

S.A.No.1649 of 1999

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.04.2025

Pronounced on : 16.06.2025

CORAM

THE HONOURABLE MR JUSTICE P.VELMURUGAN

S.A.No.1649 of 1999

1.Rajmohan

2.Sathiyabama

3.Santhakumari (Died)

4.Suresh Babu

5.Meera

6.S.Sudha

7.M.Suguna

8.R.A.Palanivelrajan

.. Appellants

(Appellant Nos.6 to 8
are brought on record as
LRs of the deceased 3rd
appellant vide Court
order dated 20.07.2010
made in M.P.(MD)No.2
of 2010 in S.A.No.1649
of 1999)

Vs.

Page No 1 of 25



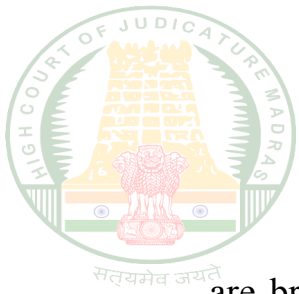
S.A.No.1649 of 1999

WEB COPY

- 1.Annamalai Chettiar (Died)
- 2.Rathinam Chettiar (Died)
- 3.Vasu Chettiar
- 4.Manikumar
- 5.A.Kannapandi
- 6.Amudha (Died)
- 7.Radhika (Died)
- 8.Priya
- 9.Sakthi
- 10.Vasantha
- 11.Sumathi
- 12.Sathya

.. Respondents

(6th respondent died, and the appellants are exempted from substituting the LRs of the deceased R6 vide Court order, dated 18.10.2022, made in CMP(MD)Nos. 11377 and 11379 of 2018 in S.A.No.1649 of 1999 by NSSJ. Respondent Nos.8 and 9



S.A.No.1649 of 1999

WEB COPY

are brought on record as LRs of the deceased 7th respondent vide Court order, dated 31.01.2023, made in CMP(MD) Nos.194 to 196 of 2018 in S.A.No.1649 of 1999 by SSJ. Respondent Nos. 10 to 12 are brought on record as LRs of the deceased 2nd respondent vide Court order, dated 18.10.2022, made in CMP(MD)Nos.11377 to 11379 of 2018 in S.A.No.1649 of 1999 by NSSJ.)

Prayer : Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree, dated 10.03.1999, made in A.S.No.3 of 1996 on the file of the Court of the learned Subordinate Judge, Virudhunagar reversing the judgment and decree, dated 20.08.1990, made in O.S.No.282 of 1988 on the file of the Court of the learned District Munsif, Aruppukottai.

For Petitioner : Mr.H.Lakshmi Shankar

For Respondent : Mrs.Vijayakumari Natarajan for R5

JUDGMENT

The 2nd defendant and the legal heirs of the 1st defendant in O.S. No.282 of 1988 are the appellants before me.

Page No 3 of 25



S.A.No.1649 of 1999

WEB COPY

2. The present Second Appeal arises out of the judgment and decree, dated 10.03.1999, made in A.S.No.3 of 1996 on the file of the learned Subordinate Judge, Virudhunagar reversing the judgment and decree, dated 20.08.1990, made in O.S.No.282 of 1988 on the file of the learned District Munsif, Aruppukottai.

3. O.S.No.282 of 1988 is a suit for partition, claiming half share.

4. The learned District Munsif, after trial, dismissed the suit. Challenging the same, the respondents herein filed a regular appeal in A.S.No.3 of 1996 on the file of the learned Subordinate Judge, Virudhunagar. The learned first appellate Judge, after hearing the appellants, allowed the appeal and set aside the judgment and decree of the trial Court. Aggrieved by the same, the legal heirs of the 1st defendant and second defendant filed the present Second Appeal.

5. While hearing the Second Appeal, this Court formulated the following substantial questions of law :

Page No 4 of 25



S.A.No.1649 of 1999

“(i) Is it necessary to plead the nature of the evidence to let in the written statement and is not sufficient if the written statement indicates the right and title of the claimant and that being so, is the lower appellate Court correct and justified in rejecting the defendants' case merely on the ground that in the written statement the defendants had not mentioned as to how Mariammal became entitled to the suit property?”

“(ii) When the defendants' case claiming under Ex.B-190 and the recitals in Ex.B-190 clearly mentioned as to how Mariammal became entitled to the suit property, is it still necessary to so plead in the written statement as to how Mariammal became entitled to the suit property?”

“(iii) On the face of Exs.B-3 and B-187 is the lower appellate Court correct and justified in rejecting the defendants' title to the suit property?”

“(iv) Is the lower appellate Court correct and justified in rejecting Ex.B-190, a registered Will, especially when its due execution and attestation have been proved and established?”

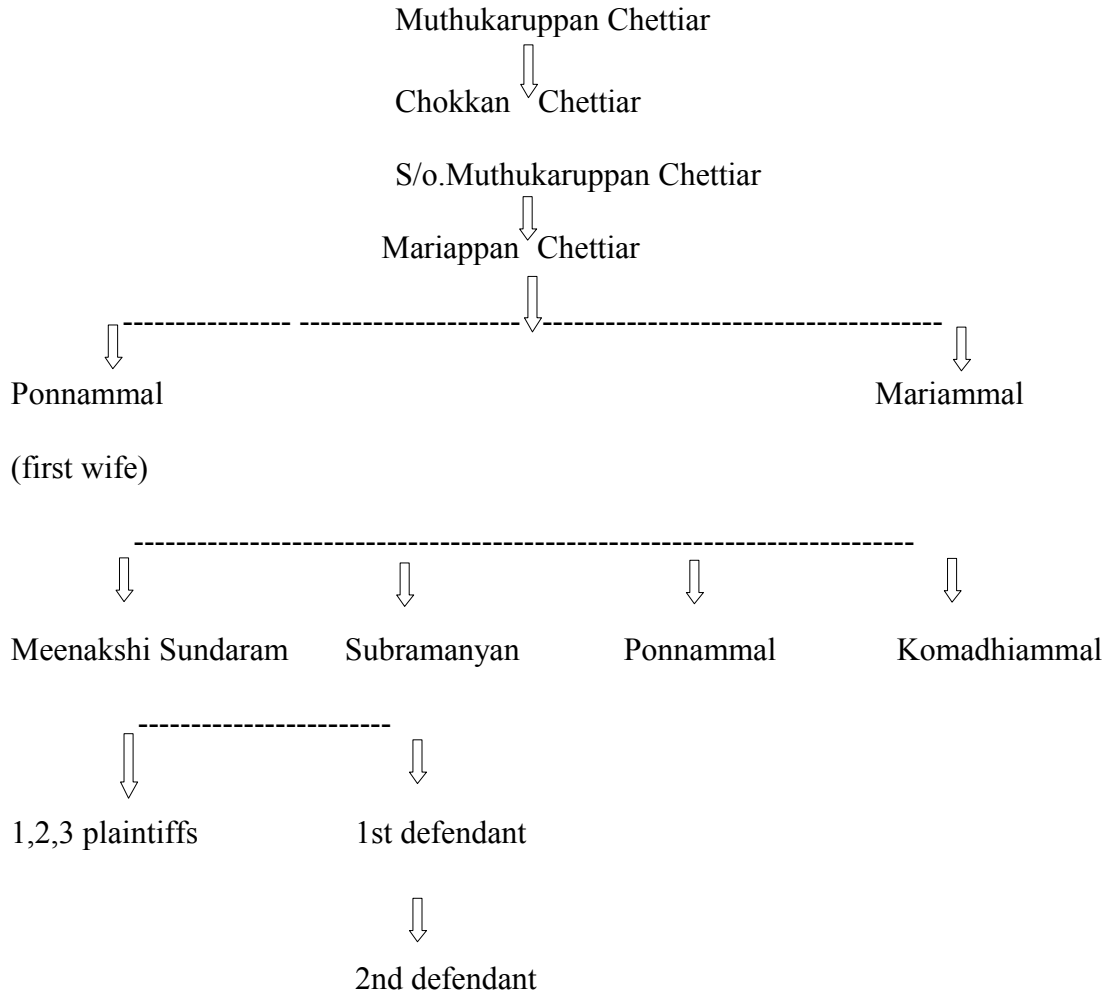
6. The case of the respondents/plaintiffs as per the plaint filed before the trial Court is that the property was originally purchased by one late



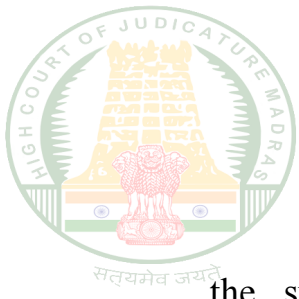
S.A.No.1649 of 1999

WEB COPY

Chokkan Chettiar, S/o.Muthukaruppan Chettiar. The genealogy table of the ancestors and parties is extracted hereunder :



7. After Chokkan Chettiar, Mariappan Chettiar got the property and succeeded the same. After him, his sons Meenakshisundaram Chettiar and Subramaniyan Chettiar were enjoying the suit property as joint family property. Their sister Ponnammal, having lost her husband, was residing in



S.A.No.1649 of 1999

WEB COPY

the suit property. Meenakshisundaram Chettiyar and Subramaniyan Chettiyar were residing in D.No.5/2. Mariammal and Ponnammal were residing in D.No.5/3.

8. Mariammal died on 28.11.1966. Thereafter, Ponnammal was residing continuously in the suit property, treating it as a joint family property. Ponnammal died on 04.06.1986, and her funeral was performed by her legal heirs on the same day in presence of five Panchayatats. The plaintiffs are the legal heirs of Late Meenakshi Sundaram Chettiar. The defendants are the legal heirs of the Subramanian Chettiar. The plaintiffs and the defendants agreed to take half share each in the suit property and entered into a sale agreement, fixing the total value at Rs.30,000/-. Even in the agreement itself, it is cited that on or before 30.07.1987, the defendants should pay a sum of Rs.15,000/- to the plaintiffs and purchase their share. The 2nd defendant was living in the suit property. Despite demand, the defendants did not come forward to perform their part of the sale agreement and they were also issued notice for the same, and the defendants issued a false reply on 19.07.1988 refusing the claim of the plaintiffs. Therefore, the plaintiffs filed the suit for partition for their half share.

Page No 7 of 25



S.A.No.1649 of 1999

WEB COPY

9. The case of the defendants as per the written statement filed by them before the trial Court is that the suit property belonged to one Mariammal, and after her death on 28.11.1966, her legal heir, namely Ponnammal, was entitled to the suit property. Both of them were enjoying the property by paying taxes while Mariammal was alive. Both of them were very much attached to the 2nd defendant and treated him like their foster son and brought him up, and also arranged his marriage, and the 2nd defendant had also been living with them.

10. On 22.01.1981, Ponnammal executed a registered “Will” in respect of the suit property and other properties in favour of the 2nd defendant. Ponnammal died on 04.06.1986. The plaintiffs, preventing the removal of her dead body and forcing the 2nd defendant by threat and coercion, got the alleged sale agreement executed on 05.06.1986. Only thereafter, they allowed the 2nd defendant to remove the dead body of Ponnammal for cremation. Therefore, the claim of the plaintiffs is false and the plaintiffs are not entitled to any share in the suit property.



S.A.No.1649 of 1999

WEB COPY

11. On completion of pleadings, the trial Court framed the following issues to decide the case :

- (i) Whether the genealogy table filed by the plaintiffs is true ?
- (ii) Whether the suit property belongs to Ponnammal ?
- (iii) Whether Ponnammal executed “Will” on 22.01.1981 ?
- (iv) Whether the suit property exclusively belongs to the 2nd defendant based on the “Will” ?
- (v) Whether the plaintiffs are entitled for share in the suit property ?
- (vi) Whether the plaintiffs are entitled to the relief as sought for ?
- (vii) Whether the suit has got cause of action ?
- (viii) What other reliefs are the plaintiffs entitled to ?

12. On the basis of these pleadings and issues, the parties went for trial.

13. On the side of the plaintiffs, two witnesses were examined as P.W.1 and P.W.2 and 7 documents were marked as Ex.A1 to Ex.A7. On the side of the defendants, three witnesses were examined as D.W.1 to D.W.3 and 205 documents were marked as Ex.B1 to Ex.B205.

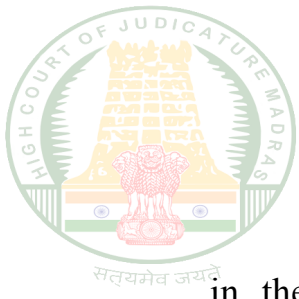


S.A.No.1649 of 1999

WEB COPY

14. After the trial and hearing of arguments advanced by either side, the trial Court dismissed the suit. Challenging the same, the plaintiffs in the suit filed the Appeal Suit in A.S.No.3 of 1996 on the file of the learned Subordinate Judge, Virudhunagar. The learned Subordinate Judge, after hearing the appeal, allowed the same and set aside the judgment and decree passed by the trial Court. Aggrieved by this reversal, the present Second Appeal.

15. The learned counsel appearing for the appellants submitted that the suit property belonged to one Mariammal, who is the wife of Mariappan Chettiyar. Mariappan Chettiyar had three wives. The 1st wife, namely Deivani, was not shown in the plaint. Likewise, the late Subramaniyan Chettiyar had two more sisters, namely Deivani and Mahalakshmi and their names were also not disclosed in the plaint. After the death of Mariammal on 28.11.1966, Ponnammal became the owner of the suit property. Even during lifetime of Mariammal, both Mariammal and Ponnammal were enjoying the property by paying taxes. The tax receipts standing in the name of Mariammal were marked as Ex.B3 to Ex.B13. The tax receipts standing



S.A.No.1649 of 1999

WEB COPY

in the name of Ponnammal were marked as Ex.B14 to Ex.B33. The electricity bills were initially in the name of Mariammal and subsequently, the same were transferred to the name of Ponnammal. The electricity bills stand in the name of Mariammal and Ponnammal were marked as Ex.B34 to Ex.B160 and Ex.B180 to Ex.B187. The enjoyment of the property by the 2nd defendant also marked as Exhibits. Therefore, all the oral and documentary evidence shows that the suit property belonged to Mariammal, and after the death of Mariammal, Ponnammal became the owner of the property, and both Mariammal and Ponnammal were very much attached to the 2nd defendant/1st appellant herein and treated him as their foster son and brought him up and they also arranged his marriage and the 2nd defendant had also been living with them.

16. He also submitted that during lifetime of Ponnammal, she bequeathed her properties, including the suit property and registered a “Will”, dated 22.01.1981, in favour of the 2nd defendant/1st appellant herein. Subsequently, Ponnammal died on 04.06.1986. Therefore, the 2nd defendant/1st appellant herein is entitled to the suit property as per the “Will” after the death of Ponnammal. He further submitted that the

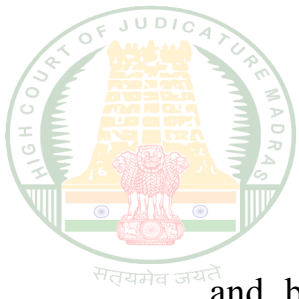


S.A.No.1649 of 1999

WEB COPY

respondents, who were residing in the same village, prevented the 2nd defendant from removing the dead body of the deceased Ponnammal and they forced the 2nd defendant by threat and coercion and got the alleged sale agreement dated 05.06.1986 (Ex.A2). After executing the sale agreement (Ex.A2) only then, they allowed the 2nd defendant to remove the dead body of Ponnammal for cremation.

17. Further, he would submit that there were also oral partition. In the oral partition, the suit property allotted to Mariammal and therefore, the property tax for the suit property was accessed in her name and after her death, Ponnammal was enjoying the property, and except the suit property, other properties were divided as admitted by P.W.1. However, the suit property was allotted to Mariammal and after the death of Mariammal, her daughter Ponnammal was enjoying the property and only at the time of cremation of Ponnammal's dead body, Ex.A2 came into existence, which does not bind the appellants. P.W.1 and P.W.2 categorically admitted the oral partition, but, however, they denied the suit property allotted to Mariyappan Chettiyar's family. Mariammal and Ponnammal were enjoying the property. After the death of Mariammal, Ponnammal enjoyed the same



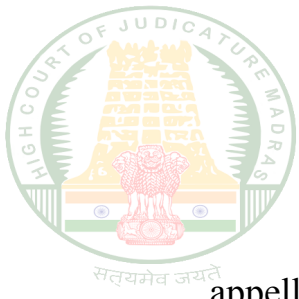
S.A.No.1649 of 1999

WEB COPY

and bequeathed the same in favour of the 2nd defendant/1st appellant herein, and only at the time of funeral ceremony, Ex.A2 came into existence which was obtained by coercion. Therefore, Ex.A2 does not bind the appellants.

18. The trial Court rightly appreciated the oral and documentary evidence, and held that there are numerous documents stand in the name of Mariammal and Ponnammal and they were enjoying the property, and the “Will” was also proved in the manner known to law. Therefore, the respondents are not entitled for any share and trial Court also rightly dismissed the suit. However, the 1st appellate Court overlooked all the documents and allowed the appeal on the ground that the appellants have not pleaded the written statement that as to how Mariammal was entitled to the suit property and also they have not spoken about the oral partition in the plaint. Therefore, the appeal was allowed by setting aside the judgment and decree passed by the trial Court, and the suit was decreed. Hence, the present Second Appeal.

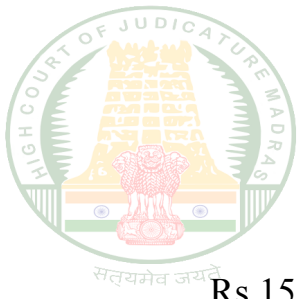
19. The learned counsel for the fifth respondent submitted that the suit property originally belonged to one Chokkan Chettiyar and the



S.A.No.1649 of 1999

WEB COPY

appellants have not denied the same. The genealogy table also accept the fact that one of the wives of Mariappan Chettiyar and two of the sisters of Subramaniyan Chettiyar were also not shown in the genealogy table. Therefore, the relationship of the parties is admitted. After the death of Chokkan Chettiyar, Mariyappan Chettiyar became the owner of the property and after him, his sons Meenakshisundaram Chettiyar and Subramaniyan Chettiar were enjoying the suit property as a joint family property, and their sister Ponnammal, having lost her husband, was also residing in the suit property. Meenakshisundaram Chettiyar and Subramaniyan Chettiyar were residing in D.No.5/2. Mariammal and Ponnammal were residing in D.No. 5/3. After the death of Mariammal on 28.11.1966, her daughter Ponnammal was residing in the suit property as a joint family property. Ponnammal also died on 04.06.1986. At that time, before the Panchayatars, the appellants and the defendants agreed that they both are equally entitled for half share in the suit property and fixed the value of the suit property at Rs.30,000/-. The appellants were willing to purchase half share of the respondents' and the 2nd defendant/1st appellant herein, who was living in the suit property, agreed to pay half share of Rs.15,000/- for the suit property and entered into a sale agreement and agreed to pay their part of sale consideration at



S.A.No.1649 of 1999

Rs.15,000/- on or before 30.07.1987. Subsequently, the appellants did not pay the said amount and did not come forward to perform their part of the contract. Therefore, the respondents sent a legal notice, for which the appellants sent a false reply. Therefore, the respondents filed the suit.

20. Even though the respondents admitted the oral partition during the examination, however, they denied the fact that the suit property was divided and it was allotted to Mariammal, and even the appellants have not stated in their written statement that as to how Mariammal got the suit property and they simply stated that the suit property belonged to Mariammal and after the death of Mariammal, Ponnammal became the owner of the property and executed the registered “Will” in favour of the 2nd defendant/1st appellant herein. But the appellants have not pleaded and proved that how Mariammal got the property. There is no material evidence to show that in the oral partition, the suit property was exclusively allotted for the share of Mariammal, and even they have not stated the date of partition and also what are all the properties allotted to each sharers. When the appellants admitted the ancestors and relationship that originally the suit properties purchased by Chokkan Chettiyyar. After his death,



S.A.No.1649 of 1999

WEB COPY

Mariyappan Chettiyar got the property and after him, his sons Meenakshisundaram Chettiyar and Subramaniyan Chettiyar got the property, but the appellants have not stated that as to how the property came to Mariammal. Once the character of the joint family property is accepted, merely any revenue records which stand in the name of one of the members of the joint family and they have got exclusive right over the property. Therefore, in the absence of any pleadings, no amount of evidence can be let in. Even if it is let in, the Court need not give much weight on that and therefore, though the trial Court failed to appreciate the pleadings, oral and documentary evidences, the appellate Court, however, rightly re-appreciated the evidences and reversed the judgment and decree passed by the trial Court and hence, there is no merit in the appeal.

21. Heard both the sides, and I have perused the materials available on record.

22. Insofar as the 1st substantial question of law is concerned, according to the appellants/defendants, the suit properties were originally purchased by one Chokkan Chettiyar and after his demise, his son one

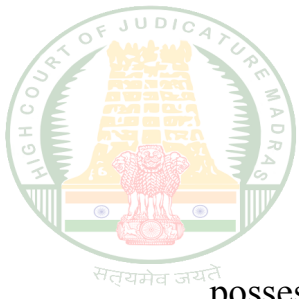


S.A.No.1649 of 1999

WEB COPY

Mariyappan Chettiyar succeeded the property and after him, his sons Meenakshisundaram Chettiyar and Subramaniam Chettiyar were enjoying the property as a joint family property. Since their sister Ponnammal is a widow, she was residing in the suit property. After the death of Mariammal, Ponnammal became the owner of the property, and after the death of Ponnammal, an agreement of sale for half share was entered into between the appellants and the respondents.

23. According to the appellants, even in the written statement, the 2nd defendant has stated that the property belonged to Mariammal, and after the death of Mariammal, her daughter Ponnammal became the owner of the property. Ponnammal executed a “Will” and therefore, the 2nd defendant/1st appellant herein is entitled to the suit property as an absolute owner of the property. Though, during the trial, the respondents have admitted that there is an oral partition, but, however, they have denied the fact that the suit property allotted to Mariammal. When the plaintiffs filed the suit for partition and also stated tracing the title and when the defendants were claiming absolute right over the property, therefore, they have to plead and prove that as to how the defendants are entitled to the suit property. Mere



S.A.No.1649 of 1999

WEB COPY

possession of one of the joint family members or the revenue records standing in the name, does not entitle them to claim absolute right. When the appellants admitted the relationship and the original owner of the property and when they claim exclusive right over the property, they have to plead and prove the same.

24. No doubt, in the pleadings, the facts should be pleaded and the evidences need not be pleaded, and when the appellants have stated that the property belongs to Mariammal, and it is the duty of the appellants also to plead that as to how the appellants were entitled to the suit property. The appellants have stated that through the registered “Will” they are entitled to the suit property. The right and entitlement of the testators were denied and the right to execute the “Will” by testator has to be proved. While reading of the pleadings, the appellants have not stated in their written statement as to how Ponnammal has got right in the property. Therefore, in the absence of pleadings, no amount of evidence can be let in. Even the party let in the evidences, the Court need not be looked into. Though the trial Court failed to appreciate the pleadings, oral and documentary evidences, the 1st appellate Court rightly re-appreciated the same and allowed the appeal.

Page No 18 of 25



S.A.No.1649 of 1999

WEB COPY

Therefore, the 1st substantial question of law is answered accordingly against the 2nd defendant/1st respondent herein.

25. Insofar as the 2nd substantial question of law is concerned, mere the recitals mentioned in the document itself are not sufficient, however, as a party, they have to plead the facts and the facts should have to be substantiated through oral and documentary evidence. Mere filing of the document is not enough and mere the recitals shown in the document are also not sufficient until the parties plead and prove the facts. Therefore, the facts must be pleaded and that has to be proved by way of oral and documentary evidence. Hence, the 2nd substantial question of law is answered accordingly.

26. Insofar as the 3rd substantial question of law is concerned, the respondents have pleaded that one Chokkan Chettiyar purchased the property, and after his death, his son Mariyappan Chettiyar got the property. Though Mariyappan Chettiyar had three wives, Meenakshisundaram Chettiyar and Subramaniyan Chettiyar were enjoying the property. Though Ponnammal is a widow, she was permitted to reside in the property.

Page No 19 of 25



S.A.No.1649 of 1999

WEB COPY

Therefore, on the death of Ponnammal, they entered into the agreement. Though Ponnammal got right and the 1st appellant, even as per the “Will”, may be entitled to a share, but Ex.A2 agreement clearly shows that the respondents are entitled to half share and the appellants are entitled to half share. Even assuming that the “Will” executed by Ponnammal is true and proved, Ponnammal did not have the absolute right over the property, therefore, she is not entitled to bequeath the entire suit property. Though the appellants have stated that Ex.A2 agreement, dated 05.06.1986, was obtained under threat and coercion, even for the purpose of cremating the dead body of Ponnammal, if it had been obtained by threat and coercion by persons who were not entitled to the suit property or any share in the suit property, the first appellant ought to have filed a complaint before the police or should have taken steps to challenge the said document, namely Ex.A2. But the appellants have not taken any steps even after completion of funeral ceremony of Ponnammal and after filing the suit, the appellant cannot take the said defence that the same was obtained by threat and coercion and the same was not proved in the manner known to law. It is an admitted fact that Mariyappan Chettiyar succeeded the property from Chokkan Chettiyar, and Meenakshisundaram Chettiyar and Subramaniyan Chettiyar are the legal



S.A.No.1649 of 1999

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heirs of Mariyappan Chettiyar, and Ponnammal is also one of the legal heirs of Mariyappan Chettiyar. However, when the appellants claim the absolute right of the suit property of Mariammal and Ponnammal, it is for the appellants to plead and prove the same. The pleadings are absent and also the 1st appellant is a party to Ex.A2 agreement dated 05.06.1986 and the respondents as plaintiffs have proved the suit property and divided the properties and Ex.A2 also strengthens the same. Though the appellants claiming the absolute right based on Ex.B series, the properties taken in the name of Mariammal and Ponnammal and electricity charges also filed.

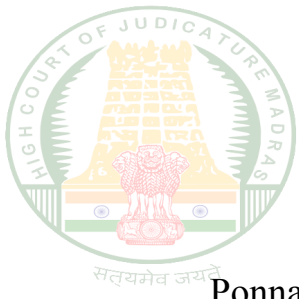
27. It is settled proposition of law that once it is proved or admitted that it is an ancestral property, then it is for the persons, who claim the individual rights, to prove it. Therefore, a reading of the written statement filed by the appellants shows its absence. Though the trial Court failed to consider Ex.A2 agreement, the 1st appellate Court rightly re-appreciated the evidences and in the absence of denying the relationship of the parties and not challenging Ex.A2, and no compliance till filing of the suit which was also said to have been executed in the presence of Panchayatars in the said village under these circumstances. The 1st appellate Court rightly re-



S.A.No.1649 of 1999

appreciated the pleadings, oral and documentary evidences and reversed the judgment and decree of the trial Court. Therefore, the 3rd substantial question of law is answered accordingly.

28. Insofar as the 4th substantial question of law is concerned, though the appellants pleaded that Ponnammal, during her lifetime, executed the “Will” Ex.B.180 and after her death, the 2nd defendant/1st appellant herein became the absolute owner of the property. The 2nd defendant/1st appellant herein also proved by examining the attestors. However, as already held that on the date of death of Ponnammal, there were Panchayathars, and in front of those Panchayathars, they executed the sale agreement and accepted the right and share of the respondents have already stated that the appellants have not given any complaint regarding existence of Ex.A2 and subsequently, the same was also not challenged. Therefore, even assuming that the “Will” is proved, Ponnammal had only got half share in the suit property and the respondents only filed the suit for half share and are not claiming suit for declaration and recovery of possession stating that the respondents are absolute owners of the suit properties. The respondents filed the suit for partition for a half share, admittedly, when assuming that



S.A.No.1649 of 1999

WEB COPY

Ponnammal has got half share and the appellants admitted and executed the sale agreement, subsequently, failed to execute the sale deed and therefore, the respondents filed the suit for partition. Therefore, the “Will” Ex.B187 failed only for half share alone, and once Ponnammal has no absolute right and ownership, she has no right to execute the “Will” or bequeath the suit property. Since it is a suit for partition, the 1st appellate Court rightly re-appreciated the evidences and also the pleadings, oral and documentary evidences, especially Ex.A2 which was not challenged or disputed. Therefore, there is no perversity in the re-appreciation of evidence and in the reversal judgment of the 1st appellate Court.

29. Therefore, all the substantial questions of law are answered against the appellants. Since it is only a suit for partition, the respondents have pleaded and proved, whereas, the appellants have not proved their absolute right and entitlement. Therefore, under these circumstances, this Court does not find any merit in the present Second Appeal and the same is liable to be dismissed.



S.A.No.1649 of 1999

WEB COPY

30. Accordingly, this Second Appeal is dismissed. However, considering the facts and circumstances and also relationship of the parties, there is no order as to costs.

16.06.2025

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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WEB COPY



S.A.No.1649 of 1999

P. VELMURUGAN, J.

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To

1.The Sub Court,
Virudhunagar.

2.The District Munsif Court,
Aruppukottai.

S.A.No.1649 of 1999

16.06.2025