malarvannan

For Respondents :Mr.V.Rajesh Babu for R1

No appearance for R2

JUDGMENT

Suit for declaration of title and mandatory injunction to direct the defendants to vacate from the suit premises and hand over the vacant possession.

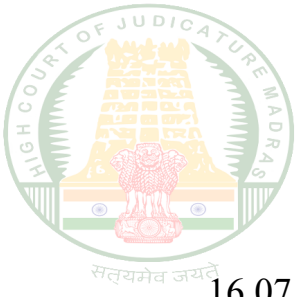


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2. The case of the plaintiff:

The plaintiff and defendants 2 to 4 are children of late Ramadoss Naidu and Rajalakshmi (the first defendant). The plaintiff was gainfully employed at Anglo French Textiles at Pondicherry and through his personal earning, the suit property was purchased by him through two sale deeds dated 26.03.1997 and 26.10.1998. The plaintiff has been enjoying the property by putting up construction on it in the year 2003.

3. The defendants are the mother, brother and one of the sister of the plaintiff. They are staying in his house as permissive occupants. He had few more properties at Karasur Village and when those lands were acquired for the purpose of establishing Special Economic Zone, the defendants claimed share in it as if it is a joint family property. The issue was the subject matter of reference under Section 30 of Land Acquisition Act in L.A.O.P.No.57 of 2009, L.A.O.P.No.59 of 2009, L.A.O.P.No.60 of 2009 and L.A.O.P.No.61 of 2009. After enquiry, the Principal District Court vide, order dated



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16.07.2013 held that those properties are the exclusive property of the plaintiff.

4. Out of 23 kuzhies and 3 Veesam purchased under the two sale deeds, the plaintiff had sold 3 kuzhies and 4 veesam on the western side in R.S.Nos.68/4 and 68/5 to one Ramamoorthy on 26.10.1998. The remaining land measuring 19 kuzhis and 05 veesams at Cad No:87/ 1/3/1 pt, 87/ 1/3/2pt in R.S.Nos.68/4, 68/5 and 68/7 in Karasur Village, Villianur Panchayat along with a single storied terraced building bearing Door No:6, Main Road, Karasur Village, Kadaperikuppam(Post) and Coconut thope is the subject matter of the suit.

5. The defendants, who are permissive occupants, made an attempt to open a new entrance to the suit property on 14.08.2012 which was prevented by the plaintiff with the help of elders in the village and by lodging police complaint. He also filed a suit for injunction in O.S.No.1277 of 2012 before the III Additional Munsif Court, Puduchery for permanent



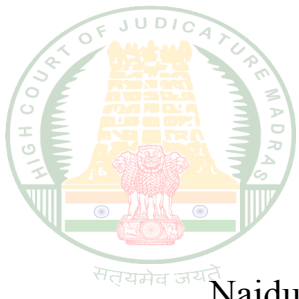
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injunction against the defendants. The suit was dismissed and against which he has preferred A.S.No.7 of 2014 before the Additional Sub-ordinate Court at Puducherry and pending. The defendants with the intention to grab the property made all attempts, hence after causing notice on 25.08.2014, revoking the permission, the suit for declaration and delivery of possession is laid.

6. Pending suit, the first defendant Rajalakshmi died. Hence, her other daughter Sarasu, who was not a party, initially was brought on record by amending the plaint.

7. Case of the defendants:

The suit property is not the exclusive property of the plaintiff. Being the eldest son of the family, the properties were purchased in the name of the plaintiff from the joint family income. The family had ancestral property at Karasur Village, which they inherited from their great- great- grandfather Mr.Naina Naidu. Their father Ramdoss Naidu is the son of Thirumalai

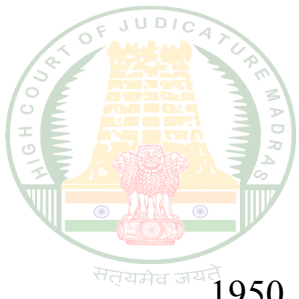


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Naidu, S/o Muthukrishna Naidu, S/o Ellusamy Naidu, S/o Balarama Naidu, S/o Naina Naidu the propositus.

8. While in employment at AFT Mills, Puducherry, their father Ramdoss died on 23.12.1988 in harness. Upon the consent given by the defendants, the plaintiff was given compassionate appointed in AFT Mills. The suit property and several other properties were purchased in the name of the plaintiff being the eldest son and manager of the family. They were all purchased either from the terminal benefit of their father Ramadoss or and the income derived from the joint family property. The plaintiff sold 3 kulizies 4 veesams to Ramamoorthy and in exchange, he purchased property from Ramamoorthy on the same day. The building in the suit property was constructed from the joint family income in which the defendants 2 and 3 along with the plaintiff are residing.

9. The further averment in the written statement is, the the entire estate of Naina Naidu developed by his heirs as co-parceners. In the year



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1950, the same was divided among his heirs. Later, after the demise of Tirumalai Naidu, by oral partition, his four sons got the property divided. As the son of Thirumalai Naidu, their father Ramdoss got the property in Karasur Village. That property enjoyed jointly by the plaintiff and the defendants as joint family property and the income of the joint family property is the source for the purchase of the suit property in which they were living jointly. To prevent claim from the brothers of Ramadoss, at the instant of the plaintiff, a sham and nominal sale deed was created on 27.09.1995 in favour of one Ammanathan, a co-worker of the plaintiff and another sale deed on 21.08.1998 in favour of Ramu @ Pachiyappan. These deeds were created to avoid untenable claim from Seetharaman Naidu who is the brother of their father Ramadass. The purchasers under these two sham and nominal sale deeds later conveyed the property to the plaintiff. The defendants were deceived by the plaintiff by giving misleading information about all these transactions. Only after knowing about the injunction suit O.S.No.1277 of 2012 filed by the plaintiff, suspicion grew about the plaintiff.



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10. The injunction suit O.S.No.1277 of 2012 filed by the plaintiff later dismissed and A.S.No.7 of 2014 preferred by the plaintiff is pending. The plaintiff has also instituted another suit for declaration in respect of other properties and that suit in O.S.No.1490 of 2013 is pending. The defendants have instituted suit for partition and the same is pending as O.S.No.76 of 2015. The plaintiff has no adequate income of his own. AFT Mills has become a sick unit and the plaintiff had no surplus to purchase the suit property or to put up construction on it.

11. Based on the pleadings, the following Issues were framed by the trial Court:-

1. Whether the suit properties belongs to plaintiff as alleged?

2. Is it true that the suit properties are joint family properties of plaintiff and defendants?

3. Whether the suit properties were



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purchased in the name of plaintiff from and out of the income of Joint family properties as alleged by defendants?

4. Whether the plaintiff is entitled to decree of declaration of title as prayed?

5. Whether the plaintiff is entitled to recovery of possession?

6. Whether the plaintiff is entitled to damages as claimed?

7. To what other relief the plaintiff is entitled to?

12. To prove the case, on the side of the plaintiff, the plaintiff himself was examined as PW-1 and Ex.A-1 to Ex. A-25 were marked. For the defendants, two witnesses were examined as DW-1 and DW-2 and Ex.B1 and Ex.B2 were marked. During the cross examination of DW-1, Ex.A26 to Ex.A33 were marked.



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13. Based on the recitals in Ex.A-1 and Ex.A-2 along with the Ex.A-13 to Ex.A-25, the trial Court had concluded that the plaintiff had discharged the initial burden of proof that the suit property was purchased and developed from out of his own fund. Contrarily, the defendants failed to establish that the plaintiff had no independent income or the ancestral property jointly enjoyed by them had enough surplus to purchase the suit property. Further, the document also discloses that the defendants have also acquired properties in their personal name during the same point of time and were enjoying it separately and claiming those properties as their own. While so, the suit property in the name of the plaintiff alone cannot be declared as joint family property. The order passed in L.A.O.P.No.59 and L.A.O.P.No.61 of 2009 was also taken into account to hold in favour of the plaintiff.

14. The Trial Court distinguished, 'living in the property' and 'joint enjoyment of the property as co-owner', while allowing the suit holding that the defendants living in the property will not confer right in the property as



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co-owner. The defendants are only permissive occupants and after termination of permission, they are bound to vacate. Accordingly, it was declared that the plaintiff is the exclusive owner of the suit property. Further, the defendants were directed to vacate the suit property and hand over the vacant possession within 2 months. Failing which, the defendants were directed to pay damages at the rate of Rs.2000/- p.m from the date of decree till the date of delivery of possession.

15. The learned counsel for the aggrieved third defendant/appellant contended that the trial Court erred in holding that the plaintiff had discharged the burden of proof, that the suit property purchased by him is from out of his individual income. The earlier suits filed by the plaintiff for the very same cause of action stand as *res-judicata* for the subsequent suit. Based on the finding in LAOP, the Trial Court erroneously presumed that the suit property is also the self-acquired property of the plaintiff without any substantial evidence. The land acquired and subject matter of LAOP is different from the suit land, so the declaration of title in respect of different



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land ought not to have been taken as proof of title in the present suit. Ex.B-1 and Ex.B-2 are adequate proof to show the first defendant (deceased mother) funded for the purchase of the suit property in the name of the plaintiff. The Trial Court failed to properly appreciate Ex.B-1 and Ex.B-2.

16. Point for determination:

Whether the defendants had discharged the burden of proof that the suit property was purchased in the name of the plaintiff under Ex.A-1 and Ex.A-2 and got blended with the ancestral property ?

17. The plaintiff relying on the recitals in Ex.A-1, Ex.A-2, which are the sale deeds in his name and the judgment of the Court in the LAOP proceedings, claims that he had discharged the initial burden that he is the absolute owner of the suit property.

18. Per contra, the learned counsel for the defendants rely on Ex.B1 and Ex.B-2 to show that the surplus from the ancestral nucleus used for the



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purchase of the suit property.

19. Ex.A-1 is the sale deed dated 26.03.1997 in favour of the plaintiff. The vendor is one Kannan. The sale consideration mentioned is Rs.60,000/-. Ex.A-2 is the sale deed dated 26.10.1998 in favour of the plaintiff. The vendor is one Ramamoorthy. The sale consideration is shown as Rs:11,500/-. The Defendants document Ex.B-1 is the Bank passbook of Rajalakshmi (First defendant- mother of the plaintiff, and defendants 2 to 4). Page No:10 of the pass book Ex.B-1 is separately marked as Ex.B-2. The entries in the pass book reveals that Rajalakshmi had a regular monthly income of fixed deposit interest around Rs.600/-. On 30.08.1996 she had accumulated cash balance of Rs.1,13,912.60 and she had withdraw a sum of Rs.30,500/- on 31.08.1996 and Rs.50,000/- on 12.09.1996. The two entries in the pass book are in the end of August and beginning of September, 1996. This does not even remotely correlate to the two sale transactions in the year 1997 and 1998 or these are the income from any ancestral property. Firstly, the defendants had not placed any evidence to prove that the money



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in the account of Rajalakshmi was the surplus income derived from the joint family property. Secondly, there is no evidence to prove that after withdrawal of money, Rajalakshmi after 5 months gave it to the plaintiff Venkatachalam for purchase of the suit schedule property.

20. Above all, though the defendants claim that the properties originally belong to Niana Naidu and they have inherited it, which forms the nucleus for the joint family, there is no evidence. DW-1 in her evidence admits that Ramadoss after getting his share from his father, had left some ancestral properties to his legal heirs. Each of his legal heirs had purchased properties in their name and enjoying it independently. From Ex.A-7 to Ex.A-10, it is proved that, a competent Court after examining the plea of joint possession in respect of other properties purchased in the name of Venkatachalam had declined to hold that they were purchased from the ancestral properties income.



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21. Just because members of the family live jointly, there cannot be a presumption that the property in the name of any one of the family members is the property of the joint family. The person who pleads that a property purchased in the name of the Manager or Karta on behalf of the joint family must first prove that there was joint family nucleus giving income in surplus to acquire new property in the name of the Manager/kartha. Whenever there is evidence to show the Manager/kartha had his own personal income, then the intention of the kartha to blend the property in the hotchpot of the joint family must have been pleaded and proved.

22. In the instant case, the plaintiff had proved about his independent income and purchase of the property with his own fund. While so, the defendants have not placed any documents to the contrary, to prove either joint family income or blending of the property with the joint family property. Therefore, the appeal is liable to be dismissed.



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23. Accordingly, **this Appeal Suit stands dismissed**. The judgment and decree of the trial Court passed in O.S.No.11 of 2015 (on the file of II Additional District Judge, Puducherry) dated 05.02.2021 stands confirmed. Consequently, connected Miscellaneous Petition is closed. No order as to costs. One month from today granted for the appellants to vacate and hand over the suit property.

02.07.2025

Index:yes

Internet:yes

Speaking order/non speaking order

Neutral citation:yes/no

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To

1.The II Additional District Judge at Puducherry.

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



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DR.G.JAYACHANDRAN,J.

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delivery Judgment made in
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