



SA(MD)No.231 of 2005

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 07/03/2025

CORAM

The Hon'ble Mr.Justice **G.ILANGOVA**

SA(MD)No.231 of 2005

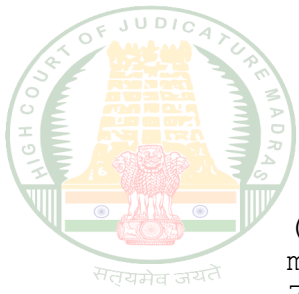
1.Ayyakkannu (Died) : 1st Appellant/R1/D1
2.A.Alagan
3.A.Mayan
4.A.Ponnammal
5.V.Chinnammal
6.C.Muthupillai : Appellants 2 to 6/
LR.s of the deceased
appellant

(A2 to A6 are brought on record as
LR.s of the deceased sole appellant,
vide Court order, dated 31/08/2021
made in CMP(MD)No.2560, 2561 and
2563 of 2021 in SA(MD)No.231 of 2005)

Vs.

1.B.Pappu (Died)
2.Chinnasamy
3.Rajammal
4.M.Rajendran
5.A.Ramu
(5th respondent brought on record
as LR of the deceased sole appellant
vide court order, dated 41/08/2021
made in CMP(MD)No.2560, 2561, 2563
of 2021 in SA(MD)No.231 of 2005)

6.Tamilselvi
7.Sindhu
8.Kesavan
9.Viswa
10.Chitra
11.Anbalagan : Respondents 6 to 11
(Respondents 6 to 11 are brought
on record as LR.s of the deceased
1st respondent vide court order,
dated 01/10/2021 made in CMP(MD)
No.3337 and 3341 of 2021 in
SA(MD)No.231 of 2005)



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(Respondents 8 and 9 are declared as major and the guardian of their sister 7th respondent Sindhu is discharged, vide court order, dated 22.10.2014 made in CMP(MD)No.12615 and 12691 of 2024 in SA(MD)No.231 of 2005 respectively)

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 08/04/2004 in AS No.70 of 2001 on the file of the III Additional Sub Judge, Madurai, reversing the judgment and decree, dated 20/09/2000 in OS No.236 of 1998 on the file of the District Munsif, Madurai Taluk at Madurai.

For Appellants : Mr.R.Janakiramulu

For 1st Respondent : Died

For R2 to R5 : Dispensed with

For R6, R7, R10
and R11 : D.Malaichamy

For R8 and R9 : No appearance

JUDGMENT

This second appeal is filed against the judgment and decree, dated 08/04/2004 passed in AS No.70 of 2001 by the III Additional Sub Judge, Madurai, reversing the judgment and decree, dated 20/09/2000 passed in OS No.236 of 1998 by the District Munsif, Madurai Taluk at Madurai.



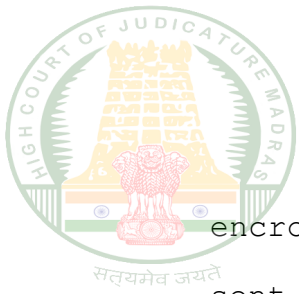
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2. The plaint averments:-

The property comprised in Survey No.130/2 measuring about 7 acres and 56 cents originally belonged to the joint family consisting of Mayandi Thevar and others. The family members were enjoying the property here and there without dividing the same by partition. The plaintiff purchased 1 Acre 81 cents in Survey No.130/2 from the legal heirs of Sadamaya Thevar, on 03/10/1991.

3.The defendants 2 to 6 are the legal heirs of the Mayandi Thevar @ Vellaichamy Thevar. The second defendant was entitled to 94 cents. The defendants 3 to 6 were entitled to 94 cents in the total extent of 7 acres and 56 cents. The second defendant and his brother sold 64-3/4 cents to the first defendant, on 16/10/1995 covered in survey No.130/2B1. Similarly, the defendants 3 to 6 sold 40 cents in favour of the first defendant, on 29/12/1997. But in the second sale deed, survey number was wrongly mentioned as 130/2B.

4.Sub division was effected in survey No.130/2 as various numbers such as S.Nos.130/2A, 130/2B1, 130/2B2, 130/2B3, 130/2B4, 130/2B5, 130/2B. 130/2B6 and 120/2B. By taking advantage of the wrong mentioning of survey number in the sale deed, dated 29/12/1997, the first defendant



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encroached 40 cents belongs to the plaintiff. Notice was sent on 30/07/1998. But there was no proper response. Hence, the suit for declaration and recovery of possession, costs.

5.**The statement:-** The first defendant filed written statement stating that he purchased the property in survey No.130/2B measuring about 40 cents through a sale deed dated 29/12/1997 from the defendants 3 to 6 wherein the correct survey numbers and boundaries are mentioned.

6.The defendants 2 to 6 remained *ex-parte*.

7.On the basis of the pleadings of both sides, the trial court formulated the following issues:-

(1)Whether the vendors of the plaintiff and the plaintiff has got valid and lawful title over the suit property?

(2)Whether the 1st defendant had encroached the suit property?

(3)Whether the plaintiff is entitled for the relief of declaration as prayed for?



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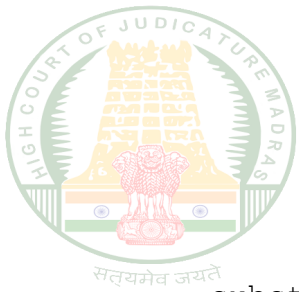
(4)Whether the plaintiff is entitled to the relief of recovery of vacant possession of suit property from the 1st defendant?

5.To what other relief, the plaintiff is entitled to?

8.On the side of the plaintiff, two witnesses were examined and 19 documents marked. On the side of the defendants, two witnesses were examined and two documents marked. Commissioner report and plans were marked as Exs.C1 to C4.

9.At the conclusion of the trial process, the trial court recorded a finding that the plaintiff has not established and proved her title over the suit property and accordingly, dismissed the suit without any costs. Against which, appeal was preferred by the plaintiff before the III Additional Sub Court, Madurai, in AS No.70 of 2021. The appellate court differed from the trial court and recorded a finding that the plaintiff has proved the title over the suit property, accordingly, decreed the suit as prayed for without costs.

10.Against the reversal judgment, this second appeal is preferred by the defendants.



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

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(1) Whether the lower appellate court has committed error of law in reversing the findings of the trial court without considering the reasons given by the trial court?

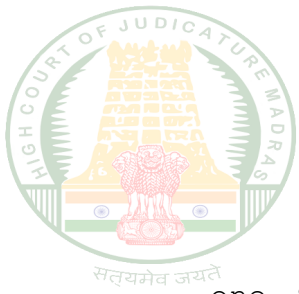
(2) Whether the lower appellate court has committed illegality in allowing the suit of the plaintiff without any cogent findings regarding the extent of encroachments?

(3) Whether the appeal before the lower appellate court should have been abated on account of death of 5th respondent in the said appeal?

12. Heard both sides.

Substantial Question of No.3:-

13. Before we go into the substantial questions of law 1 and 2, we will take up the 3rd substantial question of law first.



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14.The 5th respondent before the appellate court was one Selvam. He was the 5th defendant before the trial court. But he remained *ex-parte*, even before the appellate court, he did not appear. Now in this circumstance, in the grounds of appeal, it has been stated by the appellants that the 5th respondent/5th defendant died. on 07/12/2002. The judgment of the appellate court was rendered on 08/04/2004.

15.According to the appellants, the appeal ought to have been dismissed as abated, since Selvam died. But, as mentioned above, Selvam remained *ex-parte* before the trial court. It appears that he received the notice from the appellate court and thereafter, did not appear, later died. It was not intimated to the appellate court. So, the judgment rendered by the appellate court is not affected. This ground is not at all available to the appellants now and even this ground will not support or improve the case of the appellants. So, the third substantial question of law is answered that the appeal judgment is not affected.

Substantial Question of law No.2:-

16.This is the main issue, of course, it is a factual issue. Since the judgment of reversal, this

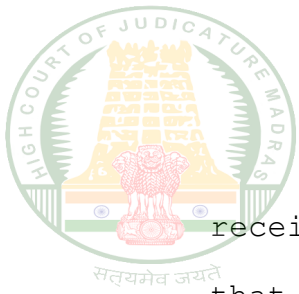


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substantial question of law was framed. So, we will go into the factual aspect to find out whether the plaintiff has established her title over the suit property.

17. On both sides, written submissions have been filed. Now the case of the plaintiff is very specific to the point that she purchased the property with specific four boundaries, which was originally situated in survey No.130/2. It is admitted that an extent measuring about 7.56 Acres belongs to the joint family consisting of Mayandi Thevar @ Vellichamy, Muthunaya Thevar, Sadaimaya Thevar and Chinnasamy Thevar. She purchased an extent of 1.81 Acres from the legal heirs of Sadaimaya Thevar, on 03/10/1991. This sale deed cannot be disputed and in fact, could not be disputed by the defendants. In the sale deed, it is specifically mentioned that the property is situated in Survey No.130/2. The total extent is 7.56 Acres. Within specific four boundaries measuring about 1.81 Acres was sold. Original survey number was subsequently sub-divided into various sub divisions mentioned in the plaint. According to the plaintiff, the disputed property, now situated is in Survey No.130/2B2. To show that sub division was effected, for which she was granted with patta, Ex.A2 (Adangal Extract), Ex.A3 (Kist receipt). Ex.A4 (Adangal Extract) and relevant tax



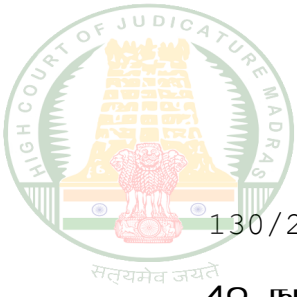
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receipts are produced by the plaintiff. So, this shows that the after purchase sub- division was effected and the plaintiff was granted patta in respect of her purchased property.

18.At this juncture, the trial has recorded a finding that there was no proof for the partition among the joint family members of the original Vendor; Sub-division was not proved to be effected after notice of the parties; As per the provisions of Tamil Nadu Survey and Boundary Act and according to the trial court, sub-division effected cannot be relied. This finding was reversed by the appellate court.

19.It is not even the case of the defendants that sub division was improperly made without any notice. In fact, they cannot make any such contention, since the sale deed of the plaintiff is dated 03/10/1991. The exact date of sub-division is not available. But from the available documents, it is seen that it was effected around 1995 as chitta and adangal shows. But the defendants purchased the property only in 1997. So, probably, they cannot make any objection regarding the sub-division for the simple reason that in the sale deed under Ex.B1 specifically the sub-division is mentioned as



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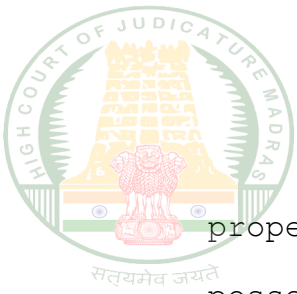
130/2B in vernacular portion " சரீவே எண்.130/2B நீர் செ.

40 நாற்பதும். The original survey number is also mentioned as 130/2. Without any valid reason, the trial court has recorded a finding that sub-division itself is not proper.

20.So, the 1st defendant purchased the property by mentioning the sub-division as 130/2B measuring about 40 cents. He says that he is in possession of the suit property in pursuance of the sale deed under Ex.B1. Apart from the suit property, he has also purchased 63-3/4 cents in survey No.130/2B1.

21.At the time of purchase, there was no survey number as 130/2B. It was already sub- divided as mentioned above. So, it appears that the defendants without verifying the correct sub-division number purchased the property and now claims right over the property situated in Survey No.130/2B2. As mentioned above, Survey No.130/2B2 was standing in the name of the plaintiff.

22.A commissioner was appointed, he inspected the suit property and filed the report, wherein he has stated that no proper survey stones were available around the



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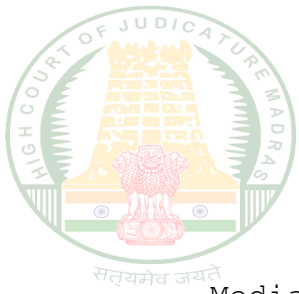
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property. The portion marked as 'ABC' was stated to be in possession of the defendants. The portion marked as 'D' was stated to be under the possession of the plaintiff. Survey number was identified as 130/2B2.

23.So, when *prima facie*, it is established on the side of the plaintiff that the suit property belongs to her by way of purchase, now it is the duty of the defendants to prove that Ex.B1 covers the suit property. Because there is an observation by the trial court that it is the duty of the plaintiff to prove the title over the property, notwithstanding the defective title of the defendants. But this observation itself is also not correct. It is settled principles of law that when both parties claim title over the property on the basis of the documents, the burden of proof pale into insignificance.

24.As mentioned above, the plaintiff has established her title on the basis of the document in a *prima facie* manner. Now against this, the defendants, except producing Ex.B1 sale deed, no other document is forthcoming from them.

25.Now we will go to the oral evidence of both sides regarding this aspect of title.



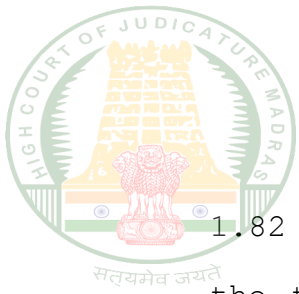
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26. Leaving the evidence of PW1, PW2 who is the Mediator between the plaintiff and the defendants would say that the title resolve the issue at their level. But the defendants did not agree for the compromise. He would say that the dispute arose between the plaintiff and the defendants, when the defendants purchased the very same property, which was purchased by the plaintiff. Now, he involved in a criminal case. So, we can ignore his evidence.

27. The vendor of the defendants was examined on the side side of the defendants as DW2. He would say that the brothers namely Mayandi Thevar @ Vellaichamy Thevar, Sadaimaya Thevar, Muthunaya Thevvar and Chinnasamy Thevar divided the joint family properties orally. Each was allotted 1.8 Acres each. They were allotted property, which was sold to the defendant under Ex.B1. But, his evidence does not inspire any confidence. Because, he would say that sub-division was not made. They have not mentioned any sub-division in the document. But, as mentioned above, sub-divisions are mentioned.

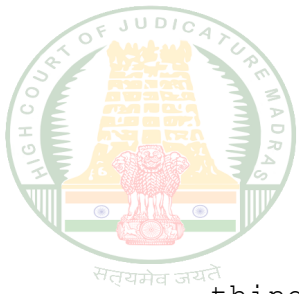
28. One important fact was brought to the notice of this court on the basis of the evidence of DW2. He would admit that in the total property, his father was allotted



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1.82 Acres. That was divided between his mother who is the third defendant (Mayakkal). The first wife was dead. The second defendant is the son of the first wife. So, the first wife children and the second wife children divided 1.8 Acres equally. So DW2's mother was allotted 90.5 cents. According to him, 40 cents, out of 90.5 cents was sold to the defendants. Remaining 40 cents was sold to a third party. Now he is in possession of the remaining 50 cents. That property situated on the south eastern side. If we calculate these extents, it will come around 130 cents, which was more than the property allotted to their mother. So, this important aspect was mentioned in the written argument, which appears to be an acceptable one. So, it is clear that DW2 sold the property, which did not belong to them. The defendants without noticing all those things, purchased the property which was already purchased by the plaintiff. This can be confirmed even from the evidence of DW1. He would say that at the time of purchase, he did not notice any patta standing in the name of DW2. He did not collect any encumbrance certificate. But the vendor, who had shown a paper which contains survey number. So, this shows that he was not careful enough while purchasing the property. So, in all probabalities, as mentioned above, DW2 has sold in excess against their share.



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29. But the trial court without appreciating those things in a proper manner, went on to hold that the plaintiff has not established her title. So, the 2nd substantial question of law is answered that the lower appellate court did not commit any illegality in re-appreciating facts, since the 1st defendant himself admits that he is in possession of the suit property. There is no issue with regard to the extent in the occupation of the defendants. So, the appellate court recorded a correct findings.

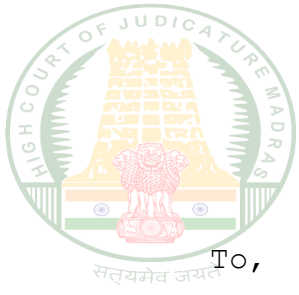
Substantial question of law No.1:-

30. The appellate court has given reason for its decision. As mentioned above, the trial court did not appreciate the evidence on record and facts in a proper manner. So, the first substantial question of law is answered that the lower appellate court did not commit error in law in reversing the finding of the trial court.

31. In the result, this second appeal fails and the same is **dismissed** with costs, confirming the judgment and decree of the appellate court.

07/03/2025

Index: Yes/No
Internet: Yes/No
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To,

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- 1.The District Munsif,
Madurai Taluk.
- 2.The 3rd Additional Sub Judge,
Madurai.
- 3.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVA, J

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