



SA(MD)No.373 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.08.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.(MD)No.373 of 2019

and

C.M.P(MD)No.7407 of 2019

1.K.Chitra

2.K.Anjali

... Appellants / Appellants / Plaintiffs

Vs

1.M.Kannan

2.M.Sudalai

3.S.Vasantha

4.Vijaya Raghavan

5.Sundar Singh

... Respondents / Respondents / Defendants

Prayer : This Second Appeal is filed under Section 100 C.P.C., against the judgment and decree made in A.S.No.28 of 2017 on the file of the Principal District Judge, Ramanathapuram, dated 20.11.2018 in confirming the judgment and decree made in O.S.No.68 of 2008 on the file of the Principal Subordinate Judge, Ramanathapuram dated 17.07.2017.



SA(MD)No.373 of 2019

WEB COPY

For Appellant : Mr.S.Chandrasekaran

For R2 and R3 : Mr.D.Balamuruga Pandi

JUDGMENT

The unsuccessful plaintiffs are before this Court on appeal. The Second Appeal is filed challenging the judgment and decree dated 20.11.2018 made in A.S.No.28 of 2017 on the file of the Principal District Judge, Ramanathapuram, confirming the judgment and decree dated 17.07.2017 made in O.S.No.68 of 2008 on the file of the Principal Subordinate Judge, Ramanathapuram.

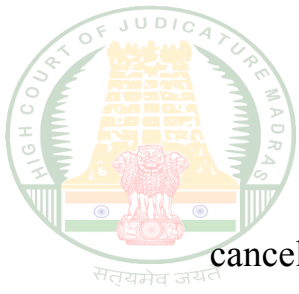
2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3. It is the case of the plaintiffs that the first defendant is their father who is employed in Malaysia. Since he is not available herein, he is impleaded as the first defendant. The second and third defendants who are husband and wife and the purchasers of the 'A' schedule property. According to the plaintiffs, the suit properties originally belonged to one



SA(MD)No.373 of 2019

Muthuraja Pillai, who is the father of the first defendant and the plaintiff's grandfather. The 'A' schedule property is the ancestral property of Muthuraja Pillai. Further, the 'B' schedule property is also the property of Muthuraja Pillai having purchased on 06.03.1973 in the name of his wife Arumugathammal from the income derived from the joint family. Muthuraja Pillai have five sons and three daughters. He died intestate in the year 1993. The first defendant is the eldest son. The second son Nagendran predeceased Muthuraja Pillai and he died in the year 1987 itself, leaving behind his wife and son. The third son by name Ramasethu had renounced the world about 10 years ago and his whereabouts are not known. He had a wife and two children. The fourth son is Balasubramanyam and the last son is Vengatachalapathi. After the demise of Muthuraja Pillai all the legal heirs were in joint possession and enjoyment of the suit properties. In November, 2002 all the co-owners except legal heirs of Nagendran and Ramasethu, decided to sell the 'A' schedule properties to the third parties and nominated the younger brother Venkatachalapathy as a power agent on 12.11.2002. The legal heirs of Nagendran and Ramasethu objected the sale of 'A' schedule property. It is the case of the plaintiffs that the first defendant had



SA(MD)No.373 of 2019

cancelled the power of attorney on 26.08.2003. The cancellation intimation has been sent by registered post to Venkatachalapathy which was acknowledged on 27.08.2003. Further a petition was submitted to the Sub Registrar Office intimating the cancellation which was acknowledged on 27.08.2003 and 08.09.2003 respectively. The first defendant thereby cancelling the power, had intimated his unwillingness to sell the suit 'A' schedule property. However, the second defendant had obtained a sale deed on 02.06.2004 from the power agent in collusion, including the share of the first defendant. The sale executed including the share of first defendant is *void ab initio*. The B schedule property is also a joint family property. The purchase in the name of Arumugathammal was only for convenience, as she had no separate income. The sale deed has been executed in favour of the third defendant on 15.09.2005 in respect of the 'B' schedule property and the said transaction is also *void ab initio*. Part of the 'B' schedule property is in possession of the plaintiffs. The daughters of Muthuraja Pillai also entitled to have a share. Since documents have been executed by conveying the suit property, the plaintiffs had come up with the suit seeking for partition of the suit property and also to declare the sale



SA(MD)No.373 of 2019

deeds in favour of the 2 and 3 defendants as null and void and for consequential permanent injunction.

4. The defendants resisted the suit, disputing the claim of the plaintiffs. According to the first defendant, he disputed that a communication was sent by him cancelling the power. There was no collusion among any parties and conveyance has been effected for the convenience and development of all the parties. The legal heirs of the other two sons had also executed separate sale deeds in favour of the second defendant. The plaintiffs have no right to seek for partition or challenge the sale deeds, as the documents have been executed by the rightful persons. When the father, the first defendant had executed a document, for selling the suit properties, the plaintiffs cannot make any claim and sought for dismissal of the suit.

5. During trial, the second plaintiff examined herself as P.W.1 and marked Ex.A1 to Ex.A17. On the side of the defendants, the second defendant examined himself as D.W.1 and marked Ex.B1 to Ex.B10. An advocate commissioner was appointed and his report and plan has been



SA(MD)No.373 of 2019

marked as Ex.C1 and Ex.C2. The trial Court after analyzing the evidences, came to the conclusion that when the first defendant had jointly executed power of attorney, along with two other legal heirs, the sale deed had been executed pursuant to the power. Plaintiffs' father, the first defendant remained *ex parte* and he did not assert that he had sent the letters in Ex.A2 and Ex.A4. The sale deed has been executed through valid power of attorney, and further, the plaintiffs failed to prove that the 'B' schedule property is a joint family property, as such the trial Court dismissed the suit. On appeal, the lower appellate Court on finding that the power of attorney was not cancelled by the first defendant and the alleged letters relied on by the plaintiffs are not supported by the author, the first defendant and also finding that the Arumugathammal is the absolute owner of 'B' schedule property, had concurred with the finding of the trial Court and dismissed the appeal. Assailing the concurrent finding of facts, the plaintiffs have preferred the above appeal.

6. The appeal has not been admitted and by order dated 20.08.2019, only notice before admission was issued.



SA(MD)No.373 of 2019

7. Learned counsel appearing for the appellants argued that the plaintiffs have marked the two letters in Ex.A2 and Ex.A4 which has been duly received and the acknowledgments were marked as Ex.A3 and Ex.A5. The fact that the cancellation of power by the first defendant was intimated, is proved and therefore any sale executed based on the power of attorney in Ex.B2 including the share of the first defendant would not bind on the plaintiffs. It is his further contention that the 'B' schedule property though was purchased in the name of Arumugathammal, it is a purchase only for convenience and the property remained as a joint family property, even during purchase and also pursuant to the purchase. It is the vehement contention of the learned counsel that when the power of attorney stood cancelled and the first defendant is having a share in the 'B' schedule joint family property, the power of attorney executed by Arumugathammal and the subsequent sale for 'B' schedule property would not bind and take away the rights of the plaintiffs who are the daughters of the first defendant. Further when the plaintiffs are residing in a portion of the 'B' schedule property, the judgment and decree of the Courts below without considering these aspects and dismissing the suit are perverse and sought for interference of this Court.



SA(MD)No.373 of 2019

WEB COPY

8. Contending contra, learned counsel appearing for the respondent argued that the plaintiffs had simply by relying on the two letters which is not even supported by the author first defendant disputes the sale transaction, which cannot be sustained. When the plaintiffs make a claim in the 'B' schedule property, that is admittedly purchased by Arumugathammal then it is for the plaintiffs to establish that the 'B' schedule property was purchased from out of the income of her husband from the joint family property. In the absence of the first defendant supporting the case of the plaintiffs and also the plaintiffs having failed to prove such a claim made by them, the Courts below have rightly dismissed the suit which needs no interference and sought for dismissal.

9. Heard the rival submissions and considered the materials available on record.

10. Muthuraja Pillai and Arumugathamml had five sons namely Kannan, Nagendran, Ramasethu, Balasubramanian and Venkatachalapathy and three daughters namely Panjavarnam,



SA(MD)No.373 of 2019

Vijayalakshmi and Muneeswari. The second son Nagendran died in the year 1987 leaving behind his wife and son. The third son Ramasethu had renounced the world and his whereabouts is not known for more than 10 years and he survived by his wife and two children. The relationship and these facts are admitted by the parties. The plaintiffs are two daughters born to the first son Kannan who is the first defendant. The plaintiffs had come up with the suit for partition claiming share in both A and B schedule properties. Further, the documents executed in favour of the purchasers was also put to challenge.

11. In so far as the first item of the suit properties, three legal heirs viz., the first defendant Kannan, Balasubramanian and their mother Arumugathammal had executed a power of attorney in favour of the last son Venkatachalapathy in Ex.B2 on 12.11.2002. Based on the power of attorney executed, Venkatachalapathy had entered into a sale agreement with the second defendant on 30.06.2003 in Ex.B3. Pursuant to which, Venkatachalapathy as the power agent had executed a sale deed in favour of the second defendant on 02.06.2004 in Ex.B4. Further apart from the sale deed executed by Venkatachalapathy representing himself, his



SA(MD)No.373 of 2019

brother Kannan, Balasubramanian and his mother Arumugathammal, the other legal heirs of the other two sons had executed a separate sale deed in favour of the second defendant in Ex.B7 on 10.11.2006. In view of the purchase, the second defendant had become the absolute owner of the A schedule property.

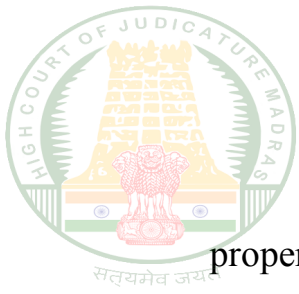
12. It is the contention of the plaintiffs that though the first defendant, their father Kannan had executed a power of attorney in Ex.B2 along with his brother and mother, he had subsequently issued two letters dated 26.08.2003 addressed to the power agent Venkatachalapathy in Ex.A2 and also a separate letter addressed to the Sub Registrar in Ex.A4 intimating the cancellation of power of attorney. The plaintiffs had also filed acknowledgment copies in Ex.A3 and Ex.A5 to evidence the receipt. It is the contention of the plaintiffs that based on these two letters in Ex.A2 and Ex.A4 the power of attorney stood cancelled and the last brother Venkatachalapathy was not having any right to execute a sale deed in favour of the second defendant on 02.06.2004 in Ex.B4. However, based on the power of attorney, initially a sale agreement was executed in favour of the second defendant on 30.06.2003 itself in



SA(MD)No.373 of 2019

Ex.B3, followed by the sale deed in Ex.B4 on 02.06.2004. When the power of attorney executed in Ex.B2 is a registered document which has been jointly executed by three person, the plaintiffs contended that by the letters in Ex.A2 and Ex.A4, the first defendant had cancelled the power. But, the author of the letter in Ex.A2 and Ex.A4 who is the first defendant, had not supported the claim of the plaintiffs. The first defendant who is the party to the power of attorney and a party to the suit remained ex parte and he has not questioned the sale executed in favour of the two defendants based on the power of attorney executed by him.

13. When the principle, the first defendant himself has not disputed the sale or acknowledged the letters in Ex.A2 and Ex.A4 supporting the case of the plaintiff, the mere filing of these letters in Ex.A2 and Ex.A4 will not support the case of the plaintiffs, that too challenging the registered sale deed in favour of the second defendant which has been validly executed based on the power of attorney in Ex.B2. When the legal heirs who are entitled to the A schedule property had executed the sale deeds jointly and also separately in favour of the second defendant, it is not open for the plaintiffs to seek for any partition in the A schedule



SA(MD)No.373 of 2019

property or they could maintain the challenge to the sale deed in favour of the second defendant.

14. In so far as the second item of the suit property is concerned, admittedly, the same was purchased by Arumugathammal through sale deed dated 06.03.1973 in Ex.B1. There is a presumption attached to the registered document. Further, Arumugathammal who had become the absolute owner of the 'B' schedule property had executed a power of attorney on 07.07.2005 in Ex.B5 in favour of the second defendant. In the power of attorney in Ex.B5, Arumugathammal had clearly recited that the suit property by purchase absolutely belongs to her and she has nominated him as the power agent. In view of the power executed in Ex.B5, the agent had executed a sale deed in favour of the third defendant on 15.09.2005 in Ex.B6. The third defendant on becoming the absolute owner of the second item of the suit property, seems to have further sold the properties to the 4th and 5th defendants and those documents are not filed before this Court.

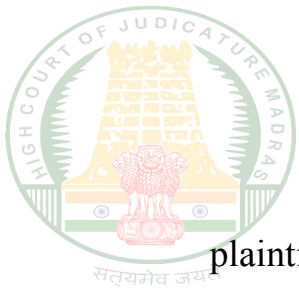


SA(MD)No.373 of 2019

WEB COPY

15. When the second item of the suit property had been purchased by Arumugathammal and also been sold in favour of the third defendant and subsequently to defendants 4 and 5, based on the power of attorney in favour of the second defendant in Ex.B5, the plaintiffs had made a claim in the second item of the property contending that the property is a joint family property. When Arumugathammal is the absolute owner by purchase in Ex.B1 and the plaintiffs have come forward with a claim that though the sale deed stands in the name of Arumugathammal, the sale was only for convenience and the source of purchase was through the joint family income from her husband Muthuraja Pillai, it is for the plaintiffs to establish the same. As per Section 103 of the Indian Evidence Act, the onus is on the party to discharge the burden in proving the fact which they want the Court to accept its existence.

16. In the instant case, when the plaintiffs come forward with such a claim that the 'B' schedule property is a joint family property having been purchased from out of the joint family funds, the burden was on the plaintiffs to establish and prove such a contention. However, the



SA(MD)No.373 of 2019

plaintiffs miserably failed to file any documents or any evidence in support of their claim. When no documentary evidence has been filed, except the second plaintiff examining herself as P.W.2, no other person has been examined and no oral evidence has been let in in this regard. When the plaintiffs failed to prove such a contention, then Arumugathammal who is the absolute owner by purchase in Ex.B1 had executed power of attorney in favour of the second defendant in Ex.B5 and based on which a sale has been executed to the third defendant and thereafter to the 4 and 5th defendants. The plaintiffs as such, also cannot make any claim challenging the sale deed or seek for a partition in this second item of the suit property.

17. The Courts below have rightly analyzed the evidences available on record and have rendered the concurrent finding of fact and dismissed the claim of the plaintiffs. This Court does not find any illegality or perversity in the finding rendered. No substantial question of law arises for consideration in the appeal.



SA(MD)No.373 of 2019

WEB COPY

18. Accordingly, this Second Appeal is dismissed. However, there shall be no order as to costs. No costs. Consequently, connected miscellaneous petition stands closed.

07.08.2025

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

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To

- 1.The Principal District Judge, Ramanathapuram.
- 2.The Principal Subordinate Judge, Ramanathapuram.
3. The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



SA(MD)No.373 of 2019

G.ARUL MURUGAN, J.

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S.A.(MD)No.373 of 2019
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C.M.P(MD)No.7407 of 2019

07.08.2025