



A.S.(MD)No.179 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.03.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

**A.S.(MD)No.179 of 2023
and
C.M.P.(MD)No.10099 of 2023
and
C.M.P.(MD)No.18772 of 2024**

V.Kalusivalingam

... Appellant

Vs.

V.Lakshmanan

... Respondent

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code, to set aside the judgment and decree dated 31.01.2023 passed in O.S.No.7 of 2016 on the file of the Additional District Court, Virudhunagar and allow this appeal with costs.

For Appellant : Mr.V.Kalusivalingam,
Party-in-person.

For Respondent : No appearance



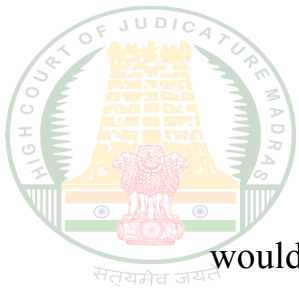
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JUDGMENT

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V.Kalusivalingam and V.Lakshmanan are brothers. Lakshmanan filed O.S.No.7 of 2016 on the file of the Additional District Court, Virudhunagar seeking half share in “B” schedule property. The “B” schedule property is a marriage hall. It had been constructed on “A” schedule land. The “A” schedule land is a consolidation of as many as six parcels of land purchased under Exs.A1 to A6. The plaintiff also sought rendition of accounts in respect of “B” schedule property. He also sought permanent injunction against the defendant to restrain him from evicting him except by due process of law.

2.Kalusivalingam filed written statement contending that “A” schedule lands as well as “B” schedule marriage hall were put up only by deploying his funds. During the relevant period, Kalusivalingam was employed in Highways department and with the money sent by him, his father had purchased the property. The specific stand of Kalusivalingam is that the plaintiff / Lakshmanan did not make any financial contribution for purchasing the land or for the construction of the marriage hall. He



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would also add that the dyeing unit, which is also located in a portion of the schedule property, stands in the name of his wife. That itself would indicate that it does not belong to the plaintiff.

3. Based on the rival pleadings, the Court below framed the following issues:-

“Issues framed in O.S.No.7 of 2016:

(1) Whether the plaintiff is entitled to get a preliminary decree for partition and separate possession of half share in the 'B' schedule property, shown as ABCDFGHIJKA in the plaint plan?

(2) Whether the plaintiff is entitled to get a direction, directing the defendant to render accounts of the Marriage Hall, situate in the suit property, from May, 2014?

(3) Whether the plaintiff is entitled to get a permanent injunction restraining the defendant from evicting the plaintiff from the suit dyeing unit, shown as BCDE in the plaint plan, except under due process of law?

(4) Whether the plaintiff is entitled to get a permanent injunction restraining the defendant from altering the name, Velusamy-Packialakshmi Pavalavizh Arangam, of the Marriage Hall into other names?



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(5) What other reliefs is the plaintiff entitled to?

Issues framed in counter claim in O.S.No.7 of 2016:

(1) Whether the counter claimant/defendant is entitled to get a declaration that the 'B' schedule property, shown as ABCDFGHIJKA in the plaint plan, belongs to him exclusively?

(2) Whether the counter claimant/defendant is entitled to get a mandatory injunction directing the countclaim respondent/plaintiff to hand over to the counter claimant/defendant such original sale deeds (382/09.02.1998, 383/09.02.1998, 2726/04.09.1998, 1992/03.07.1998, 2222/14.07.1998, 2661/25.08.1999) as are referable to the suit property?

(3) Whether the counter claimant/defendant is entitled to get a mandatory injunction directing the counterclaim respondent/plaintiff to hand over to the counter claimant/defendant the vacant possession of the property, shown as BCDE in the plaint plan?

(4) Whether the relief of mandatory injunction, instead of recovery of possession with respect to the property shown as BCDE in the plaint plan?

(5) What other reliefs is the counter claimant/defendant entitled to?"



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4.V.Lakshmanan examined himself as P.W.1 and one P.Mathavan was examined as P.W.2 and Exs.A1 to A19 were marked. V.Kalusivalingam examined himself as D.W.1 and one P.Rameshkumar was examined as D.W.2 and Exs.B1 to B12 were marked. Court documents as well as third party documents were also marked.

5.It is relevant to note that Kalusivalingam raised counter claim. Vide common judgment and decree dated 31.01.2023, the trial Court decreed the suit in the following terms:-

“(1) The suit is decreed by passing preliminary decree for partition of $\frac{1}{2}$ share of the plaintiff in plaint 'B' schedule property.

(2) The preliminary decree is passed for rendition of accounts of marriage hall in 'B' schedule property Velusamy-Packialakshmi Pavalavizha Arangam. The defendant is directed to render accounts within two months of the date of decree.

(3) The defendant is restrained by an order of injunction not to evict the plaintiff from 'B' schedule dyeing unit till the final decree passed.



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(4) The defendant is restrained by an order of injunction not to change the name of marriage hall from Velusamy-Packialakshmi Pavalavizha Arangam.

(5) The counterclaim is dismissed

(6) Considering the facts of the case, the parties are directed to bear the own costs.

(7) Suit is adjourned to 27.04.2023 for drafting final decree. The plaintiff entitled to file necessary application for drafting final decree.”

The counter claim filed by the defendant was dismissed. Aggrieved by the same, the defendant filed A.S.(MD)No.170 of 2023.

6.The defendant appeared in person. We asked the defendant as to whether only he has filed only one appeal or he has filed two appeals. The appellant submitted that he had filed only one appeal.

7.When he had filed a counter claim and by a separate decree, the counter claim was dismissed, the defendant was obliged to file two appeals. As a result of his failure to do so, the principle of *res judicata* will kick in.



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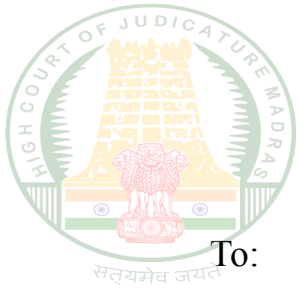
8. Even on merits, the appellant does not have a case. “A” schedule parcels of lands were purchased vide Exs.A1 to A6. It is not in dispute that all the six sale deeds stand in the joint names of Kalusivalingam and Lakshmanan. Therefore, the trial Court rightly decreed the suit as prayed for.

9. In this appeal, an interim order was granted on 31.01.2025. The said interim order will continue till the final decree proceedings are concluded.

10. With the aforesaid observation, this appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(G.R.S. J.) & (M.J.R. J.)
27.03.2025

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

The Additional District Court,
Virudhunagar.

Copy to:

The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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