

S.A.(MD)No.363 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 08.07.2025

CORAM

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

S.A.(MD)No.363 of 2018

- 1.M.Veerappan (died)
- 2.R.Indira @ Nachammal
- 3.Sivagami
- 4.Sethuraman
- 5.Chittal

(AA3 to 5 are brought on record as LR's of the deceased first appellant vide court order dated 13.04.2023 made in CMP(MD)No.11196, 11199 & 11201 of 2022)

... Appellant

-vs-

- 1.M.Palaniappan
- 2.M.Venkatachalam

..Respondents

PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure, against the judgment and decree dated 01.03.2018 made in A.S.No.32 of 2015 on the file of the Sub Court, Devakottai confirming the judgment and decree dated 31.08.2015 made in O.S.No.170 of 2013 on the file of the Principal District Munsif Court, Karaikudi.



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For Appellants

... Mr.VA.Shanmugaraj (A2)
Mr.RM.Arun Swaminathan (AA3 to 5)

For Respondents

... Mr.R.Sundar Srinivasan (R2)

JUDGMENT

The second appeal is filed challenging the judgment and decree dated 01.03.2018 in A.S.No.32 of 2015 on the file of the Sub Court, Devakottai, confirming the judgment and decree dated 31.08.2015 in O.S.No.170 of 2013 on the file of the Principal District Munsif Court, Karaikudi.

2. The plaintiffs had originally filed the above second appeal. Pending appeal, the first appellant/first plaintiff died, and the legal heirs were brought on record as the appellants 3 to 5.

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

4. According to the plaintiffs, the suit property originally belonged to one Muthuveerappan. Muthveerappan had two sons, Veerappan and Palaniappan, and one daughter, Indira @ Nachammai.



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Muthveerappan died intestate, and his wife also predeceased him.

Pursuant to the death of Muthveerappan, the plaintiffs and the first defendant, who are the legal heirs of Muthveerappan, had inherited the suit property and had been in joint possession and enjoyment. It is the further case of the plaintiffs that the first defendant, Palaniappan, without conveying his intention to sell his 1/3 share and giving the first right to the plaintiffs to purchase his share, in view of the preemptive right granted under section 22 of the Hindu Succession Act, 1956, had clandestinely sold his 1/3 share in favour of the second defendant on 15.12.2011. Since the sale has been executed by the first defendant when the preemptive right was available to the plaintiffs, the sale is void. Therefore, the plaintiffs had come up with the suit seeking to declare the sale deed executed in favour of the second defendant as null and void after issuing a paper publication on 13.03.2013.

5. The defendants had resisted the suit by filing a written statement disputing the claim of the plaintiffs that they were not informed about the intention of the first defendant to sell his 1/3 share. Further, it is the contention of the defendants that since the relationship of the plaintiffs was not cordial and there was an urgent need for the first defendant to convey his property to meet out the



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marriage expenses of his daughter, and since the sale could not be completed with the plaintiffs, he had executed the sale in favour of the second defendant. It is the further contention that the claim made by the plaintiffs is not within time, and therefore, they sought dismissal of the suit.

6. During trial, the first plaintiff examined himself as P.W.1 and one Pethaperumal as P.W.2 and marked Exs.A1 to A3. On the side of the defendants, both the defendants themselves were examined as D.W.1 and D.W.2, but they have not marked any documents.

7. The trial court, after analyzing the evidence, came to the conclusion that though the plaintiffs were having a preemptive right, to exercise their right, they ought to have filed the suit within a period of one year from the date of sale. Since the suit has been filed after nearly two years, the claim made by the plaintiffs is barred by limitation, and the suit is dismissed in respect of the claim of declaration. However, since the plaintiffs were having 2/3 share in the suit property, an injunction was granted against the second defendant/purchaser from interfering in the suit property till the share is ascertained in partition.



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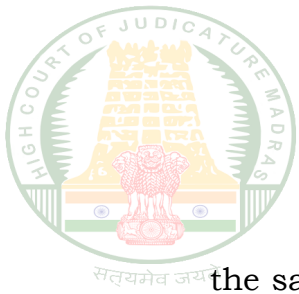
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8. On appeal, the lower appellate court also concurred with the finding of the trial court and dismissed the appeal. Assailing the concurrent findings of the courts below, the plaintiffs had filed the present second appeal.

9. The appeal has not been admitted. This court, by order dated 15.11.2018, issued notice to the respondents.

10. The learned counsel appearing for the second appellant reported 'no instruction.'

11. The learned counsel appearing for the impleaded appellants 3 to 5 in the place of the legal heirs of the first appellant argued that when the plaintiffs were admittedly entitled to 2/3 share in the suit property as the legal heirs of Muthveerappan, they had a preemptive right to purchase 1/3 share of the first defendant when he was selling his share. The learned counsel further submitted that when the appellants had a preemptive right under Section 22 of the Hindu Succession Act, 1956, the first defendant, without expressing his interest to sell the property, had denied the right of the plaintiffs and had sold his share in favour of the second defendant. As such, the sale would not create any right in favour of the second defendant, and



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the sale itself is null and void. It is also his further contention that as soon as the sale executed by the first defendant in favour of the second defendant was made known, the plaintiffs came up with the suit, and the courts below have not rightly considered this aspect in a proper perspective, and therefore, the dismissal of the suit in respect of the declaration is perverse, and he sought for interference of this court.

12. Per contra, the learned counsel for the second respondent argued that though the plaintiffs had a preemptive right to purchase the share of the first defendant, when they came up with the claim seeking to declare the sale deed as null and void, there was no pleading to the effect that they were ready and willing to purchase the 1/3 share of the first defendant and that even though they were ready to purchase, the preemptive right was denied by the first defendant. It is his further contention that if at all the plaintiffs want to dispute the sale on claiming the preemptive right, they ought to have instituted the suit and made a claim within a period of one year from the date of sale, and admittedly, the suit has been filed after a period of two years, and the claim made by the plaintiffs is time-barred.



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13. The learned counsel further submitted that the second appellant, who is the second plaintiff, had already entered into an understanding with the second defendant, and therefore, as on date, there is no dispute between them, and as such only, the second appellant has reported 'no instruction.'

14. The learned counsel further submitted that even the impleaded appellants 3 to 4 have not established that they are the legal heirs of the deceased first appellants, and even when they were allowed to be impleaded, this court had specifically recorded that they are allowed to be impleaded for the purpose of agitating the claim in this appeal, and they have to establish their legal heirship as the legal heirs of the first appellant. As such, the learned counsel submitted that the courts below, rightly placing reliance on the legal provision, had dismissed the suit in respect of the declaration, and hence, there is no interference.

15. Heard the learned counsel for the appellants 3 to 5 and the learned counsel appearing for the second respondent and perused the material available on record.



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16. Admittedly, the suit property originally belonged to one Muthveerappan, who had inherited the property from his father, Ramasamy Chettiar. It is also an admitted case that Muthveerappan died intestate and his wife also predeceased him. Further, admittedly, Muthveerappan had two sons, Veerappan and Palaniappan, and one daughter, Indira @ Nachammai. After the death of Muthveerappan, all three legal heirs have inherited the suit property, and they are entitled to 1/3 share each in the suit property. To this extent, there is no dispute among the parties.

17. One of the sons, Palaniappan, who had inherited 1/3 share in the suit property, had executed a sale deed dated 15.12.2011 in Ex.A3, wherein the first defendant conveyed his 1/3 share in favour of the purchaser, the second defendant. The other son and daughter of Muthveerappan had jointly come up with the suit claiming that since they have a preemptive right under Section 22 of the Hindu Succession Act, 1956 they are entitled to have the first right of purchasing any share or thing that is to be sold by the co-sharer. It is their contention that the first defendant did not express his intention to sell his share and the first right was not given to the plaintiffs by allowing them to purchase the share that is to be conveyed by the first defendant. As such, according to the plaintiffs, the sale executed by



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the first defendant in favour of the second defendant in Ex.A3 is null and void and cannot defeat the rights of the plaintiffs. Therefore, they are entitled to purchase the 1/3 share conveyed by the first defendant. In this regard, it is useful to refer Section 22 of the Hindu Succession Act, 1956, which reads as follows:-

22. Preferential right to acquire property in certain cases.-(1) Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

18. In view of section 22 of the Hindu Succession Act, 1956, an interest in any immovable property that devolves upon two or more heirs as specified in clause I, if any one of such heirs proposes to transfer his interest, then in such a case, the other heirs shall have a preferential right to acquire the interest proposed to be transferred. In view of section 22, the plaintiffs admittedly have a preferential right to purchase the share of the first defendant if the first defendant intends to transfer his undivided share. However, if the plaintiffs dispute the



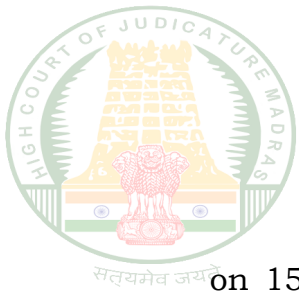
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sale executed by the first defendant in favour of the second defendant by making a claim of preferential right under Section 22 of the Hindu Succession Act, 1956, then the plaintiffs can make such a claim only within a period of one year, as the time period fixed under Article 97 of the Limitation Act, 1963, is one year from the date of sale. In this regard, it is useful to refer Article 97 of the Limitation Act, which is extracted hereunder:

97	To enforce a right of pre-emption whether the right is founded on law or general usage or on special contract.	One year.	When the purchaser take under the sale sought to be impeached, physical possession of the whole or part of the property sold, or, where the subject matter of the sale does not admit of physical possession of the whole or part of the property, when the instrument of sale is registered.
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19. In the instant case, there is no pleading on the part of the plaintiffs to the effect that they were ready and willing to purchase the share of the first defendant. Even assuming that the first defendant had not conveyed his interest to transfer his 1/3 share, still any claim of the plaintiffs by relying on section 22 has to be made within one year from the date of sale. In the instant case, admittedly, the sale deed has been executed by the first defendant in favour of the second defendant in Ex.A3 on 15.12.2011. When the sale had been executed



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on 15.12.2011, the plaintiffs had come up with the suit only in the year 2013. Prior to the suit, no notice had been issued. Admittedly, the plaintiffs are disputing the sale in Ex.A3 after a period of two years. As per Article 97 of the Limitation Act, 1963, the plaintiffs can enforce the right of preemption only within a period of one year when the purchase takes place under a sale deed that is sought to be impeached

20. In view of the above legal position, the suit filed by the plaintiffs seeking to declare the sale deed executed in favour of the second defendant is admittedly time-barred. The courts below have rightly analyzed this aspect and have come to the conclusion that the claim made by the plaintiffs is time-barred and dismissed the suit in respect of declaration, but however, since the second defendant had only purchased 1/3 share, an injunction has been granted in favour of the plaintiffs that the defendants shall not interfere in the property till the shares are worked out in a suit for partition.

21. This court does not find any illegality or perversity in the finding arrived at, and no substantial question of law is involved in this second appeal for consideration.



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22. In the result, the Second Appeal fails and the same is dismissed. No costs.

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

To:

- 1.The Sub Judge, Devakottai.
- 2.The Principal District Munsif, Karaikudi.
- 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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