



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-03-2025

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CORAM

THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

SA No. 175 of 2025

AND

CMP NO. 5055 OF 2025

Subramani (Died)

Malarkodi (Died)

1. Sivakumar

2. Papathi @ Sambathal

3. Marimuthu

4. Karuppasamy

5. Yuvaraj

6. Viswanathan

7. Parimalam

8. Duraisamy

9. Karunaiammal

10. Jothi

11. Murugasamy

12. Jagadeeswari



13. Malarkodi

14. Chitra

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15. Naveenraj

16. Krishnakumari

Appellant(s)

Vs

Natarajan (Died),
Saraswathi (Died)

1. Mylathal

2.P. Shanmugam

3.P. Vasudevan

4.P. Dhandapani

5.P. Aruchamy

6.P. Krishnan

7.Pappathi

8.K. Sadhasivam

9.P. Murugasamy

10.Ammimiammal

11.Thangavel

12.Sivaguru



13.Karunaiammal

14.Murugaiyan

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15.Kathirvel

16.Palaniammal

17.Gunaseelan

18.Shanmugam

19.Kalimuthu

20.Arusamy

21.Ramasamy

22.Palanisamy

Respondent(s)

PRAYER : Second Appeal filed under Sec. 100 of Code of Civil Procedure, praying to set aside the judgment and decree passed by the Subordinate Judge, Avinashi in A.S. 39 of 2017 dated 24.04.2024 confirming the Decree and Judgment passed by District Munsif, Avinashi in O.S. No. 273 of 2007 dated 04.07.2017.

For Appellants: Mr. M.R. Thangavel

For Respondents: Mr.AR.L.Sundaresan
Senior Advocate For
Mr.K.M.C.Arunmokan for R8



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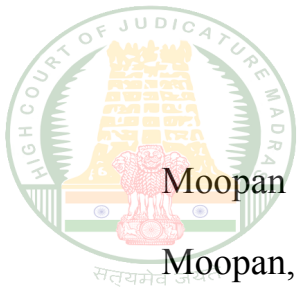
JUDGEMENT

The appellants, who are the plaintiffs and legal heirs of deceased plaintiffs in the original suit in O.S.No. 273 of 2007, challenging the concurrent findings of the courts below rendered in A.S.No. 39 of 2017 by the Subordinate Judge, Avinashi arising out of trial court findings rendered in O.S.No.273 of 2007 by the District Munsif Court, Avinashi, have preferred this Second Appeal.

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

3. Originally, before the trial court, the plaintiffs 1 to 25 have filed a suit against the defendants 1 to 9 claiming partition as well as praying to declare the sale deed executed by defendants 2 to 7 in favour of defendants 8 and 9 dated 03.01.2007 as not binding on the plaintiffs and other consequential reliefs.

4. The case of plaintiffs is that the suit property originally belongs to one Muruga Moopan, who died in the year 1947 leaving behind his four sons viz., Palani Moopan, Mutha Moopan, Chinna Moopan and China Thambi



Moopan @ Palani Moopan. The plaintiffs are the legal heirs of Palani Moopan, Mutha Moopan and Chinna Thambi Moopan @ Palani Moopan and grand children of Chinna Moopan respectively. The defendants are legal heirs of Chinna Moopan and Palaniammal, who is daughter of Muruga Moopan. All the plaintiffs claiming 11/12 share in the suit property. The said suit was contested by defendants 2 to 9 and the 1st defendant remained exparte. The defendants 2 to 7 admits the fact that the suit property originally belong to their grandfather Muruga Moopan, but it is false to state that after his demise, his sons constituted a Hindu joint family and they were enjoyed the property jointly. These defendants' father Palani Moopan purchased the suit property from four sons of Muruga Moopan in the year of 1952, 1953 and 1956. Thereafter, in the year 1960, a partition was held among other sharers and the remaining extent was allotted to these defendants' father. From the year 1960 onwards, he enjoyed the property as absolute owner. Thereafter, on 03.01.2007 he sold the property to defendants 8 and 9. Therefore, as on date, there is no joint family property and already the property was sold in the year of 2007 to defendants 8 and 9. Therefore, they prayed to dismiss the suit.

5. The defendants 8 and 9/purchasers have contested the suit stating that the property in Survey No.7/2A, an extent of 67 cents belong to Palani Moopan, son of Avinashi Moopan, who purchased the property through three sale deeds of the years 1952, 1953 and 1956. As per the oral partition, the



remaining share was allotted to defendants 2 to 7's father and after his demise, his legal heirs enjoyed the property by mutation of records. Thereafter, on 03.01.2007, they have purchased the property for a valid consideration.

6. Considering both side submissions, the trial court framed three issues and both parties adduced their evidence. On the side of plaintiffs, P.W.1 and P.W.2 were examined and documents Ex.A1 to Ex.A4 were marked. On the side of defendants, D.W.1 to D.W.3 were examined and documents Ex.B1 to Ex.B13 were marked. Considering the evidence on record, the trial judge found that the sale deeds Ex.B1 to Ex.B3 pertaining to the year of 1952, 1953 and 1956 were purchased by father of defendants Palani Moopan, son of Avinashi Moopan. As per the recitals of sale deeds, the legal heirs of Muruga Moopan sold the property on behalf of himself and on behalf of his minor son and one such minor son is Natarajan, who is named as 1st plaintiff herein and thereafter, the Patta was transferred in the name of 1st defendant's father and after his demise, from his legal heirs, the defendants 8 and 9 have purchased the property. The contesting defendants disputed that the plaintiffs are not the real legal heirs of Muruga Moopan and except Chinna Thambi, they have not produced any material evidence to establish that they are legal heirs of Muruga Moopan and without this, the trial judge unable to accept the case of plaintiffs. Furthermore, it is also found that three sale deeds Ex.B1 to Ex.B3 relied to the year of 1952, 1953 and 1956 have not been challenged by the



plaintiffs, on the other hand, they have challenged only sale deed of the year 2007 stands in the name of defendants 8 and 9. So, without challenging earlier sale deeds and though they were aware of all those documents, filing the present suit challenging recent sale deed as such is not maintainable. Accordingly, the suit was dismissed. Aggrieved over that, the plaintiffs have preferred an appeal suit in A.S.No.39 of 2017, wherein the first appellate judge also analysed the facts and evidence, finally held that the plaintiffs were not able to prove that they have enjoyed the property as joint family members nor they have produced the materials to show that they are legal heirs of Muruga Moopan, who is original owner of the suit property. But, on the other hand, the contesting defendants proved that already the property was sold and revenue records also changed, so the prayer sought by plaintiffs as such is not maintainable, thereby confirmed the findings of trial judge. Challenging the said findings, the plaintiffs as well as legal heirs of plaintiffs have preferred this Second Appeal.

7. The learned counsel for appellants would submit that the sale deeds Ex.B1 to Ex.B3 would not prohibit the plaintiffs from claiming their respective shares in the suit property and their right of purchase would be worked out only during the final decree proceedings, however there is no cogent evidence on the side of defendants to prove their right and title, without which the trial court erroneously dismissed the suit as such is not maintainable. Hence, he prayed to set aside the findings of the courts below.



8. The learned senior counsel for 8th respondent pointed out that there is no such ancestral property in existence in the year of 1952, but in the year of 1953 itself, the properties were purchased by father of 1st defendant and after his demise, from his legal heirs, the defendants 8 and 9 purchased the property. So, as on date, they are in possession and enjoyment of the property. The plaintiffs though aware of earlier sale deeds, not sought any relief to challenge those sale deeds, on the other hand, they have filed the present suit through which, they have challenged the recent sale deed of the year of 2007 as such is not permissible and without claiming any relief in respect of earlier sale deeds, the same was rightly appreciated by the courts below, thereby he argues that there is no substantial question of law involved. Hence, he prayed to dismiss this Second Appeal as no merit.

9. Heard and considered rival submissions of either side and perused the materials available on record.

10. Considering both side submissions, it reveals the fact that admittedly, the plaintiffs claiming legalheirship of Muruga Moopan, who is original owner of suit property. As rightly pointed out by the respondents that they have not produced any relevant records to show that they are sons and legal heirs of Muruga Moopan. When there is a specific denial on the side of contesting defendants, the plaintiffs not proved their legalheirship, except



Chinna Thampi Moopan, there is no material evidence to show that they are legal heirs of Muruga Moopan and they are his sons. As per Ex.B1 to Ex.B3 sale deeds, the property was sold long back and sale deeds also revoked by sons of Palani Moopan and their minor children. Aggrieved over the same, they ought to have sought the relief in respect of those sale deeds, but there is no such prayer in the plaint nor there is no reason assigned. Furthermore, the plaintiffs admitted during the trial that they are not in possession of the property nor they are having any relevant materials to show that they are legal heirs of Muruga Moopan. Therefore, the courts below rightly held that plaintiffs not proved their claim nor assigned any reason and after selling of the property 50 (fifty) years later only they have come forward with the present suit, for which no reason assigned. Therefore, the findings rendered by the courts below needs no interference and there is no substantial question of law involved. Accordingly, this Second Appeal is dismissed as no merit. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



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