



WEB COPY



A.S.No.801 of 2019

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2025

CORAM

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

**A.S.No.801 of 2019
and C.M.P.No.24673 of 2019**

Sivapragasam (died)
S/o.late Calappa Mudaliar
No.728/130, 3rd Cross Street, Min Nagar, Vengikkal,
Thiruvannamalai.

1.S.Tirougnanassambandane,
S/o.Sivapragasam,
No.18, Sundara Vinayagar Koil Street, Mudaliyarpeta,
Puducherry.

Appellant(s)

Vs

Selvaraj
Residing at Old No.136, (New No.236, 238 & 240)
Mahatma Gandhi Road, Muthiyalpet, Puducherry

Respondent(s)

First Appeal filed under Order XLI Rule 1 r/w Section 96 CPC to set aside the judgment and decree dated 30-08-2019 passed in O.S.No.83 of 2011 on the file of the III Additional District Court, Puducherry.

For Appellant(s): Mr.P.Veeraraghavan



A.S.No.801 of 2019

For Respondent(s): Mr.S.Bhargavan

WEB COPY

JUDGMENT

Unsuccessful plaintiff has preferred the present appeal challenging the judgment and decree dated 30-08-2019 passed in O.S.No.83 of 2011 on the file of the III Additional District Court, Puducherry.

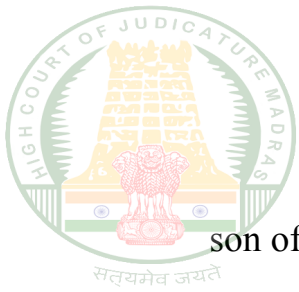
2. Suit is filed for declaring the settlement deed dated 27.12.2010 in Doc.No.5569/10 is invalid and not binding on the plaintiffs and for preliminary decree for partition. The trial Court dismissed the suit.

3 The parties are referred to as per their rankings in the trial Court.

4. The brief case of the plaintiff is as follows:

4.1 Originally, the plaintiff Sivaprakasam filed a suit, pending which, he died and therefore, his legal representative Tirougnanassambandane was brought on record as the second plaintiff.

4.2 Calappa Mudaliar, who is the father of the said Sivaprakasam, had married one Sivagami and they begot five male children viz. Shanmugam, Sivapragasam/first plaintiff (died), Saravanan, Sithanandan and Balasubramanian. The defendant is the son of Shanmugam and grand



A.S.No.801 of 2019

son of Calappa Mudaliar.

WEB COPY 4.3 Calappa Mudaliar was a businessman engaged in imports and exports and he has owned huge properties and also purchased properties in the name of his eldest son *viz.* Shanmugam. There was no partition between the legal heirs of Calappa Mudaliar till date. The suit schedule property was purchased by Calappa Mudaliar in the name of his eldest son in the year 1957. Calappa Mudaliar died a long time ago leaving his male children as his legal heirs to succeed the suit property.

4.4 Sivaprakasam demanded his brother Shanmugam for an amicable partition and separate possession of the suit property. Shanmugam died on 03.06.2011 leaving the defendant as his legal heir. Sivaprakasam approached the defendant in the first week of July 2011 for partition. The defendant has informed the plaintiff that all the brothers of his father have already relinquished the property in favour of his father Shanmugam *vide* a release deed dated 14.12.1982. The defendant has also informed that his father has already settled the suit property in his favour through a registered settlement deed dated 27.12.2010. The alleged release deed dated 14.12.1982 and the settlement deed dated 27.12.2010 are not valid and not binding on the plaintiff. Hence the suit.



A.S.No.801 of 2019

WEB COPY 5 The brief case of the defendant is as follows:

5.1 Calappa Mudaliar died in the year 1987 and on his death, he did not leave any properties either ancestral or self-acquired. The Hindu Succession Act, 1956, was extended to Puducherry with effect from 01.10.1963 and the effect of extension repealed the then existing customary Hindu Law. The defendant denied that the suit property was purchased by Calappa Mudaliar in the year 1957 in the name of his eldest son Shanmugam.

5.2 Shanmugam got married in the year 1952 and he was employed in Government service. The suit schedule property was a self-acquired property of Shanmugam purchased from his own money by the French Notarial sale deed dated 05.10.1957. Shanmugam had availed loan from Puducherry Cooperative Housing Society by mortgaging the land of the suit property to construct a house thereon and executed a French Notarial mortgage deed dated 27.05.1961. Shanmugam had constructed a house and obtained electric and water connections in his name and he discharged the loan and got the mortgage deed redeemed on 03.08.1987. Shanmugam had accommodated his brothers Saravanan, Sithanadan and Balasubramanian to



WEB.COM

live with him in the suit property, while the other brother viz. Tirougnanassambandane/plaintiff lived elsewhere. While vacating the suit property, Saravanan, Sithanathan and Balasubramanian had executed a document dated 14.12.1982 purporting to be a release deed in favour of Shanmugam. Though the nomenclature of the said document stated to be the release deed, the execution has clearly acknowledged that the absolute ownership of the suit property in Shanmugam. As per the recitals of the said document dated 14.12.1982, the brothers of Shanmugam did not have any subsisting title over the suit property. Shanmugam had settled the suit property in favour of the defendant under registered settlement deed dated 27.12.2010 and since then, the defendant has been in possession and enjoyment of the suit property as the absolute owner and no demand for partition was made either during the lifetime of his father Shanmugam or in the first week of July 2011 as alleged in the complaint. There is no cause of action for the suit and the same is vexatious one.

6. Based on the above pleadings, the trial Court has framed the following issues:

(1) Whether the settlement deed dated 27.12.2010 executed by Shanmugam in favour of the defendant is null and void?



WEB COPY



A.S.No.801 of 2019

(2)Whether the plaintiff is entitled to 1/5th share of the schedule mentioned property?

(3)Whether the plaintiff is entitled to mesne profit at Rs.5,000/- per month from the date of plaint till date of delivery of possession?

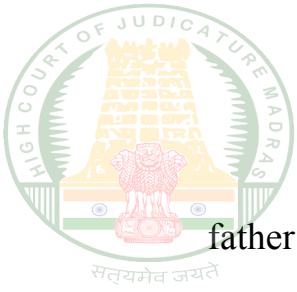
(4)Whether the suit is bad for want of cause of action?

(5)To what other relief the plaintiff is entitled?

7. During trial, on the side of the plaintiff, the second plaintiff/Tirougnanassambandane examined himself as PW1 and Exs.A1 to A7 were marked. On the side of the defendant, the defendant/Selvaraj examined himself as DW1 and Exs.B1 to B25 were marked.

8. Findings of the trial Court:

8.1 The release deed in Ex.A4 dated 14.12.1982 executed by Saravanan, Sithanandan and Balasubramaniam in favour of Shanmugam, wherein, the recitals shows that three brothers have relinquished their right by receiving Rs.25,000/- each from the father of the defendant. PW1 admitted that at the time of execution of release deed in Ex.A4, except his



A.S.No.801 of 2019

father Sivapragasam, Shanmugam Saravanan, Sithanandan and

WEB.COM

Balasubramaniam and their father Calappa Mudaliar were residing in the suit property. So, the averment of the defendant that the released deed in Ex.A4 has been executed only for the purpose of vacating the other brothers from the suit property is acceptable one.

8.2 The plaintiff has not filed any document to show that the suit property has been purchased by Calappa Mudaliar in the name of his elder brother Shanmugam. That apart, the other properties owned by Calappa Mudaliar were not included for partition. Therefore, the suit property has been purchased by the hard earned money of the father of the defendant and the plaintiff has not right over the property. PW1 himself has admitted that he has not produced any document to show that Calappa Mudaliar had purchased various items of properties out of his earnings through his business.

9. The points for determination that arises in this appeal are (a) whether the document in Ex.A4 is a release deed? and (b) whether the plaintiff is entitled for partition?



A.S.No.801 of 2019

WEB COPY 10. The learned counsel appearing for the appellant/plaintiff made the following submissions:

- The document Ex.A4 is the release deed and its recitals clearly speak about the release of right over the joint family property and the intention of the executors is very clear.
- It is settled law that if the words are plain and unambiguous, then, they must be given true legal effect and there is no ambiguity in the language employed in the deed.
- The real character of the transaction is the release deed in Ex.A4 executed by other shareholders in view of their existing right in favour of Shanmugam.
- Ex.A4 itself described as release of undivided share over the suit schedule property and Sivapragasam (deceased) is also one of the legal heirs of Calappa Mudaliar.
- When other three legal heirs were having right over the property and the same is accepted for release of title on payment of Rs.25,000/- each, then, the plaintiff has got 1/5th share in the suit property.

11. *Per contra*, the learned counsel appearing for the



A.S.No.801 of 2019

respondent/defendant made the following submissions:

WEB COPY

➤ Calappa Mudaliar died in the year 1987 and on his death, he did not leave any properties either ancestral or self acquired to be inherited by his sons.

➤ The father of the defendant got married in the year 1952 and he was employed in Government service and the suit schedule property was purchased from his own money by the French Notarial sale deed dated 05.10.1957 from Jayaram Gramani and Rajamanicka Gramani.

➤ The father of the defendant, during his lifetime, had possessed and enjoyed the suit property as an absolute owner.

➤ The father of the defendant had availed loan from the Puducherry Co-operative Housing Society by mortgaging the suit property for constructing a house in the year 1961.

➤ The father of the defendant alone discharged the loan and got the mortgage deed redeemed in the year 1987 by execution of release deed.

➤ The father of the defendant had accommodated his brothers Saravanan, Sithanandan and Balasubramanian to live with him in the suit schedule property and therefore, the father of the defendant paid a sum of Rs.25,000/- each to his brothers and amicably made them vacate from the suit property.

➤ While vacating them, executed a document dated 14.12.1982 purported to



A.S.No.801 of 2019

be the release deed.

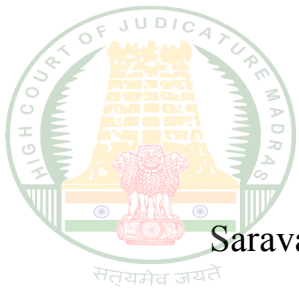
WEB COPY

In the said document, Saravanan, Sithanandan and Balasubramanian had acknowledged the absolute ownership of the suit property on Shanmugam, father of the defendant.

12. This Court has considered the submissions made on either side and perused the records.

13. It is the specific case of the plaintiff that that the suit property was purchased by Calappa Mudaliar in the name of his eldest son Shanmugam in the year 1957 out of the income earned from the business of exports and imports and he has also owned huge properties and there was no partition between the legal heirs of Calappa Mudaliar. It is also the specific case of the plaintiff that the alleged released deed dated 14.12.1982 executed in favour of the defendant's father Shanmugam and the settlement deed dated 27.12.2010 executed by Shanmugam in favour of the defendant are not valid and not binding on him.

14. It is not in dispute that one Calappa Mudaliar had five sons viz. Shanmugam (father of the defendant), Sivapragasam/first plaintiff (died),



A.S.No.801 of 2019

Saravanan, Sithanandan and Balasubramanian.

WEB COPY

15. The plaintiff heavily relied on the document in Ex.A4 to prove his case that the suit property was purchased by Calappa Mudaliar in the name of his elder son Shanmugam in the year 1957. According to the plaintiff, the recitals of Ex.A4 dated 14.12.1982 executed by Saravanan, Sithanandan and Balasubramanian in favour of Shanmugam reveals that the other three brothers Saravanan, Sithanandan and Balasubramanian have relinquished their right by receiving a sum of Rs.25,000/- each from the father of the defendant. The deceased first plaintiff Sivapragasam is also one of the brother of the said Shanmugam and therefore, he is entitled to claim 1/5th share in the suit property.

16. A perusal of Ex.A4 shows that Saravanan, Sithanandan and Balasubramanian have relinquished their right over the suit property by receiving Rs.25,000/- each from the father of the defendant. A reading of the recitals of Ex.B4 reveals that the property was purchased in and out of the income of the father of the defendant, while he was serving as a Government servant at the time of purchase. It also reveals that after obtaining the housing loan from the housing society, Shanmugam had constructed a house and the same has been revealed through the mortgage deed in Ex.B5.



WEB COPY

17. Tirougnanassambandane/PW1, in his evidence, has categorically admitted that at the time of execution of Ex.A4, Shanmugam, Saravanan, Sithanandan and Balasubramaniam and Calappa Mudaliar were residing in the suit schedule property and Sivapragasam alone was residing in some other place. He also admitted that he has not produced any document to show that Calappa Mudaliar was doing export and import business and he does know whether Calappa Mudaliar was having any other property except the suit schedule property. Further, he admitted that he has not produced any document to show as to whether Calappa Mudaliar purchased various items of property from the money earned from his business.

18. It is well settled that once the party relying upon the document establishes its genuineness, the onus shifts on the other party to prove that the said document is sham and nominal [*vide Subhra Mukherjee and another Vs. Bharat Coking Coal Ltd. and Others* reported in (2000) 3 SCC 312].

19. Though the recitals of Ex.A4 shows that the other brothers of Shanmugam have relinquished their right, it cannot be termed as a released



A.S.No.801 of 2019

WEB COPY

deed and it is a document made for the receipt of Rs.25,000/- to vacate the brothers from the suit property. Ex.A4 is of the year 1982 and the same was challenged only in the year 2011, after the demise of Shanmugam. The initial burden of proof lies on the plaintiff has not been discharged. The plaintiff has failed to establish that the suit property was purchased by Calappa Mudaliar in the name of Shanmugam or it is the ancestral property. The trial Court has rightly concluded the *lis* between the parties. There is no reason to interfere with the impugned judgment and decree passed by the trial Court. The points are answered accordingly.

In the result, this First Appeal is dismissed by confirmed the judgment and decree dated judgment and decree dated 30-08-2019 passed in O.S.No.83 of 2011 on the file of the III Additional District Court, Puducherry. No costs. Connected C.M.P. is closed.

10-07-2025

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



A.S.No.801 of 2019

WEB COPY

To

The III Additional District Court, Puducherry.



WEB COPY



A.S.No.801 of 2019

M.JOTHIRAMAN J.

nsd

AS No. 801 of 2019



WEB COPY



A.S.No.801 of 2019

10.07.2025