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SA(MD)No.425 of 2004

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	24/03/2025
Date of Pronounced	13/05/2025

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

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1.Velmurugan alias Velmayil (Died)
2.Palaniswami
3.Muthuraj : Appellants/Appellants/
Plaintiffs

Vs.

1.Murugan
2.Shanmugam
3.A.Murugan : Respondents/Respondents/
Defendants

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the Principal District Judge, Dindigul made in AS No.75 of 2002, dated 31/03/2004 confirming the decree and judgment of the First Additional District Munsif, Dindigul, made in OS No.716 of 1998, dated 02/04/2002.

For Appellants : Mr.G.Gomathi Sankar
For R1 and R2 : Mrs.S.Vijaya Shanthi
For 3rd Respondent : Mr.J.Lawrance



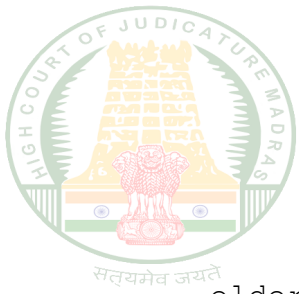
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J U D G M E N T

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This second appeal is filed against the judgment and decree of the Principal District Judge, Dindigul made in AS No.75 of 2002, dated 31/03/2004 confirming the decree and judgment of the First Additional District Munsif, Dindigul, made in OS No.716 of 1998, dated 02/04/2002.

2. The complaint averments:- Suit 'A' schedule properties are the self-acquired properties of one Kathiri. 'B' schedule properties are the poramboke lands in the enjoyment of Kathiri for more than 60 years. Kathiri had three wives by name Alagi, Kathiri and Kathiriammal. Through the first wife Alagi, the first plaintiff K.Velmurugan @ Velmayil and one S.Murugan were born. After the death of the first wife Alagi, Kathi married one Kathiri as second wife. Through the second wife, Kathiri got the plaintiffs 2 and 3 as children. When the second wife was alive, he had affairs with one Kathiriammal. Through her, one Palaniammal was born. Kathiri conducted marriage of his two daughters by providing sufficient sreedhana properties. On 03/09/1976, Kathiri executed a Will bequeathing the suit properties in favour of the plaintiffs and the second wife Kathiri. Kathiri died on 11/02/1997. After the death of Kathiri, the properties which were bequeathed to the plaintiffs came into force and is in possession and enjoyment.



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3.The defendants 1 and 2 are the sons of Kathiri's elder brother Kathiri Mathari. Kathiri Mathari died. Later, some illicit intimacy occurred between the father of the plaintiffs Kathiri and Solaiammal. During that time, Kathiri Mathari kept the documents in the house of Solaiammal. As mentioned above, the defendants 1 and 2 are the sons of one Alagar, who is the brother of Kathiri Mathari. They have no right or interest in the property. The third defendant is the friend of the defendants 1 and 2. Demand was made by the plaintiffs to hand over documents of Kathiri Mathari for which police complaint was also given. But the defendants 1 and 2 under the guise of some false documents claimed right over the properties. So, the suit is laid for declaration and permanent injunction, costs.

4.The statement of the first defendant adopted by the second defendant:-

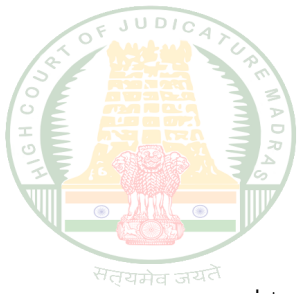
The description of the property mentioned in the plaint A and B schedule properties are admitted. But the averments regarding the second wife and about the plaintiffs 2 and 3 are denied. It is also denied that the plaintiffs were living as joint family. The Will, dated 03/08/1976 executed by Kathiri and the signature found



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therein are denied. It was fraudulently created by the plaintiffs. It is false to say that after the death of Kathiri, the plaintiff were in possession and enjoyment of the suit properties. The plaintiffs 2 and 3 are not the sons of deceased Kathiri. The defendants 1 and 2 are the sons of Subban, who is the elder brother of Late Kathiri. The third defendant is the lessee of some properties of the suit properties. It is false to say that Kathiri had affair with Solaiammal the wife of his brother and executed a Will on 07/12/1978 and kept all the documents relating the suit properties in the house of the defendants 1 and 2. By Will dated, 07/12/1978 Kathiri bequeathed Items No.1 of A schedule properties and B schedule properties in favour of the defendants 1 and 2 and items 2 and 3 of A schedule property in favour his daughter Palaniammal. The entire suit properties were in possession and enjoyment of the defendants 1 and 2 and Palaniammal. When the plaintiffs 1 and 2 attempted to interfere with the possession of the property of the defendants 1 and 2, they lodged a complaint before the Dindigul Taluk Police in Crime No.519 of 1997. The suit is bad for non-joinder of necessary party.



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5. The statement filed by the third defendant:-

The suit properties originally belonged to Late Kathiri. The first plaintiff alone is the son of Kathiri. The plaintiffs 2 and 3 are not the sons of Kathiri. As per the Will executed by Kathiri, the defendants 1 and 2 and Palaniammal were in possession and enjoyment of the suit properties. From Palaniammal, the third defendant took 17 cents of land on lease in SF No.550/2 in Sirumalai Village in 1966.

6. Rely statement filed by the plaintiffs:-

The land in survey No.831/2 and other are the ancestral properties of Late Kathiri. Out of the income derived in the ancestral properties, he acquired the other properties. Plaintiffs and Late Kathiri enjoyed the same as joint family properties. The mother of the plaintiffs 2 and 3 Kathiri Ammal is alive. When the second wife Kathiri was alive, Late Kathiri had illegal affair with Kathiriammal and gave birth to Palaniammal. The above said Kathiriammal and Palaniammal are not the legal heirs of Late Kathiri and they have no right in the suit properties. The defendants 1 and 2 are not the sons of Late Kathiri's brother. Alagar, the father of the defendants 1 and 2 is not the blood related brother of Late Kathiri. The alleged Will dated 07/12/1998 of



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Kathiri is a concocted one. Late Kathiri did not execute any Will in favour of anybody except the plaintiffs. After knowing the Will executed by Late Kathiri in favour of the plaintiffs, Palaniammal, Kathiriammal, defendants 1 and 2, Solaiammal would have fabricated the Will, dated 07/12/1978. After the death of Kathiri, the defendants 1 and 2 and Palaniammal never enjoyed the suit properties. It is not correct to say that the third defendant took on lease certain properties.

7. On the basis of the pleadings of the parties, the following issues were framed by the trial court:-

(1) Whether the plaintiffs are entitled to the relief of declaration as prayed for?

(2) Whether the plaintiffs are entitled to the relief of permanent injunction?

(3) Whether the suit is bad for non-joinder of necessary parties?

(4) To what other reliefs?



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8.Additional issue was framed on 19/09/2001:-

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*(1)Whether the Will executed by
Late Kathiri on 07/12/1998 is true?*

9.On the side of the plaintiffs, 8 witnesses were examined and 34 documents marked. On the side of the defendants, 3 witnesses were examined and 9 documents marked.

10.At the conclusion of the trial process, the trial court dismissed the suit without costs. Against which, appeal was preferred in AS No.75 of 2002. Along with appeal, IA No.35 of 2003 was filed to receive the additional documents. The appeal as well as the IA petition came to be dismissed by the appellate court.

11.Against which, this second appeal is preferred.

12.At the time of admission, the following substantial questions of law were framed:-

**(1)Whether the courts below ought
to have held that even if the
plaintiffs' claim as legatees under the**



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Will Ex.A.27 is rejected still the plaintiffs are entitled to succeed to the suit properties as the sons of the legal heirs Kadiiri Mathari?

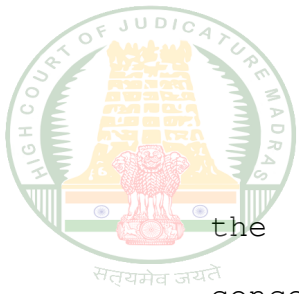
(2)Whether the District Judge has erred in rejecting the plaintiffs' claim when even the defendants do not dispute the legal heirship of the first plaintiff?

(3)Whether on the basis of Ex.A-6 to A-26 the courts ought to have held that the plaintiffs were in possession of the suit properties and granted a decree for injunction?

13.Heard both sides.

Substantial Questions of Law Nos.1 and 2:-

14.Even though the substantial question of law is framed with regard to the limited prayer, now the learned counsel appearing for the appellants would submit that the Will under Ex.A27 was established by examining PW2

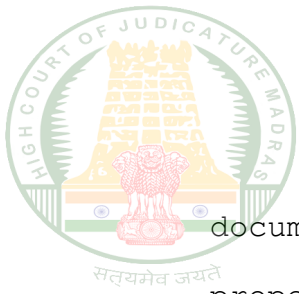


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the one of the attestors. But so far as Ex.B9 is concerned, it is only a Xerox copy and non availability of the original document was not established by the defendants before the trial court. Even the evidence of attestor namely PW2 was rejected by the trial court, but the appellate court did not enter into that issue. So, when the defendants failed to establish that Ex.B9 was executed by Kathiri Mathari, then automatically, as mentioned above, the plaintiffs being the legal heirs of Kathiri Mathari are entitled for the limited prayer of declaration.

15.Per contra, the learned counsel appearing for the respondents would submit that 'B' schedule property, as admitted by the plaintiffs themselves, only poramboke lands. So, the prayer itself is not maintainable against 'B' schedule and the plaintiffs 2 and 3 were born to Kathiri Mathari through a concubine. The appellate court recorded a finding that the plaintiffs 2 and 3 are childrens of Kathiri Mathari and the marriage between PW4 and Kathiri Mathari was established. But the Priest, who was examined on the side of the plaintiffs to prove that the alleged marriage between PW4 and Kathiri Mathari is not stated anything about the place of the marriage. Even PW3 has not supported the case of the plaintiffs. No

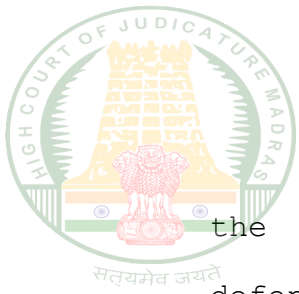


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document was shown the existence of the ancestral properties. It was not established on the side of the plaintiffs that out of the joint family property income, other properties were purchased by Kathiri Mathari. Even they failed to prove the joint possession. Till the death of Kathiri Mathari from Ex.B9, he was alive for about 20 years. The Will was not put into question by any one. Actually the original document was kept by Kathiri Mathari, but later found missing. So, the certified copy was marked, which was also proved through DW2. Even in Ex.B9, no reference was made to the mother's name of the plaintiffs 2 and 3. At the time of Ex.B9, the defendants 1 and 2 were minors. There was no possibility to influence Kathiri Mathari.

16.Now the plaintiffs failed to prove and establish the fact that the deceased Kathiri Mathari executed the Will under Ex.A27 bequeathing the property in favour of the plaintiffs. For valid and cogent reasons, the above said contention on the part of the appellants were rejected by the trial court, so also by the appellate court. Now that sort of finding is not challenged by the appellants in the grounds of appeal. Now they restricted the grounds of appeal only in respect of the the limited prayer of legal-heir ship right to them. According to

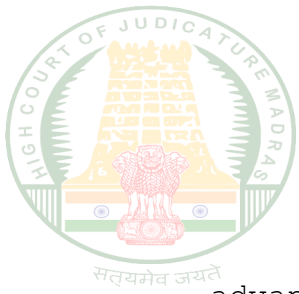


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the appellants, when the plaintiffs as well as the defendants 1 and 2 failed to establish their respective title over the suit property by virtue of Ex.A27 and Ex.B9, then automatically when it is admitted by the defendants 1 and 2 that the suit properties belonged to Kathiri Mathari, automatically being the first class legal heirs only are entitled to succeed to the estate of Kathiri Mathari. As such, they are entitled for declaration.

17.This plea was also raised before the appellate court. The appellate court found that even though the plaintiffs are the legal heirs of Kathiri. But upsetting the finding of the trial court that the plaintiffs 2 and 3 are not the legal heirs of Kathiri Mathari, it also held that the plaintiffs are the childrens of Kathiri Mathari and they are the first class legal heirs. But the limited request placed by the appellants before the appellate court was rejected on the ground that the other legal heirs of Kathiri Mathari namely Palaniammal and Muthulakshmi are not parties to the suit. They are also necessary parties for the purpose of considering that sort of request. When the necessary parties are not impleaded, then automatically, the plaintiffs are not entitled to get any limited decree to the effect that they are the legal heirs of the deceased Kathiri Mathari.



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18.Before this court also, the very same argument is advanced. I find absolutely no reason to differ from the view taken by the appellate court. When necessary parties are not before the court, naturally no declaration can be granted to the plaintiffs. So, the very same plea is not available to the appellants before this court also. So, the substantial questions of law Nos.1 and 2 are answered that the appellate court has not committed any mistake in rejecting the limited prayer sought for.

19.Not only that the plaintiffs must be non-suited for other reason also. They have created Ex.A27 and produced before the court to believe that Ex.A27 was validly executed by Kathiri Mathari. As mentioned above, the genuineness of the document was very much doubted by the appellate court and the trial court, because of some insertion of stamp papers, which were subsequently purchased. This itself indicates that the plaintiff has approached the court with unclean hands. In a suit for declaration, it is the duty of the plaintiffs to approach the court with clean hands. By producing a fabricated documents, they wanted the court to grant the decree in their favour, which will not lie. On that ground also, the plaintiffs are not entitled for any limited decree of declaration. So, these substantial questions of law are



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answered accordingly. So also, in the absence of Palaniammal, no finding can be recorded regarding Ex.B9 also.

Substantial Question of Law No.3:-

20.Regarding the second substantial question of law, the plaintiffs wants this court to believe that by virtue of Exs.A6 and A26, their possession must be upheld and protected. But even for the limited prayer of injunction, it is the duty of the plaintiffs to approach the court with clean hands. Because injunction prayer is an discretionary remedy. When the plaintiffs have approached the court with unclean hands by producing Ex.A27, the fabricated document then they are not entitled for any limited relief for permanent injunction. The trial court as well as the appellate court recorded a clear finding that the the plaintiffs have not established their possession. No argument worth considering was advanced on the side of the plaintiffs as to how the finding recorded by the appellate court as well as the trial court even in respect of the possession is wrong. So, no more discussion is required in view of the glaring defect in the case of the appellants.



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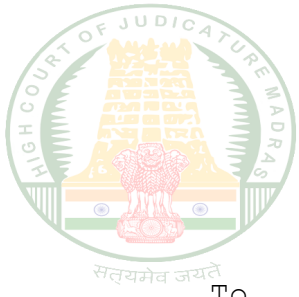
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21. When the plaintiffs say that they are in possession by virtue of Exs. A6 to A26, another glaring defect in their request is that the third defendant would say that by virtue of the Will executed by Late Kathiri, the defendants 1 and 2 and one Palaniammal obtained the suit properties. From Palaniammal, he became a lessee so far as 70 cents are concerned in survey No. 5502 in Sirumalai village. He became a lessee around 1996. So, when a specific plea is taken by the third defendant in this regard, unless Palaniammal, who is not arrayed as a party, then by virtue of the document, the plaintiffs cannot claim that they are in exclusive possession and enjoyment of the property as legal heirs of Late Kathiri. So this limited prayer is also not available to them. So, the third substantial question of law is answered accordingly.

22. In the result, this second appeal fails and the same is **dismissed** with costs confirming the decree and judgment of the courts below.

13/05/2025

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To,
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- 1.The Principal District Judge,
Dindigul.
- 2.The First Additional District Munsif,
Dindigul.
- 3.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J

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