

S.A.(MD)No.216 of 2008

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.07.2025

PRONOUNCED ON : .09.2025

CORAM

THE HONOURABLE MS.JUSTICE **R.POORNIMA**

S.A(MD)No.216 of 2008

- 1.Rajendran
- 2.Selvanayagam
- 3.Natarajan
- 4.Russelraj

... Appellants/Respondents 1 to 4/Plaintiffs

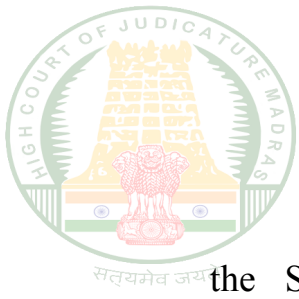
Vs.

- 1.Pithalese
- 2.Mary Santhini
- 3.Thankammal

...Respondents/Appellants & 5th respondent
/Defendants

PRAYER : Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree in A.S. No.5 of 2004 on the file of

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the Subordinate Court, Kuzhithurai, dated 25.07.2006 reversing the Judgment and Decree in O.S.No.215 of 1993 dated 20.10.2003 on the file of the District Munsif Court, Kuzhithurai.

For Appellants : Mr.K.N.Thambi

For Respondents : Mr.P.Thiagarajan

JUDGMENT

This Second appeal had been filed by the plaintiffs in O.S.No. 215 of 1993 on the file of the District Munsif Court, Kuzhithurai. The suit in O.S.No.215 of 1993 had been filed by the plaintiffs against the defendants, for partition and separate possession.

2. This suit came up for consideration before the learned District Munsif Court, Kuzhithurai, vide judgment and decree dated 20.10.2003, the District Munsiff allowed the suit as prayed for, against which 1st appeal has been preferred in A.S.No.5 of 2004 by the defendants 2 and 3.



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3. The 1st appeal in A.S.No.5 of 2004, filed by the defendants 2 and 3 came up for consideration before the Subordinate Court, Kuzhithurai. The first appellate Court by its judgment and decree dated 25.07.2006, allowed the appeal and set aside the judgment and decree passed in O.S.No.215 of 1993 by the District Munsif, Kuzhithirai dismissed the suit. Challenging the judgment, the plaintiffs had filed the present second appeal.

4. The plaintiff's case in O.S.No.215 of 1993 in brief, is as follows:

(a) The suit property originally belonged to one Arumughom Nadar who was in possession and enjoyment of the same. The said Arumughom Nadar died intestate leaving behind his three sons viz., Thankamony, Chellayyan and Muthuswamy as his legal heirs. Upon his death, the property devolved on his sons by inheritance.

(b) The share that Thankamony obtained in the inheritance from his father Arumughom Nadar, became the co-parcenary property of



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Thankamony. Consequently the plaintiffs acquired an equal right in the suit property with Thankamony.

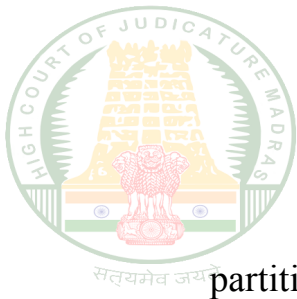
(c) Therefore the plaintiffs are entitled to 4/5th shares in the suit property while the 1st defendant is entitled to only 1/5th share. The other two defendants having claimed rights under the 1st defendant are necessary parties to this suit and hence they have been included as defendant 2 and 3.

(d) The 1st defendant was a habitual drunkard and was leading an immoral life. In furtherance of illegal acts, he purported to sell the suit property in favour of the defendants 2 and 3 on 01.03.1993. No valid consideration was in fact, paid to the 1st defendant under a sale deed.

(e) It is submitted that the suit property is the joint family property and not the exclusive property of the 1st defendant. Hence, the sale deed dated 01.03.1993 allegedly executed by the first defendant in favour of the defendants 2 and 3 is null and void and the same is liable to be set aside.

(f) The plaintiffs are entitled to recover their 4/5 shares in the suit property from the defendant after deducting 4 ½ cents which had been separately purchased by the 1st defendant in 1990.

(g) It is further stated that the suit property has not been



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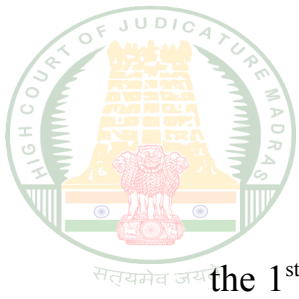
partitioned by metes and bounds, and therefore, the plaintiffs are constrained to seek partition and separate possession. Despite repeated requests, the defendants are not amenable to settlement. Hence, this suit for partition.

5. The brief facts of the written statement filed by the defendants 2 and 3 are as follows:

(a) This suit is not maintainable in law and on the facts. The description of the plaint schedule property is not correct. The survey number has been wrongly mentioned in the plaint. The 1st defendant and his sons are not residing at the address mentioned in the plaint. They have been residing with their family with the plaintiffs at Madras for the last several years. The 1st defendant has invested several lakhs of rupees for the establishment of an Industry in the name of his sons viz., plaintiffs at Madras. The suit as well as the injunction application is collusive.

(b) The plaint schedule property is the absolute property of the 1st defendant. The 1st defendant obtained portions of the suit property as per the partition deed, dated 25.10.1967. The said property was purchased by

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the 1st defendant and his brothers out of their separate funds in the name of their father. Apart from this, the 1st defendant has also purchased certain other properties from his separate funds. So the 1st defendant has got alienable right in the suit property. The 1st defendant has a separate patta and he was paying land tax to the same. Absolutely, the plaintiffs have no right or possession whatsoever in the suit property. There is no such joint family as alleged by the plaintiffs.

(c) On 01.03.1993, the 1st defendant sold the entire plaint schedule property in favour of the defendants 2 and 3 for valuable consideration. The plaintiffs are very well aware of the sale deed and they never objected to the execution of the sale deed at any time. The consideration received by the 1st defendant was utilized for family necessity and for the welfare of the plaintiffs. A substantial portion of the amount was utilised for the improvement of the Industries of the plaintiffs and also for meeting out the medical expenses of the 1st defendant and his wife. Therefore, the plaintiffs could not dispute the same in this suit. The allegation that the plaintiffs have obtained a right by birth in the suit property, is not correct.



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(d) The suit property is not a co-parcenary property. Even assuming, without admitting that it is a co-parcenary property, the defendants purchased the same for valuable consideration and for family necessity. As the absolute owner of the property, the 1st defendant has also alienated several properties and at no point of time the plaintiffs raised any objections to such transactions at any time. Hence, the contentions of the plaintiffs are barred by estoppel. The resurvey authorities have measured the property and settled the property in the name of the 1st defendant. The resurvey proceedings have become final and the plaintiffs are bound by that, these defendants have effected mutation and they are paying land-tax to the suit property.

(e) This suit is filed simply to harass these defendants. Hence, the suit may be dismissed with costs.

6. The brief facts of the written statement filed by the 4th defendant are as follows:

The 1st defendant is entitled to get a 1/5th share in the suit property. The 1st defendant died and his rights devolved on the plaintiffs 1



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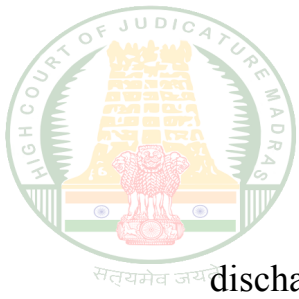
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to 4 and the 4th defendant. So this defendant is entitled to get a 1/10th share in the suit property. Hence, the suit may be disposed of in terms of this written statement.

7. The brief facts of the additional written statement filed by defendants 2 and 3 are as follows:

(a) These defendants deny all the allegations contained in para 2A of the plaint. The first defendant is not a drunkard, he is also not leading an immoral life as alleged. The first defendant is very gentle and he lived only for the welfare of his wife and children. The immorality attributed by the plaintiffs against their father, first defendant is only mischievous. He died on 28.12.1993. So the story of immorality alleged by the plaintiffs in the plaint is only for the purpose of filing this vexatious suit.

(b) The sale deed executed by the first defendant is valid and for necessity. Even though an amount of Rs.14,875/- is mentioned in the sale deed towards sale consideration, the actual sale consideration paid by these defendants is Rs.79,000/-. The valuation is made in the document as per the guideline rate only to save stamp duty. The first defendant



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discharged certain antecedent debts and deposited the balance amount of Rs.55,000/- in the Bank. The account No.is XCC-4792. The plaintiffs and the 4th defendant cannot dispute that fact in this suit.

(c) As averred in the original written statement, the suit property is not a co-parcenary property of the first defendant and the plaintiffs. It is the separate property of the first defendant. Even if the suit property is a family property, the first defendant can alienate the same for his necessity and also for maintenance.

(d) The claim of the plaintiffs for setting aside the sale deed in favour of the defendants 2 and 3 is hopelessly barred by limitation. The sale deed in favour of the defendants 2 and 3 is dated 01.03.1993. The petition seeking to set aside the sale deed by way of amendment was filed only on 21.04.2000 and the amendment petition was ordered on 02.02.2001. A sale deed has sought to be set aside within three years from the date of the sale deed. This petition itself is filed after a lapse of seven years and hence, the claim of the plaintiffs for setting aside the sale deed is barred by limitation. The description of the property is not correct. The plaintiffs are not entitled to get any relief in this suit. Hence, the suit may be dismissed with costs.



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8. Based on the rival pleadings, the learned District Munsif, Kuzhithurai, framed the following issues for consideration:

- 1. Whether the plaintiffs are entitled to the decree for partition of 4/5th share in the suit properties?*
- 2. Whether the plaintiffs are entitled to recover the 4/5th share of the suit property from the defendants 2 and 3?*
- 3. To what relief and costs?*

9. The Trial Court/ District Munsif Court, Kuzhithurai, has decreed the suit in O.S.No.215 of 1993 dated 20.10.2004, against which the defendants 2 and 3 filed A.S.No.5 of 2004, with a prayer to set aside the judgment in O.S.No.215 of 1993, whereas, the First Appellate Court / Subordinate Judge, Kuzhithurai has allowed the appeal by setting aside the decree and judgment of the trial Court, against which, the present Second Appeal has been filed by the plaintiffs.



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10. This Second Appeal was admitted on the following substantial question of law:-

1. Whether the judgment and decree of the first appellate Court is perverse as it held that the sale made by the first defendant was for legal necessity when there was no factual foundation and evidence adduced to show such legal necessity ?

11. For the sake of convenience, the parties are referred to herein, as their own ranking as before the Trial Court.

12. The plaintiffs have claimed that the suit property as their ancestral property of the joint family consisting of their father 1st defendant Thiru.Thankamony. Therefore, stated that the plaintiffs are entitled to 4/5th share, and their father is entitled to a 1/4th share. The plaintiffs also prayed to set aside the sale deed dated 01.03.1993 executed by their father, 1st defendant in favour of the defendants 2 and 3 as null and void.



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13. Initially, the plaintiffs instituted a suit for partition and separate possession as against the first defendant. Though the defendants 2 and 3 were added as parties, no independent claim was made against them, except for the allegations that they were claiming rights over the property.

14. This Court found that the suit property had been sold in favour of the defendants 2 and 3 on 01.03.1993. Subsequently, upon the death of the first defendant, the plaintiff's wife, first defendant Thangammal was impleaded as fourth defendant. In the amended plaint, the plaintiffs introduced pleadings along with a fresh prayer wherein they made certain allegations against their late. father, by contending that he was a drunkard and led an immoral life and sold the suit schedule property to the defendants 2 and 3 on 01.03.1993, for his illegal act. They further contended that no consideration whatsoever was passed to the 1st defendant. Accordingly, they added a prayer seeking to set aside the sale deed dated 01.03.1993, in so far as it relates to plaintiffs 4/5th share of the suit property after deducting an extent of 4 ½ cents of land which had been purchased by the 1st defendant.



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15. The defendants 2 and 3 who are the purchasers filed their written statement by denying all the allegations contained in the plaint. The defendants claimed that the suit-schedule property is the absolute property of the first defendant, as he along with his brothers, purchased the property in the name of their father, Arumughom. After the death of their father, the first defendant and their brothers divided the properties by virtue of a partition, dated 25.10.1967. They have also denied the joint possession and enjoyment of the property by the plaintiffs. They further stated that they had purchased the property for a valuable consideration.

16. The defendants further contended that the plaintiffs cannot maintain a plea to set aside the sale deed, as the sale was executed on 01.03.1993, whereas the prayer seeking to set aside the sale deed was filed on 21.04.2000 and ordered 02.02.2001 after lapse of seven years and is therefore, barred by limitation.

17. Now the Court has to decide whether the plaintiffs proved



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that the subject matter of the suit property is their coparcenary property or the absolute property of the 1st defendant.

18. As per Hindu law, co-parcenary property is a much narrower body than a joint family. It includes only those persons who acquired by birth an interest in the joint or coparcenary property. Those are sons, grandsons and great grandsons of the holder of the joint property for the time being, in other words, the three generations next to the holder of unbroken male descent (and now after the 2005 amendment, daughters also become co-parceners by birth).

19. The Hon'ble Supreme Court in the judgment reported in ***AIR 1969, SC 1330 (State Bank of India Vs. Ghamandi Ram (dead, through L.R.s.)*** summarized the main ingredient as follows :

“Joint family or coparcenary property
devolves by survivorship not by
succession”.



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20. When a person approaches the Court claiming that the property in dispute is the joint family property or co-parcenary property, the burden lies on them to establish the essential ingredients. He must show that there is an existing joint hindu family, or co-oparcenary consisting of the claimants and other members. He should prove that the existence of a joint family nucleus which could have been sourced for acquiring the disputed property.

21. In this case, the plaintiffs failed to establish the existence of joint family and the presence of joint family nucleus as well as that the property originated from such nucleus or was treated as common property, and that it was in their long possession and enjoyment in common.

22. In the plaint averment, it is admitted that the suit scheduled property is the absolute property of Thiru.Arumughom, their grandfather. It is not stated anywhere that it was purchased from nucleus of the joint family.



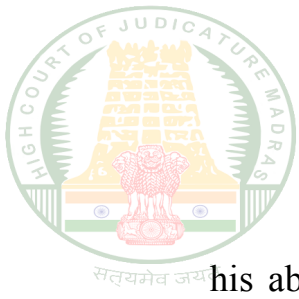
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23. Ex.A1 (A2 clear version) is the partition deed dated 25.10.1960 entered into between Thiru.Muthuswamy Nadar, Chellaiah Nadar, and Thankamoni, (the father of the plaintiffs) sons of Thiru.Arumughom. In the said partition it was specifically recited that the properties forming the subject matter of the partition were the absolute property of their father Arumughom acquired by virtue of his purchase under a registered sale deed bearing No.2025 (in respect of the suit property in survey No.7184) and 4824 (in respect of properties in survey No.7243) during the year 1957.

24. This clearly establishes that the suit property was the self-acquired property of the Thiru.Arumughom, father of the first defendant and after his death, his sons partitioned the properties between themselves. consequently, the sons became the absolute owners of their respective shares upon partition.

25. It is well settled in law that once the partition taken place among the co-parceners, the property allotted to each coparcener becomes



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his absolute property and the children of such co-parcener do not acquire any right in its by birth therein. Therefore, the first defendant being the absolute owner of the property that fell to his share in the partition, was fully competent to deal with the same. Furthermore it is not established by the plaintiffs, whether they were born at the time of the partition. The share that fell to Thankamony Nadar became his separate and absolute property not the co-parcenary property of the plaintiffs as well.

26. Further, from the evidence of the plaintiff, it is proved that the first defendant was not residing with the plaintiffs. He was residing in his Village alone whereas the plaintiffs are residing in Chennai. During cross-examination PW1 admitted that his father was indisposed of since the year 1986. The plaintiff did not examine any witnesses or produced any document to establish that he alone maintained their father, 1st defendant. Though the plaintiffs claimed that the 1st defendant had the habit of consuming alcohol, and leading an immoral life, but it was not proved by cogent and reliable evidence. In fact, during cross-examination he admitted that he was educated due to the hard work of his father. PW1 claimed that



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he had only maintained his father from the year 1982. However, during the examination he conceded that at the time of his father's death, he was not aware of his fathers place of residence and therefore, he was not in a position to meet him, which shows that the plaintiffs were not on good terms with their father. Therefore, it was inferred that the first defendant needed money, sold the property to sustain his livelihood and to meet out his medical expenditure.

27. It is the further contention of the plaintiffs that the property was fraudulently obtained by the defendants 2 and 3 without any consideration. Ex.A4 is the registration copy of sale deed, dated 01.03.1993 executed by the first defendant in favour of the defendants 2 and 3, for total sale consideration of a sum of Rs.12,500/- and the same was acknowledged by the vendor, viz., first defendant. However, the defendants 2 and 3 contended that the actual consideration paid by them was Rs.79,000/- and that the sale reflected only the guideline value of Rs.12,500/-. They further contended that, from the said amount, the first defendant deposited a sum of Rs.55,000/- under Ex.B4 in his name in the Syndicate Bank.

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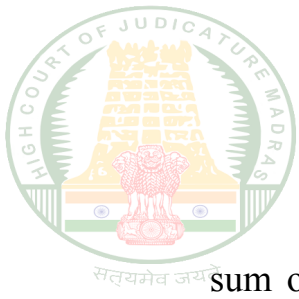
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28. To prove the same, they examined D.W.2, the scribe of the sale deed dated 01.03.1993, Ex.B3. D.W.2 admitted that the defendants 2 and 3 paid a sum of Rs.79,000/- towards sale consideration. Out of the said amount, the defendants deposited a sum of Rs.55,000/- in his name in the Syndicate Bank wherein he signed as introducer. PW1 during cross-examination admitted that a sum of Rs.55,000/- was standing in the name of his father, and the same was presently deposited in the name of the fourth respondent, viz., their step-mother. Though the plaintiffs seriously disputed that the said amount was not paid by the Defendants 1 and 2, but it was paid by him, for which he has not produced any document.

29. The allegation that the defendants 2 and 3 have not paid any consideration proved false as the first defendant acknowledged the consideration and signed the sale deed. Once the vendor of the property has accepted the sale consideration and acknowledged the receipt of consideration in the document, it cannot be denied by the person who is not a party to the said deed. Moreover, DW2, the scribe clearly stated that a

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sum of Rs.79,000/- was paid by the defendants 2 and 3 for the total sale consideration. From the amount, the first defendant deposited a sum of Rs.55,000/- into his bank account. After his death, the same was deposited in the name of the fourth defendant wife of the 1st defendant. Therefore, the allegation that defendants 2 and 3 purchased the property without any consideration is not proved.

30. The plaintiffs failed to prove their right, title and possession of the suit property and also failed to establish that the property was purchased by the defendants 2 and 3 fraudulently without any consideration.

31. As far as question of limitation is concerned, the learned counsel for the respondents argued that the prayer seeking to set aside the sale deed is barred by limitation as it was filed only after seven years from the date of execution of sale deed.

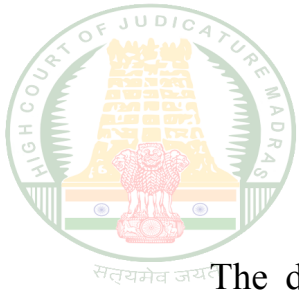


32. Section 59 of the Limitation Act, 1963 defines as follows :

Description of suit	Period of limitation	Time from which period begins to run
"To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years	When the facts entitling the plaintiff to have the instrument or the contract rescinded first become known to him."

33. It is true that the sale was executed on 01.03.1993. The plaintiff also admitted that he was aware of the execution of sale deed at the time of filing the suit however, he did not seek any relief against Defendants 2 and 3, but only after the death of his father he introduced such a prayer. A prayer to set aside the sale ought to have been introduced within three years from the date of exhibition of the sale deed. However, in the present case, such a prayer was made only after seven years and is therefore, clearly barred by limitation.

34. The first appellate Court properly reversed, the finding of the trial Court. There is no sustainable ground to allow the Second Appeal.



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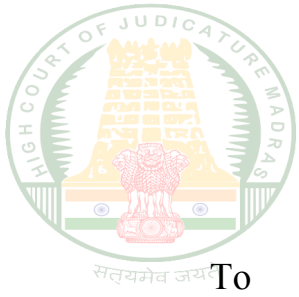
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The decree and judgment of the trial Court is hereby confirmed. The Second Appeal deserve no merits and hence, the same is liable to be dismissed. The substantial question of law is answered accordingly.

35. In the result, the Second Appeal is dismissed. No costs.

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- 1.The Subordinate Court,
Kuzhithurai.
- 2.The District Munsif Court,
Kuzhithurai.
- 3.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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R.POORNIMA, J.

RM

Judgment in
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