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S.A.Nos.2069 and 2070 of 2001, W.P.(MD)No.846 of 2021
and Cont.P(MD)No.1247 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.04.2025

Delivered on : 09.05.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

**S.A.Nos.2069 and 2070 of 2001, W.P.(MD)No.846 of 2021
and Cont.P(MD)No.1247 of 2020 in S.A.No.2069 of 2001
and
W.M.P.(MD)Nos.706 of 2021 and 16749 & 16748 of 2023**

S.A.No.2069 of 2001

1. Ayyappan,
2. Parameswaran,
3. Paulu Pillai
4. Paulraj
5. Premakala

...Appellants

-Vs-

1. Chellappan (died)
2. Haridas
3. Radha
4. C.Rajan
5. Rajeswari @ Vimala (Died)



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6. Amala Manoharan

7. Jaya Sekaran

8. Josephin Mary

9. Jesus Christopher

10. Margeret

(R3-10 care brought on record as LR's of the deceased R1 vide
Court order dated 22.07.2021 in MP(MD)Nos.1 to 3/2015 and CMP(MD)Nos.
1392 to 1394/2021 in SA.No.2069 of 2001)

11. Soman

12. Grellet

13. Grant

14. Sherly

(R11-14 care brought on record as LR's of the deceased R5 vide
Court order dated 25.04.2017 in CMP(MD)Nos.10236 to 10238/2016
in SA.No.2069 of 2001)

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree in A.S.No.78 of 1999 dated 20.09.2001 on the file of Sub Judge, Padmanabhapuram, pursuant to the Judgement and decree in OS No.130 of 1996 dated 10.04.1999 on the file of Additional District Munsif, Padmanabhapuram.

For Appellants : Mr.R.Subramanian
for Mr.R.J.Karthick



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**S.A.Nos.2069 and 2070 of 2001, W.P.(MD)No.846 of 2021
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For Respondents : Ms.J.Anandavalli
for R2-4, 6,7 and 9
: Mr.Godwin for R11-14

S.A.No.2070 of 2001

1. Ayyappan,

2. Parameswaran,

3. Paulu Pillai

4. Paulraj

5. Premakala

...Appellants

-Vs-

1. Chellappan (died)

2. C.Rajan

3. Radha

4. Rajeswari @ Vimala (Died)

5. Amala Manoharan

6. Jaya Sekaran

7. Josephin Mary

8. Jesus Christopher

9. Margeret

(R3-9 care brought on record as LR's of the deceased R1 vide Court order dated 22.07.2021 in M.P.(MD)No.1/2015 and CMP(MD)Nos.10239 to 10241 of 2016 in SA.No.2070/2001)



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11. Soman

12. Grellet

13. Grant

14. Sherly

(R10-13 care brought on record as LR's of the deceased R5 vide Court order dated 22.07.2021 in M.P.(MD)No.1/2015 and CMP(MD)Nos. 10239 to 10241/2016 in SA.No.2070 of 2001)

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree in A.S.No.54 of 1999 dated 20.09.2001 on the file of Sub Judge, Padmanabhapuram, pursuant to the Judgement and decree in OS No.132 of 1996 dated 10.04.1999 on the file of Additional District Munsif, Padmanabhapuram.

For Appellants : Mr.R.Subramanian
for Mr.R.J.Karthick

For Respondents : Ms.J.Anandavalli
for R2, 3, 5, 6, and 9
: Mr.Godwin for R10-13

W.P.(MD)No.846 of 2021

Rajan.C

... Petitioner

/Vs./

1. The Revenue Divisional Officer,

/Sub Collector,

Padmanabhapuram, Kanyakumari District.



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2. The Tahsildar

Thiruvattar Taluk,
Kanyakumari District

3. The Village Administrative Officer,

Kulasekharam B Village,
Thiruvattar Taluk,
Kanyakumari District.

4. Ayyappan

5. Parameswaran,

6. Paulu Pillai,

7. Paulraj

8. Premakala

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent dated 16.07.2020 vide Mu.Mu.Aa.No.3/8359/2019 and quash the same and consequently direct the 2nd respondent herein to receive the land tax from the petitioner in respect of the property of an extent of 32 cents in Sy.No.409/15 in Kulasekaram B Village of Thiruvattar Taluk of Kanyakumari District in the name of Chellappan and issue receipt for the same.

For Petitioner : Ms.J.Anandavalli



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For Respondents : Mr.S.Kameswaran
Additional Advocate for R1-3

: Mr.R.Subramanian
for Mr.R.J.Karthick for R 4-8

Cont.P.(MD)No.1247 of 2020

C.Rajan

... Petitioner/Petitioner

vs.

1. Ayyappan,
2. Parameswaran,
3. Paulu Pillai
4. Paulraj
5. Premakala

... Contemnor/ Respondents

PRAYER: Contempt Petition filed under Section 11 of the Contempt of Courts Act, to punish the respondents for Contempt of the order passed by this Court on 11.03.2002 in C.M.P.(MD).No.21587/2001 and V.C.M.P.No.2713/2002 in S.A.No.2069 of 2001.

For Petitioner : Ms.J.Anandhavalli

For Respondents : Mr.R.Subramanian
for Mr.R.J.Karthick



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COMMON JUDGMENT

All these matters are heard jointly, pursuant to the directions of the Hon'ble Administrative Judge of the Madurai Bench of Madras High Court.

2. The Second Appeals arise out of two suits, viz., (i) O.S.No.130 of 1996 filed before the Additional District Munsif, Padmanabhapuram, for declaration of title, permanent injunction and demarcation of the suit property and (ii) O.S.No.132 of 1996 filed for permanent injunction insofar as the very same property, which is subject matter of O.S.No.130 of 1996. The defendants in the suits are the appellants in the second appeals.

3. I have heard Mr.R.Subramanian, learned counsel for the appellants in both the second appeals; respondents 4 to 8 in the writ petition and the contemnors in the contempt petition; Ms.J.Anandavalli, learned counsel for the respondents 2 to 4, 6, 7, 9 in S.A.No.2069 of 2001; respondents 2,3,5,6,8 in S.A.No.2070 of 2001, writ petition in the writ petition and the contempt petitioner in the contempt petition; Mr.Godwin, learned counsel for the respondents 11 to 14

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S.A.No.2069 of 2001; respondents 10 to 13 in S.A.No.2070 of 2001;
Mr.S.Kameswaran, learned Government Advocate for the official respondents 1 to 3 in the writ petition.

4. The brief and necessary facts are as follows:-

The lands measuring to an extent of 1 Acre 26 ½ cents in survey No. 409/15 Kulasekaram 'B' village, Tiruvattar Taluk, Kanyakumari District, was subject matter of the said two suits. According to the plaintiff in O.S.No.130 of 1996, the said property belonging to Bhagavathi Pillai, Sami Pillai, who sold an extent of 18 ½ cents to Vaidyanathaswamy, 32 cents in favour of Palayyan and 76 cents in favour of Chinnappillai (the first defendant in O.S.No.130 of 1996), under one document viz., a sale deed dated 26.03.1959. The purchaser of 32 cents, viz., Palayyan filed a suit for partition in O.S.No.781 of 1974. In the said suit, the first defendant Chinnappillai, who was also the first defendant in the present proceedings, contested the said suit, pleading an oral partition had already been taken place and was also given effect to. Accepting the plea of oral partition, the trial Court and the First Appellate Court as well dismissed the suit for partition.



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From the said Palayyan, Chellappan purchased an extent of 32 cents on 20.09.1991 and Vaidyanathaswamy, who had purchased 18 ½ cents sold his entitlement to the seventh defendant, Haridas. The grievance of the plaintiff in O.S.No.130 of 1996 was that the defendants had closed the entry on the western side and hence the suit for demarcation of 32 cents came to be filed.

5. In the other suit in O.S.No.132 of 1996, Chinnappillai claimed to be in possession and enjoyment of the said lands, where he had put up a building and also two shops. During his life time, under a partition dated 07.09.1994 amongst the said Chinnappillai and his six children, Chinnappillai retained 10 cents on the north-west and remaining 83.725 cents were divided under 13 plots and allotted to his children. 10 cents retained by the said Chinnappillai on the north-western portion was settled in favour of fourth plaintiff in O.S.No.132 of 1996 on 10.04.1987. Therefore, the claim in the suit was that the plaintiffs are in possession and enjoyment of the total extent of 92 ½ cents or thereabouts. Both the suits were tried jointly and the trial Court after examining the evidence, oral and documentary adduced by the parties and also the report of the Advocate



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Commissioner and the Plan marked as Ex.C1 and Ex.C2 respectively and also taking note of the judgment in O.S.No.781 of 1974 filed by Palayyan, which was marked as Ex.B14 and the plaint, which is marked Ex.B15, found that in the earlier proceedings, Chinnappillai, had pleaded oral partition and rights only in respect of 76 cents and therefore, dismissed the suit in O.S.No.132 of 1996 and decreed the suit in O.S.No.130 of 1996, as against which, two appeals came to be filed in A.S.No.78 of 1999 and 54 of 1999 respectively.

6. The above first Appeals were heard together and the First Appellate Court by the judgment and decree dated 20.09.2001, confirmed the judgment and decree of the trial Court. As against which, the present Second Appeals in S.A.Nos.2069 and 2070 of 2001 have been filed, arising out of O.S.Nos.132 and 130 of 1996 and A.S.Nos.78 and 54 of 1999 respectively.

7. The learned counsel for the appellants, Mr.R.Subramanian, would submit that the respondents' vendor had filed a suit for partition in O.S.No.781 of 1974, which came to be dismissed, after contest, accepting the plea of oral partition set up by the appellants herein, through their proceedings. Thus, he

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would submit that the Courts below have clearly erred in decreeing the suit for demarcation filed by the respondents. The learned counsel would submit that as against the dismissal of the partition suit, first Appeal in A.S.No.54 of 1999, was filed, which also dismissed on 25.10.1978 and therefore, the present suit by the purchasers is barred by principles of res judicata and also right if any, also stood extinguished by delay and long passage of time. In this regard, he would rely on Section 27 of the Limitation Act. The learned counsel would also take me through the averments in the plaint in O.S.No.130 of 1996, where there is a clear admission regarding the earlier suit proceedings. He would also rely on the report of the Advocate Commissioner with regard to the availability of one Acre 8 cents and when already the Court has accepted the plea of oral partition, according to the learned counsel for the appellants, there is no dispute with regard to 32 cents to which the respondents are entitled to in the said suit proceedings and therefore, he would pray for the second appeals being allowed.

8. Per contra, the learned counsel for the contesting respondents, Ms.J.Ananthavalli, would contend that the cause of action for the suit in O.S.No. 130 of 1996 arose only because of the partition deed amongst the defendants'



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family for a larger extent of 93 ½ cents, when admittedly, Chinnappillai was entitled only to 76 cents. Therefore, the learned counsel would state that the suit is not barred by *res judicata* or hit by Section 27 of the Limitation Act. The learned counsel would further state that both the Courts have concurrently found the issues in favour of the contesting respondents and the same does not require interference under Section 100 of the Code of Civil Procedure.

W.P.(MD)No.846 of 2021 :

9. Insofar the writ petition is concerned, one of the respondents in the second appeal, has filed this writ petition, seeking a relief of Certiorari and Mandamus, to call for the records of the first respondent in Mu.Mu.Aa.No. 3/8359/2019 dated 16.07.2020 and to quash the same and to consequently direct the second respondent to receive the land tax from the petitioner in respect of the property of an extent of 32 cents in survey No.409/15 in Kulasekaram 'B' Village, Thiruvattar Taluk, Kanyakumari District.

10. In view of the facts that have been narrated and discussed herein above, the order to be passed in the writ petition would depend on the decision in

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the Second Appeals. In the light of the above, the second appeals are taken up for consideration first.

11. The Second Appeal were admitted by this Court on 21.12.2001, the following substantial question of law has been framed.

S.A.No.2069 of 2001:

After accepting the title of the appellants to the extent of 76 cents, whether the Courts below are right in granting a decree for demarcation of 32 cents to the first respondent overlooking that there is a deficiency of 18.025 cents of land under which decree the appellants, who purchased 76 cents will get only 57.975 cents and the first respondent, who purchased 32 cents under the same document will get the entire 32 cents?

S.A.No.2070 of 2001:

Whether the judgment of the Courts below is opposed to the established evidence on record?

12. Subsequently, on 27.07.2021, the following two common substantial questions of law have been framed:



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“1.Whether the findings that were rendered in the previous proceedings in O.S.No. 781 of 1974 and A.S.No.56 of 1976, wherein, the right was traced from the oral partition that took place between the parties, will be a bar for tracing the title by virtue of the registered sale deed, dated 26.03.1959 and consequently will be hit by principles of res judicata in the present proceedings?

2.Where the rights of the parties has been substantially decided in the earlier proceedings in O.S.No.781 of 1974 and A.S.No.56 of 1976 and the shares were declared and was also identified, the present suit seeking for the relief of declaration of title is barred under Article 58 of the Limitation Act, since three years time has already expired when the right to sue first accrued on the completion of proceedings in A.S.No.56 of 1976 by judgment and decree, dated 25.10.1978?”

13. It is fairly conceded by the learned counsel for the appellants, Mr.R.Subramanian, that the appellants have to be necessarily bound to any right only to an extent of 76 cents, considering the fact that they themselves rely on the earlier partition suit in O.S.No.781 of 1974, on the file of the Additional District Munsif Court, Padmanabhapuram, where the case set up by them was only with regard to the said 76 cents, by way of an oral partition. Admittedly, the said suit



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filed by the respondents' vendor Palayyan for partition and other reliefs was dismissed, accepting the defence of oral partition set up by the appellants predecessors-in-interest. Therefore, neither the appellants nor the contesting respondents can claim any better right over what has been tried and found in the earlier round of litigation viz., O.S.No.781 of 1974, which was confirmed by A.S.No.56 of 1976. The said findings in the earlier proceedings have also become final, admittedly.

14. With regard to the arguments of Mr.R.Subramanian, learned counsel for the appellants that the present suit is barred by res judicata and also hit by Section 27 of the Limitation Act, I find that such contention though attractive, it does not merit acceptance for the simple reason that despite the specific claim of 76 cents under an oral partition, Chinnappillai proceeded to enter into a deed of partition in respect of 93 ½ cents, over and above his entitlement of 76 cents. The case of Chinnappillai was admittedly not only claiming 76 cents for himself, but also admitting the 32 cents of the vendor of the plaintiffs, who are the contesting respondents herein. In fact, in the said suit, and Advocate Commissioner was also appointed and the report of the Commissioner was also discussed before coming



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to the conclusion that the oral partition had in fact taken place and the parties were in separate possession in respect of 76 cents and 32 cents respectively.

15. Therefore, when an attempt was made to claim a larger extent of 93 ½ cents, the plaintiff in O.S.No.130 of 1996 was necessitated and compelled to approach the Court. The cause of action for filing the said suit was not the earlier oral partition, but an assertion of right over and above 76 cents. In the light of the above, I am not inclined to accept the plea of *res judicata* or the applicability of Section 27 of the Limitation Act to the facts of the present case.

16. However, at the same time, the suit filed by the appellants in O.S.No.132 of 1996 for permanent injunction, though claiming an extent of 93.735 cents ought not to have been dismissed. The Courts, considering the earlier litigation and the rights of the parties, ought to have granted a lesser relief. The Courts are entitled to mould the relief, in accordance with the peculiar facts and circumstances of each case before it. However, only on the ground that the plaintiffs had set up a claim for 93.735 cents and they were entitled 72 cents, the Court has negatived relief for permanent injunction. Even as on date, I am able to

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see from the arguments of the learned counsel for the parties that insofar as the subject survey number, it is admitted that the total extent is only of One Acre 8 cents, out of which, 76 cents belongs to the appellants and the contesting respondents are entitled to 32 cents, this 32cents has already been demarcated and identified by the Advocate Commissioner, who was appointed in O.S.No.781 of 1974. The Advocate Commissioner in his report in the said suit has shown 32 cents belonging to the contesting respondents herein as plot No.1 and 76 cents belonging to the appellants as plot No.2. Both the trial Court and the First Appellate Court, in the earlier round of litigation, relied upon the report of the Advocate Commissioner to conclude that an oral partition had, in fact, taken place and had also been given effect to.

17. In the light of the above, it cannot be disputed that the parties are in physical possession of 76 cents and 32 cents respectively. The plan of the Advocate Commissioner has not been marked in the present proceedings. However, the same is placed before me by way of typed set of papers by the second respondent in the second appeals. In view of the above, there can be no grievance for either of the parties, if their respective 76 cents and 32 cents, as



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found in the plan attached to the report of the Commissioner in O.S.No.781 of 1974 is given effect to / implemented. I find from the Commissioner's Plan that the Commissioner has also given clear admeasurements for the respective extents as well as the boundaries. There would have been no issue at all, if only the appellants had not ventured to enter into the partition deed dated 07.01.1984, in respect of 93.725 cents, with 10 cents being retained by Chinnappillai which has also subsequently settled on the 4th plaintiff in O.S.No.132 of 1996.

18. In the light of the above, the Second Appeals are disposed of with a direction to either of the parties to either individually or jointly make an application for survey and pay the necessary charges to the jurisdictional Tahsildar, who shall immediately act upon the said survey application and in the presence of the parties, shall proceed to mark 76 cents, which is the entitlement of the appellants and the 32 cents, which is entitlement of the respondents. The demarcation of the said 76 cents and 32 cents shall be strictly in accordance with the Commissioner's report and plan in O.S.No.781 of 1974, which shall form part of the decree passed in these Second Appeals. The registry shall enclose the Commissioner's plan, which is filed as a separate typed set by the second

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respondent in the second appeals, to the judgment and decree to be drafted in these Second Appeals. Such exercise shall be carried out by the **Tahsildar** with the assistance of the Taluk Surveyor, to enable the parties to know the correct identity / location of their respective 76 cents and 32 cents and the *inter se* disputes would also stand resolved amicably.

19. In the light of the above, the second appeals are disposed of with the above directions and the substantial questions of law framed on 21.12.2001 are answered in favour of the appellants and the substantial questions of law framed on 27.07.2021, are answered in favour of the respondents. The on-line application and fee shall necessarily be made / paid and the parties shall co-operate with each other for the survey to ascertain and demarcate 76 cents and 32 cents in terms of the Commissioner's plan in O.S.No.781 of 1974, which shall form part and parcel of the common judgment and decree in these Second Appeals. The said exercise shall be completed within a period of four weeks from the date of application.



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W.P.(MD)No.846 of 2021:

20. Having found in the second appeals that the respondents are legitimately entitled to 32 cents, there can be no impediment for the authorities, to receive tax from the petitioner and accordingly, this Writ Petition is allowed as prayed for and the impugned order passed by the first respondent dated 16.07.2020 is set aside.

Cont.P.(MD)No.1247 of 2020:

21. Contempt Petition has been filed alleging the disobedience of the order passed in C.M.P.(MD)No.21587 of 2001 in V.C.M.P.No.2713 of 2002 in S.A.No.2069 of 2001.

22. Considering the fact that, after hearing the learned counsel for the parties and by disposing of the second appeals and the writ petition, a workable and permanent solution has been given, I do not deem it fit to pass any order in this contempt petition, as it would likely only to aggravate the litigation further.

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Accordingly, the Contempt Petition is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

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

- 1.The Sub Judge,
Padmanabhapuram.
- 2.The Additional District Munsif,
Padmanabhapuram.
3. The Revenue Divisional Officer,
/Sub Collector, Padmanabhapuram,
Kanyakumari District.
4. The Tahsildar
Thiruvattar Taluk,
Kanyakumari District.
5. The Village Administrative Officer,
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P.B.BALAJI, J.

LS

6.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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