



S.A.No.527 of 2001

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 16.06.2025

CORAM

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Second Appeal No.527 of 2001

- 1.Pathinettampadiyar Thevar (died)
- 2.Kuruvammal
- 3.Karunakaran (died)
- 4.Manimekalai
- 5.Pandiammal
- 6.Chandrasekaran
- 7.Panneerselvam
- 8.Indiradevi
- 9.Thilagavalli
- 10.Rani
- 11.Pathinetampadiyar
- 12.Muthunatchiyar
- 13.Jeyasimman
- 14.Minor Manikandan @ Velan
- 15.Minor Lakshana Selvi

(Minor A14 and A15 are represented by their mother and next guardian, A9)

(A2 to A7 are brought on record as Legal Heirs of the deceased sole appellant vide order dated 19.07.2010 made in M.P(MD)No.1 of 2009)

(A8 to A15 are brought on record as Legal Heirs of the deceased third appellant vide order dated 25.01.2023 made in C.M.P(MD)Nos.639, 640 & 642 of 2023)

... Appellant

-VS-



S.A.No.527 of 2001

WEB COPY

- 1.Natarajan
- 2.Devakunjari (died)
- 3.Palanidevi (died)

(Death of the R2 & R3 is recorded vide court order dated 05.01.2023)

..Respondents

PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure, against the Judgment and Decree dated 24.11.2000 made in A.S.No.102 of 1998 on the file of the Additional District Judge, Ramanathapuram, reversing the Judgment and decree dated 17.04.1998 in O.S.No.9 of 1998 on the file of the Principal District Munsif, Ramanathapuram.

For Appellants	... Mr.G.Sridharan for Mr.T.M.Hariharan
For Respondents	... Mr.D.Nallathambi (for R1)

JUDGMENT

The first respondent filed a suit for permanent injunction restraining the defendants from interfering with the joint possession and enjoyment of the suit property and restraining the defendants from alienating the suit property.

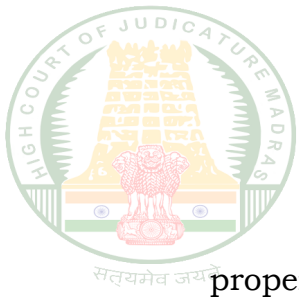


S.A.No.527 of 2001

WEB COPY

2. Originally, the suit was filed against the sole defendant, Subbiah Pillai, and subsequently, the deceased appellant filed the impleading petition, and he was impleaded as the second defendant in the suit. After a full-fledged trial, the said suit was dismissed by the trial Court by judgment and decree dated 17.04.1998. Challenging the said dismissal of the suit, the first respondent herein filed an appeal in A.S.No.102 of 1998 on the file of the Additional District and Sessions Judge-cum-Chief Judicial Magistrate, Ramanathapuram. After hearing both sides, the learned first appellate Judge allowed the appeal suit and decreed the original suit by judgment and decree dated 24.11.2000. Challenging the said judgment and decree, the second defendant has filed the present second appeal. Pending the second appeal, the appellant died. Therefore, the legal heirs of the appellant have been impleaded as appellants 2 to 7. Thereafter, the third appellant died. Hence, the legal heirs of the third appellant have been impleaded as appellants 8 to 15.

3. The case of the plaintiff, as per the plaint, is that the suit property measures an extent of 29 cents, in which there is a Pillaiyar temple and a samadhi of one Subbiah Pillai @ Vidhiyanatha Swamigal, who is the great-grandfather of the first plaintiff. The said



S.A.No.527 of 2001

WEB COPY

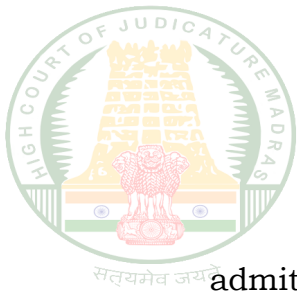
property originally belonged to three brothers, namely, Nagu Pillai, Ammasiya Pillai, and Subbiah Pillai @ Vaidhiyanatha Swamigal. Ammasiya Pillai died issueless. The deceased Subbiah Pillai, who was arrayed as the first defendant in the suit, is the grandson of Nagu Pillai. The plaintiff is the great-grandson of Subbiah Pillai @ Vaidhiyanatha Swamigal through his son Sundharam Pillai. A Pillaiyar temple and the samadhi of the said Subbiah Pillai @ Vaidhiyanatha Swamigal are situated in the suit property. Guru pooja is being conducted every year in Karthigai month in the Pillaiyar temple. There was a panchayat between the first defendant and the father of the plaintiff with respect to the suit property and other properties. The suit property, as per the partition deed dated 16.02.1995, was kept as a common property. The father of the plaintiff had put up shops in the suit property and let out the same. The first defendant had no separate right in the suit property. When the first defendant attempted to sell the suit property to the third party, the plaintiff filed the suit. The first defendant remained *ex parte*. However, the second defendant filed the petition in I.A.No.816 of 1986 for impleading him as one of the defendants in the suit. Therefore, the deceased first appellant has been impleaded as the second defendant in the suit.



S.A.No.527 of 2001

WEB COPY

4. The case of the second defendant, as per the written statement filed before the trial Court, is that there is no Pillaiyar temple and samadhi in the suit property, and the genealogy and relationship pleaded in the plaint are false. The alleged panchayat document dated 16.02.1995 was not proved, and was created for the purpose of filing the suit. The suit property was originally an inam property. A settlement patta was issued in favour of the first defendant under Act 26 of 1948. The first defendant is the absolute owner of the suit property. The order granting patta has become final. The first defendant agreed to sell the property to the second defendant for the sale consideration of Rs.25,600/-. On 02.04.1986, the first defendant received the entire sale consideration from the second defendant. The sale deed was executed, and the possession was also handed over to the second defendant on the same day. The tenants of the first defendant undertook to pay the rent to the second defendant. The first defendant promised to get the sale registered under the sale deed on 03.04.1986. Due to the ill-health of the first defendant, the sale deed could not be registered on the same day, as promised by the first defendant. Therefore, he did not turn up for registration. On 06.05.1986, the first defendant sent a notice admitting execution of the sale deed but denying the receiving of sale consideration and



S.A.No.527 of 2001

WEB COPY

admitted that only he received a sum of Rs.2000/- as an advance.

The second defendant sent a reply notice. However, the plaintiff suppressed the fact and filed the suit, colluding with the first defendant. Since the first defendant remained *ex parte*, the second defendant made himself as a party to the suit, and he got the compulsory registration from the concerned department. Since the second defendant was put in possession and only the first defendant was the ostensible owner, he had every right to sell the property to the second defendant or any other person. Therefore, the purchaser of the second defendant from the rightful owner is in possession. The plaintiff has no right, title, or possession, and he is not entitled to get a decree for permanent injunction and prayed for dismissal of the suit.

5. The trial Court, after completing the pleadings, framed the following issues:

1. Whether the suit property was in possession of the plaintiff at the time of filing of the suit?
2. Whether the plaintiff is entitled to get the relief of permanent injunction? and
3. What other relief?



S.A.No.527 of 2001

WEB COPY

6. During the trial, on the side of the plaintiff, the plaintiff was examined as P.W.1, and 37 documents were marked as Exs. A1 to A37. On the side of the second defendant, he was examined as D.W. 1, and five other witnesses were examined as D.W.2 and D.W.6, and 39 documents were marked as Exs.B1 to B39. Besides, one exhibit was marked as Ex.X1, and 7 documents were marked as Exs.C1 and C7.

7. After trial, the trial Court dismissed the suit by judgment and decree dated 17.04.1998. Therefore, the plaintiff filed the appeal before the District Court, Ramanathapuram, in A.S.No.102 of 1998 and the same was dealt with by the I Additional District and Sessions Judge-cum-Chief Judicial Magistrate, Ramanathapuram. After hearing, the first appellate Court allowed the appeal and reversed the judgment and decree passed by the trial Court. Challenging the same, the present second appeal has been filed by the second defendant.

8. While admitting the second appeal, this Court, considering the facts and circumstances of the case, has formulated the following substantial questions of law:



S.A.No.527 of 2001

WEB COPY

“ 1. On the specific case of the plaintiff that the suit property is inalienable, whether the suit for bare injunction claimed by the plaintiff in his individual capacity without a prayer for declaration of title of the temple and the samadhi is maintainable in law?

2. After the compulsory registration of Ex.B2 sale deed, whether the suit for injunction against alienation and to protect the joint enjoyment claimed by the plaintiff is sustainable in law?

3. Whether the appellant is entitled to the benefits of Section 41 of the Transfer of Property Act and the suit itself is collusive?

4. Whether the lower appellate Court is right in law in reversing the decree of the trial Court without considering the material documents and salient evidence on record?

9. The learned counsel for the appellants would submit that under Act 26 of 1948, a settlement patta was issued to the first defendant in his individual capacity without any reference to the temple or samadhi, and to prove the same, Ex.B13 survey settlement 'A' Register of the year 1956 and Ex.B14 settlement chitta were filed on the side of the second defendant. In Ex.B15, the FMB sketch,

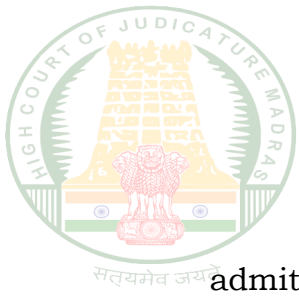


S.A.No.527 of 2001

WEB COPY

there is absolutely no reference to the temple and samadhi. The lower appellate Court, however, placed reliance upon Exs.A2 to A4 to conclude that there was a temple and samadhi in the suit property, overlooking the vital fact that Exs.A2 to A4 are all after-suit documents. Further, the lower appellate Court failed to see that the plaintiff had not proved that Exs.A5 to A7 pertain to the suit property. Similarly, Exs.A13, A14, A48, 26, and 30 do not in any way help the plaintiff to prove that they are related to the suit property, and the finding in this regard by the lower appellate Court is perverse. Moreover, when the plaintiff pleads that the suit property is inalienable, the suit for bare injunction in his individual capacity without a prayer for declaration of title to the temple and samadhi is not maintainable, and the lower appellate Court completely overlooked the legal principles in this regard.

10. The learned counsel would further submit that the lower appellate Court failed to consider the document Ex.B2, wherein the first defendant received the entire sale consideration of Rs.25,600/- and executed the sale deed in favour of the second defendant, and also the first defendant promised to get the sale deed registered on 03.04.1986. The first defendant sent a letter through DW.2 intimating that the registration be postponed to the next day while



S.A.No.527 of 2001

WEB COPY

admitting the execution of the sale deed (Ex.B3), citing his ill-health.

The first defendant issued a legal notice on 06.05.1986 to the second defendant, admitting the signature and the execution of the sale deed, however, he denied the receipt of the sale consideration of Rs. 25,600/-. In the meanwhile, on 16.04.1986, the plaintiff filed the suit against the first defendant alone. The second defendant, having given a reply notice on 08.05.1986 (Ex.B5), presented the sale deed for compulsory registration on 14.05.1986 and also got impleaded in the suit in I.A.No.816 of 1986, which was confirmed in C.R.P.No.3988 of 1987. Though the first defendant, by colluding with the plaintiff, remained *ex parte* in the suit, he had filed the petition in I.A.No.657 of 1991 for an injunction against the second defendant and the District Registrar not to register the sale deed, and the same was dismissed on merits, and the appeal filed by the first defendant in C.M.A.No.8 of 1992 was also dismissed. Therefore, the said order has become final. On 20.09.1993, after due enquiry, the District Registrar ordered the registration of the sale deed Ex.B11, and on 27.09.1993, the document was registered by the Sub Registrar. After the compulsory registration of the sale deed Ex.B2, the suit for injunction against the alienation and to protect the joint enjoyment has become infructuous and liable to be dismissed. The lower appellate Court conveniently omitted to analyze the above facts.



S.A.No.527 of 2001

WEB COPY

11. The learned counsel would further submit that the survey settlement 'A' register of the year 1958 stands in the individual name of the first defendant, and the same was not challenged by the plaintiff, and as such, the plaintiff had recognized the first defendant as the ostensible owner, and therefore, Section 41 of the Transfer of Property Act debars the plaintiff from disputing the title of the second defendant, especially when the second defendant is a *bona fide* purchaser for valuable consideration from the first defendant. Therefore, the finding of the lower appellate Court on the ground that the patta is not a document of title is erroneous. The lower appellate Court failed to consider that the patta in favour of the first defendant was granted during the settlement proceedings under Act 26 of 1948. He would further submit that Ex.A21 is not admissible in evidence which cannot be relied on even for the collateral purposes. The lower appellate Court allowed the appeal only based on the reliance of Ex.A21, which is inadmissible in evidence and the same has not been proved in the manner known to law. Therefore, the judgment and decree passed by the first appellate Court are liable to be set aside, and the judgment and decree passed by the trial Court are liable to be restored.



S.A.No.527 of 2001

WEB COPY

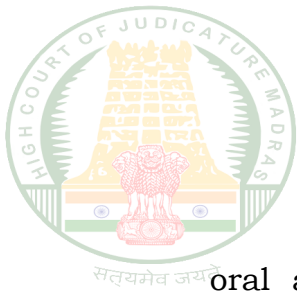
12. The learned counsel for the respondent/plaintiff would submit that the suit property originally belonged to three brothers, namely, Nagu Pillai, Ammasiya Pillai, and Subbiah Pillai @ Vaidhiyanatha Swamigal. Ammasiya Pillai died issueless. The deceased first defendant is the grandson of Nagu Pillai. The plaintiff is the great-grandson of Subbiah Pillai @ Vaidhiyanatha Swamigal through his son Sundharam Pillai. Therefore, the plaintiff and the first defendant are entitled to the suit property. In the year 1995, they entered into a partition deed dated 16.02.1995. As per the partition, the suit property was kept as a common property, which is inalienable, in which the Pillaiyar temple and the samadhi of the Subbiah Pillai @ Vaidhiyanatha Swamigal are situated, and there is a mutt. Therefore, the first defendant had no separate right in the suit property. Since he has no better title, the appellant cannot get a better title than the first defendant. The alleged sale deed said to have been executed by the first defendant in favour of the second defendant is not valid, and it is not binding on the plaintiff. The first defendant has not denied the relationship and the original ownership of the grandfather of the first defendant and plaintiff. The second defendant cannot deny the same. The first defendant has not filed a written statement and denied the relationship and ownership. He remained *ex parte*.



S.A.No.527 of 2001

WEB COPY

13. The learned counsel would further submit that the appellant only filed a petition for compulsory registration and got the sale deed registered. Even in Ex.A21, it is clearly mentioned that the Pillaiyar temple and the samadhi of Subbiah Pillai @ Vaidhiyanatha Swamigal exist. The appellant cannot dispute the same. Even the Commissioner's Report and plan, Exs.C1 and C2, clearly show that there is an existence of the temple and samadhi. Even otherwise, a reading of the Commissioner's Report shows that the suit property was not a vacant property as mentioned by the second defendant in Ex.B2. He has also relied upon the judgment of the Patna High Court in the case of **Jamuna Prasad vs. Bhuneswar Thakur and others** reported in **(1988) AIR (Patna) 113**. Though the property was registered under the compulsory registration, it became operative not only from the date of presentation of the registration, but also from the date of execution. Since Ex.B2 is dated 02.04.1986, on that date, the suit property was shown as a vacant site. However, subsequent to the filing of the suit, on 11.04.1986, the Commissioner was also appointed and inspected the suit property. Exs.B2 and B3 also make it very clear that the suit property was not a vacant site. Therefore, the contention of the appellant that the suit is not maintainable is not legally sustainable. Though the trial Court failed to appreciate the



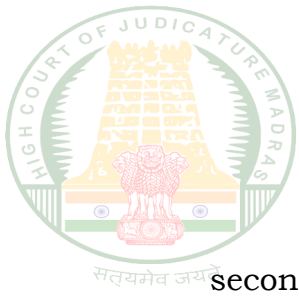
S.A.No.527 of 2001

WEB COPY

oral and documentary evidence and dismissed the suit, the first appellate Court as the final Court of fact-finding Court, re-appreciated the oral and documentary evidence and allowed the appeal and set aside the judgment and decree passed by the trial Court. Therefore, there is no merit in the second appeal, and hence, the second appeal is liable to be dismissed.

14. Heard the learned counsel appearing on either side and perused the materials available on records.

15. The specific case of the appellant is that the suit property was vacant land on the date of filing of the suit, and that the suit property was already sold by the first defendant in favour of the second defendant way back on 02.04.1986 as a vacant site. Therefore, the suit for a permanent injunction not to sell the property and not to disturb the property is legally unsustainable, since the respondent was not in possession of the property. Further, a settlement patta was given to the first defendant under Act 26 of 1948 in his individual capacity without reference to the temple or samadhi. The first defendant was not the owner of the property and only the second defendant is the owner of the property, as per Ex.B2, the sale deed said to have been executed by the first defendant in favour of the



S.A.No.527 of 2001

WEB COPY

second defendant. The trial Court rightly appreciated the evidence and dismissed the suit decree. However, the first appellate Court failed to appreciate the above facts.

16. The specific case of the respondent is that the suit property originally belonged to three brothers, namely, Nagu Pillai, Ammasiya Pillai, and Subbiah Pillai @ Vaidhiyanatha Swamigal. The first defendant is the grandson of Nagu Pillai. The plaintiff is the great-grandson of Subbiah Pillai @ Vaidhiyanatha Swamigal through his son Sundharam Pillai. There is a Pillaiyar temple and the samadhi of the said Subbiah Pillai @ Vaidhiyanatha Swamigal situated in the suit property. The same was established through Ex.A21 as well as Ex.C1 Commissioner's Report and Ex.C.2 Commissioner's Plan. The first defendant has no alienable interest since the suit property was kept as common property for maintaining the temple and the samadhi. The first defendant also constructed a small shed on the suit property and let it out to the tenants, and they also admitted that they are tenants under the respondent. The first defendant also denied the recital of the sale consideration, and the same was disputed. Though the appellant got compulsory registration, the same will not bind the respondent because the property is inalienable.

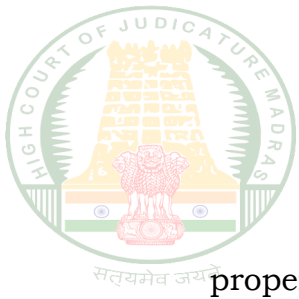


S.A.No.527 of 2001

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Question No. 1.

17. As far as the first substantial question of law is concerned, though the appellant vehemently contended that on the date of filing of the suit, the suit property was already sold to the appellant, and therefore, the relief sought for in the plaint is not maintainable, since the respondent was not in possession of the property and already the property was sold to the appellant. In this regard, a reading of the pleadings and oral and documentary evidence shows that the plaintiff, who was examined as P.W.1, has categorically stated that the property originally belonged to three brothers, namely, Nagu Pillai, Ammasiya Pillai, and Subbiah Pillai @ Vaidhiyanatha Swamigal, and he is the great-grandson of the said Subbiah Pillai @ Vaidhiyanatha Swamigal. The defendant is the grandson of one of the brothers, namely, Nagu Pillai. The said fact was not denied by the first defendant, and he remained *ex parte* before the trial Court. Further, the appellant also has not disproved the relationship since the appellant claimed title only from the first defendant. Further, Ex.A21 is a partition list in which the suit property is mentioned as a temple property and as a common property. After the filing of the suit, the Commissioner was appointed, and he inspected the suit property. He has also mentioned that the appellant damaged and removed certain physical features. Exs.C1 and C2, the report and plan, clearly show that the suit



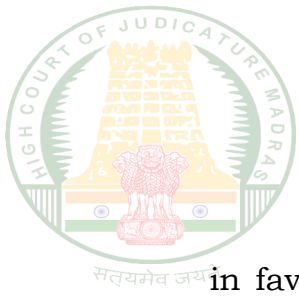
S.A.No.527 of 2001

WEB COPY

property is not a vacant site as stated by the appellant and as mentioned in his title deed, Ex.B2.

18. Further, the first defendant has no alienable interest. Even though the patta stood in the name of the first defendant, it does not mean that he is the absolute owner of the property. Once it is proved by the respondent under Ex.A21 that the property is a common property of the three brothers and under Ex.A21 partition list, the legal heirs of the brothers divided the property, and the suit property was kept as common property, the first defendant has no alienable interest in the suit property.

19. Admittedly, the appellant got the sale deed under compulsory registration. Even though the first defendant has admitted the execution of the document, however, he denied the sale consideration. Even otherwise, he has no right or interest in alienating the property. Therefore, the appellant does not have any better title than his vendor, since the vendor of the appellant himself has no alienable interest in the property. Further, a reading of Exs.C1 and C2 Commissioner's report and plan, shows that the recitals in the sale deed of the appellant, Ex.B2 and his title are contradictory. Therefore, the sale said to have been executed by the first defendant



S.A.No.527 of 2001

in favour of the second defendant will not bind the respondent, and therefore, the suit is maintainable. The first substantial question of law is answered accordingly.

Question No.2

20. Insofar as the second substantial question of law is concerned, the appellant claimed title under Ex.B2. However, the first defendant himself denied the receipt of the sale consideration. The appellant has obtained compulsory registration only pending suit, and as already held, the first defendant has no alienable interest. The appellant has not proved that there is no relationship between the respondent and the first defendant, and on the date of filing of the suit, the sale deed was not duly registered. Even though the effect of the registration will go back to the date of execution, Ex.A21 clearly shows that it is only a common property, and the first defendant has not filed any written statement. The suit was initially filed against only the first defendant not to alienate the property, and the summons was duly served, and the first defendant remained *ex parte*, and thereafter, the second defendant came into the picture by way of filing the application in I.A.No.816 of 1986 to implead himself in the suit. Subsequently, he was impleaded, and only during the pendency of the suit, he got the compulsory registration under Ex.B2. Therefore, the claim of the respondent is sustainable.



S.A.No.527 of 2001

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Question No.3

21. Since I already held that the vendor of the appellant has no enforceable right and title and has no alienable interest, and further, the appellant cannot be treated as a *bona fide* purchaser, Section 41 of the Transfer of Property Act would not be applicable to the appellant herein.

22. Further, Ex.B2 sale deed shows that the suit property is a vacant site, whereas Ex.A21, dated 16.02.1995 itself, which is much earlier than Ex.B2, shows that the samadhi is situated in the suit property. Though the main contention of the appellant is that it is not a registered one, and the first defendant has not denied the said document and Ex.B1, a reading of the deposition of P.W.1 in the other proceedings, which is the deposition of the first defendant in the criminal proceedings in C.C.No.131 of 1988, deposition dated 17.05.1988, clearly shows that there was a Ganesan temple and also a Madam, and it was damaged by the appellant. Further, the Commissioner's Report and Plan Exs.C1 and C2 also clearly show that the suit property is not a vacant site. Therefore, the contention of the appellant that the suit property is a vacant site and D.W.1 has an absolute right and title as the ostensible owner is not legally tenable.



S.A.No.527 of 2001

WEB COPY

Therefore, the appellant is not entitled to get the benefit of Section 41 of the Transfer of Property Act. Therefore, the substantial question of law is answered accordingly.

Question No.4

23. The fourth substantial question of law is concerned, though the trial Court granted judgment and decree in favour of the appellant by dismissing the suit filed by the respondent, the first appellate Court as the final Court of fact-finding Court, while re-appreciating the evidence and by considering Ex.A21 and Exs.C1 and C2 and the recitals of Exs.B1 and B2, reversed the judgment and decree of the trial Court. Therefore, upon a reading of the oral and documentary evidence, this court does not find any perversity in re-appreciating the evidence by the first appellate Court, since the appellant claimed title only through the first defendant.

24. The specific case of the respondent/plaintiff is that the suit property is a common property of the first defendant and the respondents' family, which can be kept as a common property to maintain the temple and samadhi situated in the suit property. The tenants also admitted that they are the tenants under the respondent. Though Ex.B2 and the patta stand in the name of the first defendant,



S.A.No.527 of 2001

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other documents are not related to deciding the case. Ex.B2 shows that the suit property is only a vacant site. However, the pleading and evidence put forth by the parties shows otherwise, especially the Commissioner's report. The learned counsel for the appellant took one of the grounds that in the first commissioner's report, the physical features were different, and in the second commissioner's report Exs.C3 to C5, the physical features were different, and there was vast discrepancy between both the commissioner's reports. However, the first commissioner's report and plan, Exs.C1 and C2, were prepared within a short span of time after the filing of the suit, whereas Exs.C3 to C5, the second commissioner's report are much later, and therefore, one cannot expect both the commissioner's reports to be the same. Therefore, in this case, after a careful reading of the pleadings, oral and documentary evidence, this Court does not find any merit in the second appeal. Hence, all the substantial questions of law are answered as against the appellant. Unless the appellant substantiates the alienable right and interest of the first defendant and merely gets the sale deed from the first defendant under Ex.B2, the appellant cannot get any better title. Therefore, under these circumstances, the second appeal is liable to be dismissed as devoid of merit.



S.A.No.527 of 2001

WEB COPY

25. In the result, the Second Appeal fails and the same is dismissed as devoid of merits. Considering the facts and circumstances of the case, there is no order as to costs.

16.06.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes
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To:

- 1.The Additional District Judge, Ramanathapuram.
- 2.The Principal District Munsif, Ramanathapuram.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A.No.527 of 2001

P.VELMURUGAN, J.

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Judgment made in

Second Appeal No.527 of 2001

16.06.2025