

S.A.(MD)No.42 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 23.07.2025

CORAM

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

S.A.(MD)No.42 of 2019

Chandrasekarapandian

... Appellant/Plaintiff

-VS-

1.Jeyaraja

2.Shanthamani

3.V.Krishnaraja

4.Navamani

5.V.Dasarathapandian

6.Rani

7.S.Jegatheswari

8.Rasu

9.Panjaraj

10.Mutthan

11.Ilangovan

12.Muthu

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WEB COPY 13.A.Jeyalakshmi

14.Amsupandi

S.Asaithambi (died)

15.S.Selvam

16.Ramar

S.Jeyaraj (died)

18.Mayakkal

19.B.Ponnammal

Chellathurai (died)

21.Parameswari

22.M.Vengidu

23.Selvarani

24.Saroja

J.Sureshkumar (died)

26.R.Selvi

27.Mallika

28.Vignesh

..Respondents

*(R24 to R26 are brought on record as LRs of the deceased
17th respondent and R27 and 28 are brought on record as LRs of the
deceased 24th respondent vide common order dated 03.03.2025
made in C.M.P.(MD).No.12725 of 2024, 4436 and 4437 of 2019)*



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PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure, against the judgment and decree dated 07.09.2018 made in A.S.No.55 of 2015 on the file of the learned IV Additional District Judge, Madurai, confirming the judgment and decree dated 30.03.2015 made in O.S.No.510 of 2007 on the file of the learned Sub Court, Usilampatti, Usilampatti Camp.

For Appellant :Mr.K.Hemakarthiskeyan

For Respondents :Mr.S.Lakshmanan (for R1 to R7)

Mr.P.Manikandan (for R21)

R8 to 16, 19, 22, 23, 26 and R27-No appearance

R17, 20 and 25-died

R18-refused

R24 and R28-service awaited

JUDGMENT

The unsuccessful plaintiff is before this Court on appeal.

2. The second appeal is filed challenging the judgment and decree dated 07.09.2018 in A.S.No.55 of 2015 on the file of the learned IV Additional District Judge, Madurai, confirming the judgment and decree dated 30.03.2015 in O.S.No.510 of 2007 on the file of the learned Sub Court, Usilampatti, Usilampatti Camp.



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3.For the sake of convenience, the parties are referred to as per their litigative status before the trial Court.

4. It is the case of the plaintiff that the suit schedule properties are the ancestral properties belonging to the plaintiff and the defendants 1 to 8. The first defendant is the mother, the defendants 2 to 4 and 6 are brothers and the defendants 3, 5,7 and 8 are the sisters of the plaintiff. The father of the plaintiff namely, Vellaisampandian was a erstwhile jamin of Uthapanayakaur Village. After the death of his father, the plaintiff along with the defendants 1 to 8 were enjoying the suit properties commonly without any partition. It is the further case of the plaintiff that when the defendants 1 to 8 attempted to alienate some portion of the suit properties, the plaintiff had questioned the same. Further, the parties had also executed a mortgage deed in respect of some of the items of the suit properties for their family expenses. Since attempts are made to alienate the property and defeat the rights of the plaintiff, he has filed the suit seeking partition.

5.The defendants resisted the suit by filing a written statement.



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According to the defendants, their father Vellaisampandian died in the year 1990 and pursuant to which, the joint family properties were partitioned in the year 1991 through family arrangement effected orally among the plaintiff and his brothers. In the oral partition, the suit properties were allotted to the defendants 2 to 4 and 6, whereas the other property was allotted to the share of the plaintiff. Based on the partition effected and enjoyment, the mutation has been made and patta has been issued in favour of the parties. The plaintiff has received properties through the oral partition and sold the same to the third parties. The four sisters/the defendants 3, 5, 7 and 8 had executed a released deed releasing their rights in the joint family properties to the brothers. Since the sisters had released their shares and they had an oral partition in the year 1991, the existence of any joint family properties as claimed by the plaintiff is disputed and thereby, they had sought for dismissal of the suit.

6. During trial, on the side of the plaintiff, he examined himself as P.W.1 and two more witnesses had been examined as P.W.2 and P.W.3 and marked Ex.A1 to A23. On the side of the defendants, the sixth defendant examined himself as D.W.1 and marked Ex.B.1 to Ex.B.21.



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7.The trial court, after analyzing the evidence, dismissed the suit by holding that there are certain properties, which has been purchased by the first defendant/mother and the plaintiff cannot make a claim in respect of those properties. Further, in the other suit properties, which are all ancestral properties, the defendants had claimed that there was a oral partition in the year 1991 and the partition stood proved in view of the documents marked under Ex.B2, which is the sale deed executed by the plaintiff himself, and as per the recitals, he got the ancestral property through the partition deed and thereby, they had rejected the claim of the plaintiff and dismissed the suit.

8. The lower appellate court, on re-appraising the evidence, concurred with the finding of the trial court that as per Ex.B2, the plaintiff had sold the ancestral property and he had not impleaded the purchasers as party. However, only examined him and the evidence of P.W.2 did not support the case of the plaintiff. Further, since he was barred to give any oral evidence against the document under Ex.B2, dismissed the appeal confirming the judgment and decree of the trial Court. Challenging the concurrent finding of the courts below, the



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plaintiff is before this court.

9.The appeal has not been admitted. This court, by order dated 22.02.2019, had issued notice to the respondents.

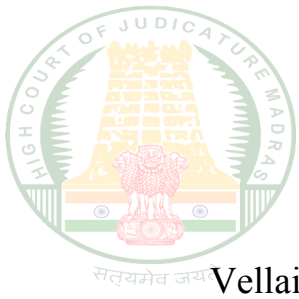
10.The learned counsel appearing for the appellant argued that admittedly, the plaintiff is a legal heir of the Vellaisampandian. It is the further contention that when the suit properties are the ancestral properties, the plaintiff is entitled to a share by inheritance. It is the further contention that when the defendants had come forward with the claim of an oral partition, the burden was on them to prove that such a partition had taken place in the family. It is his further contention that after the death of the father in the year 1990, sons had joined together and executed a mortgage deed through document under Exs.A10 and A11. When the sisters had released their shares through the document under Ex.A23, the Courts below ought to have decreed the suit. No contra evidences have been produced on the side of the defendants. Through the documents in Exs.A10 and A11, the plaintiff had established that there is a joint family and the suit properties are in joint possession of the legal heirs of the Vellaisampandian. The Court's below without appreciating the legal aspects in a proper perspective, had dismissed the suit, which is perverse and sought for decision of this



11.The learned counsel appearing for the respondents argued that when the defendants had filed document in Ex.B2, which categorically establishes the fact that there was an oral partition in the family and the plaintiff, who got the properties through oral partition, had sold the same to the third parties. The learned counsel further contended that though the plaintiff chose to examine his purchasers as P.W.2, the purchasers had taken inconsistent stand in the evidence and further, he cannot give any evidence as against the registered document, which is barred under Section 92 of the evidence Act. The learned counsel further contended that when the oral partition stood proved by the documents executed by the plaintiff himself, the claim for partition by the plaintiff cannot be sustained. Therefore, the Courts below rightly dismissed the suit, which needs no interference, and sought dismissal of the appeal.

12.Heard the learned counsel on either side and perused the materials available on record.

13.Admittedly, the plaintiff and defendants 2 to 8 were born to one



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Vellaisampandian and the first defendant. The plaintiff had come up with the suit in respect of 24 items of the suit properties claiming share contending that the suit properties are ancestral properties of Vellaisampandian. In the suit, the documents Ex.B5 and B6 had been marked, which goes to show that the suit properties in Item Nos.10, 11, 12, 13, 16 and 17 had been purchased by the mother/first defendant. Therefore, those properties are not ancestral properties as claimed by the plaintiff.

14.In respect of the other suit scheduled properties excluding the above, it is admitted by the parties that those properties are ancestral properties. Admittedly, the defendants 3, 5, 7 and 8, who are the daughters of the Vellaisampandian, had executed a release deed under Ex.A23 releasing their right in the suit properties, excluding the properties of the first defendant/mother in favour of their brothers. From the above, it is evident that except the properties that are standing in the name of the mother, after the daughters had released their share, the plaintiff and the defendants 2, 4 and 6 became entitled to share in the suit properties. The first defendant/mother had also died pending the suit.

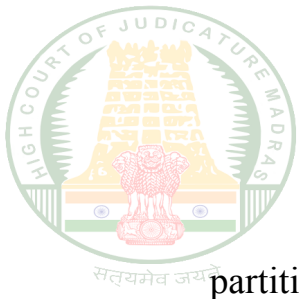


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15.It is also to be noted that as admitted by the parties the first defendant/mother had executed Will and had allotted certain portions of the property to her sons, and the respective parties are in enjoyment of the same. Now, when the plaintiff had come up with the suit claiming share in the suit properties, it is the contention of the defendants that there was an oral partition in the year 1991 and in view of the oral partition, the suit properties excluding the properties of the mother, came to share of the defendants 2, 4 and 6 and in the oral partition, the plaintiff was allotted some other properties.

16. To establish the fact that there was an oral partition in the family, the defendants have filed the documents in Exs.B1 and B2. The perusal of documents Exs.B1 and B2 reveals that the plaintiff had executed a sale deed in favour of the third parties. Ex.B1 has been executed even prior to the death of the father and Ex.B2 had been executed after the death of the father. The Courts below have considered the document in Ex. B2 and as per the recitals found in the sale deed in Ex. B2, the plaintiff had categorically averred that out of the ancestral property, the plaintiff got the property that was conveyed through



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partition. Therefore, the document makes it evident that the suit properties were ancestral properties and there was an oral partition among the sons and in the oral partition, the properties were allotted to the respective persons. Since the property that was conveyed through Ex.B2 was allotted to the share of the plaintiff in the oral partition, he had sold the same by executing sale deed in favour of the third party. It is also to be noted that in respect of the other properties, based on the partition and their possession, the revenue documents had been mutated and individual patta has been issued in favour of the respective defendants.

17.The plaintiff had not added the purchaser in Ex.B2 as party to the suit. Admittedly, the plaintiff had sold the properties through Ex.B2 and he is seeking share in the property. Even the perusal of the evidence of P.W.2 would show that he had initially contended that the sale consideration was paid to the first defendant/mother. However, he had later retracted and had confessed that the sale consideration was actually paid to the plaintiff. In this regard, it is also to be noted that P.W.2 being a party to the document Ex.B2, cannot give evidence contrary to the sale deed and the same is not permissible under Sections 91 and 92 of the



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Evidence Act. When the defendants by filing this document in Ex.B2 had established the fact that there was an oral partition in the family and in view of the oral partition, the plaintiff had admitted the same and had also sold the property given to his share, the plaintiff had miserably failed to explain the documents executed by him in Ex.B2 and disprove that there was no oral partition.

18. When already the partition has been executed in the family in year 1991, the present suit filed by the plaintiff seeking for partition cannot be maintained. Both the Courts below rightly relying on the oral and documentary evidence had dismissed the suit and this court does not find any illegality or perversity in the finding arrived at. No substantial question of law is involved in this second appeal for consideration.

19. In the result, the Second Appeal fails and the same is dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

23.07.2025

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

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To:

- 1.The IV Additional District Judge,
Madurai.
- 2.The learned Sub Court,
Usilampatti, Usilampatti Camp.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ARUL MURUGAN, J.

vsg

Judgment made in

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