



S.A.No.155 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20.08.2025
Pronounced on	14.11.2025

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A.No.155 of 2020

Govindasamy (died)

1. Gowrammal
2. Annadurai
3. Paanchalai
4. Manickavasagam

...Appellants

Vs.

1. Deivam @ Theerthagiri
2. Samikannu
3. Vijayalakshmi
4. Manjula
5. Rajathi

...Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the judgment and decree dated 25.07.2019 passed in A.S. No.88 of 2017, on the file of the Principal District Court, Krishnagiri, reversing the Judgment and decree dated 08.08.2017 passed in O.S.No.88 of 2014, on the file of the Subordinate Court, Uthangarai.



S.A.No.155 of 2020

WEB COPY

For Appellants : Ms. Chenthoori Pugazendhi
for Mr. K. Balu
For Respondents : Mr. S. Thangavel.

JUDGMENT

In this Second Appeal, challenge is made to the judgment and decree dated 25.07.2019 passed in A.S. No.88 of 2017, on the file of the Principal District Court, Krishnagiri, reversing the Judgment and decree dated 08.08.2017 passed in O.S.No.88 of 2014, on the file of the Subordinate Court, Uthangarai.

2. The appellants are the defendants 2 to 5 in O.S. No.88 of 2014, on the file of the Subordinate Court, Uthangarai. The respondents 1 and 2 as plaintiffs has filed the above suit for declaration of plaintiffs title over the 2nd item of the suit properties and for granting permanent injunction against the defendants from in any way trespassing into the suit property and from in any way disturbing the plaintiffs' peaceful possession and enjoyment and for declaring the gift deed dated 13.01.2012 which was



S.A.No.155 of 2020

executed by the deceased 1st defendant in favour of the defendants 2 to 5 as null and void and for granting permanent injunction as against the defendants from restraining them from, in any way alienating or encumbering the 2nd item of the suit properties in favour of any third parties and for costs.

3. For the sake of convenience, the parties are referred to as per their ranking in the trial court.

4. The case of the plaintiffs is that, the plaintiffs are the sons of the 1st defendant through his first wife Rajammal @ Chellammal. The 2nd defendant is the concubine of the 1st defendant and the defendants 3 and 5 are the sons and the 4th defendant is the daughter of the 1st defendant through the 2nd defendant. The 1st item of the suit properties are the ancestral properties of the plaintiffs. The grand parents of the plaintiffs namely Chinnasasmy and Periya Govindammal had a son by name, Govindasamy, the 1st defendant herein and a daughter namely Alamelu. After the demise of Chinnasasmy and Periya Govindammal, the 1st



S.A.No.155 of 2020

WEB COPY

defendant took possession of the suit properties and other ancestral properties. The 1st defendant along with the plaintiffs constituted a joint family. When the plaintiffs were minors, the 1st defendant sold away the ancestral properties through sale deeds dated 20.08.1980, 21.10.1982 and 24.01.1986 to one Kaveri and Chinnasamy respectively. The above properties are shown as the first item of the schedule of properties in the present suit. The 1st defendant had sold away 7.45 acres of land in total. Out of the income derived from the above properties and from the sale proceeds, he purchased the 2nd item of the suit properties in his name. Hence, the 2nd item of properties are also ancestral properties of the joint family, though it stands in the name of the 1st defendant. While so, the 1st defendant developed illicit intimacy with the 2nd defendant and had four children, who are the defendants 3 to 5 in the above suit. Due to strained relationship with the 1st defendant, the plaintiffs demanded for their shares in the 2nd item of the suit properties through a registered partition deed. On 23.02.1987, a panchayat was convened before the village elders and a partition muchalika was written in which the 1st defendant and Periya



S.A.No.155 of 2020

WEB COPY

Govindammal along with the plaintiffs have subscribed their signatures.

As per the above partition muchalika, the 1st defendant and the plaintiffs took possession of their respective portion. From then onwards, the plaintiffs are jointly enjoying the 2nd item of properties, i.e., the lands comprised in patta Nos.130 and 159 along with unfinished house in patta No.130 by paying kists to the revenue department. The house tax and the electricity connection stands in the name of the plaintiffs, however, the patta for the suit land and other lands stands in the name of the 1st defendant. While so, on 22.10.2012 the plaintiffs came to know that the 1st defendant has created a gift deed in the name of the defendants 2 to 5 in respect of 2nd item of the suit properties, taking advantage of the patta in the name of the 1st defendant. The plaintiffs are alone in possession and enjoyment of 2nd item of the properties and in some portions, the defendants are in possession. The 1st defendant has no right to execute a gift deed in favour of the defendants 2 to 5 in respect of the 2nd item of the properties since the same was purchased by selling the 1st item of the suit properties and the same is construed to be the ancestral properties. Hence,



S.A.No.155 of 2020

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5. The claim of the plaintiffs was resisted on the side of the defendants stating that the 1st defendant legally married the 2nd defendant and the defendants 3 to 5 are their legitimate children. The 2nd item of properties and other properties were purchased by the 1st defendant from his own earnings and since then the 1st defendant is in exclusive possession and enjoyment of the above said properties. The properties were purchased by the 1st defendant even prior to selling of the 1st item of the suit properties. The plaintiffs along with their mother Chinnammal filed a suit in O.S. No.259/1999 for partition in respect of the 2nd item of the properties and the same was dismissed on 06.04.2004. The above fact was suppressed by the plaintiffs in the present suit. Though the plaintiffs in the present suit claimed that the 2nd item of suit properties absolutely belong to them as per the partition muchalika dated 23.02.1987 which is contra to



S.A.No.155 of 2020

WEB COPY

the allegations mentioned in above suit in O.S. No.259/1999. The 1st defendant was doing business and from his own earnings he purchased the 2nd item of the suit properties along with other properties and was in exclusive possession and enjoyment of the same. When the 1st defendant suffered loss in his business, the 2nd defendant gave her jewels to discharge the loans and for that the 1st defendant provided the lands in S. Nos 575/5, 576/4 and 567/1C to the 2nd defendant and handed over possession in the year 1984 and since then she is in exclusive possession and enjoyment of the above properties. The plaintiffs are well aware of the said facts, but did not question the same. Patta was also issued in favour of the 2nd defendant for the above properties and she is paying kists for the same. Hence, the 2nd defendant had perfected her title by adverse possession in the above properties. On 13.01.2012, the 1st defendant executed a settlement deed in favour of the defendants 4 and 5 in respect of 2nd item of the suit properties and some other properties and handed over possession of the same. Since then, the defendants 4 and 5 are in exclusive possession and enjoyment of the above properties by paying kists to the



S.A.No.155 of 2020

WEB COPY

Government. It is further submitted that, the marriage between the first wife Chennammal and the 1st defendant was dissolved in the village through customary practice in the year of 1969 and subsequently the 1st defendant married the 2nd defendant as per Hindu custom. It is false to state that the plaintiffs and the 1st defendant convened a panchayat in their village on 23.02.1987 and the properties were partitioned. Hence, prayed for dismissal of the suit.

6. Based on the above pleadings, the trial court framed appropriate issues. Having considered all the materials on record, the trial court dismissed the suit. Aggrieved by this, the plaintiffs preferred the appeal suit in A.S. No.88/2017 before the Principal District Court, Uthankarai. The first appellate court allowed the appeal and decreed the suit filed by the plaintiffs by its judgment and decree dated 02.07.2019. Challenging the same, the present Second Appeal is preferred by the defendants.

7. The second appeal has been admitted on the following substantial



S.A.No.155 of 2020

WEB COPY questions of law:

"a) Whether the Lower Appellate Court is correct in holding that the unregistered document Ex.A1 is a valid one?

b) Is the Lower Appellate Court correct in decreeing the suit on the basis of unregistered document Ex.A1?"

8. The learned counsel for appellants/defendants submits that the first appellate court erred in decreeing the suit on the basis of an unregistered document marked as Ex.A1. He would submit that since Ex.A1 panchayat muchalika is an unregistered document, the same is inadmissible in evidence. It is further submitted that the above document was created after dismissal of the suit in O.S. No.259/1999. The learned counsel further submits that the 2nd item of the properties were purchased even prior to selling of 1st item of the suit properties out of the income of

Page 9 of 18



S.A.No.155 of 2020

WEB COPY

the 1st defendant and therefore, the same cannot be construed as ancestral properties. The first appellate court failed to appreciate the above facts and erroneously decreed the suit in favour of the respondents/plaintiffs which warrants interference by this Court.

9. On the other hand, the learned counsel for the respondents / plaintiffs submits that, Ex.A1 panchayat muchilika does not require registration and the 2nd defendant herself admitted that the 1st defendant had no means to purchase the properties mentioned in the gift deed. Hence, it is made clear that the 2nd item of the properties are not the self acquired properties of the 1st defendant. The 2nd defendant failed to produce any document to show her possession and enjoyment in the suit properties. Moreover, except the 5th defendant none other witnesses were examined to support the case of the defendants. The first appellate court rightly decreed the suit in favour of the plaintiffs which calls for any interference by this Court.



S.A.No.155 of 2020

WEB COPY

10. Heard on both sides. Records perused.

11. The first and foremost contention of the learned counsel for the appellants / defendants is that Ex.A1 partition muchiaika is an unregistered document inadmissible in evidence and therefore, the first appellate court erred in decreeing the suit in favour of the plaintiffs based upon the unregistered document.

12. Firstly, the difference between the family arrangement and panchayat muchalika has to be dealt with. A 'family arrangement' is a broad, often informal, agreement between family members to secure peace and harmony and avoid litigation. The purpose is to settle existing or potential disputes and ensure an equitable distribution of assets based on an assumption of an antecedent title or claim, rather than creating a new one. An oral family arrangement does not require registration. A written document of a past oral arrangement for the purpose of the record or for



S.A.No.155 of 2020

WEB COPY

information of the court for making necessary mutation is also generally exempted from compulsory registration. Because in such a case, the memorandum does not create or extinguish any rights in immovable properties and therefore, does not fall within the mischief of Section 17(2) the Registration Act and is, therefore, not compulsorily registrable. If a document is a memorandum of a previous oral settlement, it can be used as corroborative evidence to explain the conduct of the parties. Whereas, a 'muchalika' generally implies a written obligation or agreement. When this is executed before a panchayat, it records the terms settled by the parties, often with the panchayat members as witnesses or facilitators. The purpose is to see, it functions as an agreement or a record of a local settlement, which may or may not be related to a family dispute. If a panchayat muchalika is merely a memorandum of an oral family arrangement, it may not require registration. However, if the document itself is the instrument that creates, assigns, or extinguishes rights in immovable properties worth a hundred rupees or more, it is compulsorily registrable under the Registration Act, 1908. An unregistered muchalika that purports to create



S.A.No.155 of 2020

WEB COPY

or transfer property rights is generally inadmissible as evidence of title in a formal court of law, except possibly for 'collateral purposes', for example, to prove possession, but not ownership.

13. Now the truth and validity of Ex.A1 panchayat muchika has to be analysed. According to the plaintiffs in the present suit, there was a panchayat muchallika, which was marked as Ex.A1 in which the 2nd item of the suit properties were given to the plaintiffs and to their grand mother Periya Govindammal. However, the said panchayat muchalika was denied by the defendants contending the same as a fabricated document. Admittedly Ex.A1 is an unregistered document. It is also not in dispute, even after execution of Ex.A1 panchayat muchalika, on 23.02.1987, the plaintiffs have filed a suit in O.S. No.259/1999 for partition. The defendants have stoutly denied the truth and validity of Ex.A1 by stating that the same is an unregistered document inadmissible in evidence and the same is a fabricated one. The suit is filed by the plaintiffs to declare their title over the 2nd item of the suit properties under Ex.A1 partition



S.A.No.155 of 2020

WEB COPY

muchalika. On a cursory perusal of the above document, it is seen that the rights of the parties are created on the date of execution of Ex.A1 partition muchalika, which necessarily be stamped and registered. A document which creates or extinguishes right of a person in the present or in future of the value of rupees hundred and upwards in an immovable property is compulsorily registrable under the Registration Act and cannot be admitted unless registered. Hence, the first appellate court ought not to have decreed the suit based on Ex.A1 panchayat muchalika which is an unregistered document.

14. Now, the validity of the settlement deed also has to be scrutinized. In the plaint it is claimed that the suit 2nd item of the properties are ancestral and the same has been purchased from the sale proceeds by selling the 1st item of the suit properties. But, the documents marked as Ex.B1 to Ex.B5 and Ex.B7 to Ex.B9 shows that the 2nd item of the suit properties were purchased much prior to selling the 1st item of the properties. However, one property under Ex.B6 has been sold prior to



S.A.No.155 of 2020

WEB COPY

purchase of the 2nd item of the suit properties. Moreover, the defendants failed to establish that the above properties were purchased independently by the 1st defendant out of his own income and that the 2nd item of properties are the self acquired properties of the 1st defendant. In fact the 2nd defendant herself admitted that the 1st defendant has no means to buy the 2nd item of the suit properties. In the absence of any evidence of separate income that was available with the 1st defendant enabling him to purchase the 2nd item of properties, the properties purchased by the 1st defendant should be held to be the ancestral properties and the gift deed executed by the 1st defendant in favour of the defendants 2 to 5 in respect of the 2nd item of the suit properties, cannot be held to be valid.

15. In the present case the plaintiffs failed to prove that they are the absolute owner of the 2nd item of the suit properties. Hence the plaintiffs are not entitled for declaration of title in the 2nd item of the suit properties. However, the relief granted by the first appellate court declaring the settlement deed dated 13.01.2012 executed by the 1st defendant in favour



S.A.No.155 of 2020

WEB COPY

of the defendants 2 to 5 as null and void is upheld. Since the plaintiffs and the defendants are co-sharers, at the most the parties can be relegated to file a suit for partition for their respective shares in the 2nd item of the suit properties.

16. In the result,

- i. The Second Appeal is partly allowed. No costs.
- ii. The judgment and decree dated 25.07.2019 passed in A.S. No.88 of 2017, on the file of the Principal District Court, Krishnagiri, is set aside with regard to declaration of title in the 2nd item of the suit properties. However, the relief granted by the first appellate court declaring the settlement deed dated 13.01.2012 executed by the 1st defendant in favour of the defendants 2 to 5 as null and void, is upheld.

14.11.2025

Index: Yes/No

Page 16 of 18



S.A.No.155 of 2020

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

To

1. The Principal District Court, Krishnagiri.
2. The Subordinate Court, Uthangarai.
3. The Section Officer, VR Section, High Court, Madras.



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S.A.No.155 of 2020

K.GOVINDARAJAN THILAKAVADI,J
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Pre delivery Judgment in
S.A.No.155 of 2020

14.11.2025