



A.S.No.143 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated:24.03.2025

Coram:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

A.S.No.143 of 2025

Sornambal,
W/o Duraisamy,
Sellakuttipalayam,
Alandur Post,
Kavundapadi Via,
Bhavani Taluk.

.. Appellant/1st
Respondent/Plaintiff

/versus/

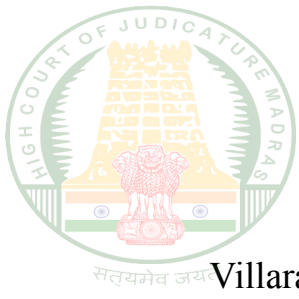
1.Kannagi,
W/o Balasubramaniam,
No.11, Vidhya Nagar,
Valliammal Illam,
Thindalmedu, Erode.

..1st Respondent/ petitioner/5th defendant

Nallasamy (died)

2.Saraswathi,
W/o Nallasamy,

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Villarasampatti,
Erode Taluk, Erode.

3.Jayachandran,
S/o Nallasamy,
Villarasampatti,
Erode Taluk, Erode.

4.Sathishkumar,
S/o Nallasamy,
Villarasampatti,
Erode Taluk, Erode.

.. Respondent Nos.2 to 4/Respondent
Nos.2 to 4/Defendants 2 to 4

Appeal suit has been filed under Section 96 r/w Order 41 Rule 1 and 2 of C.P.C., praying to set aside the fair and final order dated 12.08.2024 made in I.A.No.02 of 2022 in O.S.No.113 of 2017 on the file of I Additional District Judge, Erode and to allow the First Appeal.

For Appellant :Mr.V.Anandhamoorthy
For Respondents :Mr.A.Sundaravadhanam for R1
R2 to R4 No appearance



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JUDGMENT

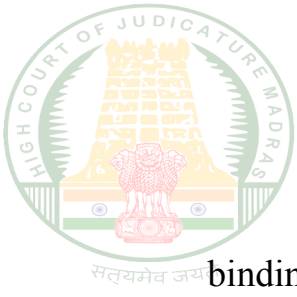
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Challenge is made against the decree and judgment of the trial Court rejecting the plaint filed by the plaintiff. The plaintiff has filed a suit for partition, separate possession and permanent injunction.

2. The case of the plaintiff is that that the properties are ancestral properties. Her father Ramasamay Gounder died 40 years ago leaving behind the plaintiff and the first defendant. The second defendant is the wife of the first defendant. The defendants 3 and 4 are the children of the defendants 1 and 2.

3. According to the plaintiff, the properties are the ancestral properties. However, the first defendant had entered into a registered partition deed on 14.09.1990 along with the other co-sharers wherein, the plaintiff is not a party to the said document. Hence, the suit document is not

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binding on the plaintiff. Taking advantage of the said partition deed, the defendants 1 to 4 had executed certain documents to the third party and the same will not bind on the plaintiff. The plaintiff is also impleaded in the Execution Petition in E.P.No.22 of 2011 arising out of the suit in O.S.No.646 of 1993. Hence, the plaintiff filed a suit in respect of S.Nos.186/4, 185/4,184/4,5, 193/2C and 193/3C for a total extent of 5.68 acres.

4. It appears that on the side of the plaintiff, PW-1 and PW-2 were examined and Ex.A1 to Ex.A4 were marked and PW-1 was also cross examined.

5. At this stage, the fifth defendant filed an application to reject the plaint on the ground that an extent of 3.00 acres in S.F.No.193/3C was agreed to be sold to the fifth defendant by virtue of the agreement dated 14.06.1988 and 09.06.1989. That agreement culminated into the sale by



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virtue of the decree passed in O.S.No.646 of 1993. Against the judgment and
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decree of O.S.No.646 of 1993, A.S.No.986 of 1997 and 120 of 1998 and
Tr.A.S.No.116 of 2003 were also dismissed by confirming the judgments
and decrees of the trial Court. Hence, according to her, in those proceedings,
the partition deed dated 14.09.1990 was held to be not valid and created only
to defeat the agreement in favour of the fifth defendant. On the basis of the
said application, the trial Court has rejected the plaint. Challenging the same,
the present Appeal Suit is filed.

6. The learned counsel appearing for the appellant would mainly
submit that the suit has been filed not only in respect of S.No.193/3C, but
also for the other survey numbers. The specific performance suit relates to
S.No.193/3C in respect of 3.00 acres. Even that proceedings reached
finality, the plaintiff's right in respect of other survey numbers cannot be
non-suited citing the specific performance decree in O.S.No.646 of 1993.

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7. Per contra, the learned counsel appearing for the respondents would mainly submit that as far as 3.00 acres of land has been registered in favour of the fifth defendant pursuant to the decree of the court, this Court in A.S.No.986 of 1997 and A.S.No.120 of 1998 clearly held that the partition deed dated 14.09.1990 has been created for the purpose of circumventing the agreement of sale. The above finding has been recorded by this Court in these appeals. Therefore, as far as the three acres of land is concerned, the suit cannot be maintained.

8. In the light of the above submissions, now the point arises for consideration in this appeal is that, whether the trial Court is right in rejecting the suit merely on the basis of the earlier suit filed for specific performance and reached finality in respect of the three acres in the suit survey numbers.

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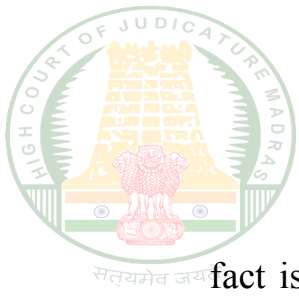
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9. Point:-

The suit has been filed for claiming partition on the ground that the entire property is ancestral property. However, the partition deed dated 14.09.1990 has been entered without the presence of the plaintiff and her mother. According to the plaintiff, the said partition deed is not binding on the plaintiff. Hence, she sought partition in respect of various survey numbers one such survey number is 193/3C. Whereas the main contention of the fifth defendant is that as far as the three acres in S.No.193/3C is concerned, the agreement came to be executed on 14.06.1988 and 09.06.1989 which was the subject matter of the suit property in O.S.No.646 of 1993, which was decreed for specific performance. Against the said decree and judgment, the appeal had been filed and the same is also confirmed by this Court and against the said judgment, S.L.P was filed before the Hon'ble Supreme Court and the same was also dismissed. This

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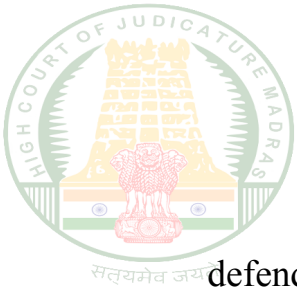
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fact is also not disputed. While dismissing the appeal, this Court has held that the partition deed dated 14.09.1990 has been created only to circumvent the agreement for sale and granted the decree. The fact remains that the plaintiff is not a party in that suit.

10. Be that as it may, now, it is stated by the learned counsel appearing for the appellant that even if three acres of land, which was decreed in O.S.No.646 of 1993, is to be left out, the plaintiff is still entitled for the partition in respect of the other survey numbers.

11. In such view of the matter, this Court is of the view that one of the survey number i.e S.F.No.193/3C, which was the subject matter of the suit in O.S.No.646 of 1993 filed for specific performance, to be excluded in the suit. It is to be noted that the suit has been filed for a larger extent more than five acres. Merely because the property registered in the name of the fifth

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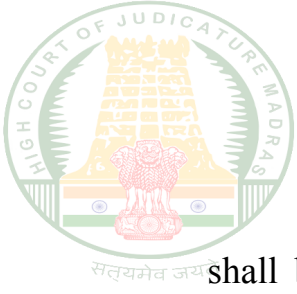
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defendant is also included, the entire suit property cannot be rejected. The trial Court in fact has not even gone into the survey number of the property and just carried away by the application filed and earlier decree passed. Even the specific item has also been sold as observed by this Court in A.S.No.986 of 1997 is excluded, the plaintiff still can maintain the suit in respect of the other properties. In such view of the matter, rejection of entire plaint cannot be sustained in the eye of law.

12. In the result, this Appeal Suit is allowed. The fair and final order dated 12.08.2024 made in I.A.No.2 of 2022 in O.S.No.113 of 2017 on the file of I Additional District Judge, Erode is hereby set aside. The trial Court shall proceed with the trial and the trial Court will also permit the plaintiff to make necessary amendment for deletion of three acres, which was sold in favour of the fifth defendant in S.F.No.193/3C and also permit the plaintiff to delete the fifth defendant from the array of parties in the suit and the suit

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shall be proceeded in respect of other survey numbers for the remaining
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property. The plaintiff is also permitted to adduce additional evidence in
respect of the remaining properties other than the property measuring to an
extent of 3.00 acres in S.F.No.193/3C. There shall be no order as to costs.

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Index:yes/no

Speaking order/non speaking order

Neutral citation:yes/no

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To

I Additional District Judge, Erode.



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N.SATHISH KUMAR, J.

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