



S.A.(MD)No.924 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A.(MD)No.924 of 2011

1.Asaithambi

2.Manavalan

...Appellants/Appellants
/Plaintiffs

-VS-

1.Kannamma

2.Thavamani

...Respondents/Respondents
Defendants

PRAYER :Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 06.12.2010 in A.S.No.2 of 2009 on the file of the Subordinate Judge, Sivagangai confirming their judgement and decree dated 31.10.2008 in O.S.No.146 of 2006 on the file of the District Munsif Court, Sivagangai and allow the above second appeal.

For Appellants : Mr.A.Suresh Babu

For Respondents : Mr.S.Sakthi Siddharth
For Mr.R.Suriyanarayanan



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JUDGMENT

The plaintiffs in O.S.No.146 of 2006 on the file of the District Munsif Court, Sivagangai have filed the present second appeal challenging the concurrent finding of the trial Court as well as the appellate Court.

2.The suit was filed by the appellants herein for the relief of declaration of title and permanent injunction. According to the plaintiffs, the suit schedule property and other properties were originally owned by Rengachariyar, Soumiya Narayana Iyengar, V.S.Narayana Iyengar and Rajagopal Iyengar. The plaintiffs' grandfather Nagalingakonar had purchased the shares of Rengachariyar and Soumiya Narayana Iyengar under a registered sale deed dated 07.08.1941 under Exhibit A1.

3.It is further contended in the plaint that the first defendant's grandfather has purchased 1/4th share from V.S.Narayanan Iyengar under a registered sale deed dated 29.05.1946 which is marked as Exhibit A2. Without having any right or title, the first defendant has created a sale deed in favour of the second defendant on 12.04.2005 under Exhibit B7 and attempting to disturb the possession of the plaintiffs. Hence, the suit.



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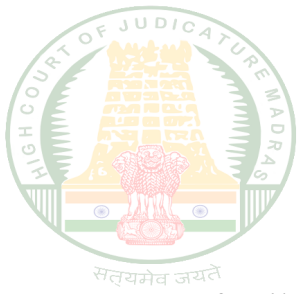
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4.The defendants have filed a written statement disputing the title and possession of the plaintiffs.

5.The trial Court as well as the Appellate Court after going through Exhibit A1 and the deposition of the plaintiffs, have arrived at a finding that the suit schedule properties were purchased by Nagalingakonar who had died leaving behind him four legal heirs. Out of four legal heirs, the sons of two legal heirs alone have filed the present suit seeking declaration of title without impleading the other two legal heirs of Nagalingakonar. The plaintiffs have not averred how both of them have exclusive title over the suit schedule property.

6.Based upon the above said findings, the suit has been dismissed by the trial Court and confirmed by the Appellate Court. Challenging the same, the present second appeal has been filed.

7.According to the appellants, the trial Court as well as the Appellate Court have arrived at a concurrent finding that Nagalingakonar is entitled to 83 cents in the 1st schedule property and 57 cents in the 2nd schedule property. Even assuming that the plaintiffs are co-owners, they are entitled to maintain a suit for declaration of title as against the third parties to the



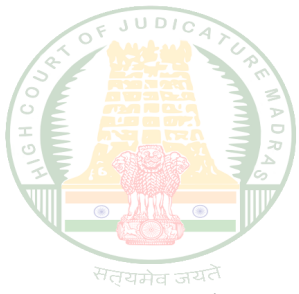
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family who are arrayed as defendants. Therefore, the Court ought to have decreed the suit after arriving at a finding that Nagalingakonar is the owner of 83 cents in the 1st schedule property and 57 cents in the 2nd schedule property. They further submitted that in case if a decree for declaration of title cannot be granted, at least a decree for partition could be granted for 1/4th share in favour of the plaintiffs.

8.Per contra, learned counsel appearing for the respondents/defendants had submitted that the plaintiffs have not established their title and possession over the suit schedule property without impleading the other legal heirs of Nagalingakonar and the suit for declaration of title is not maintainable. Even a co-owner cannot maintain a suit for declaration of title, without impleading the other co-owners, a prayer for partition cannot be sought for.

9.Heard both sides and perused the material records.

10.It could be seen from the judgment and decree of the trial Court as well as the appellate Court that though the Courts below have arrived at a finding that the plaintiffs' grandfather is entitled to 83 cents in the 1st schedule property and 57 cents in the 2nd schedule property, the suit has



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been dismissed primarily on the ground that the other legal heirs of Nagalingakonar have not been impleaded in the suit.

11.A perusal of plaint averments reveal that the plaintiffs have not established how both of them claim exclusive title to the suit schedule property. It is an admitted fact that Nagalingakonar had died leaving behind four legal heirs namely Muthukonar, Balakrishnan, Somasundaram and Thillaiappan. In such circumstances, the present suit filed by two of them seeking exclusive title over the suit schedule property is clearly not maintainable. Even for maintaining a suit for declaration of title as against the other co-owners, at least there should be a averment in the plaint that the suit has been filed on behalf of the joint family. However, the plaint averments does not disclose that the suit has been filed on behalf of the joint family as against the 3rd parties to the family. In such circumstances, the Court below cannot be found fault with for dismissing the suit for declaration of title.

12.As far as the plea relating to the partition is concerned, admittedly the other co-owners have not been impleaded and a suit for partition cannot be maintained as against the third party to the family.



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13.In view of the above said deliberations, all the substantial questions of law are answered as against the appellants and the second appeal stands dismissed with liberty to the plaintiffs to initiate the appropriate proceedings. No costs.

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Index : Yes / No
Internet : Yes / No
NCC : Yes/No
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To

1.The Subordinate Judge
Sivagangai

2.The District Munsif
Sivagangai

3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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