



S.A.No.1042 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	18.08.2025
Pronounced on	31.10.2025

CORAM

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

S.A.No.1042 of 2019

Vallikannan

...Appellant

Vs.

Raghu

...Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the judgment and decree dated 22.08.2019 passed in A.S. No.1 of 2018, on the file of the Subordinate Judge, Gudiyattam, Vellore District, reversing the Judgment and decree dated 07.11.2017 passed in O.S.No.80 of 2013, on the file of the District Munsif, Gudiyattam, Vellore District.

For Appellant : Mr. N. Suresh
for Ms. A.B. Reehana Begum
For Respondent : Mr. K.A. Ravindran



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JUDGMENT

In this Second Appeal, challenge is made to the judgment and decree dated 22.08.2019 passed in A.S. No.1 of 2018, on the file of the Subordinate Judge, Gudiyattam, Vellore District, reversing the Judgment and decree dated 07.11.2017 passed in O.S.No.80 of 2013, on the file of the District Munsif, Gudiyattam, Vellore District.

2. The appellant is the plaintiff in O.S. No.80 of 2013 on the file of the District Munsif Court, Gudiyattam, Vellore District. He filed the said suit for the relief of declaring his title over the suit 'B' schedule property, for mandatory injunction directing the defendant, his men, servants to deliver vacant possession of the 'B' schedule property after removing the superstructure put up in the schedule mentioned property in default, order to deliver the possession of the suit property through the court and for cost of the suit.

3. For the sake of convenience the parties are referred to as per



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4. The case of the plaintiff is that the plaintiff is the owner of the land to an extent of 73 cents in S.No.35/2 with specific boundaries by way of an oral partition took place between him and his brother Krishnamoorthi. Originally the property comprising S.No.35/2 with an extent of 1.47 acre was purchased by the plaintiff and his brother under a sale deed dated 22.4.1968 and since then they were in possession and enjoyment of the same till a partition was effected between them. Thereafter the plaintiff is in possession and enjoyment of the 'A' schedule property. The defendant who is a third party to the 'A' schedule property had illegally trespassed into a portion of the 'A' schedule property which is described as 'B' schedule property in the month of July 2012 when the plaintiff was away from the suit property. When the plaintiff questioned



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about the same, the defendant agreed to vacate and deliver possession of the suit property within a month but he did not do so. so the plaintiff gave a police complaint and they directed the plaintiff to get remedy from the civil court. Hence the plaintiff has been constrained to file this suit for declaration and possession of the suit property.

5. The suit was resisted by the defendant by stating that the property comprised an extent of acres 1.46 situate in S.No.35/2 of Chithathoor village is the ancestral property of the defendant and it was succeeded by his grandfather Kali and he died intestate in or about 1955 leaving behind his two sons namely the plaintiff and Krishnamorrthy and daughter Dhanalakshmi born to his 2nd wife Nagammal and one son Natarajan born to his 3rd wife



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Kullammal to succeed his estate. The said Natarajan died on 5.6.1997 leaving behind his two sons namely this defendant (Ragu) and his brother Manivannan to succeed his estate. Hence the plaintiff, his brother Krishnamoorthy are entitled to $2/3$ rd share in the suit property and the defendant's father and after his death the defendant and his brother Manivannan are entitled to the remaining $1/3$ rd share and accordingly enjoying separately in vaikkals for convenient enjoyment without any partition till date. Based upon the common enjoyment, the Government also granted patta pass book to all the above sharers for the said property. Krishnamoorthy died intestate leaving behind his wife Kanthammal, 2 sons namely Ganesan and Kumar to succeed his common $1/3$ share in the suit property. The plaintiff was working in Police Department and permanently residing at Madras. He never used to come to the village and his portion is being kept vacant



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for several years. There is no necessity for the defendant to trespass in to the plaintiff's property. The defendant's father Natarajan and after his death, the defendant and his brother Manivannan are in common and joint enjoyment of the above said property. The plaintiff seemed to have created several documents to defeat the rights of the defendant's common $1/3$ share in the said property which is illegal and not binding upon the defendant. There is no cause of action for the suit. The defendant has filed a suit for partition relating to the said property against the plaintiff and others on the file of this court and the same is pending. So the relief as claimed is not maintainable. The valuation of the suit and court fee paid is not correct. The suit is not bonafide one. Hence prayed to dismissal of the suit with cost.

6. The trial court decreed the suit in favour of the plaintiff.



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Aggrieved over the same, the defendant preferred the appeal suit in A.S. No.1/2018 before the Sub Court, Gudiyatham, Vellore District. The first appellate Court allowed the appeal against which the present second appeal is preferred by the plaintiff.

7. The second appeal has been admitted on the following substantial question of law:

"In the absence of either any oral or documentary evidence in proof of the marriage between Sippoy Kali and Kullammal and a son Natarajan was born out of the wedlock and nor any proof of revenue documents to clothe title with Natarajan, still is the learned Subordinate judge right in dismissing the suit?"

8. The plaintiff case is that, the 'A' schedule property is in possession and enjoyment of the plaintiff and that the defendant illegally trespassed into a portion of the 'A' schedule property which is described



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as 'B' schedule property in the month of July 2012, when the plaintiff was away from the suit property. Hence, the plaintiff was constrained to file the present suit for declaration of title and recovery of possession of the suit property. The learned counsel appearing for the appellant/plaintiff would submit that the original owner Sippoy Kali executed a settlement deed under Ex.A7 in favour of his wife Boopathy Ammal. The plaintiff, his brother Krishnamoorthy and sister Danalakshmi as heirs of Boopathy Ammal sold the suit property to one Irusammal with a right of re-conveyance within 5 years. Having retained the right of re conveyance sold the suit property to one Nagammal and the said Nagammal sold the property to Krishnamoorthy and plaintiff by way of registered sale deed dated 23.04.1968. Further, the said Krishnamoorthy and the plaintiff leased out the entire property to one Nataraj Chetti for a period of 7 years. The plaintiff filed a suit for partition against the heirs of Krishnamoorthy in O.S. No.249/1999 on the file of the Sub Court, Gudiyatham, Vellore District, which was dismissed on the ground that, a prior oral partition took place in the year 1975 itself in two equal halves and one half is already with the plaintiff. It is settled law that onus will be always on the



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person who pleading a fact and in this case, it is on the defendant to prove that the said Sippoy Kali had three wives and the name of the third wife is Kullammal and Natarajan was born out of the said wed lock. No independent witness was examined to establish the same. While so, the lower appellate court erroneously shifted the onus on the plaintiff. Neither the marriage certificate nor birth certificate was produced on the side of the defendant to establish the factum of marriage between the said Kullammal and Sippoy Kali and the father of the defendant Nataraj was born to them. Ex.B1 Encumbrance Certificate also indicate that only the plaintiff and his brother Krishnamoorthy have right over the suit property. The issuance of patta in favour of the defendant will not clothe any title. Hence prayed for setting aside the judgment and decree passed by the first appellate Court in A.S. No.1 of 2018.

9. On the other hand, the contention of the learned counsel for the respondent/defendant is that, the property comprised an extent of 1.46 acres situate in S.No.35/2 of Chithathoor Village is an ancestral property of the defendant and it was succeeded by his grandfather Kali who



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possessed and enjoyed the same till his demise in or about 1995 leaving behind his two sons namely the plaintiff and Krishnamoorthy and daughter Danalakshmi born to his second wife Nagammal and one son Natarajan born to his third wife Kullammal to succeed his estate. The said Natarajan died on 05.06.1997 leaving behind his two sons namely the defendant Raghu and his brother Manivannan to succeed his estate. Hence, the plaintiff and his brother Krishnamoorthy are entitled to 2/3 share in the suit property and the defendants' father and after his demise, the defendant and his brother Manivannan are entitled to the remaining 1/3 share and accordingly, enjoying separately in Vaikkas for convenient enjoyment without any partition till date. Based upon the common enjoyment, the Government has granted patta passbook to all the above sharers for the said property. The said Krishnamoorthy died intestate leaving behind his wife Kanthammal two sons namely Ganesan and Kumar to succeed his common 1/3 share in the suit property. The plaintiff was working in police department and was permanently residing at Madras. He never used to come to the suit village and his portion was kept vacant for several years. There is no necessity for the defendant to



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trespass into the plaintiff's property. The defendant's father Natarajan and after his death, the defendant and his brother Manivannan are in common enjoyment of the said property. The plaintiff is attempting to defeat the right of the defendant 1/3 common share in the suit property. The defendant has also filed a suit for partition in respect of the suit property against the plaintiff and others which is still pending. The first appellate court rightly dismissed the suit filed by the plaintiff which calls for no interference by this Court.

10. Heard on both sides. Records perused.

11. The above suit is filed for the relief of declaration of title to the 'B' schedule property and for mandatory injunction directing the defendant to remove the superstructure in the suit 'B' schedule property and to hand over vacant possession to the plaintiff. The unsuccessful plaintiff before the first appellate court has filed the present second appeal.

12. The specific contention of the plaintiff is that one Kullammal is



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not the second wife of Sepoy Kali and the father of the defendant namely Natarajan was not born to them and that the defendant trespassed into 'B' schedule property in the month of July 2012 and put up a thatched house when the plaintiff was away from the suit property. Hence he was constrained to file the present suit. The suit was filed in the year 2013.

13. *Per contra*, the defendant has produced Ex.B2 and Ex.B3 death certificates of Kullammal and Natarajan in which the husband name of Kullammal and father name of Natarajan is mentioned as Sepoy Kali.

14. No doubt, birth and death certificates are not sufficient on their own to establish legal heir ship. It is issued only on the informations given by the applicant. The same cannot be construed to be a conclusive proof for establishing the relationship between the parties. It requires additional circumstances, that proves the relationship between the parties. The defendant has produced Ex.B4 and Ex.B5 pattas jointly issued in the Natarajan, father of the defendant in respect of the suit property. Moreover, the defendant and his brother have filed a partition suit in O.S.



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No.235/2013 against the plaintiff in which an *ex parte* decree was passed on 04.07.2013 allotting 1/3 share to the defendant and his brother in the suit property. Even it is an *ex parte* decree, the same is binding on the plaintiff unless the same is set aside. Admittedly, the defendant is in possession of the suit property and the revenue records stands in the name of his father. If really the defendant is a stranger, the plaintiff would have taken necessary steps to remove the name of the defendant from the revenue records. It is also not established that the defendant trespassed into the suit property in July 2012. The suit is filed only in the year 2013. Moreover, the factum of marriage and proof of paternity are all question of facts. The first appellate court having analysed the above facts in a proper perspective, rightly concluded that the plaintiff is not entitled for the relief claimed. No perversity or infirmity found in the findings of the first appellate court, which warrants any interference by this Court. Hence, the substantial question of law is answered against the appellant.

15. In the result,

- i. The Second Appeal is dismissed. No costs.



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ii. The judgment and decree dated 22.08.2019 passed in A.S. No.1 of 2018, on the file of the Subordinate Judge, Gudiyattam, Vellore District, is upheld.

31.10.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To

1. The Subordinate Judge, Gudiyattam, Vellore District
2. The District Munsif, Gudiyattam, Vellore District.
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J
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Pre delivery Judgment in
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