



S.A.(MD)No.67 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2025

CORAM:

THE HON'BLE MR JUSTICE G.ARUL MURUGAN

S.A.(MD)No.67 of 2019
and
C.M.P(MD)No.2121 of 2019

1. A.Murugan (died)
2. Shanmuga Ammal
3. Mahalakshmi
4. Ganesh
5. Dinesh Singh
6. Mahesh Kumaran

... Appellants

(A2 to A6 are brought on record as Lrs of the deceased sole appellant vide Court order dated 23.01.2024 in CMP(MD)No.14596 of 2023 in SA(MD)No.67 of 2019 by PVMJ)

Vs.

1. Petchiammal
2. Venkatesan
3. Saravanan
4. Selvapavalakannan
5. Arumuga Vadivammal

... Respondents

Prayer: The Second Appeal has been filed under Section 100 of C.P.C, to set aside the judgment and decree dated 03.11.2018 in A.S.No.86 of 2017 on the file of the Subordinate Judge Tiruchendur Thoothukudi District confirming the judgment and decree dated 21.09.2011 in O.S.No. 31 of 2007 on the file of District Munsif Court, Srivaikundam, Thoothukudi District and allow the above second appeal.



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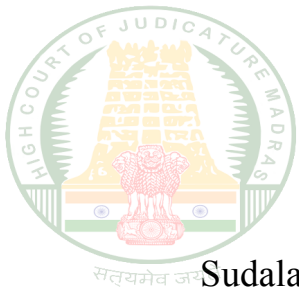
For Petitioner : Mr.A.D.Ganeshamoorthi
For R1 & R4 : Mr.Prabhu Rajadurai
for M/s.K.Shwathini

JUDGMENT

The 1st defendant is before this Court on appeal. The second appeal is filed challenging the Judgment and Decree dated 03.11.2018 in A.S.No. 86 of 2017 on the file of the Subordinate Judge Tiruchendur Thoothukudi District confirming the Judgment and Decree dated 21.09.2011 in O.S.No. 31 of 2007 on the file of District Munsif Court, Srivaikundam, Thoothukudi District.

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

3. It is the case of the plaintiffs that the 1st item of the suit property originally belonged to their ancestor Sudalaimadan. The said Sudalaimadan has purchased the property measuring 1.39 acres of land in S.No.81/2 through a registered Sale Deed. Pursuant to the death of

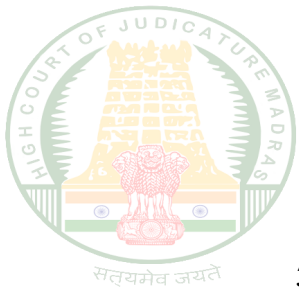


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Sudalaimadan, his three sons namely Pechimuthu, Eenan and Thiruvarangam @ Irudhayaprakasam inherited the property and subdivided $\frac{1}{3}$ shares each by a oral partition. Each share consisting of $46 \frac{1}{3}$ share and they were in possession and enjoyment of the same. Pechimuthu died leaving behind his daughter Seeniammal and Seeniammal had a son and a daughter namely Murugan and Parvathi. Thiruvarangam @ Irudhayaprakasam had executed a settlement deed on 12.06.1973 by settling his $\frac{1}{3}^{\text{rd}}$ share of $46 \frac{1}{3}$ cents in favour of Rajamani, who is the son of Eenan.

4. It is further case of the plaintiff that Eenan who got $46 \frac{1}{3}$ share died leaving behind his three sons namely Vellaiyan, Dharumar and Rajamani. Dharumar died as bachelor. Pursuant to which, Vellaiyan and Rajamani entered into an understanding on 30.12.1991 in Ex-A2 by which Vellaiyan took 23 cents on the southern side and Rajamani took 23 cents on the northern side. Rajamani died on 11.02.1999 leaving behind his wife and three sons viz., the plaintiffs 1 to 4.



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5. After the death of Rajamani, plaintiffs 1 to 4 have inherited the 1st item of the suit property with an extent of 69 cents. Subsequently, when subdivision were carried out in S.No.81/2, the 1st defendant by executing a partition deed with his sister claimed 56 cents instead of 46 1/3 cents, which he was originally entitled to. When the subdivision was carried out, patta in respect of 7 cents in S.No.81/2A had been wrongly included in the name of the 1st defendant and based on which the 1st defendant is unauthorizedly in possession of this extent of 7 cents. As such the plaintiff had come up with this suit seeking for declaration and permanent injunction in respect of the 1st schedule and sought for recovery of possession in respect of the 2nd schedule.

6. The 1st defendant had resisted the suit by filing a written statement contending that since Thiruvarangam @ Irudhayaprakasam had died without any issues and his wife also died, the legal heirs of Pechimuthu and Eenan are equally entitled to the share of Thiruvarangam @ Irudhayaprakasam. Further, according to the 1st defendant even though he had admitted that there was an oral partition among the 3 sons of Sudalaimadan in respect of 1.39 acres in S.No.82/2, however, as per the

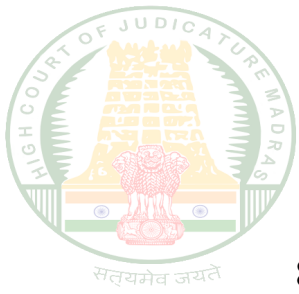


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customary practice in the community as well as in the village, the elder son would be allotted a little higher extent of land, as such the Pechimuthu was allotted $56 \frac{1}{3}$ cents and only the balance $82 \frac{2}{3}$ cents was divided between the other two brothers Eenan and Thiruvarangam @ Irudhayaprakasam. The 1st defendant had entered into a partition deed with his sister Parvathy on 23.02.1995. Based on which, $56 \frac{1}{4}$ cents were allotted to the 1st defendant. When the sub division was carried out in S.No.81/2, $56 \frac{1}{4}$ cents came to the 1st defendant and subdivided as 81/2A and 81/2B and the 1st defendant is in possession of this entire extent of $56 \frac{1}{4}$ cents.

7. The 1st defendant have also further averred that since he along with his mother and grandfather were in possession of the extent for more than a period of 12 years, they have also perfected the title through adverse possession. Therefore, the plaintiffs have no right to claim to seek for the recovery of possession of the 7 cents in the 2nd item of the suit property and sought for dismissal of the suit.

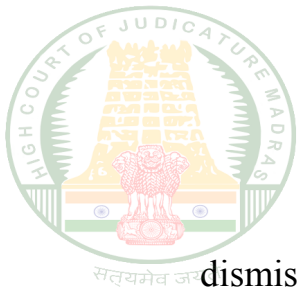


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8. During trial, the 2nd plaintiff examined himself as PW-1 and one Dharmaraj as PW-2 and marked Exs-A1 to A6. On the side of the defendants, the 1st defendant examined himself as DW-1 and marked Exs-B1 to B8. The Trial Court after analyzing the evidences, came to the conclusion that the plaintiffs had established their title to the first item of the suit property and when the title stands established they are entitled for recovery of possession in respect of the 2nd item of the suit property which forms part of the 1st item of the suit property.

9. The Trial Court also finding that the 1st defendant who had claimed 56 $\frac{1}{4}$ cents i.e., some portion more was allotted to him then his brothers, did not prove such a claim with any documents or evidences and thereby had decreed the suit. On appeal the Lower Appellate Court reappraised the evidence and on finding that through the settlement deed in Ex-A1 and the document in Ex-A2, the plaintiffs were entitled to 69 cent in the 1st item of the suit property held that the partition executed by the 1st defendant with his sister in Ex-B2 being a self serving document has not established as to how the plaintiff was entitled to an extent of more than 46 $\frac{1}{3}$ cents, concurred with the findings of the trial court and



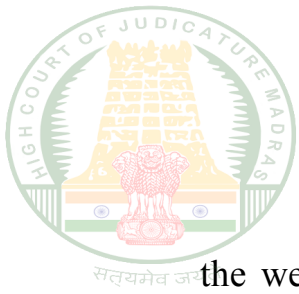
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dismissed the appeal. Hence, the 1st defendant is before this Court on appeal.

10. The appeal has not been admitted and this Court by order dated 08.03.2019 only issued notice before admission.

11. The learned counsel for the appellant argued that, when the plaintiff were entitled to an extent of 56 cents, since the plaintiffs grandfather Pechimuthu being the elder son was entitled for an additional extent as per the customary practice and the same had ben fortified through the partition executed in Ex-B2 in which 56 cents were allotted to the 1st defendant, the Courts below has not considered the document in Ex-B2 in proper perspective. It is his further contention that the settlement deed executed by Thiruvarangam @ Irudhayaprakasam in favour of Rajamani itself is doubtful and the plaintiffs are not entitled to claim any right in respect of the share that went to Thiruvarangam @ Irudhayaprakasam. It is also his contention that when the plaintiffs have come up with this appeal seeking for declaration and recovery of possession, they have to succeed on their own strength and cannot rely on



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the weaknesses in the case of the defendant and the Courts below have erroneously shifted the burden on the defendant and had come to a conclusion that the defendant had not established that he was not entitled to the second item of the suit property which is perverse and as such sought for interference of this Court.

12. The learned counsel for the appellant further submits that for the extent of 56 cents, the 1st defendant being the rightful owner had also been issued with patta.

13. Per contra, the learned counsel appearing for the respondent submitted that when it is an admitted case that all the three sons of Sudalaimadan had inherited the properties, as per the Hindu Succession Act, all the three sons are entitled for an equal share. When the 1st defendant claims an excess extent against the provisions of the Hindu Succession Act by claiming that there is a customary practice prevailing in the village, then the onus is on the defendant to establish that there was any such customary practice and through that customary practice an excess extent as claimed by the 1st defendant was allotted to his grandfather.



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14. The learned counsel for the appellant further submitted that when the property which came to Thiruvarangam @ Irudhayaprakasam was settled in favour of Rajamani through a registered Settlement Deed in the year 1973 which has never been disputed or challenged, the appellants cannot now seek to argue as against the document in Ex-A1.

15. It is her further contention that Rajamani being one of the sons of Eenan, after the death of his brother Dharuman had partition with his other brother Vellaiyan and got 23 cents of land in Ex-A2 and in view of the documents in Ex-A1 and Ex-A2, the plaintiffs have proved his title to the 1st item of the suit property. Then once title stands proved the plaintiff is entitled to seek for recovery of possession for the 2nd item which the Courts below has rightly found and had decreed the suit which needs no interference and sought for dismissal.

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

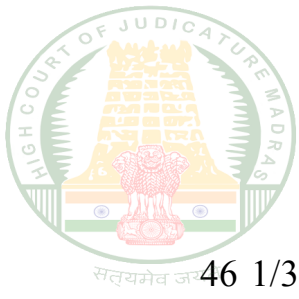


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17. Admittedly, Sudalaimadan had purchased an extent of 1.39 acres in S.No.81/2. It is also admitted by the parties that Sudalaimadan had three sons namely Pechimuthu, Eenan and Thiruvarangam @ Irudhayaprakasam. There is also no dispute that Sudalaimadan died intestate. Since the Sudalaimadan being the absolute owner by purchase, after his death, his property at the hands of Sudalaimadan would get devolved to the legal heirs as per the Section 8 of Hindu Succession Act, 1956. As such Pechimuthu, Eenan and Thiruvarangam @ Irudhayaprakasam who are the admitted three sons and the Class I legal heirs of Sudalaimadan inherited $\frac{1}{3}$ share each. As such each one were entitled to $46 \frac{1}{3}$ cents of land out of the total extent of $1 \frac{1}{39}$ acres in S.No. 81/2. It is also an admitted case that there was an oral partition between the brothers by which the respective portion were earmarked and taken possession by them.

18. The only dispute that arises is, when according to the plaintiffs, in view of the inheritance in which each of the sons got $46 \frac{1}{3}$ cents, there was an oral understanding for a partition by which Pechimuthu took



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46 1/3 cents on the western side, Eenan took 46 1/3 cents on the middle portion and Thiruvarangam @ Irudhayaprakasam took 46 1/3 cents on the eastern side.

19. The 1st defendant did not dispute that there is an oral partition and in the oral partition the properties as suggested in the western, middle and eastern side were taken respective possession by the parties. However, it is the only case of the 1st defendant that since the Pechimuthu was elder son and in view of customary practice that prevailed in the village, the elder son would be entitled to have a little higher extent than the other two brothers. It is the contention of the 1st defendant that in view of such customary practice instead of 46 1/3 cents Pechimuthu was actually given 56 1/3 cents and only the balance land were divided between the other two brothers.

20. When the ownership of sudalaimadan, three Class-I legal heirs and the oral partition are all admitted and when the 1st defendant comes up with the claim of an excess extent through a customary practice, then the onus is on the 1st defendant to establish that there had been such a



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customary practice and through the customary practice, an extent higher than 46 1/3 cent was allotted to Pechimuthu.

21. In this regard, it is to be noted that the defendant has not examined any other witnesses nor had produced any documents to establish the fact that in view of the customary practice, the 1st defendant grandfather Pechimuthu was given any portion of lands in excess than the other two brothers.

22. When as per Section 8 of the Hindu Succession Act, 1956, all the three sons who are the class 1 legalheirs are entitled to an equal share and when the 1st defendant makes a claim by contending customary practice then as per Section 103 of the Evidence Act, the onus is on the defendant to prove the fact for the Court to believe its existence, to accept the said fact.

23. As referred above, when the onus was on the 1st defendant, he had miserably failed to prove through evidence that there was any such customary practice, through which an excess land was allotted to



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Pechimuthu. Thiruvarangam @ Irudhayaprakasam who is one of the sons who got $46 \frac{1}{3}$ cents on the eastern side through inheritance and oral partition, had executed a registered Settlement Deed in favour of Rajamani on 12.06.1973 in Ex-A1. As such through the settlement, $46 \frac{1}{3}$ cents on the eastern side was settled to the father of the plaintiffs 2 to 4 and the husband of the 1st plaintiff namely Rajamani, based on which Rajamani became the absolute owner.

24. It is also to be noted that when a registered Settlement Deed was executed by Thiruvarangam @ Irudhayaprakasam as early as in the year 1973, which also establishes the fact that in the oral partition and by inheritance, all the three brothers got equal shares, the 1st defendant who comes with a new claim has never disputed or challenged the settlement deed in Ex-A1. Further, Eenan who inherited $46 \frac{1}{3}$ cents in the middle portion died leaving behind his three sons namely Vellaiyan, Dharumar and Rajamani.



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25. It is also admitted that Dharumar one of the son had died bachelor and pursuant to which Vellaiyan and Rajamani by document dated 30.12.1991 in Ex-A2 had partitioned 23 cents each by which Rajamani took 23 cents on the northern side and Vellaiyan took 23 cents on the southern side. As such Rajamani who got 46 cents from his brother Thiruvarangam @ Irudhayaprakasam through Ex-A1 Settlement Deed had got 23 cents from his father and also by the partition from his brother and he became the absolute owner of 69 cents in the 1st item of the suit property. Rajamani died on 11.02.1999. Pursuant to his death, the plaintiffs who are his wife and three sons had inherited the suit properties as per Section 8 of the Hindu Succession Act, 1956, they being the Class-I legal heirs. The plaintiffs by filing the documents in Ex-A1 and Ex-A2 has established their title to the 1st item of the suit property. Based on the said document executed in their favour, patta has been issued in Ex-A3.

26. Apart from the above, since a doubt was created as to the fact that Thiruvarangam had allied name as Irudhayaprakasam, the plaintiffs have also filed documents in Ex-A4 to Ex-A6 which are the settlement



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deed executed by Thiruvarangam @ Irudhayaprakasam in respect to some other properties to third parties.

27. As such the plaintiffs by filing a document in Ex-A1 to Ex-A6 and also by examination of the two witnesses have established their title to the suit property. When the plaintiff had established their title, the 1st defendant had not brought in any evidence to prove his claim that he was entitled to any extent more than 46 1/3 cents which he got through his mother from his grandfather Pechimuthu. As such it is evidently clear that 1st defendant is holding the portion of 7 cents in Item 2 of the suit property which belongs to the plaintiffs.

28. In view of the fact that the plaintiff had established their title to the 1st item of the suit property, the Courts below have rightly analyzed the evidences and come to the conclusion that on being the title holder of the 1st item of the suit property, the plaintiffs are entitled to seek for recovery of possession in respect of the 7 cents in item 2 of the suit property, which forms part of item 1 of suit property.



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29. In view of the above deliberations, this Court does not find any illegality or perversity in the findings rendered by the Courts below.

30. Accordingly, the Second Appeal stands dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

24.07.2025

NCC :yes/No
Index :yes/No
Internet:yes/No
rgm



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To

1. The District Munsif Court, Srivaikundam.
2. The Subordinate Judge, Tiruchendur.
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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and
C.M.P(MD)No.2121 of 2019

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