

S.A.(MD) No.112 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 28.08.2025

CORAM:

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

S.A.(MD) No.112 of 2022
and
CMP(MD)No.1473 of 2022

Y.Arulraj
S/o.Yesiah,
Kanarpatti,
Tirunelveli Taluk,
Tirunelveli District.

... Appellant/Appellant/Defendant

Vs.

A.Sudalai (Died)
S/o.Arumugam,

1.Ganapathy,
W/o.Late.Sudalai,
45/e-1, Kottaiyadi Street, Tirunelveli Town,
Tirunelveli District

2. Bahatsingh
S/o.Late.Sudalai,
45/e-1, Kottaiyadi Street,
Tirunelveli Town, Tirunelveli District

3. Janaki
D/o.Late.Sudalai,
45/e-1, Kottaiyadi Street,
Tirunelveli Town,
Tirunelveli District.

... Respondents/Respondents/Plaintiffs



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PRAYER in S.A.: Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree passed in A.S. No.39/2012 dated 26.09.2019 on the file of the Principal Sub Court, Tirunelveli by confirming the Judgment and decree passed in O.S. No. 379/2007 dated 21.11.2009 on the file of the Principal District Munsif Court, Tirunelveli and pass such or other orders as this Honourable Court may deem fit and proper in the circumstances of the above case and thus render justice.

PRAYER in CMP:

To grant an order of interim stay of the judgment and decree passed in A.S. No.39/2012 dated 26-09-2019 on the file of the Principal Sub Court, Tirunelveli by confirming the Judgment and decree passed in O.S. No.379/2007 dated 21-11-2009 on the file of the Principal District Munsif Court Tirunelveli, pending disposal of the second appeal and thus render justice.

APPEARANCE OF PARTIES:

For Appellant : Mr.J.Jeyakumaran, Advocate

For Respondents : Mr.H.Arumugam, Advocate for R1 to R3

JUDGMENT

Heard.



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2. For the sake of convenience, the parties would be referred to as per their ranks before the trial Court.

3. The defendant, having lost before the Trial Court in O.S. No.379 of 2007 and the First Appellate Court in A.S. No.39 of 2012, has filed this Second Appeal under Section 100 of the Code of Civil Procedure.

4. The suit property originally belonged to one Louis Pakiyam, who, under a registered gift deed dated 23.10.1973 (Ex.A1), conveyed the same to Swamidoss. Upon the death of Swamidoss in 1989, his two sons, namely Ponpandi and Joseph @ Gnanamani, became entitled to his estate. An oral partition was effected between them and was subsequently reduced into writing by way of a Kaithadi dated 05.08.1993 (Ex.A4), under which the suit property was allotted to the share of Joseph @ Gnanamani. Thereafter, Joseph @ Gnanamani and his three sons executed a registered partition deed dated 16.03.2004 (Ex.A3), in which their properties, including the suit property, were divided into three shares. The three sons, having become entitled,



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conveyed the suit property in favour of the plaintiff under a registered sale deed dated 29.11.2004 (Ex.A2). Relying on this chain of title, the plaintiff sought declaration of ownership and injunction.

5. The defendant, however, disputed the plaintiff's title and rested his claim on a General Power of Attorney dated 09.10.1995 (Ex.A7), said to have been executed by Ponpandi in favour of one Poolaiya Thevar. On the strength of this authority, the said Poolaiya Thevar executed a registered sale deed dated 22.03.1999 (Ex.B5) conveying the suit property to the defendant. On the same date, Poolaiya Thevar also executed another Power of Attorney in favour of the defendant (Ex.B7). In support of his claim of ownership, the defendant further relied upon patta, tax receipts and other revenue records.

6. The Trial Court, on appreciation of the evidence, held that Ex.A4 represented a valid memorandum of an earlier oral partition between the two brothers and, following the settled principles of law laid down in **AIR 1966 SC 292** and **AIR 2003 Delhi 168**, did not



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require compulsory registration. It further found that the defendant himself admitted the existence of a partition between Ponpandi and Joseph @ Gnanamani. Ex.A7, which described Ponpandi as the sole heir of Swamidoss, was found to be false, and hence the sale deed dated 22.03.1999 (Ex.B5) executed on the strength of that power of attorney did not confer any title upon the defendant. The Court also applied the principle that, in the case of vacant land, possession follows title, and therefore, having established title, the plaintiff was entitled to injunction. Accordingly, the suit was decreed.

7. The First Appellate Court, on reappreciation of the evidence, confirmed the findings of the Trial Court. The defendant's plea that the signature of Ponpandi in Ex.A4 was forged was examined by the Appellate Court, which compared the disputed signature with his admitted signature in Ex.B3 a registered sale deed dated 28.06.1993 executed by Ponpandi and his children in favour of Tamilselvi, under Section 73 of the Evidence Act and found them consistent. The Appellate Court agreed that Ex.A4 was genuine and, being only a memorandum of oral partition, did not require registration. It also



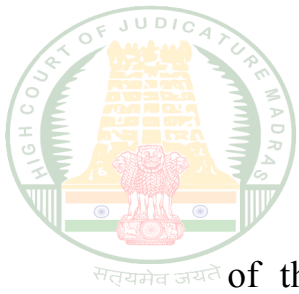
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endorsed the conclusion that Ex.A7, which falsely recited Ponpandi as sole heir, was invalid, and consequently the sale deed Ex.B5 conferred no title. The appeal was accordingly dismissed.

8. This Court finds that the concurrent findings of both the Courts below are based on a proper appreciation of the oral and documentary evidence and correct application of settled principles of law. The rejection of Ex.A7 and Ex.B5 is legally justified, since Ponpandi could not have conveyed title as the sole heir when in fact Swamidoss had two sons. The acceptance of Ex.A4 as a valid memorandum of oral partition is also supported by binding precedents.

9. The defendant's plea of forgery was specifically addressed by the First Appellate Court. In exercise of its power under Section 73 of the Indian Evidence Act, the Court compared the disputed signature of Ponpandi found in Ex.A4, the Kaithadi dated 05.08.1993, with his admitted signature appearing in Ex.B3, a registered sale deed dated 28.06.1993 executed by Ponpandi's offspring in favour of Tamilselvi. On such comparison, the Court found that the style and characteristics



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of the signatures were consistent and that Ex.A4 bore Ponpandi's genuine signature. The allegation of forgery was therefore rightly rejected on a sound factual and legal basis. There is no perversity in the findings of fact nor any misapplication of law.

10. In the circumstances, no substantial question of law arises for consideration under Section 100 CPC. The Second Appeal is, therefore, dismissed at the admission stage. No costs. Consequently, connected Miscellaneous Petition is closed.

28.08.2025

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

Copy to:

- 1.The Principal Sub Court,
Tirunelveli
- 2.The Principal District Munsif Court,
Tirunelveli
- 3.The Section Officer
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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DR.A.D.MARIA CLETE, J.

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