



S.A.No.88 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2025

PRESENT:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

S.A.No.88 of 2014

P.Sellappan,
S/o.Pachamuthu
5/173-A, Bharathiyar Street,
Gupta Nagar,
Angammal Colony,
Salem – 636 009.

....Appellant

Vs.

1.Ramamoorthy,
S/o.Venkatachala Naicker,
D.No.11, Sivaguru Street,
Attur Town, Attur Taluk,
Salem District.

2.Jothi,
W/o.Chakkarapani
14, Sivaguru Street,
Attur Town – 636 102.

3.Mohanraj
S/o.Chakkarapani,
14, Sivaguru Street,
Attur Town – 636 102.

4.Rani @ Soundari,
W/o.M.Kalaiselvan,



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2, Sivaguru Street,
Attur Town – 636 102.

5.Hamsaveni
D/o.Chakkarapani,
14, Sivaguru Street,
Attur Town – 636 102.

6.Lakshmana Moorthy
S/o.Late Venkatachala Naicker,
10-A, Sivaguru Town,
Attur Town – 636 102.

7.Kousalya,
D/o.Sridharan,
25, Sivalaya Nagar,
Alagapuram,
Salem – 636 015.

8.Jeevarathinam
D/o.Sridharan
89, Chamundi Street,
Gugai, Salem – 663 006.

9.Kalaivani,
D/o.Sridharan,
Gandhi Nagar,
Vellore Town & Post,
North Arcot District.

10.Amaravathi,
W/o.Chandran,
65, Naduseriyar Street,



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Mandavalli Area,
Attur Town.

11.T.Kandasamy,
S/o.father's name not known
100/11, Gandhi Nagar,
Attur Town – 636 102.

12.Poongodi
W/o.Late Manivannan

13.Vijayalakshmi
D/o.Late Manivannan

14.Prasanna
S/o.Late Manivannan,
Res.12 to 14 are residing at
89, Chamundi Street, Gugai,
Salem – 663 006.

...Respondents

PRAYER:

Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 22.04.2013 in A.S.No.38 of 2010 on the file of I Additional District Judge, Salem, reversing the Judgment and decree dated 11.12.2009 in O.S.No.511 of 2003 on the file of Principal Subordinate Court, Salem.

APPEARANCE:

For Appellant : Mr.P.Jagadeesan

For Respondent : Mr.D.Shivakumaran for R1



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R2, R3, R4, R5, R6
R8, R10, R12, R13 & R14
Notice served
R7 – No such Address
R9 – Insufficient address

J U D G M E N T

Heard.

2.The above Second Appeal is preferred against the judgment and decree dated 22.04.2013 made in A.S.No.38 of 2010 on the file of the I Additional District Court, Salem, whereby the lower appellate court reversed the findings of the trial court rendered in O.S.No.511 of 2003 by judgment and decree dated 11.12.2009 passed by the Principal Subordinate Judge, Salem.

3.By the impugned judgment, the lower appellate court enhanced the plaintiff's share in items 1 to 5 of the plaint schedule properties from $\frac{1}{4}$ to $\frac{3}{10}$, and further set aside the exemption granted by the trial court in respect of item No.6, a portion of the property purchased by the 12th defendant during the pendency of the suit, which had been excluded from partition. Aggrieved by the said reversal of findings, the present Second Appeal is filed by the 12th defendant, the Lis pendent purchaser.



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4.The 12th defendant is the appellant and the For the sake convenience the parties are referred to as in the trial court.

5.The brief background of the case necessary to dispose of this appeared are as follows: The plaintiff filed the suit seeking partition of six items of properties. According to him, items 1 to 5 are ancestral properties belonging to their father, R. Venkatachala Naicker, who had four sons, namely: Sridharan (son through the first wife), the plaintiff, Chakrapani, and Lakshmanamurthy (sons through the second wife). The plaintiff further contends that their father, R. Venkatachala Naicker , executed a Will dated 25.08.1973 bequeathing his undivided 1/5th share in the ancestral properties jointly in favour of the plaintiff and the 5th defendant. Thus, according to the plaintiff, he is entitled to 1/5th share by birth and ½ share out of his father's 1/5th share under the Will, thereby claiming a total 3/10th share in items 1 to 5 of the suit properties.

6.In respect of item No.6, the property originally belonged to Sridharan, who settled the property in favour of his father, R. Venkatachala Naicker, granting him a life estate, and thereafter to his heirs absolutely. R. Venkatachala Naicker died on 23.06.1988, leaving behind his second wife



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Dhanalakshmi Ammal, the wife and children of his predeceased son Sridharan (defendants 6 to 9), the plaintiff, the 5th defendant, and the children of his predeceased son Chakrapani. Thus, on his death, the plaintiff inherited 1/5th share in item No.6.

7.The plaintiff's mother, Dhanalakshmi Ammal, who had inherited 1/5th share in item No.6, died on 28.09.2002, leaving behind as her legal heirs the plaintiff, the 5th defendant, and the children of her predeceased son Chakrapani (defendants 2 to 4). Consequently, on her demise, the plaintiff inherited 1/3rd share out of her 1/5th share. Thus, in total, the plaintiff claims 4/15th share in item No.6 of the suit property.

8.The 12th defendant, during the pendency of the suit, purchased a portion of item No.6 from defendants 1 to 5 under Ex. B2 dated 16.02.2004. The trial court held that, owing to the non-production of the original Will dated 25.08.1973 executed by R. Venkatachala Naicker and the non-examination of its attesting witnesses, the Will was not proved. Consequently, the trial court concluded that Venkatachala Naicker died intestate and determined the plaintiff's share in items 1 to 5 as 1/4th. With respect to item No.6, the portion



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purchased by the 12th defendant was exempted from partition and the plaintiff was declared entitled to 4/15th share in the remaining extent.

9. Aggrieved by the judgment of the trial court, the plaintiff preferred an appeal and produced the original Will of R. Venkatachala Naicker under Order 41 Rule 27 CPC. The appellate court accepted the additional document, found the Will proved, and consequently held that the plaintiff is entitled to 3/10th share in items 1 to 5. In respect of item No.6 also, the appellate court confirmed that the plaintiff is entitled to 4/15th share. Thus, the entire claim of the plaintiff stood accepted. As regards the lis pendens purchase by the 12th defendant, the appellate court directed that the equities arising out of such purchase shall be considered during the final decree proceedings.

10. Since no appeal has been preferred against the appellate court's findings relating to the proof of the Will and the shares allotted to the plaintiff, those findings have attained finality. The present Second Appeal has been filed only by the 12th defendant, who is a lis pendens purchaser of a portion of item No.6.



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11.The appellant in this Second Appeal seeks to justify the trial court's decree excluding from partition the portion purchased by him during the pendency of the suit. The contention of the appellant that the portion purchased by him ought to have been excluded from partition cannot be accepted.

12.The 12th defendant was originally arrayed as a party since he was a tenant in item No.6 and eviction proceedings were pending under the Rent Control Act. After the filing of the suit, the 12th defendant purchased a portion of item No.6 from defendants 1 to 5 without obtaining permission from the court. In such circumstances, the purchase squarely falls within the ambit of Section 52 of the Transfer of Property Act, 1882.

13.It is a well-settled proposition that a lis pendens transfer is not void, but the transferee acquires no independent right and is bound by the result of the litigation. A lis pendens purchaser in a partition suit cannot insist that the property purchased by him must necessarily be allotted to the share of his vendors. His proper remedy is to work out his rights in the final decree proceedings, wherein the court will consider his request on equitable grounds, but always without prejudice to the rights of the other parties who are not



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connected with the pendente lite transaction.

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14. Thus, the conclusion arrived at by the appellate court is in consonance with the settled position of law. It is true that in paragraph 29 of the appellate judgment there is an erroneous observation that the sale effected during the pendency of the suit is “void” under Section 52 TPA. However, in paragraph 31, the appellate court correctly concludes that the allotment of the portion purchased by the 12th defendant can be considered on equitable grounds during the final decree proceedings, thereby applying the correct principle.

15. Conclusion: In the light of the foregoing discussion, this Court finds that the findings rendered by the lower appellate court regarding the position of *Lis pendent* purchaser is fully in consonance with the settled principles of the rights of a pendente lite purchaser under Section 52 of the Transfer of Property Act, 1882. The appellant, being a *lis pendens* purchaser, cannot claim any independent right to challenge the preliminary decree, and his equities, if any, can only be considered during the final decree proceedings. The *lis pendens* purchaser is not entitled to immediate possession of any specific part of the property. Their only right is to demand a partition and request the court



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to allot them the share that would have fallen to the original co-sharer/his vendors, after the final decree. In essence the lis pendens purchaser in partition suits buys the property at his own risk and his rights remain in limbo until the court decides the shares of each party in the final decree.

16.No perversity, illegality or misapplication of law has been demonstrated. Consequently, no substantial question of law arises for consideration in this Second Appeal.

17.Accordingly, the Second Appeal is dismissed at the admission stage itself. There shall be no order as to costs. The connected miscellaneous petition, if any, is closed.

24.11.2025

ay

NCC : Yes / No

Index : Yes / No

Speaking Order / Non-speaking Order



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To

1.The Principal District Court,
Salem.

2.The I Additional District Court,
Salem.

3.The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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DR. A.D. MARIA CLETE, J

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