



S.A.(MD)No.65 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 07.07.2025

CORAM

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

S.A.(MD)No.65 of 2019

and

C.M.P(MD)No.2119 of 2019

Angammal (died)

2.Santhanam

(A2 is brought on record as LR of the deceased
sole appellant vide court order dated 04.08.2021
made in CMP(MD)No.4064 of 2021)

... Appellant

-vs-

1.Mari

2.Arumugam

3.Dhanam

4.Rathinam (died)

5.Pitchai Mani

6.P.Senthilkumar

7.Selvi

(RR5 to 7 are brought on record as LR of the deceased
4th respondent vide court order dated 09.06.2025 made
in CMP(MD)Nos.15720, 15721, & 15723/2024)

..Respondents

PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure, against the judgment and decree dated 24.07.2017 made in A.S.No.165 of 2010 on the file of the I Additional Sub Court, Madurai confirming the judgment and decree dated 07.07.2010 made in O.S.No.910 of 2004 on the file of the District Munsif Court, Madurai Taluk.



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For Appellants ... Mr.PT.S.Narendravasan
For Respondents ... Mr.G.Krishnan (RR1, 5 to 7)
No appearance (for RR2 & 3)

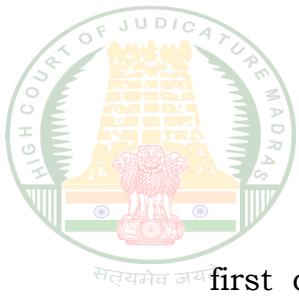
JUDGMENT

The unsuccessful plaintiff is before this court on appeal.

2. The second appeal is filed assailing the judgment and decree dated 24.07.2017 in A.S.No.165 of 2010 on the file of the I Additional Sub Judge, Madurai, confirming the judgment and decree dated 07.07.2025 in O.S.No.910 of 2004 on the file of the District Munsif Court, Madurai.

3. The parties are referred to as per their litigative status before the trial Court.

4. It is the case of the plaintiff that the first defendant and she are the son and daughter of one Periyasamy Servai. The said Periyasamy Servai had two wives, namely, Thiruvayee and Andichi. While the plaintiff was born through the second wife, Thiruvayee, the

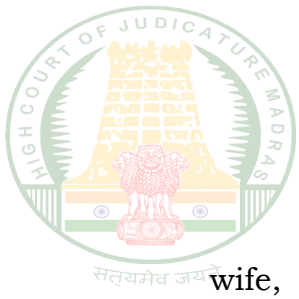


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first defendant was born through the first wife, Andichi. It is the further case of the plaintiff that after the death of the said Periyasamy Servai and also his two wives, the plaintiff and the first defendant inherited the properties and were in possession and enjoyment of the suit property. It is the further case of the plaintiff that some portions of the properties were acquired by the Government, and compensation was paid to the first defendant, which was duly shared it with the plaintiff. Thereafter, since the first defendant tried to encumber the other properties and defeat the rights of the plaintiff, she had issued a legal notice on 18.01.1994 in Ex.A1 seeking partition of the suit properties. However, a reply notice dated 01.02.1994 was issued by the first defendant in Ex.A2 denying the claim. As such, the plaintiff had come up with the suit for partition.

5. Resisting the suit, the first defendant filed a written statement disputing the claim of the plaintiff. The defendant specifically disputed the relationship of the plaintiff and denied that she is her sister and legal heir of the said Periyasamy Servai. It is the specific contention of the defendant that the plaintiff has not been in joint possession or enjoyment of the suit properties and the suit properties were not joint family properties at any point of time. According to the defendants, the said Periyasamy Servai had only one



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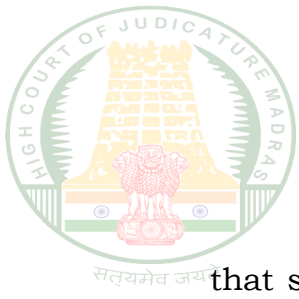
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wife, Andichi. After the lifetime of Periyasamy Servai, the first defendant, who is the only son, inherited the properties, and as the absolute owner, he is in possession and enjoyment of the suit properties. Further, the first defendant had also executed a settlement deed as early as in the year 1953 in favour of his wife, based on which she became the absolute owner. The suit filed without making all the parties is bad for non-joinder of necessary parties.

6. The third defendant had also filed a separate written statement contending that from the date of settlement, they are in possession and enjoyment of the property and are the absolute owners and sought dismissal of the suit.

7. During the trial, the plaintiff examined herself as P.W.1 and marked Exs.A1 and A2. On the side of the defendants, the first defendant examined himself as D.W.1 and his mother Andichiammal as D.W.2 and one Ramar as D.W.3 and marked Exs.B1 to B8.

8. The trial court, after analyzing the evidence, dismissed the suit by holding that when the plaintiff had come with the suit claiming to be the legal heir of Periyasamy Servai, as she was born through the second wife, Thiruvayee, the onus was on the plaintiff to establish



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that she was a legal heir, which the plaintiff had failed to prove, and therefore, the plaintiff is not the legal heir to make her claim for partition in the suit property. The trial court also, from the documents filed by the defendants, came to the conclusion that the first and third defendants had exclusively dealt with the suit property through the documents in Exs.B2 to B5 from the year 1953 onwards, and therefore, the claim made by the plaintiff is not sustainable.

9. On appeal, the lower appellate court also confirmed the judgment and decree of the trial court by observing that even as per the admission of the plaintiff that she has the necessary documents to establish her legal heirship, she is the legal heir of Periyasamy Servai, but she has failed to submit any document in this regard to establish her claim. As such, since the plaintiff failed to prove her paternity, the plaintiff is not entitled for the suit relief. Assailing the concurrent finding of fact, the plaintiff has come up with the above second appeal.

10. The second appeal has not been admitted, and this court, by order dated 12.03.2019, directed issuance of notice for admission.



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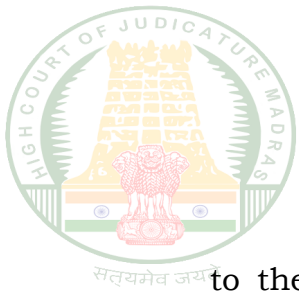
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11. The learned counsel for the appellant/plaintiff argued that the courts below had only relied on the statement given by the plaintiff during the evidence that she has the necessary documents to prove that she is the legal heir, and only because the documents have not been filed, the claim of the plaintiff came to be rejected without considering the other evidence available on record. It is his further contention that the defendant himself, by filing an additional written statement, had averred that the suit property belonged to the father of the plaintiff. Therefore, this aspect has not been rightly taken note of. As such, the findings of fact arrived at by the courts below are perverse, and they sought interference from this court.

12. The learned counsel for the respondents/defendants placed submissions in respect of the decision arrived at by the courts below.

13. Heard the learned counsel for the appellants/plaintiff and the learned counsel for the respondents/defendants and perused the materials available on record.

14. Admittedly, the suit property originally belonged to Periyasamy Servai. Periyasamy Servai had a wife by name, Andichi. The first defendant, Pandi, was born to Periyasamy Servai. Pursuant



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to the death of Periyasamy Servai, the first defendant, as the legal heir, had inherited the suit property and had executed a registered settlement deed in favour of his wife on 01.06.1953 in Ex.B2. It is to be noted that the defendants also filed a sale deed dated 30.01.1925 in Ex.B1, which is the registered sale deed executed in favour of Periyasamy Servai, which makes it evident that Periyasamy Servai had purchased the suit property through the sale deed in Ex.B1.

15. The plaintiff had come with the claim for partition, contending that Periyasamy Servai had two wives and the second wife was one Thiruvayee. The plaintiff was born through the second wife. It is the case of the plaintiff that after the death of Periyasamy Servai and his two wives, she, along with the first defendant, had inherited the suit property, and she was in joint possession and enjoyment of the suit property. When the plaintiff had come up with such a claim, it was for the plaintiff to prove the paternity and establish that she was the legal heir and a daughter born through the second wife of Periyasamy Servai. It is also for the plaintiff to establish that after the death of Periyasamy Servai, she had been in joint possession and enjoyment of the suit property and the suit property was treated as joint family property.



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16. In the instant case, except the legal notice issued by the plaintiff in Ex.A1 and a reply notice issued by the defendants in Ex.B2, the plaintiff had not filed any document to prove the paternity or to establish that she was in joint possession and enjoyment of the suit property. The plaintiff, who had given evidence as P.W.1, in her cross-examination, had categorically stated that she had the necessary document available to establish that Periyasamy Servai had a second wife by name, Thirvayee, and the plaintiff had been born to the said Thiruvayee and his father, Periyasamy Servai. When the plaintiff had taken such a stand and admitted that the records were available to establish the same, the plaintiff failed to file any such document before the court to establish her claim. When the plaintiff had come up with the claim of legal heir and also sought partition, as per Section 101 of the Evidence Act, the burden was on the plaintiff to discharge the onus by establishing herself to be the legal heir. Further, the plaintiff has to bring the best evidence available to prove her case. When, admittedly, the plaintiff was having documents available with her, no such document has been produced before the court. In such circumstances only, adverse inference is to be drawn against the plaintiff that if any such document is produced, it will be detrimental to the claim of the plaintiff.



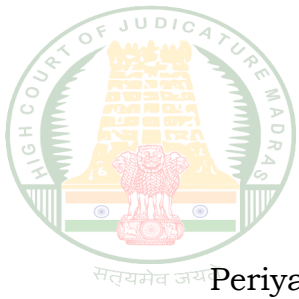
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17. The plaintiff had further claimed that she is in joint possession and enjoyment of the suit property. In this regard also, the plaintiff has not filed any document to establish that she has been in joint possession and enjoyment along with the first defendant.

18. On the other hand, the first defendant, by filing the document in Ex.B1 dated 30.01.1925, i.e., the settlement deed executed in favour of Periyasamy Servai, and also the settlement deed in Ex.B2 executed on 01.06.1953 by him, had established that the suit property absolutely belonged to his father, Periyasamy Servai, and after his death, as the son, he had dealt with the suit property from the year 1953. Further, the documents in Exs.B3 to B5 had also been executed by the first defendant and the third defendant, which also all goes to show that they had dealt with the suit property as they had been exclusive owners of the suit property. Further, the defendants have also filed the documents in Exs.B6 and B7 which are the tax receipts in respect of the suit property, to show that they have exclusive possession and enjoyment of the suit property.

19. When the defendants had established their exclusive title and also possession over the suit property, the plaintiff, who had come up with the claim of partition claiming to be the daughter of



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Periyasamy Servai and in joint possession, had miserably failed to establish her paternity and prove that she is his legal heir and she has been in possession of the suit property. The courts below have rightly analyzed the documents and thereby arrived at concurrent findings of fact which are based on the available record. This court does not find any illegality or perversity in the finding arrived at. In such circumstances, no substantial question of law is involved in this second appeal.

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

07.07.2025

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

To:

- 1.The I Additional Sub Judge, Madurai.
- 2.The District Munsif, Madurai Taluk.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ARUL MURUGAN, J.

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Judgment made in

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