



S.A.Nos.20 & 21 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	29.08.2025
Pronounced on	21.11.2025

CORAM

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

S.A.Nos.20 & 21 of 2019 and C.M.P. No.374 of 2019

P. Kandasamy ...Appellant in both the appeals
Vs.

1. N.S.Perumal
2. K. Govindaraj ...Respondents in S.A. No.20/2019

1. K. Govindaraj
2. Nagasamy Reddy
3. Velayutham ...Respondents in S.A. No.21/2019

Prayer in S.A. No.20 of 2019 : Second Appeal filed under Section 100 CPC, 1908 against the judgment and decree dated 19.07.2017 passed in A.S. No.28 of 2014, on the file of the Sub Court, Tiruttani, confirming the Judgment and decree dated 28.11.2011 passed in O.S.No.96 of 2009, on the file of the District Munsif Court, Tiruttani.



S.A.Nos.20 & 21 of 2019

WEB COPY

Prayer in S.A. No.21 of 2019 : Second Appeal filed under Section 100 CPC, 1908 against the judgment and decree dated 19.07.2017 passed in A.S. No.3 of 2013, on the file of the Sub Court, Tiruttani, reversing the Judgment and decree dated 28.11.2011 passed in O.S.No.8 of 2005, on the file of the District Munsif Court, Tiruttani.

For Appellant : Mr. S. Sathia Chandran
for Mr. D. Ashok Kumar
(in both the appeals)

For Respondents : Ms. S. Shyamala
for Mr. C. Chokkalingam
for R1 and R2 in S.A. No.20/2019
for R1 in S.A. No.21/2019
R2 & R3 given up in S.A.No.21/2019
(endorsement made in the bundle)

COMMON JUDGMENT

Challenge in these Second Appeals is made to the common judgment and decree dated 19.07.2017 passed in A.S. No.3 of 2013 and A.S. No.28 of 2014 on the file of the Sub Court, Tiruttani, reversing the common judgment and decree passed in respect of O.S. No.8/2005 and confirming O.S. No.96/2009 dated 28.11.2011 on the file of the District Munsif Court, Tiruttani.



S.A.Nos.20 & 21 of 2019

WEB COPY

2. The suit in O.S. No.8/2005 is filed by one Govindaraj against the defendant Nagasamy Reddy, Velayutham and one Kandasamy for declaration of title and permanent injunction. According to the plaintiff, the suit property originally belongs to one Appavoo Reddy, S/o. Mangapathy Reddy of Pattabhiramapuram Village. Appavoo Reddy married one Govindammal in the year 1947 while he was in Malaysia and a son by name Govindasamy was born to them. Appavoo Reddy again married Apurupammal at Malaysia in the year 1949 as his second wife and had three daughters. He came to India leaving his two wives and children. The first wife Govindammal then came to India along with her son Govindasamy and lived at Pattahiramapuram along with him. Her son Govindasamy died at the age of 18 years unmarried. Appavoo Reddy brought his youngest daughter Rathinammal born to Apurupammal to India and married her to one Manicka Reddy. Appavoo Reddy, Govindammal, Rathinammal and her husband Manicka Reddy lived together at pattabhiramapuram by cultivating the suit lands. Appavoo Reddy's second wife and her two daughters settled at Malaysia itself and they became citizens of that country. They did not come to India. Later



S.A.Nos.20 & 21 of 2019

WEB COPY

the said Apurupammal also died. Appavoo Reddy has executed a registered will dated 31.10.1975 bequeathing all his properties at Pattabhiramapuram to his daughter Rathinammal and then died on 10.12.1975. Rathinammal became the absolute owner of the said property mentioned in the suit schedule. She had patta for the items 1 to 3 of the suit property in her name and Patta for Item No.4 stands in her father's name under Patta No.23. Rathinammal was paying kist till her death on 01.05.2000 in respect of the suit property. Her husband Manicka Reddy predeceased her in or about 1995. They had no issues. So, her step mother Govindammal who is the only sole surviving legal heir succeeded to the suit property after the death of Rathinammal. Govindammal sold items 1 to 3 and 5 of the suit property to N.S. Perumal for valid consideration under registered sale deed dated 5.5.2000 and possession was also given to him. N.S. Perumal orally purchased the item No.4 of the suit property and took possession of the same. Plaintiff purchased the item No.1 to 5 of the suit property from N.S. Perumal under registered sale deed dated 4.3.2004 for valid consideration and took possession of the same. Even before 25.09.2003, Govindammal has given her right of



S.A.Nos.20 & 21 of 2019

WEB COPY

enjoyment of 2 C Patta mentioned in item N.6 to the plaintiff by executing an acceptance letter in his favour. Therefore, the plaintiff is the absolute owner of the suit properties. Since the Government has waived the land tax for two years due to drought the plaintiff has not paid any tax after his purchase. While, so the defendants without any right are attempting to interfere with the peaceful possession of the plaintiff over the suit properties. Hence, the plaintiff has come forward with the suit.

3. The claim of the plaintiff was resisted by the defendants 1 and 2 by stating that Appavoo Reddy has not married the aforesaid Govindammal and no son was born to her through him. In the year 1981 Rathinammal sold the suit properties to the defendants under oral sale for Rs.10,000/- and put the 1st defendant in possession of the suit properties. Rathinammal, the vendor of the suit properties handed over all the documents such as original registered Will dated 31.10.1975 executed by her father, house patta, revenue tax receipts, etc. standing in her name to the defendant. Hence the defendant is the absolute owner of the suit properties. Govindammal is a total a stranger to the family of



S.A.Nos.20 & 21 of 2019

WEB COPY

Rathinammal and hence she has no right, title over the suit properties.

Hence the sale under the sale deed dated 05.05.2000 by Govindammal to N.S. Perumal is not valid in law. Govindammal was married to a third person and she along with her sons and grand sons settled at Tiruchi. One Kandan has made unlawful claim over the suit properties and the defendant has filed a suit for declaration and injunction against him in O.S.NO.90 of 2001 and the said suit is pending. The said Kandan, Govindammal, Perumal and Govindaraj are relatives and created the suit. The defendant along with his son, the 2nd defendant are in enjoyment of the suit properties from 1981 and thus perfected his title by adverse possession also. Hence the suit has to be dismissed.

4. The 3rd defendant resisted the suit filed by the plaintiff by stating that the said Govindammal is in no way connected with Rathinammal and that she is not the legal heir of the said Rathinammal. The said Manicka Reddy, husband of Rathinammal is the junior paternal uncle of the 3rd defendant and younger brother of his father Periasamy Reddy. The said Manicka Reddy executed a registered will on 28.02.1985 in favour

Page 6 of 21



S.A.Nos.20 & 21 of 2019

WEB COPY

of the 3rd Defendant, his brother munusamy, and his another brother's daughter bequeathing all his immovable properties and the said Manicka Reddy died in the month of 1985 and the said Will came into force and the 3rd defendant and others became absolute owners of the suit properties. The 3rd defendant done all the last rites after the death of Manicka Reddy and thereafter Rathinammal was living with the 3rd defendant. Rathinammal also died on 01.05.2000 intestate leaving behind the suit properties without class I heirs. Her mother Apurvammal also died before her. The 3rd defendant is the class II legal heir of Rathinammal, as she is the paternal uncle's wife and after her death, the defendant took possession of the suit properties. He had paid kist in the name of Rathinammal. He had given a petition to the revenue people for transfer of patta in his name and the same is pending. The plaintiff or his vendor and defendants 1 and 2 have no right over the suit properties. There is no cause of action hence the suit has to be dismissed.



S.A.Nos.20 & 21 of 2019

WEB COPY

5. The 3rd defendant in O.S. No.8/2005 filed a suit in O.S.NO.96/09 against one N.S.Perumal and one Govindaraj, the plaintiff in O.S. No.8/2005, for declaration of title and interest in the schedule mentioned properties and for permanent injunction with the same averments mentioned in the written statement filed by him in O.S. No.8/2005.

6. The 2nd defendant resisted the suit, which was adopted by the 1st defendant, by stating that he is in actual possession and enjoyment of the suit property. He then filed the suit in O.S.8/2005 against Nagasamy Reddy and his son and got interim injunction against them, stating that the suit property belongs to Rathinammal who got it from her father Appavoo Reddy under registered will dated 31.10.1975 and she died intestate on 01.05.2000 without any issue. Her husband Manicka Reddy also died in the year 1995. Since Rathinammal got suit property from her father it had devolved upon the heirs of her father as per law. So her father's first wife Govindammal succeeded to the suit property. The said Govindammal validly sold the suit property to 1st defendant under a



S.A.Nos.20 & 21 of 2019

WEB COPY

registered sale deed dated 05.05.2000 and handed over possession. The 1st defendant sold the property to the 2nd defendant under registered sale deed dated 04.03.2004 and had given possession to him. The 2nd defendant is in actual possession of the suit property and he has got patta in his name and paying kist. The plaintiff is not in possession of the suit properties. There is no cause of action and hence the suit has to be dismissed.

7. The trial court upon considering the oral and documentary evidences adduced by the respective parties and the arguments advanced by the respective counsel, dismissed both the suits in O.S. No.8/2005 and O.S. No.96/2009 against which appeal suits in A.S. No.3/2013, A.S. No.28/2014 were preferred by the plaintiffs in the above suits.

8. The first appellate court upon considering the materials on record, allowed the appeal suit in A.S. No.3/2013 and dismissed the appeal suit in A.S.No.28/2014. Challenging the same, the present second appeals are preferred by Kandasamy, the 3rd defendant in O.S. No.8/2005



S.A.Nos.20 & 21 of 2019

and plaintiff in O.S. No.96/2009.

9. S.A. No.20 of 2019 has been admitted on the following substantial questions of law:

- i. *"Whether the courts below are correct in law in not decreeing the prayer of the plaintiff in O.S. No.96 of 2009 when it is admitted case that he is the nephew of Manicka Reddy, husband of Rathinammal and therefore under Section 15(1)(b) of the Hindu Succession Act, he being the legal heir of the husband of Rathinammal, is entitled to the property?"*
- ii. *Whether the lower appellate court is correct in law in holding that the 3rd defendant was not the legal heir of Rathinammal, when the same is not admitted by the defendants?"*

10. The learned counsel appearing for the appellant / 3rd defendant would submit that the first appellate court has rendered a finding that, the said Govindammal was the sole heir of Rathinammal and hence, Ex.A4 sale deed executed in favour of N.S.Perumal was valid and in turn,



S.A.Nos.20 & 21 of 2019

WEB COPY

Govindaraj who bought the suit properties from N.S.Perumal under Ex.A11 is entitled to the relief of declaration of title and as a consequence that title follows possession, he is entitled to the relief of permanent injunction, which is erroneous. He would submit that from the averments in the plaint in O.S. No.8/2005 filed by Govindaraj and the evidence let in by him, it is made clear that Govindammal was only a step mother of Rathinammal and hence, by no stretch of imagination, Govindammal can be construed as the legal heir of Rathinammal. The plaintiff Govindaraj examined as P.W.1 has admitted in the cross examination that the said Govindammal was residing with him, but he failed to examine her, who alleged to be the original vendor, shakes the very foundation of the plaintiff's claim of right and title over the suit properties. Even if Govindammal admitted to be the wife of Appavoo Reddy by virtue of her efforts to get the death certificate dated 28.05.2001 of Appavoo Reddy, the same will not amount to an admission or proof that Govindammal was legal heir of Rathinammal as she is only the step mother of Rathinammal. When the plaintiff has clearly admitted that the suit properties were bequeathed to Rathinammal by her father



S.A.Nos.20 & 21 of 2019

WEB COPY

through Ex.A1 Will and after the death of Appavoo Reddy, his Will came into effect by virtue of which, Rathinammal got the suit properties. Thus, the suit properties became the self acquired properties of Rathinammal and therefore, the said Govindammal is not entitled to inherit the same from Rathinammal as she is only her step mother. Therefore, Ex.A11 sale deed executed by Govindammal in favour of N.S.Perumal was *non est* in law and the said Govindaraj has no right or title over the suit properties.

10.1. It is further submitted by the learned counsel for the appellant that the first appellate court's finding is based on Ex.A10 computer patta issued in favour of Govindaraj, which also have no legal validity as the same was issued based on the sale deed which is *non est* in law. His further contention is that, the findings of the first appellate court that Rathinammal inherited the suit properties from her father Appavoo Reddy under Ex.A1 Will is basically erroneous, since the same is transformed into self acquired properties as per the Will executed by her father. The first appellate court dismissed the appeal suit filed by the appellant Kandasamy by holding that he did not file any document to



S.A.Nos.20 & 21 of 2019

WEB COPY

show that the said Govindammal was not the wife of Appavoo Reddy and that the appellant failed to prove the fact that Manicka Reddy was Kandasamy's uncle and failed to prove his possession and enjoyment in the suit properties. He would submit that it is well settled law that, the onus to prove the fact lies with the person who affirms it. On the contrary, the first appellate court dismissed the appeal suit holding that the appellant failed to prove his case. Even otherwise, the said Govindammal being the step mother of Rathinammal cannot directly inherit the properties of Rathinammal as per Hindu Succession Act. The appellant has filed Ex.B21, the registered Will of Manicka Reddy, the husband of Rathinammal, to prove that he is the nephew of Manicka Reddy and also by examining two witnesses, D.W.2 and D.W.4 to establish the execution of the Will. The appellant proved his possession and enjoyment of the suit properties by marking the kist receipts in the names of Appavoo Reddy and Rathinammal. While so, the first appellate court erred in rendering a finding that there was no mutation of revenue records in the name of the appellant and failed to appreciate that even the plaintiff Govindaraj had not filed any documents to establish his



S.A.Nos.20 & 21 of 2019

WEB COPY

possession and enjoyment in the suit properties. The appellant has clearly proved the execution of Ex.B21 Will in his favour and as per Section 15(1b) of the Hindu Succession Act, the properties of a Hindu female shall devolve upon the heirs of the husband. In the present case, it is an admitted fact that Rathinammal got the suit properties by way of her father's Will. Thus, the suit properties came into her hands not by inheritance but by testation. Hence, Rathinammal became the absolute owner of the suit properties and the properties assumed the character of self acquired properties of Rathinammal. Therefore, after her demise, the same devolved upon her husband as per Section 15(1)(b) of the Hindu Succession Act, 1956. He would further submit that the first appellate court erred in holding that the appellant was not the legal heir of Rathinammal. In fact, the appellant through concrete evidence has established that he is the nephew of Manicka Reddy, husband of Rathinammal. By applying the ratio laid down by the Hon'ble Supreme Court in *C.N. Arunachala Mudaliar vs. C.A. Muruganandha Mudaliar* reported in AIR 1953 SC 495 and in the case of *Govinbhai Chhotabhai Patel & Ors vs. Patel Ramanbhai Mathurbhai* reported in AIR 2019 SC



S.A.Nos.20 & 21 of 2019

WEB COPY

4822. The learned counsel for the appellant submits that, the properties of Rathinammal got by virtue of Ex.A1 Will is undoubtedly construed as her self acquired properties. He would submit that the Hon'ble Supreme Court while dealing with the conundrum of inheritance of dispossession of property not inherited either from parents family or husband's family, but a self acquired one, laid down the law in the case of ***Om Prakash and others vs. Radha Charan and others reported in (2009) 15 SCC 66*** that a Hindu female's self acquired properties would devolve upon the heirs of her husband as per Section 15(1)(B) of the Hindu Succession Act. Therefore, the findings of the first appellate court are patently erred in law and liable to be set aside.

11. On the other hand, the learned counsel appearing for the respondent Govindaraj, plaintiff in O.S. No.8/2005 would submit that the appeal suit was decreed in favour of the plaintiff on the grounds that the appellant failed to prove that he is the legal heir of Manicka Reddy and the other legal heirs of Manicka Reddy were not impleaded as necessary parties and also on the ground that the Will produced by the appellant is



S.A.Nos.20 & 21 of 2019

WEB COPY

not related to the suit properties. He would submit that it is not in dispute that the said Govindammal was the legal heir of Appavoo Reddy. He would submit that the said Rathinammal inherited the suit properties from her father. The said Rathinammal died in the year 2000 where as, her husband died in the year 1995. The Hon'ble Apex Court in ***Radika vs. Aghnu Ram Mahto reported in (1994) 5 SCC 761*** held that any property inherited by a female Hindu from her father or mother dying intestate shall devolve to the legal heir of the father in the absence of any son or daughter of the deceased and not upon the other heirs of the predeceased husband. If there are no issues to the deceased female Hindu even her husband stood excluded from succession to the estate of her. He further submitted that Section 15(1)(b) will not be applicable to the properties inherited from the father and that even if the properties are inherited by way of a gift, it will devolve to the legal heirs of the father. The property inherited by way of a Will declares that pre existing right of the female Hindu over the inherited property was absolute and the word 'inherit' means to receive as heir that is by succession. It is further submitted that in the present case the appellant has not added all



S.A.Nos.20 & 21 of 2019

WEB COPY

necessary parties which is primary to claim rights in the suit property. In support of his contentions, he relied on the following decisions.

- i. Judgment of the Madurai Bench of Madras High Court dated 24.11.2016 in Appeal (Civil) 6626 of 1995 (Mottaiyandi Chettiyar (died) vs. Saroja (died) reported in **2016 SCC OnLine Mad 33743**
- ii. Judgment of Karnataka High Court dated 20.12.2013 in the case of Thippeswamy vs. Rangappa **reported in (2014) ICC 276 (Kant)**
- iii. Maniyamma K.P. Vs. Harikumar & Ors **2021 SCC Online Ker 883**
- iv. V. Dhanpani Chettiar vs. Balasubramanian Chettial (dead) by lrs and others reported in **(2003) 6 SCC 633**
- v. Vash Bahadur Sabhajeet Yadav v. Dudhnath Kallu Yadav and others reported in **2018 SCC online Bom 153**
- vi. Civil Appeal Nos.5755-5756 of 2011 (Moresnar s/o. Yadaorao Mahajan vs. Vyankatesh Sitaram Bhedi (D), through Lrs and others reported in **2022 INSC 1027**



S.A.Nos.20 & 21 of 2019

WEB COPY 12. Heard on both sides. Records perused.

13. It is not in dispute that the suit properties originally belonged to one Appavoo Reddy. According to the respondent/ plaintiff, the said Govindammal is the wife of Appavoo Reddy and Rathinammal is the daughter of Appavoo Reddy through his second wife Apurupammal. The further contention of the plaintiff is that the said Appavoo Reddy executed Ex.A1 Will in favour of his daughter Rathinammal and after his death, the Will came into force. The said Rathinammal died intestate and therefore, the property devolved upon Govindammal, the first wife of Appavoo Reddy who executed Ex.A4 sale deed in favour of one N.S. Perumal, the 2nd defendant in O.S. No.96/2009. The plaintiff purchased the suit property under Ex.A11 from the said N.S. Perumal and became the absolute owner of the suit properties. On the other hand, the contention of the appellant / 3rd defendant is that Appavoo Reddy never married Govindammal and that he being the relative of Manicka Reddy, husband of Rathinammal, he is the only legal heir of Rathinammal after her death and entitled to suit property as per the Ex.B21 Will executed in

Page 18 of 21



S.A.Nos.20 & 21 of 2019

WEB COPY

his favour by the husband of Rathinammal. The fact remains that the husband Manicka Reddy, predeceased Rathinammal. The first appellate court upon perusing the materials on record found that the properties mentioned in Ex.B21 Will are not the suit properties. It is further held that the appellant / 3rd defendant failed to establish his possession and enjoyment in the suit properties. Moreover, the first appellate court placing reliance on Ex.A13 came to the conclusion that the said Govindammal is the wife of Appavoo Reddy. The first appellate court also held that since Rathinammal got the properties from her father Appavoo Reddy and died issueless and her husband having predeceased, came to the conclusion that Govindammal is entitled to the suit properties and since plaintiff had purchased the suit property for valuable consideration and proved his possession and enjoyment in the suit properties by producing the revenue records granted the reliefs claimed by the plaintiff in O/S. No.8/2005. No perversity or infirmity is found in the said findings of the first appellate court. Therefore, I do not see any question of law much less a substantial question of law in order to enable me to entertain the present second appeals.



S.A.Nos.20 & 21 of 2019

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14. In the result,

- i. The Second Appeals are dismissed. No costs. Consequently connected miscellaneous petition is closed.
- ii. The common judgment and decree dated 19.07.2017 passed in A.S. No.3 of 2013 and A.S. No.28 of 2014 on the file of the Sub Court, Tiruttani, is upheld.

21.11.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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To

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



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S.A.Nos.20 & 21 of 2019

K.GOVINDARAJAN THILAKAVADI,J
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Pre delivery common Judgment in
S.A.Nos.20 & 21 of 2019 and
C.M.P. No.374 of 2019

21.11.2025