



A.S.No.519 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:22.07.2025

Coram:

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Appeal Suit No.519 of 2022

and

C.M.P.No.19044 of 2022

1.V.Balaji,
No.472/1 D2, New Agravaram, BHEL,
Mukuntharayapuram, Ranipet, Vellore District.

2.V.Elayakumar,
No.56, Mullai Nagar 2nd Street,
Palavansadhu, Vellore 632 002.

.. Appellants/Plaintiffs

/versus/

1.V.Kanniga @ Kanniga Parameswari
2.V.Bharat

Both are residing at
No.56, Mullai Nagar 2nd Street,
Palavansadhu, Vellore 632 002.

.. Respondents/Defendants

Appeal Suit has been filed under Section 96 read with Order XLI, Rule 1 of the Civil Procedure Code, to set aside the order passed in O.S.No.81 of 2016 of the learned Principal District Court, Vellore District, dated 31.03.2022.



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For Appellants :Mr.Venkatasubban

For Respondents :Mr.K.Govi Ganesan for R2

No appearance for R1

JUDGMENT

Appeal Suit has been filed to set aside the order passed in O.S.No.81 of 2016 of the learned Principal District Court, Vellore District, dated 31.03.2022.

2. The dispute arose between three sons. Venkatachalam, who had left the suit schedule property, purchased the suit schedule property on 24.07.1985. As per the plaintiffs in the suit, who are two sons of Venkatachalam, their father died intestate leaving behind his wife, the first defendant and three sons plaintiffs 1 to 2 and the third defendant and hence, they are entitled 1/4th share each in the suit schedule property.

3. After filing the suit, the second defendant had filed a written statement with counter claim stating that during the life time of his father, executed a Will dated 17.04.2015 bequeathing the property in favour of the



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second defendant, reserving the lifetime interest for the first defendant. At the same time, he pleaded that the two other properties purchased in the name of the first plaintiff and the second defendant under Ex.B1 and Ex.B2 as well as the other properties purchased in favour of all family members were intended for the benefit of the entire family. Therefore, those properties should be divided among the legal heirs of Venkatachalam.

4. The trial Court based on the plaint, written statement with counter claim has framed the following Issues:-

1. Whether the 1 and 2 defendants are the absolute owners, in view of the Will dated 22.06.2015 executed by N.Venkatachalam?

2. Whether the suit is not maintainable, in view of the claim of partial partition?

3. Whether the defendants are entitled for counter claim of 2/4 share in A, B and C schedule properties of the Written Statement?

4. Whether the plaintiffs are entitled to a preliminary decree of partition against the defendants in respect of 2/4 shares in the plaint mentioned suit properties?

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5. Whether the plaintiffs are entitled to a decree of permanent injunction?

6. To what other relief the plaintiffs are entitled to?

5. After mounting the witness box PW-1 and marking 10 exhibits, the plaintiffs, for some reason, lost interest in pursuing the matter and consequently, when the second defendant was examined as DW-1, they did not cross examine him and four exhibits were marked on behalf of the defendants. The documents relied by the parties are as below:-

List of Exhibits marked on the side of the plaintiffs:

Ex.A1	24.07.1985	Certified copy of sale deed executed by Gopala Krishnan
Ex.A2	15.07.2016	Certificate of Encumbrance (01.01.1987 to 14.07.2016)
Ex.A3	08.09.2016	Death Certificate of N.Venkatachalam
Ex.A4	16.08.2016	Legal Notice issued by the plaintiff
Ex.A5	22.08.2016	Served postal acknowledgement card of 1 st defendant
Ex.A6	20.08.2016	Served postal acknowledgement card of 2 nd defendant
Ex.A7	31.08.2016	Reply legal notice issued by 2 nd defendant
Ex.A8	17.07.2016	Agreement between plaintiff and defendant
Ex.A9	04.11.2013	Bill No.15(Bharath Foundary)
Ex.A10	09.08.2014	Bill No.88 (Bharath Foundary)

List of Exhibits marked on the side of the defendants:

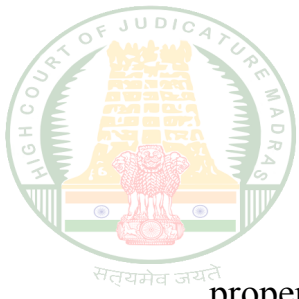


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Ex.B1	26.06.2006	Certificate copy of the sale deed executed by P.Gopal
Ex.B2	02.02.2009	Certificate copy of the sale deed executed by R.Christoper
Ex.B3	06.05.2011	Sale deed executed by T.J.Sekar, S.Murgan, K.Balamurugan and P.Thiru Murugan
Ex.B4	177.04.2015	Original Will executed by N.Venkatachalam

6. The trial Court has dismissed the suit and allowed the counter claim made by the defendants. The trial Court has gone further to declare that the Will marked as Ex.B4 is a valid Will. Therefore, the suit property shall go to the second defendant after the life time of the first defendant.

7. In the appeal, a short point canvassed by the learned counsel appearing for the appellants that the Will has not been proved in the manner known to law. Section 68 of the Indian Evidence Act, 1872, has not been complied and therefore, the finding of the trial Court is liable to be set aside. That apart, it is pleaded that two properties covered under Ex.B1 and Ex.B2 in favour of the first plaintiff and the second defendant were the property purchased out of their individual income. Contrary to the contents of the document, the oral evidence of DW1 was accepted by the trial Court to hold that these two properties mentioned in the counterclaim are the joint family



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property amenable to partition. This Court finds that for the reason best known to them, the plaintiffs have aborted the case in the middle of the trial. At any cost, the trial Court ought not to have held that the Will is valid without examining the attesting witness. Due to this failure, this Court is unable to take a decision on the dispute, which will be absolutely based on the validity of the Will.

8. For the said reason, invoking the power under Order 41, Rule 23 of C.P.C., the matter is remanded back to the Court below for retrial. The Principal District Judge, Vellore, shall cause notice to the parties to appear before the Court below on 19.08.2025 and to proceed with the trial.

9. In the result, this Appeal Suit is allowed. The judgment and decree of the Principal District Court, Vellore, in O.S.No.81 of 2016 dated 31.03.2022 is set aside. The case is remanded back to the trial Court for retrial. Consequently, connected Miscellaneous Petition is closed. No order as to costs.

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Index:yes/no

Internet:yes

Speaking order/non speaking order

Neutral citation:yes/no

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To

1.The Principal District Court, Vellore.

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

Dr.G.JAYACHANDRAN,J.

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