



S.A.No.60 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	21.08.2025
<i>Pronounced on</i>	14.11.2025

Coram:

The Honourable Mrs.Justice K.GOVINDARAJAN THILAKAVADI

Second Appeal No.60 of 2020
and C.M.P.No.1215 of 2020

- 1.Kuppathal (died)
- 2.Veerathal

[*A1 died, A2 is only legal heir of the deceased A1 memo recorded vide Court order dated 04.07.2025 made in S.A.No.60 of 2020)

.. Appellants

versus

Gopalakrishnan (died)

- 1.Selvi
- 2.Udayakumar
- 3.Nagaraj

.. Respondents



S.A.No.60 of 2020

WEB COPY

Prayer: Second Appeal is filed under Section 100 CPC, praying to set aside the judgment and decree dated 21.08.2019 made in A.S.No.58 of 2017 on the file of the learned Subordinate Judge, Kangeyam, confirming the judgment and decree dated 22.12.2015 made in O.S.No.41 of 2012 on the file of the learned District Munsif, Kangeyam.

For Appellants : Mr.S.Subbiah, Senior Advocate
for Ms.Elizabeth Ravi
Mr.P.Raja
Mr.D.Venkateswara Rao
For Respondents : Mr.K.Govi Ganesan
for R1 to R3

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 21.8.2019 passed in A.S.No.58 of 2017 on the file of the learned Subordinate Judge, Kangeyam, confirming the judgement and decree dated 22.12.2015 passed in O.S.No.41/2012 on the file of the learned District Munsif Court, Kangeyam.



S.A.No.60 of 2020

WEB COPY

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

3.The plaintiffs in O.S.No.41/2012 are the appellants in the second appeal.

4.It is a suit for declaration of title and for permanent injunction. The case of the plaintiff, in brief, is that the plaintiffs are mother and daughter. They are the legal heirs of Ramasamy goundar and Appadurai. The said Appadurai is the husband of the 1st plaintiff and father of the 2nd plaintiff while the said Ramasamy goundar is the grand father of the 2nd plaintiff and father-in-law of the 1st plaintiff. The 1st item of the suit property was mortgaged by Ramasamy gounder along with his brother Velusamy. Thereafter, the mortgage was discharged by Velusamy who got a sale deed in his name. After the said purchase, the 1st plaintiff by selling her jewels contributed for the sale consideration in purchasing the portion of the property from Velusamy in the name of Ramasamy on 03.10.1966. The said



S.A.No.60 of 2020

WEB COPY

Ramasamy was the eldest member of the family and therefore, the sale deed was executed in his name. There was a partition between Ramasamy and her son in which the 1st item of the suit property was allotted to Ramasamy who has enjoying the property with the plaintiffs till his death in 1971. His son Appadurai died on 13.11.1972 . The 2nd item of the property was settled by the father of the 1st plaintiff namely Chellappa Goundar on 28.08.1978. Hence, the suit properties are in the exclusive possession of the plaintiffs. While so, the defendant attempted to trespass into the suit properties without any authority. Hence, the suit.

5.On the other hand, the defendant would contend that the 1st item of the property was enjoyed by Ramasamy as his separate property. After purchasing the property in 1966, there was a partition between Ramasamy and his Son Appadurai. Therefore, there was no joint family and joint family properties. The 1st item of the property was sold by the Ramasamy to the



S.A.No.60 of 2020

WEB COPY

father of the defendant namely Ramasamy chetty under sale deed dated 06.01.1970 and possession was also handed over. The said property along with other properties were bequeathed to the defendant by a Will executed by his father Ramasamy Chetty. There was a partition suit between the defendant and his sisters. While so, the plaintiff colluding with her husband Appadurai filed a suit for maintenance and tried to bring the 1st item of the suit property for auction. Thereafter, the father of the defendant filed a suit in O.S.No.889/1971 for declaration and permanent injunction in which the present plaintiffs were also made as parties and the suit was decreed in favour of the defendant's father on 13.02.1974. The present suit is filed for the very same property and therefore, the suit is barred by *res judicata*. The 1st item of the property is in continuous possession of the defendant. Hence, prayed for dismissal of the suit.

6.On an appreciation of the materials placed on record, both oral and documentary and the submissions putforth by the respective parties, the



S.A.No.60 of 2020

WEB COPY

Courts below declined the relief claimed by the plaintiffs. While challenging the decree of the trial Court before the First Appellate Court, the defendant Gopalakrishnan died and his legal representatives were impleaded. The First Appellate Judge, on a re-appreciation of evidence dismissed the appeal suit. Challenging the same, the present second appeal has been preferred by the plaintiffs.

7. At the time of the admission of the second appeal, the following substantial questions of law were formulated for consideration:

" 1. When items 1 and 2 of the suit property are totally different and the finding in relation to item 1 of the suit property could not be in any manner inconsistent with the findings relating to item 2 whether the Appellate Court can invoke any powers under Order XLI Rule 33 of the Code of Civil Procedure, even to dismiss the suit in its entirety?

2. When the defendants themselves did not claim any right in respect to one of the items and a decree having been passed in favour of the plaintiffs in respect of that item whether the Appellate Court is justified in dismissing



S.A.No.60 of 2020

WEB COPY

the suit in its entirety and whether such dismissal is without any power or jurisdiction?"

8.The suit has been laid by the plaintiffs for declaration of title and for permanent injunction. The sum and substance of this second appeal is that whether the 1st appellate Court is justified in dismissing the suit in its entirety by invoking the powers under Order 41 Rule 33 of the Code of Civil Procedure. Admittedly, the defendants are not claiming any right over the 2nd item of the suit property. The dispute is only with regard to the 1st item of the property. According to the defendant, the said Ramasamy and his son Appadurai have partitioned the property and therefore, there was no joint family and joint family properties. The 1st item of the suit property was sold by the said Ramasamy to the defendant's father Ramasamy chetty under Sale deed dated 06.01.1970. While so, the 1st plaintiff and her



S.A.No.60 of 2020

WEB COPY

husband colluded together and tried to bring the 1st item of the suit property for auction. Hence, the defendant's father filed a suit in O.S.No.889/1971 for declaration and permanent injunction and obtained a decree in his favour on 13.02.1974. Hence, the suit is barred by the principles of *res judicata* and that the defendant is alone in possession of the 1st item of the suit property. The plaintiffs herein were shown as defendants 2 & 3 in the above suit. Where as, the contention of the plaintiff is that the 1st item of the suit property is a joint family property purchased in the name of Ramasamy Goundar, as he was the eldest member of the family. After his demise, his son Appadurai possessed the 1st item of the property till his death and thereafter the plaintiffs are in possession and enjoyment of the 1st item of the suit property. It is not established on the side of the plaintiff that, the subject matter in O.S.No.889/1971 is different. It is not in dispute that the present plaintiffs are defendants 2 & 3 in the above suit. No appeal has been preferred by the plaintiffs against the judgement and decree passed in



S.A.No.60 of 2020

WEB COPY

O.S.No.889/1971. Therefore, the decree passed in the above suit has become final with regard to the 1st item of the suit property. The 1st Appellate Court has rightly held that, the plaintiffs having lost their right and title even in 1974, cannot again re-agitate the same issue in respect of same property after 38 years. Since the defendants have no claim over the 2nd item of the property, no cause of action arose in respect of the 2nd item of the property. It is not established on the side of the plaintiffs that the defendant is attempting to disturb the possession and enjoyment of the plaintiffs in respect of the 2nd item of the suit property. A Suit cannot be decreed in respect of an item of property for which no cause of action arose. A valid cause of action, which is a set of facts entitling a party to sue, is the foundation of a civil suit, and a decree cannot be granted without it. If the plaintiff fails to show a right to sue for that specific property, the suit will fail concerning that item, though it may proceed for other items with a valid cause of action. The reason is that, a suit requires a valid cause of action to



S.A.No.60 of 2020

WEB COPY

proceed. Without it, there is no legal basis to seek a remedy from the Court for that particular property. If the suit involves multiple items of property and a different cause of action for each, the lack of a cause of action for one item will prevent it from being decreed. However, the suit may still be decreed for the other items of property for which a valid cause of action exist. But, for the item where no cause of action arose, the Court will not grant a remedy. In the present suit, the plaintiffs have filed the above suit for two items, and since the defendant has no objection for the 2nd item of the suit property, there is no legal basis to grant a decree in favour of the 2nd item of the suit property. Hence, the 1st appellate Court rightly felt that there is no necessity to grant a decree in respect of the 2nd item of the property in favour of the plaintiff. The substantial questions of law are answered against the appellants/plaintiffs.

9.In view of the above said discussion, this Court is of the considered view that the judgment and decree passed by the First Appellate Court is



S.A.No.60 of 2020

WEB COPY

perfectly valid and no interference is warranted.

10.In the result,

(i) the second appeal is dismissed.

(ii) the judgment and decree dated 21.08.2019 made in A.S.No.58 of 2017 on the file of Subordinate Judge, Kangeyam, confirming the judgment and decree dated 22.12.2015 made in O.S.No.41 of 2012 on the file of the learned District Munsif, Kangeyam is upheld. No costs. Consequently, connected miscellaneous petition is also closed.

14 .11.2025

vsn

Index: Yes/No

Speaking order / Non-speaking order

To

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

11



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S.A.No.60 of 2020

K.GOVINDARAJAN THILAKAVADI,J.

vsn

**Pre- delivery judgment made in
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