



**SA(MD)No.126 of 2019**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED : 29.07.2025**

**CORAM :**

**THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN**

**S.A.(MD)No.126 of 2019**

1.C.Jothi

2.Karthikeyan

3.Muthulakshmi

... Appellants / Appellants / Defendants

Vs

N.Manimaran

.. Respondent / Respondent / Plaintiff

Prayer : This Second Appeal is filed under Section 100 C.P.C., against the judgment and decree passed in A.S.No.71 of 2017 dated 13.11.2017 on the file of the Additional District Court, Palani, confirming the judgment and decree in O.S.No.4 of 2004 dated 08.11.2013 on the file of the District Munsif Court, Palani.

For Appellants : Mr.S.Anand Chandrasekar  
for M/s.Sarvabhauman Associates

For Respondent : Mr.G.Sridharan



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## JUDGMENT

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The defendants are before this Court on appeal. The Second Appeal is filed challenging the judgment and decree dated 13.11.2017 in A.S.No.71 of 2017 on the file of the Additional District Court, Palani, confirming the judgment and decree in O.S.No.4 of 2004 dated 08.11.2013 on the file of the District Munsif Court, Palani.

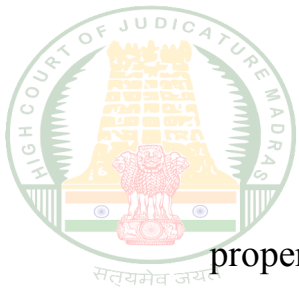
2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3. It is the case of the plaintiff that one partnership firm was formed in the name and style of M/s.Jayalakshmi Brick Works. There were four partners who formed partnership viz., Nagoor Meera Rowther, K.Chinnasamy Gounder, K.Somasundara Mudaliar and N.K.Gurusamy Naickar. The partnership deed dated 13.02.1964 was entered into between the four partners. By a registered sale deed dated 16.02.1964, one of the partner Nagoor Meera Rowther had conveyed his individual property in favour of the firm Jeyalakshmi Brick Works. The firm was carrying on its business in selling chamber bricks. On 25.03.1971, one



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of the partner K.Somasundara Mudaliar had transferred his 1/4 share to the other partner N.K.Gurusamy Naickar. K.Chinnasamy Gounder who is the father of the defendants 1 and 2 and the husband of the third defendant had also transferred 1/4 share in favour of Vijayalakshmiammal for valuable consideration on 23.03.1973. Likewise, Nagoor Meera Rowther also transferred his 1/4 share in favour of S.Balasubramanian on 25.03.1973. N.K.Gurusamy Naickar died on 23.11.1975 and the firm was reconstituted on 27.11.1975 with N.G.Gurusamy Naickar, N.G.Vijayalakshmi, S.Balasubramanian, Kannammal @ Guruvammal. It is the further case of the plaintiff that the firm and its partners by a sale deed dated 01.02.1990 had sold an extent of 4.08 acres to one M.Jegannathan and his daughter Latha and Akilandeswari. By another sale deed dated 03.05.1990, the firm and its partners had further sold an extent of 5.07 acres to the said M.Jegannathan. Earlier patta No.110 stood in the name of partnership and in pursuant to the sale deed, the same was mutated in the revenue records and the patta was transferred in the name of the purchaser Jegannathan and his two daughters. Thereafter by six separate sale deeds, the purchasers Jeganathan and his daughters had sold the



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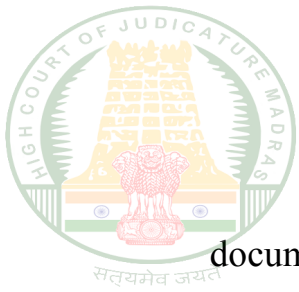
properties to Sterling Holiday Resorts (India) Ltd.,. By purchase they became the absolute owner and they were put in possession and the patta in No.790 was mutated in favour of the Sterling Holiday Resorts (India) Ltd. It is the further case of the plaintiff that the purchasers Sterling Holiday Resorts (India) Ltd., by four separate sale deeds, had conveyed the suit property in favour of the plaintiff for valuable consideration. Pursuant to purchase, the plaintiff was put in possession and the revenue documents were mutated and patta in No.790 was issued in favour of the plaintiffs. However, K.Chinnasamy Gounder one of the erstwhile partner, who has transferred his 1/4 share, had filed a petition before the revenue authorities, challenging the transfer of patta in favour of the plaintiff. He claimed that he continued to hold interest in respect of his 1/4 share. The application before the Tahsildar came to be rejected and the appeal filed there on to the Revenue Divisional Officer also came to be rejected on 02.06.1991. However, the revision filed before the District Revenue Officer, Dindigul, came to be allowed on 14.11.2003 without issuing any notice to the plaintiff who is the owner of the suit properties and pursuant to the order passed by the revisional authorities, the patta issued in favour of the plaintiff came to be cancelled. Challenging the



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orders passed in the revision, the plaintiff had filed further revision before the Commissioner of land administration and it is pending. In the meantime, since K.Chinnasamy Gounder who was disputing the patta, died and the legal heirs of Chinnasamy Gounder who are the defendants interfered in the possession and enjoyment of the plaintiff, the plaintiff had come up with the suit seeking for declaration and permanent injunction.

4. The defendants resisted the suit by contending that the entire suit properties were originally purchased by the partnership firm Jeyalakshmi Brick Works. The defendant's father Chinnasamy Gounder who was a partner was entitled to 1/4 share in the partnership firm and its properties. The defendants dispute that the Chinnasamy Gounder had transferred his 1/4 share and no such document has been executed by him on 23.03.1973. Even if such a document is available, that would not be a valid document by which the legal rights of Chinnasamy Gounder could be construed to have been transferred. The defendants had also disputed all the subsequent transactions carried out and also the ultimate sale made in favour of the plaintiff. According to the defendants, these



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documents will not defeat the rights of the defendants since 1/4 share of Chinnasamy Gounder had never been validly transferred and as such sought for dismissal of the suit.

5. During trial, the plaintiff examined himself as P.W.1 and the village Assistant as P.W.2 and marked Ex.A1 to Ex.A 42. On the side of the defendants, the first defendant examined herself as D.W.1 and the Assistant from the Revenue Department as D.W.2 and marked Ex.B1 to Ex.B10. One document in Ex.X1 was marked through the witness and the summon copy issued has been marked as Court document in Ex.C1. The trial Court, after analyzing the evidences, came to the conclusion that the Chinnasamy Gounder had validly transferred his 1/4 share in the suit property and also the plaintiff had purchased the suit property from the valid owner for valuable consideration and on finding that the plaintiff has valid title, decreed the suit. The defendants preferred an appeal and the lower appellate Court by reappraising the evidence, by judgment and decree dated 13.11.2017 dismissed the appeal, confirming the judgment and decree of the trial Court. Assailing the concurrent finding, the defendants have preferred the above appeal.



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6. This Second Appeal has been admitted and the following substantial question of law has been framed :

*"Whether the judgment of the Lower appellate Court is in compliance to Order 41 Rule 31 of CPC ?"*

7. Learned counsel appearing for the appellants made arguments on the merits of the appeal but however contended that the judgment and the decree of the lower appellate Court, cannot be sustained as the decision rendered is not in compliance with order 41 Rule 31 of CPC. Learned counsel submitted that if the same is accepted then the question of going into other issues may not arise and admittedly the lower appellate Court had not framed any points for determination in the appeal and had simply disposed of the appeal, in just two paragraphs without advertng to any merits in the appeal. Learned counsel submitted that the first appellate Court being a final fact finding Court, ought to reappraise all the evidences and render a finding. However, the lower appellate Court had not considered the evidences and documents and the decision rendered is not in compliance with the mandatory provisions and



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therefore the finding rendered are perverse and sought for allowing of the appeal and remand.

8. Per contra, learned counsel appearing for the respondent argued that since the only issue was in respect to whether the Chinnasamy Gounder had transferred his 1/4 share or not and when the partnership was reconstituted and the said Chinnasamy Gounder who is the father of the appellants 1 and 2 had never chosen to challenge the same, the lower appellate Court had rightly come to the conclusion that the defendants cannot make a claim and resist the suit. It is his further contention that since no other issues are to be decided in view of this very fact, the lower appellate Court had considered the same and when the subject issue has been considered and the finding is rendered, it is not required that a detailed decision adverting to all the other materials are required and that will not make the judgment of the lower appellate Court to be in error. As such sought for dismissal of the appeal.

9. Heard the rival submissions and perused the materials available on record.



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10. Though arguments have been made on the merits of the appeal, but however, the perusal of the judgment and decree rendered by the lower appellate Court reveals that the entire appeal has been decided in two paragraphs. Paragraph Nos.9 and 10 are extracted hereunder:

*"9.Heard both sides. Perused the documents and evidence. The trial Court has decreed the suit on the ground that the defendants father Chinnasamy had knowledge about Ex.A4 reconstitution of Partnership firm and the sale of the suit property infavour of one Jeganathan and had not chosen to question the validity of the above said acts until his death in 1997. Without challenging the above said acts 1st and 2nd defendants' father Chinnasamy Gounder, filed a petition to Thasildar, Palani for transfer of patta in the name of Jeyalakshmi Brick Works. The same was dismissed on 25.10.1990, the appeal was dismissed on 22.06.1991 and the revision was allowed on 14.11.2003. Having known about the sale of suit property in favour of Jeganathan, Chinnasamy Gounder chose to challenge the patta proceedings alone.*

*10. Further more all the moveable and immovable properties of partnership firm have to be considered as moveable property. Hence the transfer of partnership property of a partner does not require registration and*



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*hence the transaction is not hit by Section 17 and 49 of Registration Act."*

11. The first appellate Court had not framed the points for consideration as contemplated under Order 41 Rule 31 of CPC. The lower appellate Court in deciding the first appeal, is the final finding Court and when the rights of the parties are decided, the first appellate Court ought to reappraise the evidences assessing the oral and documentary evidences available, to arrive at a decision in the appeal. The decision arrived at should be supported with reasons thereof. In view of the mandatory provisions under Order 41 Rule 31 of CPC, the lower appellate Court ought to have framed the points for determination, the findings/decision arrived at and the reasons for arriving at such a decision, are all to be found part of the judgment rendered by the lower appellate Court.

12. In the instant case, when detailed grounds have been raised in the appeal, no point for determination has been arrived at and when several issues involving the rights of the parties in respect of 1/4 share



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claimed by the defendants / appellants are involved, the lower appellate Court had not considered the evidences available and had not adduced reasons in arriving at a finding thereon. In view of the above, the decision of the lower appellate Court since not in consonance with the provisions under Order 41 Rule 31 of CPC, the substantial question of law is to be answered in favour of the appellant and against the respondents.

13. In view of the above deliberations, the judgment and decree of the lower appellate Court is set aside and the matter is remanded back to the lower appellate Court to render a decision afresh in compliance with Order 41 Rule 31 of CPC. In view of the matter being remanded, the parties are to appear before the lower appellate Court on 28.08.2025. Considering the fact that the suit filed is of the year 2004 and is pending, the lower appellate Court shall endeavour to dispose of the appeal as indicated above as expeditiously as possible.

14. Accordingly, with the above observations, this Second Appeal is allowed. It is made clear that any opinion expressed in this order is



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only for the purpose of deciding this appeal and this will not prejudice the first appellate Court in deciding the appeal afresh on its own merits.

However, there shall be no order as to costs.

**29.07.2025**

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

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To

1. The Additional District Judge, Palani.
2. The District Munsif, Palani.
3. The Section Officer, VR Section,  
Madurai Bench of Madras High Court, Madurai.



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**G.ARUL MURUGAN, J.**

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