



S.A.No.489 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2025

CORAM

THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

S.A.No.489 of 2025

and C.M.P.No.16284 of 2025

1. K.Annojirao

2. A.Anil Kumar

3. A.Sunil Kumar

...Appellants/Defendants

Vs.

R.Sampangi Reddy

...Respondent/Plaintiff

PRAYER:- This Second Appeal is filed under Section 100 of Code of Civil Procedure, to allow the second appeal and to set aside the judgement and decree dated 19-11-2020 made in A.S.No.45 of 2019, on the file of the learned Additional District Judge, Hosur and confirming the judgement and decree dated 07.03.2019 made in O.S.No.190 of 2008 on the file of District Munsif cum Judicial Magistrate Court, Denkanikottai.

For Appellants : Mr.R.Sathish Kumar

For Respondent Mr.T.S.Baskaran



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JUDGMENT

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The second appeal is filed against the Judgment and Decree dated 19.11.2020 made in A.S.No.45 of 2019 by the Additional District Court, Hosur.

2. The parties are indicated herein as per their litigative status and ranking before the trial Court.

3. According to the plaintiff, the suit schedule property and the other properties originally belonged to Krishnojr Rao and he was in possession and enjoyment of the same. He along with his two sons Shankarrao and Annojr Rao (1st defendant), divided all the joint family properties including the suit schedule property on 16.09.1991 in the presence of the villagers and the partition list was executed on the same day. As per the said partition list, the suit schedule property was allotted to the share of Shankarrao. Since the date of the partition, Shankarrao had been in possession and enjoyment of the suit property and on 16.05.2007, Shankarrao and his son Prabhakarrao executed an agreement for sale, and in pursuance of the same, they sold the suit schedule property in favour of the plaintiff under a registered sale



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deed dated 07.06.2007 for a valid consideration. Since then, the plaintiff has been in absolute possession and enjoyment of the suit schedule property. The revenue records have also been mutated in the name of the plaintiff, and Patta No.67 and Adangal stand in the name of the plaintiff. The first defendant is the father, 2nd and 3rd defendants are the sons of the first defendant. The partition between the vendors of the plaintiff and the first defendant is accepted and acted upon. Defendants are living in a separate house. The first defendant had purchased some of the properties from the plaintiff's vendors admitting the partition. The first defendant is also a party to the partition deed dated 16.09.1991. Therefore, the first defendant is estopped from denying the partition. The defendants made an abortive attempt and trespassed upon the suit schedule property on 16.07.2008 and destroyed the crops of the plaintiff. The plaintiff with great difficulty resisted the said acts of the defendants. Hence, the suit for relief of.

4. The defendants no.1 to 3, per contra, would contend that the suit property and the other properties belonged to one Krishnojr Rao and he was in possession and enjoyment of the same. Krishnojr Rao had left behind not only two sons Shankarrao and Annojr Rao, but also four daughters namely Nirmala Bai, Susheela, Vasantha Bai and Vimala Bai as his legal heirs to succeed to



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his estate. The alleged partition and the partition list dated 16.09.1991 are denied. The plaintiff has not filed the original partition deed dated 16.09.1991.

5. The further case of the defendants is that the family of legal heirs of late Krishnojr Rao is still joint, and Shankarrao is not an absolute owner to sell the suit properties to the plaintiff unilaterally. As there is no partition by metes and bounds between the legal heirs of Krishnojr Rao, all his legal heirs are entitled to shares as per the Hindu Succession Act. The alleged sale deed dated 07.06.2007 is void to the extent of shares of remaining legal heirs and plaintiff is not in possession of the suit property. The defendants have raised Avarai crop in the suit land. Nirmala Bai, daughter of Krishnojr Rao, sister of the 1st defendant filed suit for partition in O.S.No.67 of 2007. Shankarrao was also arrayed as one of the defendants. The suit was dismissed for default on 24.10.2007. The suit is hit by *lis pendens* and thereafter, the suit was restored to file on the petition by the plaintiff Nirmala Bai.

6. Based on the divergent pleadings, the trial Court framed the relevant issues. At trial, to substantiate the plaint details, on the plaintiff's side, four witnesses have been examined and 14 documents have been



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marked. Ex.A1 dated 07.06.2006 is the sale deed executed by Shankarrao and his son Prabhakarrao in favour of the plaintiff in respect of the suit property. Ex.A6 dated 16.09.1991 is Partition deed executed between Krishnojirao and his sons Shankarrao and Annojirao. Ex.A8 dated 25.09.2007 is the certified copy of sale deed executed by Shankarrao to the first defendant. Ex.X1 is the 'A' Register copy pertaining to the suit property. Exs.X2 & X3 are the Chitta and Adangal Extract in respect of the suit properties. On the defendants' side, third defendant A.Sunil Kumar has been examined as D.W.1 and eight documents have been marked.

7. Upon consideration of oral and documentary evidence and after hearing the arguments advanced by either side, the suit in O.S.No.67 of 2007 filed by Nirmala Bai, sister of Annojirao and Shankarrao was dismissed for default and subsequently, it was restored to file. Thereafter, in Ex.A1 - Sale deed, the sister of Shankarrao and Annojirao have attested to the said sale deed. It appears that Ex.X1 - 'A' Register suit property stands in the name of Krishnojirao. In Ex.X3, Adangal is for fasli year 1395 to 1418 and stands in the name of Krishnojirao and plaintiff Sampangi Reddy. The trial Court decreed the suit by holding that the daughters of Krishnojirao have admitted the rights of the Shankarrao and attested in the sale deed Ex.A1.



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8. Aggrieved over the same, the defendants preferred an appeal before the Additional District Court, Hosur in A.S.No.45 of 2019. Upon consideration of case records and after hearing the arguments advanced by either side, the First Appellate Court has held that in Ex.A1, sister of Shankarrao and Annojirao attested as witnesses. Thereby, they have acquiesced and the plaintiff has established that there was a partition between Krishnojirao and the sons in 1991 and a partition deed under Ex.A6 was executed between Krishnojirao and his sons and relying upon the sale deed in the name of first defendant under Exs.A8 & A14. The First Appellate Court dismissed the appeal by confirming the judgment and decree passed in O.S.No.190 of 2008 by the learned District Munsif - cum - Judicial Magistrate, Denkanikottai.

9. The fact that the suit property and other properties originally belonged to Krishnojirao and he had two sons namely, Shankarrao and Annojirao and daughters namely, Nirmala Bai, Susheela, Vasantha Bai and Vimala Bai are not in dispute. The plaintiff Sampangi Reddy claims to have purchased the suit property from Shankarrao and his son Prabhakarao. The first defendant Annojirao is the brother of Shankarrao. The partition list dated



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16.09.1991 is denied. If there is any such partition deed list, it cannot be tendered in evidence. The family of legal heirs of late Krishnojr Rao is still joint. In such circumstances, the vendor of the plaintiff Shankarrao does not have any independent right to sell the suit property to the plaintiff. The first defendant and daughters of Krishnojr Rao are not parties to the sale deed dated 07.06.2007. Therefore, the same is not binding on them.

10. On careful perusal of Ex.A6, it is an unregistered partition deed. The unregistered partition deed can be looked into as regards the factum of partition. It is crucial to note that it is the evidence of P.W.1, as regards Ex.A6, he was informed that the actual partition took place about 7 or 15 days before the execution of Ex.A6. During his cross examination, no details contrary to the above said details were elicited from him. The best persons to speak about Ex.A6 are plaintiff's vendor and his brother, the first defendant Annojr Rao. Annojr Rao did not come to the witness box. On the defendants' side, Annojr Rao's son Sunil Kumar has been examined as P.W.3. Therefore, as per the evidence of P.W.1 with regard to Ex.A6, the partition took place about one or two weeks before the execution of Ex.A6 and it was reduced into writing under Ex.A1 remains uncontroverted.



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11. Further more, based on the evidence of P.W.1 as mentioned supra, the document has to be construed as partition list. The first defendant should controverse about Ex.A6, but he did not come to the box. The First Appellate Court has rightly taken adverse inference against the first defendant, as the best evidence is withheld by not examining himself as a witness. As per Section 114 of illustration (g) of the Indian Evidence Act, 1872 to the effect that non-examination of first defendant, if he is put in box, it would be adverse to his case. In such view of the matter, Ex.A6 is to be named as partition list, it does not require to be stamped or registered. In such case, it is admissible in evidence.

12. The plaintiff has examined P.W.3, one Seetharaman, who has spoken about that the brothers Shankarrao and Annojirao (1st Defendant) have divided their properties. At this relevant point of time, Shankarrao was ill and hospitalised and his son Prabhakarao passed away. Exs.A8 & A14 are sale deeds executed by Shankarrao in favour of Annojirao. The insertion details in Ex.A8 were clarified by the plaintiff by examining P.W.4, staff of Sub-Registrar Office, Denkanikottai and it was clarified by P.W.4 that the alleged insertion was made even before Ex.A8 was registered. In Ex.A8, plaintiff's vendor Shankarrao sold the property in Survey No.884/1B, Thally,



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Kothanur Village to Annojirao. The said property details are found in Ex.A6 partition list. In Ex.A14 sale deed, the first defendant Annojirao has purchased the property from the plaintiff's vendor Sankarraorao.

13. Moving further, the act of entering into the sale deed by the first defendant with his brother Shankarrao leads to the irresistible conclusion that they have already partitioned and the first defendant is estopped from contending that they have not partitioned the suit property and other properties. Having partitioned the properties of their father Krishnojirao and by obtaining sale deeds from Shankarrao, the first defendant has also acknowledged the partition deed dated 16.09.1991. It is also relevant to note that, in the year 1991, the unmarried daughters alone can claim co-parcenary rights. There is no evidence available on the defendants' side in order to conclude that any of the daughters remained unmarried at the relevant point of time.

14. More so, Ex.A7/Will dated 22.05.1995 was not at all proved in the manner known to law. More so, it was marked only through P.W.1/Plaintiff and the same is no way connected to the said document. In order to establish the execution of Will under Section 63 of Indian Succession Act



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and Section 68 of Indian Evidence Act, it should be resorted to and as the Will is not proved in the manner known to law.

15. Ex.B2 is the Decree passed in respect of O.S.No.67 of 2007 by the District Munsif - cum - Judicial Magistrate, Denkanikottai. The suit was dismissed for default on 09.04.2007. The Execution of Exs.A8 & A14 completely disproves the stand of first defendant as regards factum of partition. On the date of Ex.A6 partition deed list, joint status is divided.

16. In the given circumstances, both the Courts have uniformly held that the plaintiff has proved his case in respect of relief of declaration of title. The revenue records revealed the fact that mutation has taken place subsequent to Ex.A1 sale deed (Exs.A2, A3, A4, A5 & A12) in order to prove that the possession of the suit property is with the plaintiff. On one hand, the first defendant has purchased some properties from his own brother Shankarrao who is also vendor of the plaintiff. When Exs.A8 & A14 sale deeds are valid, then the first defendant is estopped from contending that there is no partition took place between the first defendant and his brother Shankarrao. He has taken a double stand, which is unsustainable in law.



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17. In such a view of the matter, no substantial questions of law arise for consideration. This Court does not find any perversity or infirmity in the judgment of the first appellate Court. This Court also does not find any good reason to upset the finding of the well considered judgment of the First appellate Court.

18. With these observations and discussions, this Second Appeal stands dismissed. Sequel to this, the judgment dated 19.11.2020 passed in A.S.N.45 of 2019 by the learned Additional District Judge, Hosur stands confirmed. There is no order as to costs. Consequently, connected Civil Miscellaneous Petition stands closed.

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Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No
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Copy to

1. The District Munsif cum Judicial Magistrate Court, Denkanikottai.
2. The Additional District Judge at Hosur.

R.KALAIMATHI, J.

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