



SA(MD)No.15 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.06.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.(MD)No.15 of 2025
and
C.M.P(MD)No.572 of 2025

1.Inbakani

2.Vellathai Sumathi

3.Jeya Malini

4.Jeyaraj

... Appellants / Appellants 1 to 3 & 5/
Plaintiffs 1 to 3 and 5

Vs

1.Jebaseelan

2.Rajarathinam

3.Jebathai ... Respondents 1 to 3 / Respondents 1 to 3 / Defendants

4.Mary Thangarathinam

... 4th Respondent / 4th Appellant / 4th Plaintiff

Prayer : This Second Appeal is filed under Section 100 C.P.C., to set aside the judgment and decree dated 20.01.2023 passed in A.S.No.77 of 2021 on the file of the Principal District Judge, Tirunelveli, confirming the judgment and decree dated 31.01.2020 passed in O.S.No.184 of 2015



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on the file of the Subordinate Court, Valliyoor.

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For Petitioner : Mr.M.R.Sreenivasan

For R1 to R3 : Mr.S.Micheal Heldon Kumar

ORDER

The unsuccessful plaintiff is before this Court on appeal. This Second Appeal is filed challenging the judgment and decree dated 20.01.2023 made in A.S.No.77 of 2021 on the file of Principal District Judge, Tirunelveli, confirming the judgment and decree dated 30.01.2020 on the file of the Subordinate Court, Vallioor.

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 plaintiff that the suit properties originally belong to Vellaidurai Nadar who is the father in law of the 1st plaintiff. Vellaidurai Nadar had purchased the properties through sale deed dated 24.07.1959 in Ex.A1. It is the further case of the plaintiffs that the suit properties belong to Velladurai Nadar both by purchase and also



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ancestrally who was in possession and enjoyment of the suit properties.

Velladurai Nadar died intestate, leaving behind his wife Thangalakshmi, three sons, Jebakani, Jebaraj, Jebaseelan and one daughter Jebathai. The first plaintiff's husband and the father of the plaintiffs 2 to 4, Jebakani S/o.Velladurai Nadar, died intestate and the plaintiffs are entitled to the inherit the share of Jebakani. It is further case of the plaintiffs that Thangalakshmi, wife of Velladurai Nadar who has no right in the suit schedule properties has executed a Will in favour of the first defendant on 27.07.2005 in Ex.B6. Based on which, the first defendant had further settled the property in favour of the second defendant through settlement deed dated 20.04.2011 in Ex.A5 = Ex.B7. Contending that the plaintiffs are entitled to half share in the suit properties, the plaintiffs have come up with the suit for partition.

4. The defendants resisted the suit by filing written statement contending that already a oral partition has been executed after the death of Velladurai Nadar in respect of the first item of the suit schedule property and also a portion of the second item of the suit schedule property measuring 10 cents. It is the specific case of the defendants that



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Velladurai Nadar is the absolute owner only in respect of the first item of the suit property having been purchased by him in sale deed Ex.A1 and also 10 cents of land in second item of suit property. The balance lands in second item of the suit schedule property belong to the mother of the first defendant Thangalakshmi W/o. Velladurai Nadar. It is the further case of the defendants that even in respect of the 10 cents which was also orally partitioned, the first plaintiff was given a share. The first plaintiff had sold the extent allotted to her share in favour of one Arumugaperumal who is the maternal uncle of the first defendant. Thereafter, Arumugaperumal again conveyed that portion also to the mother Thangalakshmi. It is the specific case of the defendants that the plaintiffs who got share in the first item of the suit schedule property and also a share in 10 cents out of the second suit schedule property, had sold the properties in favour of third persons through sale deed in Ex.B1 and Ex.B2 dated 29.03.1996 and 27.09.1995 respectively. Thangalakshmi, mother of the first defendant who had been in possession and enjoyment of her absolute property which is the balance extent of the land in second item of the suit schedule property, had executed a Will in favour of the first defendant on 27.07.2005 in Ex.B6. Pursuant to the death of



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Thangalakshmi on 24.02.2010, the first defendant became the absolute owner and based on which he had settled the property in favour of his wife, the second defendant through a registered settlement deed dated 20.04.2011 in Ex.B7 = Ex.A5. As such the plaintiffs have no right or claim over the suit schedule property and the suit filed for partition is not maintainable, particularly in view of the fact that the properties has already been partitioned and there cannot be a relief seeking for second partition and sought for dismissal of the suit.

5. During trial, the first plaintiff examined herself as P.W.1 and the fifth plaintiff as P.W.2 and marked exhibits Ex.A1 to Ex.A5. On the side of the defendants the first defendant examined himself as D.W.1 and one Sundarapandian as D.W.2 and marked exhibits Ex.B1 to Ex.B10. The trial Court on analyzing the documents and evidences and also particularly placing reliance on the admission of P.W.1 concluded that there had been a oral partition and based on the oral partition, the plaintiffs themselves have sold a portion of the property through Ex.B1 and Ex.B2, had dismissed the suit holding that the plaintiffs are not entitled to seek for partition. The trial Court also found that the



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defendants have proved the Will executed by Thangalakshmi in favour of her son, the first defendant in the manner known to law. On appeal, the lower appellate Court reappraised the evidence, documents and dismissed the appeal, confirming the judgment and decree of the trial Court. The lower appellate Court also concluded that when the plaintiffs had themselves admitted that there had been a oral partition in the family and pursuant to which, portion of the properties have been allotted in both the suit schedule properties, they cannot make a suit for partition and also agreed with the finding that the Will stood proved. Assailing the concurrent finding of fact, the plaintiffs have preferred the above second Appeal.

6. The Second Appeal has not been admitted and only notice has been issued on admission.

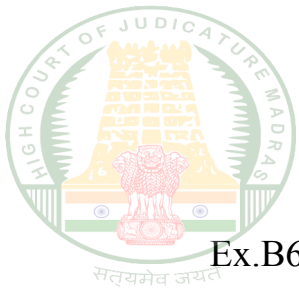
7. Learned counsel appearing for the appellants admits that though the plaintiffs had come up with the suit for both items 1 and 2 of the schedule properties, however on coming to know that a portion of the property has been sold by them in Ex.B1 and Ex.B2, they are not



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pressing their claim in respect of first item of the suit schedule property and it was also submitted that in fact even when the parties have let this fact known, however, when the plaint was drafted, these aspects were not incorporated in the plaint. It is the specific contention of the learned counsel that in respect of the second item of the suit schedule property, Thangalakshmi W/o.Velladurai Nadar, without having any right, has executed a Will in favour of her son, first defendant and based on which a further settlement has also been executed in favour of the second defendant. The Will and the settlement executed when Thangalakshmi has no right over the second item of the suit schedule property, is invalid and that will not bind the rights of the plaintiffs. Learned counsel further contended that admittedly when Jebakani is the son of Velladurai Nadar, on the death of Velladurai Nadar, Jebakani is entitled for the share in the suit schedule properties and since Jebakani died, the petitioners who are the Class-I legal heirs are entitled to inherit the share which are rightfully due to Jebakani.

8. Learned counsel further submitted that even though the defendants had defended the suit by placing reliance on the Will in



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Ex.B6, still the defendants had not proved the Will in the manner known to law and when the defendants had not dispelled the suspicious circumstances, the Courts below have erroneously dismissed the suit which is perverse and sought for interference of this Court.

9. Mr.S.Micheal Heldon Kumar, learned counsel appearing for the respondents contended that even as per the admission of P.W.1 there had been a oral partition in the family and based on the oral partition, they have already been given with a share in the suit schedule property. Based on which they have also sold a portion to third parties through a sale deed in Ex.B1 and Ex.B2 which has also been admitted in the cross examination. As such the very suit filed by the plaintiff seeking for partition is not maintainable and there cannot be a relief seeking for second partition of the property which had already been partitioned.

10. Learned counsel further submitted that only 10 cents of the property as admitted by P.W.1 belong to Velladurai Nadar and the remaining properties in the second item of the suit schedule property, absolutely belong to Thangalakshmi and she had every right to deal with



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the property and based on which she had executed a Will in favour of her son first defendant. He further contended that the defendants had examined the attester of the Will, D.W.2 who had clearly given evidence and the Will has been executed and proved duly as per Section 63(c) of Indian Succession Act read with Section 68 of the Indian evidence Act. The Courts below rightly on analyzing the documents and evidences had arrived at a finding based on the records, which needs no interference and sought for the dismissal of the appeal.

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

12. Admittedly, one Velladurai Nadar had three sons and one daughter namely Jebakani, Jebaraj, Jebaseelan and Jebathai. Velladurai Nadar had purchased the properties in the first item of the suit schedule property on 24.07.1959 through Ex.A1. Admittedly, Velladurai Nadar died intestate leaving behind his wife Thangalakshmi and the three sons and one daughter. It is the case of the plaintiffs that both the suit schedule properties belong to Velladurai Nadar and since he died



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intestate, Jebakani is entitled to inherit a share being a class-I legal heir and since Jebakani died, the plaintiffs who are his wife and daughters are entitled to inherit the share of Jebakani. As such the plaintiffs' claim for partition in the suit schedule property.

13. Though the defendants have admitted that Velladurai Nadar is the absolute owner of the first item of the suit property, however it is contended by the defendants that only 10 cents of land, out of the second item of the suit schedule property, belong to Velladurai Nadar and the balance extent of lands absolutely belong to Thangalakshmi, wife of Velladurai Nadar.

14. The plaintiffs who had come up with the suit, claiming for partition of both the suit schedule properties, except by filing the documents in Ex.A1, was not able to file any documents to establish that the second item of the suit property is the ancestral property of Velladurai Nadar. The defendants, on the other hand had filed the patta issued in favour of Thangammal in Ex.B3 for the remaining extent of lands in the second item of the suit schedule property.



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15. When it is the specific case of the plaintiffs that Velladurai Nadar died intestate and the properties are in common enjoyment of the family and they are entitled to seek for partition, however from the records, it could be seen that the plaintiffs had executed two registered sale deeds in favour of third parties through the documents in Ex.B1 and Ex.B2. As per the documents in Ex.B1 and Ex.B2, an extent of 25 cents of lands were sold on 29.03.1996 and further an extent of 35 cents of lands were again sold on 27.09.1995. The recitals found in the documents in Ex.B1 and Ex.B2 would show that the plaintiffs traced title to the properties by stating that the property originally belong to one Velladurai Nadar and pursuant to his death, the first plaintiff's husband as a legal heir, inherited the same and based on a oral partition, the property was allotted to the share of the first plaintiff's husband based on which he was in possession and enjoyment. Pursuant to the death of the first plaintiff's husband, the plaintiffs had been in possession and enjoyment of the property which has been sold in Ex.B1. Further, the recitals of the sale deed in Ex.B2 also shows that the plaintiffs had



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specifically stated that the property which came to the share of her father was inherited by them pursuant to his death and they had been in possession and enjoyment of the property and the same is sold in Ex.B2.

16. The Courts below have rightly analyzed the documents in Ex.B1 and Ex.B2 and arrived at a finding that even as per the admitted documents executed by the plaintiffs themselves, would show that there had been oral partition effected among the family members in respect of the first item of the suit property. As such, when admittedly there had been already an oral partition effected and also based on the oral partition, the plaintiffs got a share which has also been sold to third parties, the plaintiff cannot maintain a suit again seeking for partition. It is also to be noted that even assuming that the plaintiffs making claim that the oral partition was not in the interest of the plaintiffs, they had not chosen to disclose the sale executed by them and they have not even added their own purchasers as parties to suit, to whom they have sold the properties, when they specifically seek for partition including the properties which has been sold by them.



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17. In respect of the second item of the suit schedule property, already referred to, the patta stands in the name of Thangalakshmi in Ex.B3. In this regard, first plaintiff who was examined as P.W.1, in her cross examination has specifically admitted to the effect that 10 cents of the property in the second item of the suit schedule property belong to her father-in-law which is a farm house and P.W.1 had specifically given the door numbers for the farm house and also stated that after the death of her father in law, Velladurai Nadar, the property was divided as Northern portion and Southern portion and her mother-in-law Thangalakshmi was allowed to reside in the Northern portion. The first plaintiff as P.W.1 had also further admitted that the Southern portion also was divided as a upper and lower portion and out of the two divisions, the lower portion as a vacant land was allotted to the fifth plaintiff Jebaraj and the upper portion having door No.162 was specifically allotted to the first plaintiff.

18. The Courts below had specifically relied on the categorical



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admission of the plaintiffs to the effect that the first plaintiff herself has admitted that only 10 cents of property belong to Velladurai Nadar over which a farm house is located and even this property has been partitioned among the legal heirs, in which the first plaintiff has also been allotted a share where a house is situated bearing door No.162. From the admission on the part of the plaintiff and the documents filed in Ex.B1 and Ex.B2 and the patta standing in the name of Thangalakshmi in Ex.B3, all goes to show that 10 cents of property in the Second item of the suit schedule property belong to Velladurai Nadar and the balance property belongs to Thangalakshmi. In respect of this 10 cents also a partition had already been effected and a share has been allotted to the plaintiff.

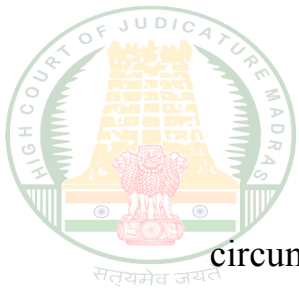
19. In respect of the property in the name of Thangalakshmi in the Second item of the suit schedule property, she had executed a Will in favour of the first defendant dated 27.07.2005 in Ex.B6. Pursuant to the death of Thangalakshmi, the first defendant got the property and thereafter he has executed a settlement deed in favour of his wife in Ex.B7 on 20.04.2011. When the defendants had come forward claiming



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right over the property vested to Thangalakshmi through a Will dated 27.07.2005 in Ex.B6, then onus was on the defendants to prove the Will as per Section 63(c) of the Indian Succession Act read with Section 68 of the Indian evidence Act.

20. In order to prove the Will, the first defendant is bound to examine at least one attesting witness to the Will as per the Section 68 of the Indian Evidence Act. The Will in Ex.B6 has been executed in accordance with Section 63(c) of the Indian Succession Act and the first defendant had also examined D.W.2 who is an attester in the Will. The evidence let in by D.W.2 clearly speaks about the execution of the Will by Thangalakshmi and the evidence shows that Thangalakshmi was hale and healthy and was in a good state of mind and on her own will and volition, she had executed a Will in favour of her sons, the first defendant. It is also to be noted that Thangalakshmi had been alive for nearly five years and had expired only on 24.02.2010 after execution of the Will. Even though, the plaintiffs had objected to the Will raising suspicious circumstance, the defendants had examined the attester D.W.2 and had proved the execution of the Will dispelling all of the suspicious



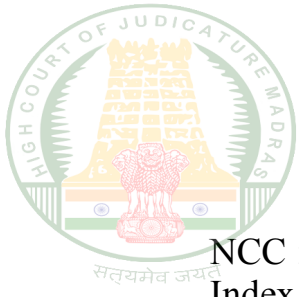
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circumstances. The Courts below had rightly taken note of this aspects and had concluded that the plaintiffs are not entitled to seek for partition as the suit property has already been orally partitioned which has been given effect to and also have been sold by them and the Will also has been proved by the defendants in accordance to law.

21. The Courts below have arrived at the finding based on the records and admissions made by P.W.1 and the other evidences available on record and this Court is not able to find any illegality or perversity in the concurrent finding of fact arrived at by the Courts below. No substantial question of law arises for consideration in this Second Appeal.

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

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NCC :Yes/No

Index :Yes/No

Internet : Yes/ No

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To

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



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G.ARUL MURUGAN, J.

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