



A.S.No.1146 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

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Date : 03.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.1146 of 2024 & CMP.No.29497 of 2024

1. K.Vasantha
2. G.Kumar

Versus

K.Vatsala [since deceased]

1. M.Gopi
2. R.Narayani
3. .Dhakshayini
4. R.Roopavathi
5. N.Roja
6. Sulochana @ R.Parameswari
7. V.Andal
8. K.Gopal
9. R.Yashodha
10. Y.Mohana
11. M.Poorani
12. Lalitha
13. Sushila

Kalpana [Since deceased]

[Represented by mother second and brother of 4th defendant]

14. Minor Jagan

[Rep. by mother and guardian 2nd defendant herein]



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15. S.Jacqueline Roasario

16. C.Munian

17. M.Venkatesan

18. Richard Aloysius

Represented by his Power /Agent Sivanesan

... Respondents

PRAYER : This Appeal Suit has been filed under section 96 of Code of Civil Procedure to set aside the judgment and decree dated 12.08.2024 made in O.S.No.11993 of 2010 on the file of the XIX Additional Judge, City Civil Court, Chennai and consequently, allow the first appeal.

For Appellants : Mr.A.M.Krishnamurthy

For Respondents : Mr.P.Sunil – R2 to R11

No appearance for R12, 13, 14 and 17

R1 – No such person

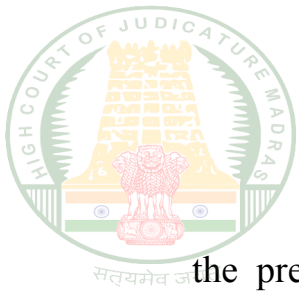
R15 – unserved [vacated]

R16 – unserved

R18 – not known

JUDGMENT

Challenge has been made against the preliminary decree passed by the trial Court allotting 1/10th share to the plaintiffs 2 to 8 separately and 9 to 12 jointly in the suit properties and decreeing the suit for permanent injunction, in



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the present appeal by the defendants 6 and 7, who are purchasers of the property from the defendants 2 to 4.

2. The parties are arrayed as per their own ranking before the trial Court.

3. The plaintiffs and the first defendant are sisters. The second defendant is the wife of Selvaraj, brother of the plaintiffs and the first defendant. The defendants 3 and 4 are daughter and son of the second defendant. The father of the plaintiffs and the first defendant Ramanjulu Naidu purchased the first item of the suit property under a registered sale deed dated 27.12.1945. Thereafter, he and his wife have purchased following agricultural lands :

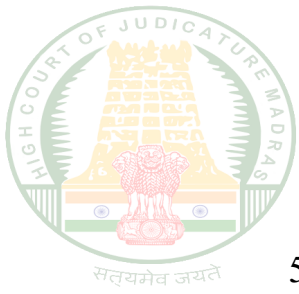
<i>Sl. No.</i>	<i>Particulars of sale deed</i>	<i>Name of the purchaser</i>	<i>Extent of property</i>
1.	Sale Deed No.2744/1963 dt.20.06.1963	Ramanjulu Naidu	4 Acres 33 cents
2.	Sale Deed No.2129/1963 dt.10.06.1963	Ramanjulu Naidu	1 Acre 84.5 cents
3.	Sale Deed No.1946/1956 dt.17.06.1956	Ramanjulu Naidu	2 Acres
4.	Sale Deed No.210/1956 dt.31.03.1956	Ramanjulu Naidu	1 Acre 36 cents
5.	Sale Deed No.2340/1970 dt.15.06.1970	Chandrakandaammal	63 cents



Sl. No.	Particulars of sale deed	Name of the purchaser	Extent of property
6.	Sale Deed No.793/1971 dt.30.04.1971	Chandrakandaammal	79 cents

According to them, the properties have been purchased with self acquired income. The said Ramanjulu Naidu died on 21.03.1980 leaving behind his wife Chandrakandammal, plaintiffs 1 to 8 and the first defendant and their only son Selvaraj as his legal heirs. Chandrakandaammal executed a settlement deed dated 29.06.1989 in favour of her son Selvaraj in respect of the first item of the suit property without any right. Chandrakandaammal is entitled to only 1/11th share in the first item of the property. She died on 24.10.1994. Selvaraj also died on 11.08.2000. Hence, the suit claiming 1/10th share.

4. The fifth defendant filed a written statement contending that the settlement deed executed by Chandrakandaammal is not binding on him, it is his contention that he is entitled to 1/10th share in the first item of the suit property. It is his further contention that the revenue records in respect of first item of the property stands in the name of the defendant Nos.2 to 4.

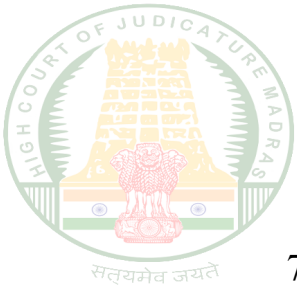


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5. The defendants 6 and 7 took a stand that they purchased 1 acre and 8 cents from the defendants 2 to 4 under a registered sale deed dated 22.01.2007. The sixth defendant had purchased the suit property in survey No.47/1, 0.35 cents and and 29/3A 0.40 cents totally measuring 75 cents from the defendants 2 to 4 on the same day. Hence, they are bonafide purchaser of the suit property for a valuable sale consideration.

6. The 10th defendant took a stand that Ramanjulu Naidu died on 21.03.1980 leaving behind his widow and the plaintiffs, late Selvaraj and the first defendant as his legal heirs. On the death of Ramanjulu Naidu, male legal heir Selvaraj and widow Chandrakandaammal alone are successors to the estate of Ramanjulu Naidu. The settlement deed executed by Chandrakandaammal is a valid document. It is his further contention that Ramanjulu Naidu had executed a Will dated 21.01.1980 bequeathing the first item of the property in favour of his wife Chandrakandaammal and his son Selvaraj. The first item of the property is owned by this defendant. Therefore, the plaintiffs are not entitled for any partition.



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7. On the basis of the above pleadings, the following issues have been framed by the trial Court :

1. Whether the alleged oral partition in respect of suit property between Ramanujulu and Chandrakandammal is proved by 10th defendant?
2. Whether Ramanujulu Naidu has executed unregistered Will dated 20.01.1980 in favour of Chandrakandammal pertaining to suit properties is true and valid?
3. Whether settlement deed No.874/1989 dated 29.06.1989 executed in favour of her late son Selvaraj is valid and binding upon the plaintiffs?
4. Whether the Sale Deed executed in favour of defendants 5 to 7 are sustainable and binding upon the plaintiffs?
5. Whether the suit is barred by limitation as alleged?
6. Whether plaintiffs are entitled to the relief of partition of 1/10th share each in the suit property as sought for?



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7. Whether plaintiffs are entitled to the relief of permanent injunction as sought for?

8. Whether suit is vitiated for want court fees as alleged?

9. To what relief, if any, the parties are entitled?

8. On the side of the plaintiffs, P.W.1 has been examined and Ex.A.1 to Ex.A.13 have been marked. On the side of the defendants, D.W.1 to D.W.3 have been examined and Ex.B.1 to Ex.B.30 have been marked.

9. The trial Court considering entire evidence, granted preliminary decree for partition declaring 1/10th share for the plaintiffs 2 to 8 separately and 9 to 12 jointly and also granted permanent injunction in favour of the plaintiffs. Challenging the same, the subsequent purchasers have filed the present Appeal Suit.

10. The main contention of the appellants before this Court is that based on the settlement executed by Chandrakandammal in favour of her son



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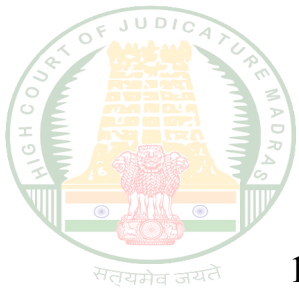
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Selvaraj, the appellants have purchased the property from the legal heirs of the said Selvaraj. Therefore, according to him, at any event, Selvaraj had 1/10th share in the suit property. The appellants step into the shoes of the Selvaraj and therefore, their right have to be determined.

11. Whereas, it is the contention of the learned counsel appearing for the respondents that the Will and the settlement deed has not been established. Therefore, the same is not binding on the plaintiffs.

12. In the light of the above submissions, the points that arise for consideration are as follows :

1. Whether the settlement deed executed by Chandrakandammal is valid in the eye of law and the purchase made by the appellants convey absolute title?
2. To what relief the parties are entitled?



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13. Point Nos. 1 & 2 :

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The crux of the issue is with regard to the validity of the settlement deed and Will executed by the said Chandrakandammal. Admittedly, the suit property has been purchased by one Ramanujulu Naidu. The plaintiffs and the first defendant are the daughters of the Said Ramanujulu Naidu and Chandrakandammal. Besides the plaintiffs and the first defendant, they had one son Selvaraj. After the death of the said Selvaraj, his wife and children have also been impleaded as a party in the suit. The appellants have purchased the property from the legal heirs of the deceased Selvaraj. They are tracing their title based on the Will executed by Ramanujulu Naidu in favour of his wife Chandrakandammal followed by a settlement deed executed by the said Chandrakandammal in favour of her son Selvaraj.

14. A perusal of entire materials reveals that the so called Will has been executed by the said Ramanujulu Naidu on 21.01.1980. Only a xerox copy of the Will has been filed. The original Will has not been filed and loss of the original Will has not been accounted. Be that as it may. None of the attesting



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witness has been examined to prove the Will. It is relevant to note that the Will has been executed at Saidapet, Madras. Therefore, the Will has to be necessarily probated. As per Section 57 of the Indian Succession Act coupled with Section 213 of the said Act, unless the probate is obtained or letters of administration is granted, no right can be established in any Court of law by the executor or legatee.

15. That apart, the Will has not been proved in the manner known to law. None of the witnesses have been examined to prove the Will. Therefore, it cannot be said that the Will has conveyed title to Chandrakandammal. Therefore, the execution of settlement deed by the said Chandrakandammal, in eye of law, also will not convey any title to the said Selvaraj, since, she herself did not get the property as the Will has not been probated. In such view of the matter, this Court is of the view that the trial Court is right in decreeing the suit for partition. The appellants claim to have purchased the property from the co-sharers. The said sale will be valid only in respect of the share of their



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vendor and they step into the shoes of their vendor and they can work out their remedy in the final decree proceedings. They can also seek for supplementary preliminary decree for allotment of 1/10th share held by the their vendor subject to payment of necessary court fee.

16. With the above observations, this Appeal Suit is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no Order as to costs.

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Index : Yes / No
Internet: Yes
Speaking/non speaking order

vrc

To,

The XIX Additional Judge,
City Civil Cout, Chennai.

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N. SATHISH KUMAR, J.

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