



A.S(MD)No.260 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.09.2025

Pronounced on : 19.12.2025

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

A.S(MD)No.260 of 2022

R.Selvaraj,
S/o. Ramasamy Naicker,
Door No.4/107-D,
West Street, B. Reddiapatti,
Sankarankovil,
Tirunelveli District.

... Appellant/Plaintiff

Vs.

1.Krishnammal,
W/o.Ramasamy Naicker,
Door No.4/107-E,
West Street, B. Reddiapatti,
Sankarankovil,
Tirunelveli District.

...1st Respondent/Defendant

2.R.Vairamuthu Kumar,
S/o.Ramasamy Naicker,
Door No.4/107-E, West Street,
B. Reddiapatti, Sankarankovil,
Tirunelveli District.

...2nd Respondent

(Respondent No.2 is impleaded as per the order of this Court, dated 01.09.2025 made in C.M.P(MD)No.4300 of 2023 in A.S(MD)No.260 of 2022)



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PRAYER :- This Appeal Suit is filed under Section 96 of CPC., to set aside the judgment and decree, dated 17.06.2022 made in O.S.No.156 of 2017 on the file of the III Additional District Judge, Tirunelveli and allow the appeal suit.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents : Mr.M.Thirunavukkarasu

JUDGMENT

This Appeal Suit is directed against the judgment and decree, dated 17.06.2022 passed in O.S.No.156 of 2017 on the file of the learned III Additional District Judge, Tirunelveli.

2. The appellant is the plaintiff in O.S.No.156 of 2017 on the file of the learned III Additional District Judge, Tirunelveli. The 1st respondent is the defendant in that suit. After filing this appeal, the 2nd respondent has been impleaded.

3. The appellant/plaintiff has filed the suit for declaration that the appellant/plaintiff is the absolute owner of the suit properties as the 1st item



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was purchased out of his own income in the name 1st respondent/defendant as name lender and as the 2 & 3 item properties were constructed from out of income of the plaintiff and consequential permanent injunction against the defendant.

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

5. The brief facts are as below:

(i) The case of the plaintiff (appellant herein):-

The plaintiff has been working in the Indian Army as Nursing Technician. His father was doing coolie work and was maintaining the family. His father did not possess any immovable property and he died on 04.03.1996. After the death of his father, the plaintiff has been alone, maintaining his mother and his brother. He sent his salary to his mother, 1st respondent herein and from out of his salary, his mother purchased a house site in P.Reddiapatti Village in 1998-99. Thereafter, she purchased the 1st item from Kaliammal & Vijayakannan on 16.09.2001. As the plaintiff has been working in the Indian Army, at the consent of plaintiff, the 1st item was purchased in the name of his



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mother. The plaintiff has obtained housing loan from LIC Housing Finance Limited, Tirunelveli, on 08.04.2003 and out of the loan & his savings amount, he constructed the 2nd item of house in a portion of the 1st item. Thereafter, the plaintiff intended to extend the 2nd item of the house. So, he applied for another housing loan from LIC Housing Finance Limited in August 2010 and obtained Rs.6,95,000/-. Utilizing the housing loan, the plaintiff constructed the 3rd item of house. The plaintiff sent money to the defendant upto 2008. Then his brother Vairamuthukumar joined in Indian Army in 1999 with the assistance of the plaintiff. The plaintiff got married in 2004 and lived with the defendant as joint family in the 2nd item. The marriage of the plaintiff's brother was also subsequently solemnized. After that, as dispute arose, the plaintiff permitted the defendant & plaintiff's brother to live in the 3rd item house. The plaintiff lived in the suit 2nd item. Whiles, without knowledge of the plaintiff, the defendant intended to encumber the suit properties to other parties by way of sale or 'Othi'. The suit properties are absolute properties of the plaintiff since the 1st item was purchased out of his salary, and items 2 & 3 houses, were constructed out of housing loan obtained by the plaintiff. Hence, the plaintiff issued a legal notice on 29.05.2017 to the defendant, who in turn sent a reply notice with false contents. Hence, the plaintiff has laid the suit for declaration



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that the plaintiff is the absolute and exclusive owner of the suit properties and for permanent injunction.

(ii) The case of the defendant (1st respondent herein):-

The averments that the father of the plaintiff was working as coolie and had not purchased any immovable property and after demise of his father, the plaintiff maintained the entire family and out of his salary the suit 1st item property was purchased in the name of the defendant and out of loan obtained by him, the suit item 2 & 3, houses were constructed are all false. In fact, the suit properties belong to joint family consisting of the plaintiff, the defendant and her another son Vairamuthukumar. The defendant earned by doing coolie work and from her income, the plaintiff and his brother Vairamuthukumar got educated. The defendant was given 30 cents of land by her father. She was doing agricultural work in that land and was also earning income. The plaintiff joined the army and after deducting his personal expenses, he sent only a small portion of the salary to the plaintiff. From her own income, the defendant purchased a property for Rs.16,000/- from Paramasivan Chettiar and others in the year 1998-99. The defendant's 2nd son Vairamuthukumar, has also joined the Indian Army in 1999. Both sons used to send part of their salary to the



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defendant after their expenses. The defendant purchased the suit 1st item from Kaliasammal & Vijayakannan for Rs.55,000/- out of her income, the share amount out of the sale of her mother's land and also part of the salary sent by her sons. The aforesaid two properties were purchased for the use of the joint family alone. The defendant sold the property purchased in the year 1998-99 for Rs.34,000/-. The suit 2nd item house was constructed with the above sale consideration and amount derived from the joint family and also housing loan of Rs.1,50,000/- obtained in the name of the plaintiff. The defendant repaid the entire loan amount from the salary sent by both sons. The plaintiff got married in 2004 and went for separate living with his wife in 2006. The defendant's 2nd son's marriage was solemnized in 2008. Thereafter, with the consent of both sons to repay, house loan of Rs.6,95,000/- was obtained in the name of the plaintiff and by using the loan, the suit 3rd item was constructed. The defendant and her 2nd son with his wife were living in that house. The 2nd loan amount was repaid by the plaintiff and the 2nd son of the defendant. In the year 2011, it was orally decided to allot the 2nd item house to the plaintiff and the 3rd item to the 2nd son of the defendant. To protect the property, the 2nd son of the defendant constructed compound wall, bathroom and latrine by obtaining a loan of Rs.5,50,000/- in his name from SBI and he also put an electric motor



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for the bore well. From the amount of joint family two house plots in Kaveripakkam of Vellore District were purchased in the name of the plaintiff, the defendant and her 2nd son agreed to retain the said plots by the plaintiff. When the drainage water leaked out from the septic tank of the house situated southeast, the defendant and her 2nd son, Vairamuthukumar, asked the plaintiff to clean the septic tank. So, the plaintiff sent a legal notice to the defendant, and it was suitably replied. Prior to this suit, the defendant settled the eastern half of the suit property to the 2nd son, Vairamuthukumar, by way of settlement, dated 04.07.2017. The defendant was also ready to convey the western half of the property. The 2nd son alone has been maintaining the defendant by giving food and medicines. The plaintiff has not maintained the defendant. The averment that the suit properties absolutely belonged to the plaintiff is utter false. There is no cause of action for the suit. The plaintiff is not entitled to any relief. So, the suit is liable to be dismissed.

6. The trial Court framed the following issues upon the pleadings of both parties.

(1) Whether the suit's 1st item was purchased from the income of plaintiff?



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(2) Whether the buildings in items 2 and 3 were constructed with own income of plaintiff?

(3) Whether the buildings in 1st item were constructed from the earnings of the plaintiff, his brother and the sale price of the defendant's property?

(4) Whether the plaintiff is entitled to the relief of declaration?

(5) Whether the plaintiff is entitled to the relief of permanent injunction as prayed by him?

(6) To what other reliefs is the plaintiff entitled?

7. Before the trial Court, the plaintiff examined himself as P.W.1 and marked Ex.A.1 to Ex.A.9. The defendant examined herself as D.W.1 and one Seeniammal was examined as D.W.2 and marked Ex.B.1 to Ex.B.19.

8. On appreciation of evidence and the arguments made by either parties, the trial Court has come to the conclusion that the 1st item of suit property was purchased out of income of the plaintiff and his brother Vairamuthukumar and the constructions thereon also were constructed from the earning of both



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parties, the parties are joint owners of suit properties and hence, dismissed the suit by its judgment and decree, dated 17.06.2022.

9. The judgment and decree of the trial Court are under challenge in this appeal.

10. Both parties have argued at length. On hearing both sides and on perusing the material records along with the grounds of appeal, the following points are to be considered.

11. The points for consideration in this appeal are;

1) Whether the suit 1st item was purchased by the plaintiff from out of his earnings in the name of his mother, the defendant herein, as the name lender?

2) Whether the plaintiff has constructed the suit items 2 & 3 buildings through home loan availed by him?

3) Whether the trial Court has not properly appreciated the evidences of the plaintiff?



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12. Point Nos.1 to 3:

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The learned counsel for the appellant/plaintiff has argued that the plaintiff is an ex-serviceman, his parents were doing coolie work and they had no immovable property. The defendant is the mother of the plaintiff and his father died in 1996. Prior to the death of his father, the plaintiff served in the Indian Army in 1995 and sent his salary to the defendant's portion. Out of the money sent by the plaintiff, the defendant purchased a property in 1998-99 and thereafter, purchased the suit 1st item property as a vacant site on 16.09.2001, since the plaintiff was not able to come over for registration of sale deed. The plaintiff intended to build a house, so he obtained plan approval in his name, availed home loan in his name and constructed the suit 2nd item house in the year 2003 and the suit 3rd item house in 2010. To establish the same, the plaintiff marked the plan approvals given by government authorities and home loan documents Ex.A.4 to Ex.A.7. The defendant has also admitted about the home loans availed by the plaintiff. But, the defendant stated in her Ex.A.9 - Reply Legal Notice that the suit properties are her self-acquired properties. But, in her written statement, she stated in paragraph No.10 that the suit properties are belonged to joint family consisting plaintiff, the defendant and her 2nd son, Vairamuthukumar. So, the defendant has taken mutually



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destructive pleas. Moreover, in written statement paragraph No.18, the defendant stated that there is a septic tank in the western side house allotted to the plaintiff and there is leakage of drainage water which caused nuisance to his brother, so the defendant and her son Vairamuthukumar asked the plaintiff to clean the same, hence, the plaintiff sent legal notice, for which the defendant's 2nd son sent reply without her knowledge. It is the submission of the learned counsel that defense story is unbelievable. The plaintiff has proved his case by marking Ex.A.1 to Ex.A.3 and LIC loan documents Ex.A4 to Ex.A.6. There is no plea in the written statement about joint family and about joint nucleus. The defendant has not examined her another son, the 2nd respondent herein. The defendant marked only copies of the documents and for the payment of loan, the bank officer has not examined. The trial Court has erred in coming to the conclusion that the suit properties are joint family properties without proper appreciation of evidences let in by both sides. Therefore, he prayed to allow this Appeal Suit.

13. Per contra, the learned counsel for the respondents has contended that the 1st respondent/defendant is the mother and her sons are the plaintiff and the 2nd respondent. The mother/defendant has cultivated her agricultural land



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measuring 30 cents and has been doing coolie work and her sons were brought up by her income. The plaintiff joined the Indian Army in 1995 and sent some salary amount to the defendant. The defendant purchased the suit 1st item from the joint family income by virtue of Ex.B.4 = Ex.A.1 dated 16.09.2001. The suit 2nd and 3rd items of the houses were constructed out of the joint family income, of course, the plaintiff contributed a part amount by obtaining loan. The plan approvals for the said houses under Ex.A.2, which stands in the name of the 1st defendant, plaintiff and the 2nd respondent and Ex.A.3, which stands in the name of the plaintiff and 1st defendant. The loan repayment was made by the defendant from the joint family income.

14. The learned counsel further submitted that the plaintiff himself admitted in his plaint, particularly in paragraph No.8, that the plaintiff and the defendant lived as joint family in the 2nd item house. The defendant has also pleaded in her written statement as joint family property and she was willing to execute a gift to the plaintiff in respect of the western side house as she had already gifted the eastern house to her 2nd son, Vairamuthukumar/ 2nd respondent. The version has clearly been explained in Ex.A.9 reply notice, which was sent against the plaintiff's legal notice. Moreover, Ex.B.1 -



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Complaint was sent to the Indian Army about the activities of the plaintiff.

The defendant sold her property, which was purchased in 1998-99 and marked the sale deed as Ex.B.6, in which the defendant clearly stated that the said property was her self-acquired property. Even prior to suit, the 1st defendant executed the registered settlement deed, dated 04.07.2017, in respect of the eastern house, i.e., suit 3rd item of property, in favour of her 2nd son, Vairamuthukumar. The said gift deed was not questioned by the plaintiff. Moreover, the 1st defendant was ready to gift the western house, i.e., suit 2nd item of property to him. The 2nd son/2nd respondent has also obtained loan and gave a share for the construction of house, compound wall, fitting of electric motor borewell, bathroom and latrine etc., which were clearly admitted by the plaintiff in his evidence. Therefore, all the parties, i.e. 1st defendant, the plaintiff and the 2nd respondent have contributed money towards purchases, construction and improvement of the suit properties. The defendant in her written statement in paragraph No.10 has clearly stated that the suit properties are joint family properties. This was not denied by the plaintiff by way of filing any reply statement. The 2nd son Vairamuthukumar has been living in 3rd item and the property tax and electricity charges stand in the name of his wife and the respondents side has produced Ex.B.12 to Ex.B.19. Therefore, the learned



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counsel submitted that the suit properties are not exclusive properties of the plaintiff, but they are joint family properties, therefore, the trial Court has properly appreciated the evidence and has correctly given findings and the same need not be interfered by this Court in this appeal. So, he prayed to dismiss the appeal.

15. In reply, the learned counsel for the plaintiff has finally submitted that the plaintiff's contribution is admitted, so the suit cannot be dismissed as a whole and the plaintiff is entitled 1/3 share. The Court can mould the relief based on evidence and prayed this Court to allow the appeal.

16. I have carefully considered the arguments of both sides and the material records of the case. The suit properties are mentioned as three items. Item No.1 is measuring 10 cents, item Nos.2 and 3 houses were constructed in item No.1. It is the case of the plaintiff that he was working in Indian Army and sent his salary to the defendant, who is his mother and that from out of his salary income the suit 1st item was purchased in the name of defendant only as name lender and also the suit item Nos.2 and 3 houses were constructed by him on availing LIC home loan. The defendant specifically pleaded that the



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suit 1st item was purchased out of her own income and from the sale proceeds of her another self acquired property. So, it is the contention that item No.1 property is her self-acquired property. It is the further case of the defendant that the item Nos.2 and 3 houses were constructed from income of joint family sources and so they are joint family properties.

17. The plaintiff has marked the sale deed, plan approval and home loan documents to substantiate his suit claim. On perusal of Ex.A.1 sale deed relating to the 1st item of suit property, it is clear that the said property was purchased by the defendant out of her own income. The contents of Ex.A.1 clearly show that the sale proceeds for the purchase of property were given out of earnings and the sale of her property, which clearly proves that the 1st item of property is self acquired property of the defendant. The plaintiff has filed Ex.A.2 and Ex.A.3 plan approval for the construction of houses in item Nos.2 and 3. A mere perusal of Ex.A.2 and Ex.A.3, clearly established that the plaintiff, defendant and the plaintiff's another son applied for approval for new construction and the same was issued in their name jointly. It is pertinent to note here that the plaintiff, in his cross examination, clearly admitted that the housing loan was obtained in his name and his mother's name. The plaintiff



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has also admitted that his brother, 2nd respondent herein, joined service in Indian Army and he also sent the salary amount. It was further admitted that the 2nd respondent has obtained a loan, out of which compound wall, bathroom, and latrine were constructed in the houses. The defendant has specifically stated that the 1st item of suit property is her self acquired property and houses were constructed from out of the jointly family income, the plaintiff has not chosen to deny the same by way of filing any reply statement.

18. The defendant has categorically stated in the written statement that she has executed a gift deed in respect of the 3rd item in favour of her 2nd son Vairamuthukumar/2nd respondent herein and the gift deed has been marked as Ex.B.8. The plaintiff has not challenged the same, even he has not denied about the execution of the gift deed in his evidence. The patta, property tax and electricity service connection were transferred from the name of the defendant to the name of the wife of the 2nd respondent, which is not denied by the plaintiff. D.W.2, in her evidence, has deposed in support of the case of the defendant. It is pertinent to note here that the defendant has pleaded in her written statement that though she is ready to convey the 2nd item of suit property to the plaintiff, but, after marriage, the plaintiff left the suit property



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and lived separately, so she let the 2nd item house for rent. Whereas the plaintiff states that he is living in the 2nd item house and admitted that his mother (defendant), brother and brother's wife are living in the 3rd item of suit property. However, on thorough consideration of evidence let in by both sides, this Court is of the considered view that the plaintiff has not established that the suit properties are his self acquired properties. When the Ex.B.8 settlement deed is not questioned by the plaintiff, the contents of Ex.B.8 strengthen the Ex.A.1 - Sale Deed stood in the name of the defendant as her self acquired property.

19. During the course of argument, the plaintiff's side submitted that since the plaintiff also contributed towards purchase and construction of houses, his suit cannot be dismissed in toto, as he has 1/3 share in the suit properties. But, the plaintiff has filed the suit for declaration that the suit properties are his self acquired properties and consequential injunction. If that is the case, the plaintiff must establish his case on his own evidence, the plaintiff cannot take advantage of the defense version. Therefore, the trial Court has correctly appreciated the evidence adduced on both side and correctly come to the conclusion that the 1st item of the suit property is the self



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acquired property of the defendant and the 2nd and 3rd item houses were not constructed out of home loan availed by plaintiff alone, but the buildings were constructed out of joint family income consisting the defendant, plaintiff and 2nd respondent. The findings of the trial Court need not be interfered by this Court by way of this appeal.

20. At this juncture, the learned counsel for the plaintiff has submitted that since the contribution of the plaintiff is admitted and established, he is entitled for 1/3 share to that effect the suit may be allowed as the Court can empower to mould the relief considering the proved facts. However, as already stated the suit has been filed by the plaintiff seeking for declaration that the suit properties are his exclusive properties and the same has not been established for obtaining the reliefs, whereas the defendant proved that the 1st item of the suit property is the self acquired property of the defendant, the suit items 2 and 3 are constructed in item No.1 from joint family income and that item No.3 of the suit property was gifted to the 2nd respondent. The said gift deed is also not challenged by the plaintiff. Therefore, the plaintiff is not entitled to any relief in this suit as sought for. However, he is at liberty to seek remedy for his share if any in the suit properties by filing a separate suit.



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For all the aforesaid discussion, the judgment and decree of the trial Court is sustainable in law and the same need not be interfered by way of this appeal.

Thus, the appeal fails.

21. In the result, this Appeal Suit is dismissed. The judgment and decree, dated 17.06.2022 passed in O.S.No.156 of 2017 on the file of the learned III Additional District Judge, Tirunelveli, is confirmed. However, the appellant/plaintiff is at liberty to seek his share in the suit properties by filing separate suit before the appropriate Forum. No costs.

19.12.2025

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

To

- 1.The III Additional District Judge,
Tirunelveli.
- 2.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

**Pre-Delivery Judgment made in
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