



WEB COPY

SA No. 110 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-04-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

SA No. 110 of 2025

AND

CMP NO. 3241 OF 2025, CMP NO. 3240 OF 2025

1. THULASIRAMAN

S/o.Jeevanandam, Old NO.23, New
No.53, Gandhi Road, Nadupet,
Gudiyattam, Vellore District

Appellant(s)

Vs

1. JEEVANANDAM

S/o.Late Dhanakotti, D.NO.23, New
No.53, Gandhi Road, Nadupet,
Gudiyattam, Vellore District

2.HEMALATHA

W/o.G.Ravi (D/o.Jeevanandam), No.2,
6th Block, Police Quarters, Reddy
Thoppu, Ambur.

3.LAKSHMI

D/o.G.Ravi, NO.79, 5th Street,
Thendral Nagar, Tirupathur Visalatchi
(Died)

4.K.Shanmugam



S/o.Late Kannan, No.22/54, Jawaharlal
Nehru Street, Nadupet, Gudiyattam,
Vellore District

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5.K.Krishnamoorthy
S/o.Late Kannan, No.22/54, Jawaharlal
Nehru Street, Nadupet, Gudiyattam,
Vellore District

6.K.Vijaya
D/o.Late Kannan, No.22/54, Jawaharlal
Nehru Street, Nadupet, Gudiyattam,
Vellore District

7.K.Dhanalakshmi
D/o.Late Kannan, No.22/54, Jawaharlal
Nehru Street, Nadupet, Gudiyattam,
Vellore District

8.K.Kajalakshmi
D/o.Late Kannan, No.22/54, Jawaharlal
Nehru Street, Nadupet, Gudiyattam,
Vellore District

Respondent(s)

SA No. 110 of 2025

PRAYER

To set aside the Judgment and decree passed by the Subordinate Judge Gudiyattam in AS No.11 of 2017 dated 14.03.2024 as confirming the Judgement and decree passed by the District munsiff at Gudiyattam in OS No.222 of 2010 dated 27.10.2017.

SA No. 110 of 2025

For Appellant(s): R.Govindasamy



For Respondent(s): T. Karunakaran For R5

JUDGEMENT

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This second appeal has been filed to set aside the Judgment and decree passed by the Subordinate Judge, Gudiyatham in AS No.11 of 2017 dated 14.03.2024 as confirming the Judgment and decree passed by the District Munsiff at Gudiyattam in OS No.222 of 2010 dated 27.10.2017.

2. The appellant herein/plaintiff filed the suit in OS No. 222 of 2010 on the file of the Principal District Munsiff, Gudiyattam, Vellore District, against the respondents herein/defendants(first defendant is his father, second defendant is his mother, third defendant is his sister, fourth defendant is the neighbour against her there is an allegation that she attempted to purchase the property with the help of the other sharers. Therefore, she added as one of the party). The subject property is that in T.S.No. 862/5, 94 square feet, in T.S.No. 862/6, 50 square totally 144 square feet in which the plaintiff is claiming $\frac{1}{4}$ share. The defendants 1, 2 and 3 remains exparte. 4th defendant contested the suit. Thereafter, fourth defendant died his legal heirs contested the suit. According to the plaintiff, the suit property originally belonged to father of the



1st defendant, Grand father of plaintiff, defendants 2 and 3 namely Dhanakoti

Gounder, which was purchased the same through sale deed dated 05.11.1963 as

a self acquired property she died in the year 1968 leaving behind son, daughter,

wife as legal heirs. Thereafter, oral partition entered between the family

members, in the said partition, the suit property was allotted to first defendant,

though it was allotted to 1st defendant, the plaintiff and defendants 1 to 3 are

jointly residing in the suit property as joint family. When the plaintiff has

demand his share in the suit property. The first defendant has refused to make

partition, now the first defendant has try to alienate the suit property to third

parties, the fourth defendant has no right and title over the property as she is

third party. Hence, the suit has been filed by the plaintiff claiming $\frac{1}{4}$ share and

separate possession of the suit property.

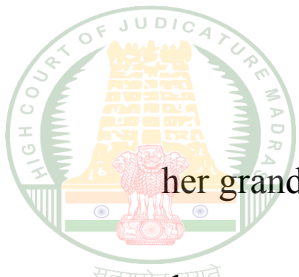
3. The fourth defendant Jeevanandam disputed the plaintiff's right and

title stating that suit property originally situated at Door No.22, Gandhi Road,

belonged to the fourth defendant and she is in the possession of the suit property

and her right and title confirmed in OS No. 1446 of 1972 which was filed by the

the fourth defendant as against Dhanakotti, to declare her right and title against



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her grandfather by this plaintiff and the same was decreed and also confirmed in the appeal proceedings. Further, she would contend that another suit was filed in OS No. 845 of 1983 as against the defendant, which was dismissed by the Court, and the fourth defendant also filed the suit in OS No. 610 of 1986 for the relief of permanent injunction and the same was decreed in favour of the fourth defendant. Thereafter, as per the exchange held among the members first defendant filed the suit for the relief of specific performance in respect of the same suit property in S.No. 862/6 in OS No. 321 of 1999 the said suit also dismissed upto the second appeal. The subject property in Suit Survey No.862/6 part Door No.22. As per the declaration decree granted in her favour in OS No. 1446 of 1972 she raised objection stating that suit as such is barred by principle of resjudicata. The plaintiff suppressed the earlier suit proceedings which he known as being the son of the first defendant but by filing suit for partition he was not aware of the earlier suit proceedings as such is illegal prayed to dismiss the suit.

4. Considering the submissions on either side, the Trial court framed the issues foremost issue is whether the suit is barred by doctrine of resjudicata



along with other issues. Finally Court concluded that earlier suit proceedings findings as well as sale deeds stands in the name of the grandfather of the plaintiff. The Trial Court held that in S.No. 862/5 belongs to the first defendant and if at all any share available he has to work out his remedy after his demise not during his life time of the first defendant in respect of settling S.No. 862/6. The Trial Court held that as per the findings rendered in OS No. 1442 of 1992 the right and title of the Viswanathan was declared. As on date decree in force. Besides, title in respect of the said suit property was declared in favour of the Viswanathan thereby said decree granted in earlier proceedings would bind the plaintiff also thereby suit is barred by principle of resjudicata. Accordingly, the suit was dismissed.

5. Challenging the said findings, the plaintiff preferred the appeal, on considering the oral and documentary evidence the first appellate Court held that there were 5 litigations pending between the parties from 1972 onwards all the suits, appeals and second appeals were ended in favour of the Vislathi, Dhanakoti, Jeevanandam and Saraswathis Ammal are unsuccessful parties in those litigations, finally the grand sons of Dhanakoti Gounder filed this 5th



litigation for the very same property. Accordingly, it held that it is barred by resjudicata. Therefore, appeal was allowed. Challenging the said findings the plaintiff preferred the present second appeal.

6. The learned counsel for the appellant raised the following grounds

1. Both the Courts failed to decide the issue that whether the appellant is entitled to get the share from suit schedule property. The appellant is entitled to get the share from suit schedule property as a co-parcener in the Hindu joint Family, originally the suit property succeeded by the appellant's grandfather deceased Dhanakotty Gounder in the year 1963 by way of exhibit.A1/ After death of Dhankotty Gounder the first respondent succeeded the property as a legal heir of deceased Dhanakotty Gounder. The appellant is son of 1st respondent and grandson deceased Dhanakotty Gounder. The said property is undivided Hindu Joint Family property. Hence the appellant is entitled to get equal share from the suit schedule property. Both the courts failed to give proper findings for the relief sought for in the suit.

2. Both the Courts failed to appreciate that the appellants and the



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respondents 1 to 3 are in absolute possession and enjoyment of the suit property continuously for three decades. The P.W.1 properly deposed regarding possession of the property. The Exhibit marked by the plaintiff Exhibit A1 to A12 clearly proved the title and possession of the property. The respondents 5 to 9 failed to prove the title and possession. The Trial Courts dismissed the suit filed by the appellant due to the earlier suit filed by the appellant's father without going in the merits.

3. Both the courts failed to appreciate that the present suit is entirely different cause of action and relief. Both the Courts have given concurrent findings without analysing the facts and circumstances of the case.

4. Both the lower courts erred in holding that the earlier suits filed by the appellant's father and grandfather are not connected with this suit, the prayer of the earlier suits filed by other person are entirely different from the current suit, hence the question of resjudicata does not arise, moreover, the appellant is not party in the suit.

5. The lower courts failed to frame the proper issues for the suit. Any



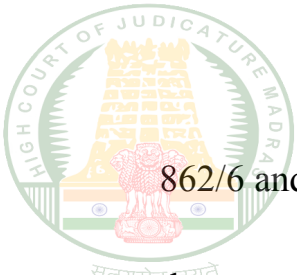
even the courts below failed to give proper findings to all the issues.

During the pendency of the appeal, the fourth respondent visalatchi died leaving behind her sons and daughters, the respondents 5 to 9 as only heirs to succeed her estates left by the deceased.

7. This Court admitted the appeal on the following substantial questions of law:

1. Whether the courts below rightly holding that earlier suit filed by the appellant's father and grandfather bound to this appellant where the appellant not party in the earlier suits ?
2. Whether the courts below the rightly appreciate that the property belongs to the ancestral property entitled to get the equal share as co-parcener?
3. Whether the courts below are right in dismissing the suit ?

8. By way of reply the learned counsel for the respondent submits that the contesting respondent who is the legal heir of the deceased Viswanathan contested the appeal stating that the Court below rightly held that claim made by the plaintiff is barred under principle of resjudicata for the reason that it is the sixth round of litigation pertaining to the same suit property in T. S.No.



862/6 and already right and title of the original owner was declared long back in the year 1972. Therefore, the claim is barred by resjudicata which needs no interference. Hence, he prayed to dismiss the second appeal.

9. Considering the both side submissions, the facts reveal that near about 5 round of litigations between grandfather, father, mother of plaintiff and fourth defendant viswanathan for the suit property pertaining to the suit property in Godiyattam Town. During the pendency of the appeal proceedings advocate commissioner was appointed, who measured the property and submitted his report which shows that subject in issue comes around 50 square feet in T. S.No. 862/6 abetting Chitoor road@ Gandhi Road which is Triangular portion in that property the plaintiff claiming $\frac{1}{4}$ share as if it is ancestral property of his family for that he relied sale deed of the year 1963 which was marked as Ex.A1, stating his grandfather purchased the property along with another T.S No. 862/6 there is no dispute in that sale deed he said to have purchased the 50 cents in T.S.No. 862/6 but sale deed was dealt with by this court in earlier suit filed by Viswanathan in OS No. 1446/72 wherein he also prayed for mandatory injunction to remove the petty shop put up by the plaintiff's grandfather



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Dhanakodi Gounder. On considering the evidence on record in the earlier suit proceedings the court found that T.S.No. 862/2 is forming part of the Door No.22 belongs to the Viswanathan and to have access through his house from Gandhi Road she enjoyed the said portion in which Dhanakodi Gounder has no right and title because he purchased the suit property forming part of the Door No.23 in that suit, the title of the Viswanathan was declared in respect of T.S. No.862/6 upto second appeal it was confirmed. Thereafter, another three suit was filed, though the plaintiff is not a party his parents grandfather were filed the litigation for the same suit property. As on date, right and title declared in favour of the Viswanathan, which is in force therefore issue in respect of right and title had already been decided, further the first defendant also party in the one of the said suit. But he remains exparte, being son of the first defendant he would have aware of the earlier litigations. On perusal of the plaint averment as rightly pointed out by the fifth defendant that plaintiff very well aware of the earlier suit proceedings which itself shows that in order to harass the fourth defendant the plaintiff filed the present suit as sixth round of litigation for the same property which is abuse of process of law. No substantial question of law



involved in this case. Thereby, the findings rendered by the Courts below is well

reasoned . Accordingly, this second appeal is dismissed as no merits. Further,

the subject in issue is only pertaining to T.S.No. 862/6, in respect of T.S.No.

862/5 the fourth defendant has no objection which belongs to plaintiff's family.

10. In the result, this second appeal is dismissed. No Costs.

Consequentially, connected miscellaneous petition is closed.

23-04-2025

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1. The District munsiff, Gudiyattam.
2. The Subordinate Judge Gudiyatam.
3. The Section Officer, V.R Section, High Court, Madras.



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T.V.THAMILSELVI J.

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