



S.A.(MD).No.87 of 2007

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2025

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CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

S.A.(MD).No.87 of 2007
and M.P.(MD).No.1 of 2007

1.Arumai ammal ... Appellant/Respondent No.1/Plaintiff
2.Mahamayee
3.Seeniammal
4.Rajesh kannan ... Appellants 2 to 4/Respondents 2 to 4
/Defendants 1 to 3
(Respondents 5 to 7 are transposed as Appellants 2 to 4 vide Court
order dated 10.12.2024 made in C.M.P.(MD).Nos.11216 of 2023 in
S.A.No.(MD).No.87 of 2007)

Vs.

Nacharammal (Died) ... 4th Defendant
1.Muthusamy
2.Meenambal
3.Amutha(Died)
4.Chitra ... Respondents/Appellants/Lrs of 4th defendant
5.Mahamayee
6.Seeniammal
7.Rajesh Kannan ... Respondents 5 to 7/Respondents 2 to 4
/Defendants 1 to 3/
Transposed into Appellants 2 to 4.
(respondents 5 to 7 are Transposed as Appellants 2 to 4 vide Court
order dated 10.12.2024 made in C.M.P.(MD).Nos.11216 of 2023 in
S.A.No.(MD).No.87 of 2007)



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8.Govindarajan

9.Suresh

... Respondents

(Respondents 8 & 9 are brought on record as Lrs of the deceased 3rd respondent vide Court order dated 22.06.2023 made in C.M.P. (MD).Nos.6397 of 2021 in S.A.(MD).No.87 of 2007)

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree made in A.S.No.133 of 2002. dated 07.07.2006 on the file of Principal District Judge, Pudukkottai, reversing the Judgment and Decree made in O.S.No.191 of 1998 dated 07.03.2002 on the file of the Sub Judge, Pudukkottai.

For Appellants : Mr.G.S.Ashok Adhithyan

For Respondents : Mr.P.Ganapathy Subramanian for
Mr.A.Purantharadhasan for RR2, 4, 8 & 9.

JUDGMENT

This second appeal is filed against the Judgment and Decree made in A.S.No.133 of 2002. dated 07.07.2006 on the file of Principal District Judge, Pudukkottai, reversing the Judgment and Decree made in O.S.No. 191 of 1998 dated 07.03.2002 on the file of the Sub Judge, Pudukkottai.

2.The averments in the plaint are as follows:

The suit properties originally belonged to one Valathal and her



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two sons namely Ramasamy and Lakshmanan. They constituted coparcenary. Ramasamy had two sons namely Rengasamy and Govindasamy. Lakshmanan had a daughter by name Nacharammal. His wife's name is Kasiammal. Rengasamy, who is the son of Ramasamy died leaving behind Mahamayee and Seeniammal, Mahamayee's son is Rajesh Kannan. Arumai ammal is the plaintiff herein. Mahamayee is the first defendant, Seeniammal is the second defendant, Rajesh Kannan is the third defendant and Nacharammal is the fourth defendant. Except these persons all others namely Ramasamy, Lakshmanan, Rengasamy, Govindasamy, Kasiammal are dead. So also the fourth defendant namely Nachiyarammal leaving behind the respondents herein 1 to 4 as the legal heirs.

3.After the death of Ramasamy and Lakshmanan, the properties were inherited by devolution upon the legal heirs as mentioned above. Ramasamy and Lakshmanan got half share equally. Since Lakshmanan died before 1929, Kasiammal and Nachiarammal could not have inherited the property. But, on 09.01.1929, some properties were given to Kasiammal for her maintenance. In spite of the fact that Kasiammal had



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no right to sell the property, she sold the same. In the document itself it was stated that at the time of marriage of Nachiarammal she was provided with Srithana and other expenses. Govindasamy died even before partition leaving behind Arumai ammal. Rengasamy also died in the year 1985. The defendants 1 and 2 as mentioned above are the children of Rengasamy and third defendant is the adopted son of Rengasamy. By that way the plaintiff has half share. The remaining half is belongs to the defendants 1 to 3. On the date of plaint, they are deemed to be in joint possession. Without any proper division, they are enjoying separate portions.

4.The fourth defendant Nacharammal filed a suit in O.S.No.311 of 1981 against Rengsamay. Now it is stated by the fourth defendant that share was allotted to her in that suit. But the plaintiff is not a party. So the decree is not binding upon her right. As mentioned above, neither the fourth defendant nor her mother can inherit any property after the death of Lakshmanan, since he died before 1929.



5.The brief averments made in the written statement filed by the defendants 1 and 2:

The nature of the property and the relationship between the parties are admitted. They are supporting the case of the plaintiff and sought partition of the property, allotting half share to them, denying some of the allegations against them stated in the plaint.

6.The brief averments made in the written statement filed by the 4th defendant:

The nature of the property and the relationship between the parties are admitted. It is stated that Ramasamy died before 1940. Around 1940 Lakshmanan died. After the death of them, Rengasamy became the kartha of the coparcenary and was in possession. The fourth defendant was receiving the share from the income till 1975. Later difference of opinion arose between the fourth defendant and Rengasamy. At that time, plaintiff was not available in the Village and her whereabouts were not known. So the fourth defendant filed a suit in O.S.No.311 of 1981 before the District Munsif Court, Pudukottai. In that suit it was decided that she is entitled for half share. Against which, Rengasamy filed



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A.S.No.54 of 1982 before Sub Court, Pudukottai. The appeal was dismissed. Later, second appeal was preferred in S.A.(MD).No.10 of 1983. During the pendency of the second appeal Rengasamy died. His legal heirs were impleaded as respondents. It was dismissed on 23.02.1996. Before that final decree application was filed in I.A.No. 1241 of 1982 before the District Munsif Court. Commissioner was appointed. He filed the report. Because of the pendency of the second appeal and first appeal final decree was not decided.

7.Now after all those proceedings were over the defendants 1 to 3 have brought the plaintiff who went away from the Village and instigated her to file the present suit. The plaintiff did not take any steps during the pendency of the suit, appeal, etc. She remains silent for about 35 years without claiming any share in the property. Even if the plaintiff has any share she can claim only in the share allotted to Rengasamy and not in the share of the fourth defendant. The plaintiff is not in joint possession of the property.



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8.The brief averments made in the reply statement:

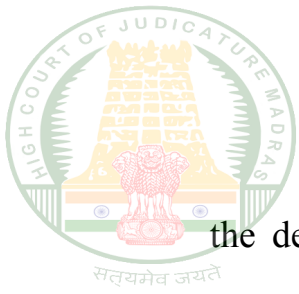
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It is denied that the plaintiff was not available in the Village for 35 years. Neither the fourth defendant nor her mother got any right over the properties as mentioned in the plaint. The release mentioned in the written statement is denied.

9.On the basis of the pleadings the trial Court formulated the following issues:

1. Whether Lakshmanan Angurar died in 1940?
2. Whether Nachiarammal had any right in the property as the legal heir of the Lakshmanan Angurar?
3. Whether the plaintiff's right over the property is lost by way of ouster?
4. Whether the plaintiff is entitled for any share?
5. To what other relief?

10.To substantiate the case of the plaintiff she herself was examined as PW1 and one other independent witness was examined as PW2. Four documents were marked as Ex.A1 to Ex.A4. On the side of



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the defendants DW1 was examined and 7 documents were marked as Ex.B1 to Ex.B7.

11.The trial court decreed the suit as prayed for with cost and preliminary decree for partition was passed. Against which, appeal in A.S.No.133 of 2002 was filed before the Principal District Judge, Pudukottai. The appellate Court differed. The Judgment and decree passed by the trial Court, reversing the finding, allowed the appeal and dismissed the suit filed by the plaintiff. Against which, this second appeal is preferred.

12.At the time of admission of second appeal the following substantial question of law were framed on 06.02.2007.

1. If Lakshmanan, father of the fourth defendant, is proved to have died before 1929, whether his wife and daughter have any right of inheritance over his properties?
2. Whether the decree in O.S.No.311 of 1981 will bind the plaintiff and operate as res judicata?
3. Whether the right of the plaintiff over the suit properties is ousted



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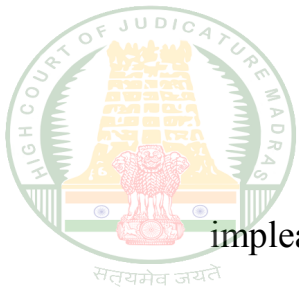
as pleaded by the fourth defendant?

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13.Substantial Question of Law:2.

We will take up the second substantial question of law first. Before going into the issue the sum and substance of case of both the parties may be kept in mind for easy appreciation of facts.

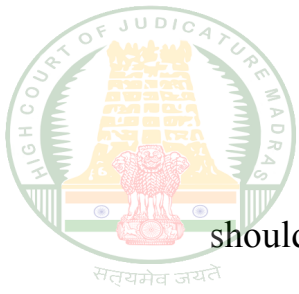
14.As mentioned in the pleadings of the parties, the relationship is not denied and disputed. The suit filed by fourth defendant in O.S.No. 366 of 1980 was decreed. Against which, appeal was preferred and dismissed. Second appeal was also preferred and dismissed. Later final decree application was filed by the fourth defendant in I.A.No.1241 of 1982 before the trial Court. Now the stage of the final report was ascertained from the District Munsif, Pudukottai. In response to the letter written by the Registry as per the direction of this Court, he submitted a report dated 28.03.2025 stating that I.A.No.1241 of 1982 in O.S.No.311 of 1982 (Old No.366 of 1980) was dismissed on 11.07.2002 due to the failure of the petitioner to take steps for the deceased plaintiff. As mentioned above before this Court, the legal heirs of Nachiarammal are



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impleaded or brought on record as R1 to R3. Later R3 Amudha was also reported to be dead. Her legal heirs were brought on record as R8 and R9. Later, the original respondents namely Mahamayee, Seeniammal and Rajesh are transposed as appellants 2 to 4. So this is the record of proceedings. The original plaintiff namely Arumai ammal still alive.

15. In the above said proceedings initiated by Nachiarammal only Rengasamy was a party. This plaintiff namely Arumai ammal, who is the wife of Govindasamy is not a party. Except Arumai ammal, Govindasamy had no other legal heirs. Why Arumai ammal was left out in the above suit. Now it has been explained by the fourth defendant as if the plaintiff went away from the Village and was not heard. So she was not impleaded. But at the instance or instigation of the defendants 1 to 3 namely the legal heirs of Rengasamy, Arumai ammal was brought. Now the suit is filed. If at all the plaintiff can claim half share, only in the branch of Ramasamy; the plaintiff cannot claim any right over the share of Lakshmanan branch. Since Nachiarammal claimed (4th defendant) half share belongs to Lakshmanan that was also recognized by the Court by way of passing preliminary decree, her half share in the property



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should not be affected.

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16.No we will go to the finding in the earlier suits. A specific issue was framed as to the non joinder of this plaintiff as a party in O.S.No.311 of 1981 (Old No.366 of 1980 on the file of the Sub Court, Pudukottai). The issue No.2 was answered that since Rengasamy took out a plea that this plaintiff relinquished her husband's share in his favour, she is not a necessary party. So it was answered that the issue does not arise. Now quiet contrary to this plea taken by Rengasamy, his legal heirs namely defendants 1 to 3 filed the statement that this plaintiff is also entitled for share in the property. She must be allotted half share.

17.So this is contrary stand taken by the father of the defendants 1 to 3, which shows that after the decree and judgment in the previous round of litigation this new stand has been taken. The appellate court has not considered the non joinder issue since that was not the ground of appeal, since only Rengasamy filed the appeal in the light of his statement and relinquishment of the share by the present plaintiff. So also in the second appeal in S.A.No.10 of 1983. In view of the above said,



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defendants 1 to 3 cannot take up a different plea in this matter.

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18.As mentioned above, the plaintiff is not a party in O.S.No.311 of 1981 (O.S.No.366 of 1980). So naturally it is not binding upon the plaintiff, more so, when a plea has been taken by Ramasamy that the plaintiff relinquished her right in the property, but, that was not established by way of any documentary evidence.

19.Consequently, the other plea that has been raised by the fourth defendant is that the plaintiff was away from the Village, was brought by defendants 1 to 3 for the purpose of frustrating the decree passed in her favour. But, I am not going to that issue for the simple reason that the right and share of the fourth defendant was already decided. As mentioned above, the plea taken by Rengasamy was rejected. It also to be held that the defendants 1 to 3 herein cannot take a separate stand than that of one taken by Rengasamy regarding the right of the fourth defendant. The Judgment rendered in O.S.No.311 of 1981 (O.S.No.366 of 1980) is conclusive one so far as the issue between the defendants 1 to 3 and fourth defendant is concerned. That cannot be taken up or raised in



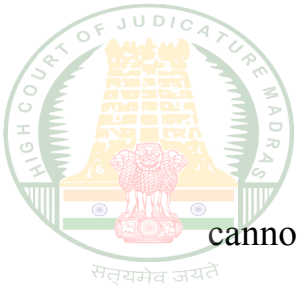
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this matter. So the plea taken by the defendants 1 to 3 that the right of the fourth defendant was lost, cannot be taken up. So this plea on the side of defendants 1 to 3 is rejected out right. They are bound by the decree. Since now the final decree application was also filed and later it was dismissed for default, it was not restored to file so far by the legal heirs of the fourth defendant, who have now brought on record. It is up to them to take up further course.

20. So the second question of law is answered that the decree in O.S.No.311 of 1981 (O.S.No.366 of 1980) is not binding upon the plaintiff and it will not operate as *res judicata*.

21. Substantial Question of Law No.1.

How the issue arises in this matter is not known. Because as stated above, the right of the fourth defendant cannot be re-agitated in the suit by the plaintiff herein. It is seen that this plea has been taken by the plaintiff/appellant at the instance of defendants 1 to 3 which is very apparent by her own conduct and plea. So this substantial question of law is answered that it does not arise holding that it was already decided. It



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cannot be re-agitated at the instance of this plaintiff.

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22.Substantial Question of Law No.3.

Since the right of the fourth defendant was already decided and culminated in the form of final decree application, she is not competent to agitate the right of the plaintiff. Since plaintiff is coming under the branch of Ramasamy. Fourth defendant is representing the branch of Lakshmanan, naturally and in view of the above said Judgment in O.S.No.311 of 1981 (O.S.No.366 of 1980) Lakshmanan Branch was awarded with preliminary decree and if at all the plaintiff can claim right only in the share of Ramasamy Branch. That was also stated by the fourth defendant in the written statement itself. Unnecessarily, she is taking the plea of ouster against the plaintiff. If at all, that plea can be taken up only by the defendants 1 to 3 and not by the fourth defendant. But in fact, the defendants 1 to 3 support the case of the plaintiff and wants her share to be allowed, but, they cunningly want to include the half share that was allotted to the fourth defendant in the above said suit. It is not permissible for the reasons stated above.



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23.Now we will go to the judgment of the trial Court. It went on discussing against judgment of the High Court in second appeal in O.S.No.311 of 1981 (O.S.No.366 of 1980). Recording contrary finding to the judgment in O.S.No.311 of 1981 (O.S.No.366 of 1980) and first appeal and second appeal judgments, it was correctly pointed out by the appellate Court stating that such sort of right is available to the District Munsif Court, Pudukkottai, to record the findings in the above said suits and that too, the Judgment of this Court in second appeal. The trial Court has also committed an error in granting the preliminary decree for partition in respect of the properties mentioned in the plaint. But, as mentioned above, the plaintiff is entitled to claim half share only in that property pertaining to the Branch of Ramasamy.

24.Now we will go to the Judgment of the appellate Court.

25.The appellate Court also committed an error of law in finding that the Judgment in O.S.No.311 of 1981 (O.S.No.366 of 1980) operates as *res judicata* so far as plaintiff is concerned, since she was represented by Rengasamy. But, Rengasamy acted only in his favour and not in

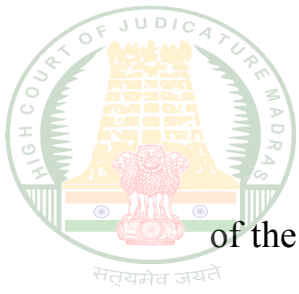


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favour of the plaintiff herein. As mentioned above, a plea was taken by Rengasamy that the plaintiff relinquished her right in the property. But it is not established.

26.The appellate court then found that at the instance of the defendants 1 to 3 the suit is filed. It may be right to that extent. But, it is not right in non suiting the plaintiff in entirety, when this apparent that Govindasamy's right was not relinquished by this plaintiff in favour of Rengasamy, legally, then as mentioned above, the plea of ouster was not taken up by the defendants 1 to 3 and in fact, supporting the case of the plaintiff, then the appellate Court ought to have granted decree to that extent.

27.So, far the reasons stated above, a limited declaration can be granted in favour of the appellant. Accordingly, declaration is hereby granted in favour of the appellant to the effect that the plaintiff is entitled for half share in the property allotted to the Ramasamy Branch. To that extent preliminary decree for partition is passed by set asiding the judgment of the appellate Court and modifying the decree and judgment



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of the trial court. In respect of the share of the deceased fourth defendant, who is the first respondent herein, the appeal stands dismissed.

Accordingly, this second appeal is allowed in part. No costs.

Consequently, connected miscellaneous petition is closed.

08.04.2025

Index : Yes / No
Internet : Yes / No
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To

- 1.The Principal District Judge, Pudukkottai.
- 2.The Subordinate Judge, Pudukkottai.
- 3.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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