

S.A.(MD)No.339 of 2018.A.(MD)Nos.339 and 340 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 16.06.2025

CORAM

THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

S.A.(MD)Nos.339 and 340 of 2018
and
C.M.P.(MD)Nos.9561 and 9562 of 2018

S.A.(MD)No.339 of 2018

1.Kakkan
2.Vanitha

... Appellant / 1st Respondent/
1st Plaintiff

Vs.

1.Thangayya

... 1st Respondent/Appellant/
Plaintiff

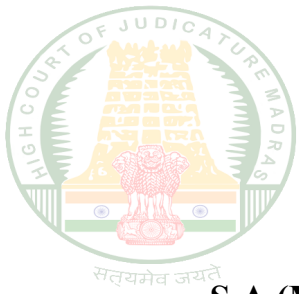
2.Poomalai

... 2nd Respondent/2nd Respondent/
2nd Defendant

PRAYER : Second Appeal filed under Section 100 Cr.P.C., against the judgment and decree dated 23.10.2017 passed in A.S.No.52 of 2012 on the file of the Sub Court, Srivilliputhur, reversing the judgment and decree dated 29.07.2011 passed in O.S.No.440 of 2006 on the file of the Additional District Munsif Court, Srivilliputhur.

For Appellants : Mr.J.Selvin Rajesh
for M/s.Dictum Law Firm for A2
: A1 died

For Respondents : Mr.C.Vakeeswaran for R1
: No appearance for R2



S.A.(MD)No.339 of 2018.A.(MD)Nos.339 and 340 of 2018

S.A.(MD)No.340 of 2018

Vanitha

... Appellant / 1st Respondent/
1st Plaintiff

Vs.

1.Thangayya

... 1st Respondent/Appellant/
2nd Defendant

2.Varalakshmi

3.M.Kaladevi

... Respondents 2&3/Respondents 2&3/
Plaintiffs 2&3

PRAYER : Second Appeal filed under Section 100 Cr.P.C., against the judgment and decree dated 23.10.2017 passed in A.S.No.53 of 2012 on the file of the Sub Court, Srivilliputhur, reversing the judgment and decree dated 29.07.2011 passed in O.S.No.448 of 2006 on the file of the Additional District Munsif Court, Srivilliputhur.

For Appellant

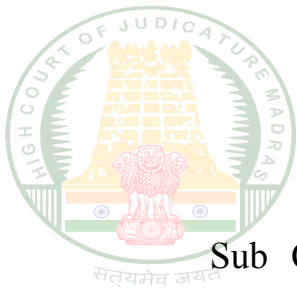
: Mr.J.Selvin Rajesh
for M//s.Dictum Law Firm

For Respondents

: Mr.C.Vakeeswaran for R1
: No appearance for R2 & R3

COMMON JUDGMENT

S.A.(MD)No.339 of 2018 is filed as against the judgment and decree dated 23.10.2017 passed in A.S.No.52 of 2012 on the file of the



S.A.(MD)No.339 of 2018.A.(MD)Nos.339 and 340 of 2018

Sub Court, Srivilliputhur, reversing the judgment and decree dated 29.07.2011 passed in O.S.No.440 of 2006 on the file of the Additional District Munsif Court, Srivilliputhur.

2. S.A.(MD)No.340 of 2018 is filed as against the judgment and decree dated 23.10.2017 passed in A.S.No.53 of 2012 on the file of the Sub Court, Srivilliputhur, reversing the judgment and decree dated 29.07.2011 passed in O.S.No.448 of 2006 on the file of the Additional District Munsif Court, Srivilliputhur.

3. O.S.No.440 of 2006 was filed by the respondents herein, seeking permanent injunction. O.S.No.448 of 2006 was filed by the appellant herein, seeking partition and also for declaration of the sale deed executed by the first defendant in favour of the second defendant as null and void. A common judgment and decree was passed in both the suits and on appeal, a common judgment and decree was passed. Against the common judgment and decree in the Appeal Suits, the present separate second appeals are filed. Hence, the second appeals are heard together and disposed of together.



S.A.(MD)No.339 of 2018.A.(MD)Nos.339 and 340 of 2018

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4. The parties are referred to, as per the ranking before the trial Court in O.S.No.448 of 2006, which is the comprehensive suit.

5. It is the case of the plaintiffs that they are the legal heirs of the first defendant and his wife Poomalai. According to the plaintiffs, the suit property was purchased by the first defendant's mother, viz., Karuppaayammal, by using the money left behind by her husband, viz. Rasu, while he died in the year 1975. It is their specific claim that since the first defendant's mother purchased the property from out of the money left by her husband, it was purchased in her name only for convenience and it is the joint family property and the legal heirs of their grand mother – Karuppaayammal, who are Rajammal, Mariammal and their father first defendant were in common enjoyment of the joint family property. It is their further case that the said Karuppaayammal died intestate in the year 1991 and prior to that the first defendant got married to their mother Poomalai in the year 1987. After the marriage, till the death of Karuppaayammal, they have lived together as a joint family and the plaintiffs were born out of the wedlock of the first defendant. It is



S.A.(MD)No.339 of 2018.A.(MD)Nos.339 and 340 of 2018

their further claim that in view of the wavered life of the first defendant, the legal heirs of Karuppaayammal joined together and executed a sale deed on 23.11.1992 in Ex.A1 in favour of their mother, viz., Poomalai, which is only for the purpose of convenience and to safeguard the properties from the hands of the first defendant. While so, in order to defeat the rights and share of the plaintiffs, the plaintiffs' mother Poomalai had executed a sale deed back in favour of her husband Murugan / first defendant in Ex.A2 and with the help of which, the first defendant had sold the suit property in favour of the second defendant on 21.05.2001 in Ex.A3. (It is to be noted that during trial, the parties have been referred to, as per the ranking in O.S.No.440 of 2006). Hence, the plaintiffs had come up with the present suit for partition seeking 3/4 share and also to declare the sale deed executed by the first defendant in favour of the second defendant as null and void.

6. The defendants resisted the suit by filing a written statement, contending that the first defendant's mother Karuppaayammal had purchased the suit property in Ex.A.7, which was her absolute property and since she died intestate, the property devolved on the first defendant



S.A.(MD)No.339 of 2018.A.(MD)Nos.339 and 340 of 2018

and the other two sisters. It is their further contention that since the legal heirs of Karuppaayammal were the absolute owners of the suit property, the sale deed executed in Ex.A1, Ex.A2 and Ex.A3 cannot be disputed or questioned by the plaintiffs as they do not have any right and sought for dismissal of the suit.

7. The second defendant herein / purchaser had filed a suit in O.S.No.440 of 2006, seeking for permanent injunction, based on the sale deed executed in his favour in Ex.A3. According to the plaintiffs, since the property was not an ancestral property and it was an absolute property of legal heirs of Karuppaayammal, the sale deed executed by the first defendant in his favour is perfectly valid and since the defendants therein interfered had come up with the suit for permanent injunction. (The defendants therein also resisted the suit contending the same stand taken in the suit filed by them)

8. During trial, since the evidence was recorded in O.S.No.440 of 2006, the second defendant herein was examined as P.W.1 and marked Ex.A1 to Ex.A7. The first plaintiff was examined as D.W.1 and her

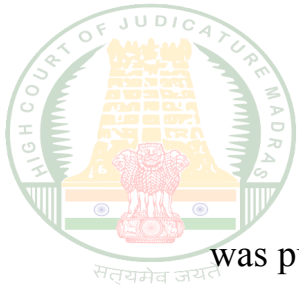


S.A.(MD)No.339 of 2018.A.(MD)Nos.339 and 340 of 2018

grand-father, viz., Kakkan, was examined as D.W.2 and marked Ex.B1 to Ex.B9.

9. The trial Court, after analyzing the evidences and documents, decreed the suit filed for partition and based on which declared the sale deed executed in favour of the second defendant as null and void. The trial Court by accepting the mere evidence let in by D.W.2, came to the conclusion that originally the suit property was purchased by the first defendant's mother Karuppaayammal through the money left behind by her husband Rasu and therefore, it is an ancestral property. By concluding that it is an ancestral property, the trial Court came to the conclusion that the plaintiffs are entitled for a share and the sale deed executed by the defendants will not bind the plaintiffs.

10. Two separate first Appeals were preferred by the defendants. The lower Appellate Court by a common judgment and decree allowed the appeals and set aside the judgment and decree of the trial Court, holding that though the plaintiffs, had come up with the claim that the suit property is an ancestral properties, failed to prove that the property

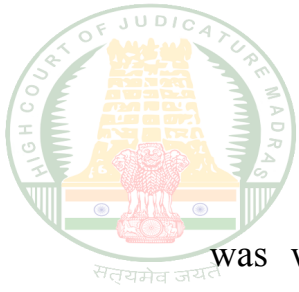


S.A.(MD)No.339 of 2018.A.(MD)Nos.339 and 340 of 2018

was purchased by their grand mother Karuppaayammal, out of the money left by her grand father, to treat the suit property as an ancestral property.

The lower Appellate Court disbelieved the evidence adduced by D.W.2 as he had no knowledge about the transaction. Assailing the common judgment and decree of the lower Appellate Court, the first plaintiff is before this Court with the above second appeals.

11. The learned counsel appearing for the appellants argued that the plaintiffs have specifically pleaded that their grand-mother had purchased the suit property from and out of the money left behind her grand father, viz., Rasu and also though they have not filed any document to substantiate the same, still they have proved the same by letting in evidence through D.W.2, their maternal grand-father, who had spoken about the fact that the purchase of the suit property was from the money left behind by Rasu and as such, they have proved that the suit property is an ancestral property. It is his further contention that even prior to the sale in Ex.A3 was executed by the first defendant in favour of the second defendant, D.W.2 had issued a legal notice in Ex.B2 on behalf of the minor plaintiff. Therefore, the purchase of the second defendant



S.A.(MD)No.339 of 2018.A.(MD)Nos.339 and 340 of 2018

was with notice. Therefore, he cannot be construed as a *bonafide* purchaser also. The learned counsel in this regard also relied on the decision of the Hon'ble Supreme Court in the case of ***Ramakant Ambalal Choksi V. Harish Ambalal Choksi & Ors.*** in ***Civil Appeal No. 13001 of 2024, dated 22.11.2024***, to the effect that the Appellate Court cannot go behind what was not adduced and considered before the trial Court. It is his further contention that the trial Court had rightly appreciated the facts and evidences and decreed the suit, but, however, the lower Appellate Court had gone beyond the scope of the Appeal and had reversed the judgment and decree by analysing the facts, which was not considered in the suit and as such, the common judgment and decree are perverse and sought for interference of this Court.

12. Per contra, the learned counsel for the respondents argued that the first defendant Murugan and his two sisters are the absolute owners of the property as they have inherited the same after the death of her mother Karuppaayammal. It is his specific contention that when the plaintiffs had come up with the claim that it is an ancestral property, it is for them to establish through documents that the property is an ancestral



S.A.(MD)No.339 of 2018.A.(MD)Nos.339 and 340 of 2018

property and that the husband of Karuppaayammal had left behind any money, which was the source of purchase of the suit property and the suit property was treated as a joint family property. He contended that in the absence of any of the materials, the plaintiffs failed to prove this fact. The judgment and decree of the trial Court, decreeing the suit holding that the suit property is an ancestral property is based on no evidence, which was rightly interfered by the lower Appellate Court. The learned counsel also contends that all the legal heirs have already executed a sale deed in favour of the first defendant's wife as early as on 23.11.1992 in Ex.A1 and the first defendant's wife had again sold the suit property on 29.03.2001 in favour of the first defendant in Ex.A2 and the plaintiffs have not chosen to challenge the two sale deeds, but, on the contrary, they only challenge the subsequent sale deed executed in favour of the second defendant in Ex.A3, which makes it evident that knowing well that they do not have any semblance of right in the suit property, the plaintiffs have come up with the suit only to harass the purchaser / second defendant. The learned counsel contended that the common judgment and decree of the lower Appellate Court is based on evidence, which needs no interference and sought for dismissal of the appeals.

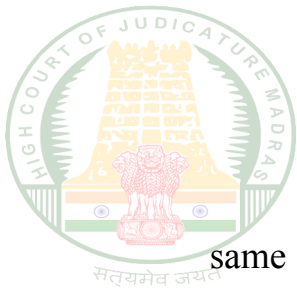


S.A.(MD)No.339 of 2018.A.(MD)Nos.339 and 340 of 2018

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13. This Court by order dated 01.11.2018, had only issued notice of motion and the appeals have not been admitted. Heard the rival submissions and perused the materials available on record.

14. It is not in dispute that originally the suit properties were purchased by Karuppaayammal from one Sangan on 07.11.1975 through sale deed in Ex.A7. On the date of purchase, the property was vested with Karuppaayammal and she had been in possession and enjoyment of the suit property. It is also admitted that Karuppaayammal died intestate, leaving behind her two daughters, viz., Rajammal and Mariammal and one son, viz., Murugan, who is the first defendant, as her surviving legal heirs. On the death of Karuppaayammal, as intestate, the property had devolved on Rajammal, Mariammal and the first defendant – Murugan, as per Section 15 of the Hindu Succession Act. The order of succession among the heirs referred to in Section 15 shall devolve according to the rules, set out under Section 16. As per Rule 1 of Section 16, among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry, and those included in the



same entry shall take simultaneously. For the purpose of clarity, Sections

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15 and 16 of the Hindu Succession Act, are extracted hereunder:

15. General rules of succession in the case of female Hindus.-(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,-

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),-

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased



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S.A.(MD)No.339 of 2018.A.(MD)Nos.339 and 340 of 2018

(including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

16. Order of succession and manner of distribution among heirs of a female Hindu.-The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate's property among those heirs shall take place according to the following rules, namely:-

Rule 1.-Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall take simultaneously.

Rule 2.-If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3.-The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and

(e) of sub-section (1) and in sub-section (2) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been



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S.A.(MD)No.339 of 2018.A.(MD)Nos.339 and 340 of 2018

the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death."

15. In view of Sections 15 and 16 referred to above, on the death of Karuppaayammal, dying intestate, the property had devolved only on her two daughters and one son. Only the children of any predeceased son or daughter will be entitled under first entry. As such the properties have vested in the three legal heirs as their absolute properties, each one having 1/3rd share in the suit property. The three legal heirs, Rajammal, Mariammal and the first defendant, viz., Murugan had jointly executed a sale deed dated 23.11.1992 in Ex.A1 conveying the suit property in favour of the first defendant's wife Poomalai, who is the mother of the plaintiff. Poomalai who became the absolute owner of the property through Ex.A1 had been in possession of the suit property and by a subsequent sale deed dated 29.03.2001 had reconveyed the suit property in favour of her husband, the first defendant-Murugan in Ex.A2. Murugan, the first defendant, who became the owner of the property had thereafter executed a sale deed in favour of the second defendant Thangayyan on 21.05.2001 in Ex.A3. As such, from the date of sale, the



S.A.(MD)No.339 of 2018.A.(MD)Nos.339 and 340 of 2018

purchaser, the second defendant- Thangayyan had become the absolute owner of the suit property. Placing title on Ex.A3, the purchaser had instituted a suit in O.S.No.440 of 2006, seeking for permanent injunction as against the first plaintiff, mother and also maternal grand father, viz., Kakkan.

16. The whole case of the plaintiff is that, the suit property was originally purchased by Karuppaayammal, out of the money left behind by her husband, viz. Rasu. It is their contention that the sale deed was made in the name of Karuppaayammal only for convenience and since the purchase was made through the money left behind by Rasu, the purchase in the name of Karuppaayammal in Ex.A7 is only a joint family property, in which, Karuppaayammal and all her three children, including the first defendant are having a common interest. Since Karuppaayammal died intestate and the three legal heirs were also in joint possession in and out of the joint family property, the property which came to the hand of the first defendant Murugan is only an ancestral property and therefore, the first defendant does not have any independent right to sell his entire 1/3rd share for which the plaintiffs are also having a share.



S.A.(MD)No.339 of 2018.A.(MD)Nos.339 and 340 of 2018

When the plaintiffs have come up with the suit, seeking for partition on the ground that it is an ancestral property, it is for the plaintiffs to plead and prove that the plaintiffs are entitled for a share by establishing that the suit property is an ancestral property. Except for pleading in the plaint where it is averred that the said Karuppaayammal had purchased the suit property by using money left behind by Rasu, who predeceased, nothing is available on record to show that neither the purchase made by Karuppaayammal in Ex.A7 was out of the money left behind by her husband nor the three legal heirs, including the first defendant had any role in the purchase made by their grand-mother Karuppaayammal. The plaintiffs had only examined in D.W.2 Kakkan, who is the maternal grand-father, to give evidence to that effect. It is to be noted that the lower Appellate Court has rightly considered this aspect that in view of the fact that the first plaintiff, who was the elder daughter of the first defendant was not even born on the date of purchase by her grand-mother in Ex.A7 and further marriage between the first defendant and Poomalai itself was only in the year 1987. When P.W.2 had known the first defendant only after the marriage of his daughter in the year 1987, it is improbable for D.W.2, to give evidence to the effect that the purchase of



S.A.(MD)No.339 of 2018.A.(MD)Nos.339 and 340 of 2018

Karuppaayammal on 07.11.1975, i.e., even 12 years prior to the marriage was through the funds left behind by her husband. Except this attempt, the plaintiff has not brought in any material, to substantiate that it is a joint family property and therefore, on the death of Karuppaayammal, the ancestral property had devolved on to the legal heirs of Karuppaayammal, including the first defendant Murugan, father of the plaintiff.

17. When the plaintiffs have miserably failed to establish the fact and prove that the suit property is an ancestral property, notice issued by them in Ex.A2 will not be of any help to them, as the legal heirs of Karuppaayammal, who had inherited the suit property absolutely, in view of the Sections 15 and 16 of the Hindu Succession Act, had executed a sale deed in favour of Poomalai in Ex.A1. Further, sale had also been executed by Poomalai, mother of the plaintiff in favour of the first defendant. It is to be noted that as rightly contended by the learned counsel for the respondents, the plaintiffs have not chosen to challenge these two sale deeds executed by the legal heirs of Karuppaayammal in favour of Poomalai in Ex.A1 and a subsequent sale deed by Poomalai in



S.A.(MD)No.339 of 2018.A.(MD)Nos.339 and 340 of 2018

favour of the first defendant in Ex.A2. In the absence of challenge to these two documents and also the failure of the plaintiffs to prove that the suit properties are ancestral property, the suit filed by them for partition and also seeking for further relief of declaration to declare the sale deed executed in favour of the first defendant and the second defendant as null and void has to fail.

18. The lower Appellate Court has rightly taken note of these aspects and had come to the conclusion that the plaintiffs have failed to prove that it is the ancestral property and when the suit property is found to be the absolute property of the first defendant and the sisters, the challenge to the sale executed by the first defendant in favour of the second defendant was bound to fail and the lower Appellate Court has also rightly disbelieved the evidence of D.W.2, as he had no knowledge about the purchase made by Karuppaayammal in the year 1975. In view of the above, this Court is not able to find any illegality or perversity in the finding of fact arrived at by the lower Appellate Court, warranting any interference. No substantial question of law arises for consideration of this Court in the above second appeal.



S.A.(MD)No.339 of 2018.A.(MD)Nos.339 and 340 of 2018

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19. Accordingly, both the second appeals are dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
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16.06.2025

To

- 1.The Sub Court,
Srivilliputhur.
- 2.The Additional District Munsif Court,
Srivilliputhur.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A.(MD)No.339 of 2018.A.(MD)Nos.339 and 340 of 2018

G.ARUL MURUGAN,J.

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SA.(MD)Nos.339 and 340 of 2018

16.06.2025