



S.A.(MD)No.277 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 15.07.2025

CORAM

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

S.A.(MD)No.277 of 2025

Kalammal (died)

- 1.Ayiranan
- 2.Rajammal
- 3.K.Konappan
- 4.K.Subbulakshmi

... Appellants

-vs-

- 1.M.Maruthamuthu
- 2.M.Anand @ Kaliram
- 3.A.Viveka
- 4.U.Sumathi @ Ramalakshmi
- 5.M.Kumar
- 6.Kaliammal
- 7.A.Kathiresan

..Respondents

PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure, against the judgment and decree dated 20.12.2022 made in A.S.No.9 of 2019 on the file of the Sub Court, Theni confirming the judgment and decree dated 22.10.2018 made in O.S.No.111 of 2012 on the file of the District Munsif Court, Bodinayakanur, Theni District.

For Appellants	...	Mr.M.Ganesan
For Respondent	...	Mr.M.Kaliraj (RR1 to 5)
		Mr.M.Kannan (R7)



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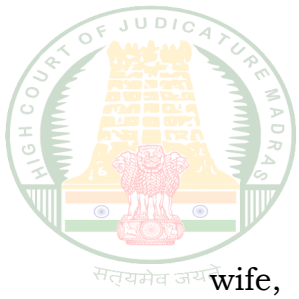
JUDGMENT

The unsuccessful plaintiff is before this court on appeal.

2. The second appeal is filed challenging the judgment and decree dated 20.12.2022 in A.S.No.9 of 2019 on the file of the Sub Court, Theni, confirming the judgment and decree dated 22.10.2018 in O.S.No.111 of 2012 on the file of the District Munsif Court, Bodinayakanur, Theni District.

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

4. The plaintiffs had filed the suit seeking partition and also to declare the sale deed dated 15.02.2010 executed by the first defendant in favour of the 7th respondent as null and void. The plaintiff claims that the suit property originally belonged to one Sundara Gounder. He had two wives and two sons. Marimuthu Gounder was born through the first wife, and Thangamuthu Gounder was born through the second wife. It is the further case of the plaintiffs that Marimuthu Gounder also had two wives, namely, Muthammal and Samakkal. The first plaintiff was born to the first



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wife, Muthammal, on 01.07.1940, whereas the first defendant was born to the second wife, Samakkal. The plaintiffs 2 to 5 are the sons and daughters of the first plaintiff. The defendants 2 to 5 are the sons, grandsons, and granddaughters of the first defendant. According to the plaintiffs, the suit property was inherited by Marimuthu Gounder from his father. Pursuant to his death, the plaintiffs, being the legal heirs, are entitled to a share in the suit property, and therefore, the sale executed by the first defendant in favour of the 7th defendant is also null and void. Hence, they had issued a legal notice on 14.09.2011, and it was not replied to. Thereafter, the plaintiffs have come up with the suit.

5. The defendants resisted the suit, disputing the fact that Marimuthu Gounder had two wives. It is the case of the defendants that Marimuthu Gounder had only married Samakkal, and the first and sixth defendants are the son and daughter of Marimuthu Gounder and Samakkal, and the defendants 2 to 5 are the grandchildren. The defendants alone, being the legal heirs of Marimuthu Gounder, had inherited the property and mutated the revenue records in their favour. Since the first defendant, being the only male heir, has been paying the taxes, they are in enjoyment of the suit property. It is the specific case of the defendants that



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Marimuthu Gounder had died on 20.11.1969, and they have performed the last rites, and immediately the death was registered, and the extract of the registration of the death certificate is also produced. The plaintiffs are in no way connected with Marimuthu Gounder. For the purpose of grabbing the suit property, the plaintiffs had come up with the false claim in the suit.

6. During the trial, on the side of the plaintiffs, five witnesses were examined as P.W.1 to P.W.5 and Exs.A1 to A13 were marked. On the side of the defendants, two witnesses were examined as D.W.1 and D.W.2 and Exs.B1 to B6 were marked.

7. The trial court, after analyzing the evidence, came to the conclusion that the plaintiffs, who claimed to be the legal heirs of Marimuthu Gounder, had failed to prove the factum of marriage and also failed to establish that they are legal heirs. The documents filed by the plaintiffs in Exs.A1 to A4, since having been registered just prior to the suit, were rejected when the certificate filed by the defendants in Ex.B1 was immediately on the next day of the death of Marimuthu Gounder, and the suit was dismissed.



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8. On appeal, the lower appellate court concurred with the finding of the trial court and dismissed the appeal, holding that the plaintiffs had not established their right by proving that they were the legal heirs of Marimuthu Gounder. Assailing the concurrent finding of fact, the plaintiffs have come up with the above second appeal.

9. The learned counsel for the appellants/plaintiffs submitted that the plaintiffs have filed three documents Exs.A1 to A3. From the documents, it could be ascertained that the name of Marimuthu Gounder has been entered even in the death certificate of their mother in Ex.A2. The learned counsel further submitted that even though the courts below have held that the plaintiffs failed to prove the factum of marriage, he sought to remand the appeal to the trial court by allowing the plaintiffs to file the documents and let in evidence to prove the factum of marriage and also establish that they are legal heirs. Except for the said contention, the learned counsel only submits that since the evidence let in by the Village Administrative Officer, who was examined as P.W.3, was not properly appreciated by the courts below, the findings are perverse and sought interference of this court.



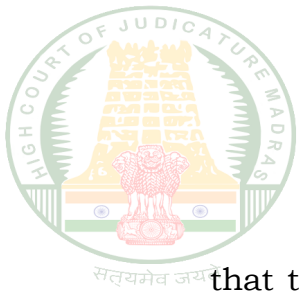
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10. Per contra, the learned counsel for the respondents/defendants submitted that the entire basis of the suit relief claimed by the plaintiffs is on the ground that they are the legal heirs of Marimuthu Gounder. When the plaintiffs failed to prove that one Muthammal was married to Marimuthu Gounder, they were not entitled to seek any relief. The learned counsel further submitted that when the death certificate of Marimuthu Gounder in Ex.B1 is available that is registered immediately after the death, the documents relied on by the plaintiffs, which have been prepared just prior to the filing of the suit almost 40 years later, cannot be sustained and have rightly been rejected by the courts below.

11. Heard the learned counsel for the appellants/plaintiffs and the learned counsel for the respondents/defendants 1 to 5 and 7, and perused the materials available on record.

12. Admittedly, the suit property belonged to one Marimuthu Gounder. It is also admitted by the parties that the property originally belonged to the father of Marimuthu Gounder, namely, Sundara Gounder. Marimuthu Gounder had inherited the property from his father. It is the claim of the plaintiffs that Marimuthu Gounder had two wives, namely, Muthammal and Samakkal. The plaintiffs claimed



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that they are the legal heirs born through the first wife, Muthammal, and Marimuthu Gounder. According to them, Marimuthu Gounder died on 10.01.1972, and therefore, pursuant to his death, they have been in enjoyment of the suit property along with the other legal heirs, and they are entitled to a share in the suit property.

13. On the other hand, the defendants disputed such a claim, and it is their contention that Marimuthu Gounder had only married Samakkal, and the first defendant and the 6th defendant, who are the son and daughter, were born to Marimuthu Gounder and Samakkal. According to the defendants, Marimuthu Gounder died on 20.11.1969, and pursuant to his death, the first defendant, being the son, had mutated the revenue records in his favour and they are in possession and enjoyment of the suit property, and therefore, the first defendant has executed a sale deed in favour of the 7th defendant, who, on purchase, became the absolute owner of the suit property.

14. The plaintiffs had come up with the case claiming to be the legal heirs of Marimuthu Gounder, born through the first wife, Muthammal. When the plaintiffs had come up with such a claim, the onus was on the plaintiffs to first establish the factum of marriage between Marimuthu Gounder and Muthammal and establish that



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they are the children born to them and, being the legal heirs, they are entitled to the suit property.

15. As per Section 103 of the Evidence Act, when a party intends to rely on a fact before the court, the burden lies on him to establish that fact that he wants the court to believe in order to arrive at a conclusion for granting a decree. In the instant case, the plaintiffs were bound to prove the factum of marriage and establish that they are the legal heirs. In this regard, the plaintiffs had filed three documents in Exs.A1 to A3. Ex.A1 is the death certificate of Marimuthu Gounder. Exs.A2 and A3 are the death certificates of Kalammal and Muthammal. A perusal of the death certificate in Ex.A1 and also the other two certificates Exs.A2 and A3, reveals that these three documents were obtained in the years 2011 and 2012. Particularly, Ex.A1 is claimed to be the death certificate of Marimuthu Gounder. The said certificate reveals that the said Marimuthu Gounder had died on 10.01.1972, and it has been registered only on 15.12.2011. Ex.A2 has also been registered only on 21.05.2012. Further, Ex.A3, which is the death certificate of Muthammal, who died on 06.10.1975, has also been registered only on 15.12.2011. As such, all the documents have been prepared or obtained just before the filing of the suit. The courts below rightly rejected the documents, as it would not enure to benefit the plaintiffs to prove their claim.



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16. On the other hand, the defendants have filed the death certificate in Ex.B1. As per the said certificate in Ex.B1, Marimuthu Gounder had died on 20.11.1969, and the death has been registered, and the same was issued on the very next day of the death of Marimuthu Gounder. When Marimuthu Gounder had died as early as on 20.11.1969, and the death is also registered and the certificate has been issued in Ex.B1 on the next day itself, it is for the plaintiffs to prove the fact that Marimuthu Gounder had only died on 10.01.1972. The certificate issued relating to the death of the first plaintiff in Ex.A2, which shows that the death on 06.10.1975 was registered on 15.12.2011, speaks volumes, and other certificates cannot be relied on. Even while placing the arguments before this court, the learned counsel for the appellants contended that since when the certificate was obtained in Ex.A1, the legal heirs were not aware of the actual date of death of Marimuthu Gounder, and as such there have been discrepancies in the certificate. In the said context, it goes to establish that the plaintiffs had not even been aware of the death of Marimuthu Gounder. Just for the filing of the suit, they had given a date of death of Marimuthu Gounder as 10.01.1971 and had obtained registration on 15.12.2011 in Ex.A1.



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17. Further, it is the vehement contention of the learned counsel for the appellants that the plaintiffs had examined the Village Administrative Officer as P.W.3, who had spoken about the marriage of Muthammal. The Village Administrative Officer is not a competent person to let in any evidence in this regard. When, admittedly, Marimuthu Gounder died in the year 1969 itself, the Village Administrative Officer, who had been examined as P.W.3, cannot have any knowledge about the factum of marriage of Marimuthu Gounder, which should have been at least in the year 1940.

18. The first defendant, being the only son of Marimuthu Gounder, and the 6th defendant, being the daughter, the revenue records have been mutated in favour of the first defendant, and the defendants had filed patta in Ex.B2 and also computerized patta in Patta No.1165. The defendants had also filed the house tax receipt in Exs.B4 and B5 to establish that they are in exclusive possession and enjoyment of the suit property. The first defendant, being the owner of the suit property, had executed a sale deed in favour of the 7th defendant. The plaintiffs having miserably failed to establish that they are the legal heirs of Marimuthu Gounder, are not entitled to seek partition or maintain the suit challenging the sale deed.



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19. The courts below have rightly analyzed the documents and thereby arrived at concurrent findings of fact which are based on the available evidence. This court does not find any illegality or perversity in the finding arrived at. No substantial question of law is involved in this second appeal.

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

15.07.2025

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

To:

- 1.The Sub Judge, Theni.
- 2.The District Munsif, Bodinayakanur, Theni District.
- 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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