

S.A(MD)No.66 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.02.2025

Pronounced on : 26.06.2025

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A(MD)No.66 of 2013

and

Cross.Obj(MD)No.21 of 2024 in S.A(MD)No.66 of 2013

and

M.P(MD)Nos.1 and 2 of 2013

and

C.M.P(MD)No.13436 of 2024

- 1.Murugesan (Died)
- 2.Ramasamy
- 3.Ganesan
- 4.Thangaraj
- 5.Dhanam
- 6.Rajendran
- 7.Saroja

... Appellants 1 to 7/Appellants
1 to 7/ Plaintiffs

- 8.M.Saroja
- 9.M.Sundaramoorthy
- 10.M.Manikandan
- 11.G.Magudeeswari
- 12.M.Kalaiselvi

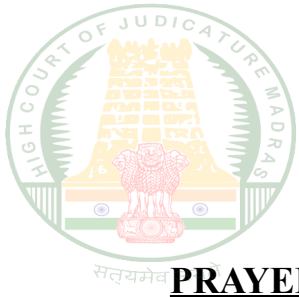
... Appellants 8 to 12

(Appellants 8 to 12 are brought on record as LR's of the deceased 1st Appellant vide Court order dated 18.07.2024 made in CMP(MD)No.5505 of 2018 in S.A(MD)No.66 of 2013)

Vs.

- 1.Thangammal
- 2.Vairavalingam
- 3.Rajasekar
- 4.Sivabalan

... Respondents/Respondents/
Defendants



S.A(MD)No.66 of 2013

PRAYER :- This Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.33 of 2011 on the file of the Principal District Judge, Dindigul, dated 16.07.2012, partly allowing the judgment and decree passed in O.S.No.267 of 2004 on the file of the Principal Sub Judge, Dindigul, dated 08.06.2011.

For Appellants : Mr.T.Lajapathy Roy
Senior Counsel
for Mr.S.Rajasekar

R1 : Died

For R2 - R4 : Mr.PT.S.Narendravasan
for Mr.M.R.Sreenivasan

Cross.Obj(MD)No.21 of 2024 in S.A(MD)No.66 of 2013

1.Thangammal
2.Vairavalingam
3.Rajasekar
4.Sivabalan

... Cross Objectors /Respondents/
Defendants

Vs.

1.Murugesan (Died)
2.Ramasamy
3.Ganesan
4.Thangaraj
5.Dhanam
6.Rajendran
7.Saroja
8.M.Saroja
9.M.Sundaramoorthy

... Respondents 1 to 7/Appellants
1 to 7/ Plaintiffs



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10.M.Manikandan
11.G.Magudeeswari
12.M.Kalaiselvi

... Respondents 8 to 12

(Respondents 8 to 12 are brought on record as LR's of the deceased 1st respondent in view of the order of this Court, dated 18.07.2024 made in CMP(MD)No.5505 of 2018 in SA(MD)No.66 of 2013)

PRAYER:- Cross Objections filed under Order 41 Rule 22 of Civil Procedure Code, against the judgment and decree passed in A.S.No.33 of 2011 on the file of the Principal District Judge, Dindigul, dated 16.07.2012, reversing the judgment and decree passed in O.S.No.267 of 2004 on the file of the Principal Sub Judge, Dindigul, dated 08.06.2021.

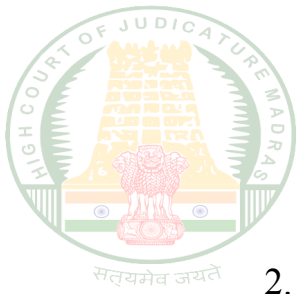
For Cross Objectors : Mr.PT.S.Narendravasan
for Mr.M.R.Sreenivasan

R1 : Died

For R2 to R12 : Mr.T.Lajapathi Roy
Senior Counsel
for Mr.S.Rajasekar

COMMON JUDGMENT

This Second Appeal and Cross Objection are filed against the judgment and decree, dated 16.07.2012 passed in A.S.No.33 of 2011 on the file of the Principal District Court, Dindigul partly allowing the judgment and decree passed in O.S.No.267 of 2004 on the file of the Principal Sub Court, Dindigul, dated 08.06.2011.



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2. The petition in C.M.P(MD)No.13436 of 2024 has been filed by the appellants to allow them to produce the additional documents.

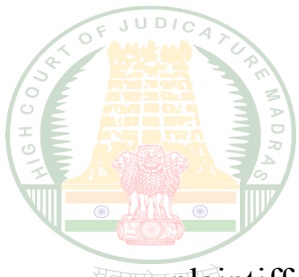
3. The appellants 1 to 7 are the plaintiffs and the respondents are the defendants in O.S.No.267 of 2004 on the file of Principal Sub Court, Dindigul.

4. The appellants 1 to 7/plaintiffs filed the suit against the respondents/defendants for partition of $\frac{1}{2}$ share in the suit property.

5. For the sake of convenience, the parties are referred as plaintiffs and defendants as arrayed in O.S.No.267 of 2004 on the file of the Principal Sub Court, Dindigul.

6. Case of the plaintiffs:

The suit property originally belonged to one Muthuvel Pillai. He gave the suit property as sridhana property to his daughter, Meenammal at the time of marriage. Hence, the suit property was in possession of her husband Rajalingam Pillai. Rajalingam Pillai had two wives, Meenammal and Thangammal, who executed Othi, dated 30.09.1961, in favour of the first



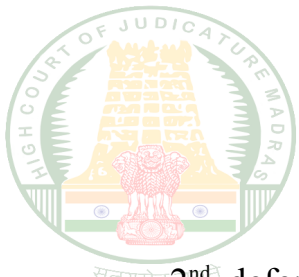
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plaintiff, Arayee Ammal. Thereafter, Meenammal had sold her half share to the first plaintiff, Arayee Ammal by virtue of registered sale deed, dated 04.10.1966. The first plaintiff made developments in the suit property by spending huge amount and also constructed a house in her share by spending Rs.50,000/-. When the first plaintiff asked the defendants to redeem the Othi, they stated that the first plaintiff would keep the suit property in its entirety. So, the first plaintiff enjoyed the suit property and the defendants had no title. But, the defendants filed the suit for redemption of the Othi property by showing the property as the ancestral property of Rajalingam Pillai. The redemption suit was decreed, however, the High Court, in its judgment in A.S.No.499 of 1995, has directed the plaintiff to file separate suit for her ½ share in the suit property. Hence, the plaintiffs filed the suit.

7. Case of the Defendants:

The suit property is the ancestral property of Rajalingam Pillai, who died in the year 1948. The Rajalingam Pillai had two wives. The 1st wife was Meenammal and 2nd wife is Thangammal, the 1st defendant herein. The 2nd defendant is the only son of Rajalingam Pillai through his 2nd wife Thangammal. Meenammal and Thangammal, for herself and for minor son



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2nd defendant, had executed Othi deed, dated 30.09.1961, for Rs.7,500/- in favour of the 1st plaintiff Arayee Amal. Meenamam died in 1968 and she had no issues. So, the entire suit property belonged to the defendants. The defendants filed the suit in O.S.No.1404 of 1984 for redemption and the suit was decreed on 19.04.1991 in favour of the defendants, directing them to deposit Rs.6,500/- into Court. Accordingly, the defendants deposited Rs.6,500/- into Court on 13.01.1991. The plaintiffs preferred A.S.No.25 of 1993 and the same was dismissed on 24.10.1994. The defendants did not know about S.A.No.499 of 1995 before the High Court filed by the plaintiffs, as they did not receive any notice. The alleged sale deed, dated 04.10.1966 executed by Meenamam is not legally valid and on that basis, the suit filed after 28 years is also barred by the Limitation Act. In the said alleged sale deed, dated 04.10.1996, the suit property was mentioned as the ancestral property of Rajalingam Pillai, so the plaintiffs are not entitled to ½ share in the suit property. The plaintiffs have not made any development in the suit property. Moreover, the first plaintiff, Arayee Ammal, filed the suit in O.S.No.1467 of 1996 for partition and the same was dismissed for default on 23.02.1998. The petition for restoration was dismissed and the civil miscellaneous appeal was also dismissed. So, the partition suit in O.S.No.1467 of 1996 reached finality. The present suit is also filed for partition



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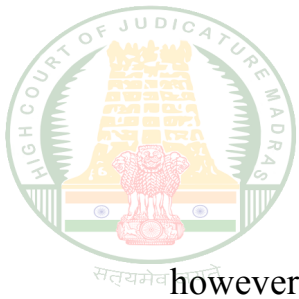
for the very same property mentioned in O.S.No.1467 of 1996. So, the suit is affected by Res Judicata U/s.11 and 12 of the Civil Procedure Code. Hence, the suit is liable to be dismissed.

8. During trial, on the plaintiffs' side, two witnesses, P.W.1 and P.W.2 were examined and Ex.A.1 to Ex.A.27 were marked. On the defendants' side, one witness was examined as D.W.1 and eighteen exhibits were marked as Ex.B.1 to Ex.B.18.

9. The trial Court/Principal Sub Court, Dindigul framed the following issues:

- (1) *Whether suit is bad for Res Judicata and U/s.12 of CPC?*
- (2) *Whether the plaintiffs are entitled to ½ share in the suit property?*
- (3) *To what other reliefs?*

10. After hearing both sides, the learned Principal Sub Judge, Dindigul held that the suit is affected by doctrine of Res Judicata and is bad U/s.12 of CPC and further held that as the suit property was ancestral property of Rajalingam Pillai, the plaintiffs' vendor Meenammal had only 1/8 share,



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however the suit is barred by Section 12 of CPC, the plaintiffs are not entitled to any relief and accordingly dismissed the suit by passing judgment and decree, dated 08.06.2011.

11. Aggrieved by the judgment and decree in O.S.No.267 of 2004, the plaintiffs preferred the Civil Appeal in A.S.No.33 of 2011 on the file of the learned Principal District judge, Dindigul.

12. The first Appellate Court, after hearing both sides and after perusing the case records, came to conclusion that suit is bad for Res Judicata and barred by Section 12 of C.P.C. and partly decreed the suit that the plaintiffs are entitled to 1/8 share and hence, modified the judgment and decree of the trial Court. The first Appellate Court granted the relief of partition of 1/8 share by passing judgment, dated 16.07.2012.

13. Challenging the judgment and decree of the First Appellate Court passed in A.S.No.33 of 2011, the plaintiffs have preferred this Second Appeal and the same has been admitted for file on 18.02.2013 on the following substantial questions of law:-



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1. Whether the lower Appellate Court is justified in interpreting Ex.A.3 sale deed and Ex.A.4 mortgage deed for ascertaining about the nature of suit schedule property?

2. Whether the Courts below are justified in holding that Appellants' vendor Meenammal has no right to sell her ½ share to the appellants' grandmother in the absence of any document to show that the suit property is an ancestral property of Meenammal's husband Rajalingam?

3. Whether the sale deed executed by Meenammal in favour of Appellants' grandmother on 04.10.1966 under Ex.A.3 is hit by the doctrine of defective title as held by the Courts below is legally sustainable?

4. Whether the Courts below are justified in holding that the appellants are entitled to 1/8 alone based on Ex.A.3 sale deed by ignoring Ex.A.11 and Ex.A.12 sale deeds which stand in the name of Meenammal's father Muthu Pillai??

5. Whether the recitals in Ex.A.3 and Ex.A.4 would override the recital in Ex.A.11 and Ex.A.12 which are more than 30 years old document.?



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14. Along with the Second Appeal, the appellants have filed C.M.P.(MD)No.13436 of 2024 for the receipt of additional documents i.e., four sale deeds stood in the name of Muthuvelpillai.

15. The respondents have filed Cross Objection No.21 of 2024 in S.A.No.66 of 2013 stating that the present suit is hit by Res Judicata as the earlier suit filed for the very same relief was dismissed for default and that since the suit property is ancestral property of Rajalingam Pillai, the plaintiffs' vendor namely the 1st wife of Rajaligan Pillai had no share and hence, the plaintiffs are not entitled to any share in the suit property. Hence, it is prayed in the cross objection to dismiss the suit.

16. Heard both sides. Both sides have filed their written arguments.

17. The learned counsel for the appellants/plaintiffs has mainly submitted that the suit properties originally belonged to Muthuvel Pillai, who was the father of Meenammal. The plaintiffs have marked Ex.A11, dated 17.09.1929, which stood in the name of Muthuvel Pillai. The said Muthuvel Pillai gave the suit property as sridhana property to his daughter Meenammal at the time of her marriage with Rajalingam Pillai. The Courts below have relied

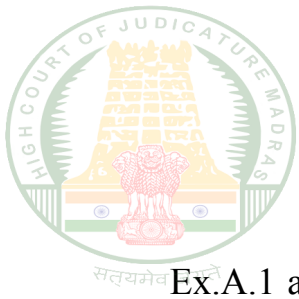


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on the recitals mentioned as ancestral property in Ex.A.1 - Sale deed and Ex.A.4 - Othi deed. The recitals are not correct. The plaintiffs filed four additional documents, which are registered sale deeds in the name of Muthuvel Pillai, clearly shows that the suit property originally belonged to Muthuvel Pillai. The plaintiffs' vendor Meenammal, had ½ share in the suit property who sold it to the plaintiffs by virtue of Ex.A.1. Moreover, the respondents' contention that the present suit is hit by Res Judicata is not acceptable, because the previous suit was dismissed for default, which was not dismissed on merits. In partition suits filed between coparceners, there would not be doctrine of Res Judicata unless the previous suit was decided on merits. In support of his argument, the learned counsel for the plaintiffs relied on **1989 Supp (2) Supreme Court Cases 162 (Shankarrao D.Shinde /v/ Vithalrao G.Shinde and Others)** and **(1993) 1 MLJ 60 (Baliah Nadar and Anr. /v/ Rayappanand Others)**.

18. Per contra, the learned counsel for the defendants argued that the plaintiffs admitted the registered sale deed - Ex.A.1 and Othi deed – Ex.A.4, wherein it is clearly mentioned as if the property is the ancestral property of Rajalingam Pillai. So, the plaintiffs' vendor stated as ancestral property in



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Ex.A.1 and also Meenammal & Thangammal stated so in Ex.A.4 – Othi deed.

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So, they cannot go against the contents of those documents. The Othi document has been confirmed in the previous suit wherein the plaintiffs' vendor had not taken any plea as if they are sridhana properties. Mere documents in the name of Muthuvelpillai, which are of the year 1929, would not be sufficient. There is no acceptable evidence to prove that they were given as sridhana properties. In between the years from 1929 and till execution of Ex.A.1 and Ex.A.4, there is nothing on record about what happened during interregnum. Therefore, defendants fairly submits that the plaintiffs are entitled to 1/8 share as their vendor Meenammal derived only 1/8 share in the suit property as held by the courts below and hence considering the age of the respondents who are senior citizens and also prolonged litigation for more than 30 years, the decree and judgment of the I Appellate Court may be confirmed.

19. On hearing arguments of both sides and also considering the material records and evidences adduced on both sides, it is admitted that one Rajalingam Pillai had two wives, Meenammal and Thangammal and that he had a son Vairalingam. It is also clear that Rajalingam Pillai and Meenammal



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died. The Meenammal and Thangammal, on behalf of Vairalingam executed Othi deed on 30.09.1961 in favour of the 1st plaintiff Arayee Ammal as seen from Ex.A.4. It is also clear that during the Othi period, Meenammal executed Ex.A.3 - Sale Deed on 04.10.1966 in favour of the 1st plaintiff Arayee Ammal.

20. Now, Arayee Ammal is no more and her legal heirs are conducting the case. It is the case of the plaintiffs that the suit properties are originally belonged to one Muthuvel Pillai, whose daughter was Meenammal. They further stated that the said Muthuvel Pillai gave the suit properties to Rajalingam Pillai as sridhana properties at the time of his daughter Meenammal's marriage with Rajalingam and so, Meenammal had ½ share in the suit properties. It is specifically contended by the defendants that the said Meenammal as well as Thangammal have specifically mentioned recital as ancestral properties in Ex.A.4 - mortgage deed as well as in Ex.A.3 - sale deed and hence, they cannot plead beyond the very recital 'ancestral property'. There is no dispute that the recitals were clearly mentioned in those documents and it is also admitted in the oral evidences of both sides. On perusal of those deeds, it is stated so. Therefore, it is the specific case that the plaintiff cannot go beyond the very recital of ancestral property.

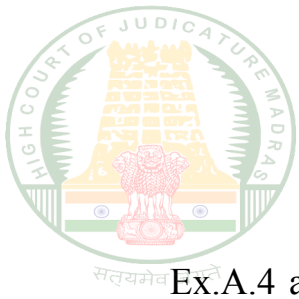


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21. On perusal of evidences available in this case, there is no clinching evidence to substantiate that when the marriage between Meenammal and Rajalingam Pillai was performed and when the suit properties were given as sridhana properties to Rajalingam Pillai. It can be disclosed only by Muthuvel Pillai, Meenammal and Rajalingam Pillai or any of their close relatives or any other witness to the sridhana conveyance. But unfortunately, they are no more and also no other witness was examined to prove the same. Though the plaintiffs filed Ex.A.11 stood in the name of Muthuvel Pillai, which was of the year 1929, the plaintiffs have not produced sufficient material to prove the conveyance as sridhana. In these circumstances, the recital mentioned in Ex.A.3 and Ex.A.4 by the very daughter of Muthuvel Pillai is the ancestral property of Rajalingam Pillai. Ex.A.4 - Othi deed is a registered deed and is of the year 1961 and Ex.A.3 - Sale deed is also registered deed and the same is also of the year 1966. The present suit was filed in the year 2004. Hence, those documents are also more than 30 years old documents.

22. Moreover, the defendants Thangammal and Vairavalingam had filed the suit in O.S.No.1404 of 1984 for redemption of Othi executed through



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Ex.A.4 against Arayee Ammal (original 1st plaintiff herein). The said Arayee Ammal took defence in that suit in O.S.No.1404 of 1984 that the suit properties are ancestral properties of Rajalingam Pillai and that during othi period Meenammal had sold her undivided half share in the suit properties and further stated that since Thangammal and Vairavalingam had not redeemed after Othi period due to financial crises, they orally sold the remaining half share in the suit properties. The copy of judgment passed in O.S.No.1404 of 1984 is marked as Ex.B.16. On perusal of Ex.B.16 the above version is disclosed and also the case of Arayee Ammal that Thangammal and Vairavalingam orally sold half share was negatived and also gave decision that the validity of sale deed, dated 04.10.1966 had to be decided by filing separate suit and so Arayee Ammal was granted liberty to work out the remedy in separate suit as there was cloud over patta issued on 15.04.1948. It is further observed that Arayee Ammal admitted as Othidhar on 11.08.1969 in her legal notice, which was discussed in paragraph No.12 of Ex.B.16. It was also observed in the said suit that without adding Thangammal and Vairavalingam, who is one sharer to the property, in the sale deed, the sale would not bind them as the property was stated to be ancestral property. The said Arayee Ammal has not challenged as stated so. Therefore, it is clear that even on prior



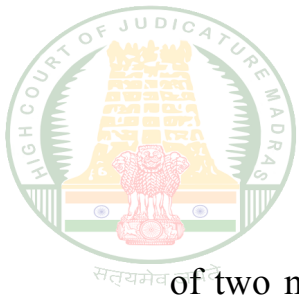
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occasion of suit, the original 1st plaintiff, Arayee Ammal took definite stand that the suit properties are ancestral properties of Rajalingam Pillai.

23. Subsequently, the original 1st plaintiff, Arayee Ammal filed the suit in O.S.No.593 of 1995 on the file of the Principal Sub Court, Dindigul, subsequently transferred to the District Munsif Court, Dindigul, upon jurisdiction and renumbered as O.S.No.1467 of 1996. The copy of the plaint in that suit is marked as Ex.B.1. On perusal of Ex.B.1, the Arayee Ammal again took stand that the suit properties are ancestral properties of Rajalingam Pillai. Against her own pleadings, in the present suit, the Arayee Ammal took another stand that the suit properties are not ancestral properties of Rajalingam Pillai. The inconsistent plea of the plaintiffs would give adverse inference against them. Therefore, the Courts below have correctly justified and concluded that the suit properties are ancestral properties of Rajalingam Pillai in view of Ex.A.3 and Ex.A.4.

24. The next contention is whether Meenammal had right to sell ½ share to Arayee Ammal. The suit properties are held as ancestral properties of Rajalingam Pillai, who has two wives and a son through 2nd wife. The validity



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of two marriages is not questioned and also both the wives, Meenammal and Thangammal admitted their marital status as seen from Ex.A.4 and Ex.A.3. There is no dispute in it. Therefore, as per the provision of the Hindu Succession Act, once the property is held as ancestral property, the 2nd defendant had an equal share by birth along with his father. There are no other children to Rajalingam, except the 2nd defendant and there is no evidence to show that there were other children, except the 2nd defendant. Hence, the 2nd defendant had half share in the ancestral property by his birth. Therefore, on the death of Rajalingam Pillai, his half share has to be divided as per the Hindu Succession Act. In such circumstances, the conveyance of half share by Meenammal to Arayee Ammal under Ex.A.3 is hit by defective title as held by the Courts below. Therefore, considering the available evidences and material records, the Courts below have correctly held that the said Meenammal could derive only 1/8 share in the suit property and hence, she could convey only 1/8 share in the suit property and accordingly, the plaintiffs can seek 1/8 share only in the suit property. The findings of the Court below do not warrant any interference by this Court.

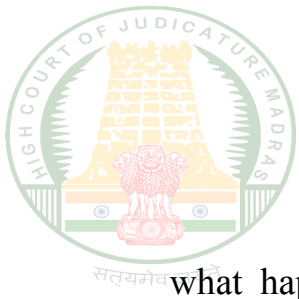


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25. The defendants have filed cross objection in the second appeal that the suit was hit by Res Judicata upon the dismissal of the previous suit in O.S.No.593 of 1995, renumbered as O.S.No.1467 of 1996, filed by the plaintiffs for partition. It is an admitted fact that the suit was dismissed for default, and there is no dispute in it. As per citations relied on by plaintiffs in **(1993) 1 MLJ 60 and 1989 Supp (2) Supreme Court Cases 162**, the earlier suit in nature of partition disposed on merits only will operate as Res Judicata and mere dismissal for default would not hit the subsequent and so, the 2nd suit for the very same nature of partition is maintainable. During the course of arguments, the defendants have also strongly objected the doctrine of Res Judicata. Therefore, this Court upheld the decision of the 1st Appellate Court that the present suit is not affected by Res Judicata and U/s.12 of CPC.

26. The plaintiffs have sought for admission of additional documents which are stood in the name of Muthuvel Pillai. Those documents of the year 1929. There are no valid reasons stated by the plaintiffs why they have not produced these documents during the suit proceedings and the first appeal proceedings. This Court had already held that there is nothing on record about



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what happened from 1929 till the marriage of Meeammal with Rajalingam Pillai. There was no material to show the conveyance of the suit property as sridhana. Moreover, the 1st plaintiff, Arayee Ammal took stand as the ancestral property of Rajalingam Pillai in the earlier suit for redemption in O.S.No.1404 of 1984, as seen from Ex.B.16. Such recital of ancestral property was specifically described in Ex.A.3 and Ex.A.4 by the very same Meenammal and Thangammal. Therefore, mere filing of additional document to show a different stand shifting title to Muthuvel Pillai will not serve any purpose as the Ex.A.3 and Ex.A.4 are more than 30 years old documents and also the plaintiffs side already took stand that the suit property is ancestral property of Rajalingam Pillai, hence, they could not take U turn against their own pleadings and recitals of Ex.A.3 and Ex.A.4. Therefore, the documents now sought to be received at this second appeal stage and also in the absence of acceptable reasons, are not admitted. The said petition is liable to be dismissed.

27. From the above facts and circumstances, the first Appellate Court correctly appreciated the evidences of the case and reversed the finding of the trial Court by decreeing partly. The said findings need not be interfered by this Court by way of second appeal. The questions of law are answered against the



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plaintiffs, appellants herein. Thus, this Second Appeal fails. The cross objection in the Second Appeal is also fails.

28. In the result,

(i) The Second Appeal in S.A(MD)No.66 of 2013 and C.M.P(MD)No. 13436 of 2024 in S.A(MD)No.66 of 2013 are dismissed.

(ii) The Cross Objection (MD)No.21 of 2024 is also dismissed.

(iii) The judgment and decree, dated 16.07.2012 passed in A.S.No.33 of 2011 on the file of the Principal District Court, Dindigul, partly allowing the judgment and decree passed in O.S.No.267 of 2004 on the file of the Principal Sub Court, Dindigul, dated 08.06.2011 are confirmed. No costs.

(iv) Consequently, the connected Miscellaneous Petitions in M.P(MD)Nos.1 and 2 of 2013 are closed.

26.06.2025

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To

- 1.The Principal District Court,
Dindigul.
- 2.The Principal Sub Court,
Dindigul,
- 3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

**Pre-Delivery Judgment made in
S.A(MD)No.66 of 2013 and
Cross.Obj(MD)No.21 of 2024 and
C.M.P(MD)No.13436 of 2024**

26.06.2025