



SA(MD)No.374 of 2004

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 07/04/2025

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

SA(MD)No.374 of 2004
and
CMP(MD)No.1940 of 2004

G.P.S.Garudappan Ramanujam : Appellant/1st Respondent/
Plaintiff
Vs.

1.Sengamalam Janaki (Died) : 1st Respondent/
Appellant/5th Defendant

2.G.P.S.Alwan (Died)

3.G.P.S.Seenivasaraghavan (Died)

4.G.P.S.Periyathiruvadi (Died)

5.Geetha @ Alamelu : Respondents 2 to 5/
Defendants 1,2,3 & 6/
Respondents 2, 3, 4 & 6

6.Thiruvengadam (Died)

7.Seema : Respondents 6 and 7/
LR.s of the 4th Defendant

8.Periathiruvadi Sadagopan

9.A.Jayam (Died) : R8 and R9/LR.s of the
deceased R1

(R8 and R9 are brought on record
as the LR.s of the deceased **1st respondent**,
vide court order, dated 04/10/2021 made
in CMP(MD)Nos.8183, 8184 and 8186 of 2021
in SA(MD)No.374 of 2004)

10.A.Andal

11.G.A.Devapiran

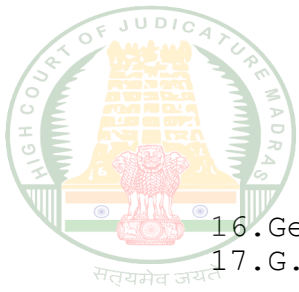
12.G.A.Aravindan

13.G.A.Govindan

14.G.A.Alagu Janaki

15.G.A.Mangala Deepa Rakha : R10 to R15/LR.s of the
deceased R2

(R10 to R15 are brought on
record as LR.s of the deceased
2nd respondent, vide court order,
dated 04/01/2022 made in CMP(MD)
Nos.8959, 8961 and 8966 of 2021
in SA(MD)No.374 of 2004)



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16.Geetha Nachiyar

17.G.P.S.Sathyannarayanan

: R16 and R17/LR.s of
the deceased R4

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(R16 and R17 are brought on record
as LR.s of the deceased **4th respondent**,
vide court order, dated 21/12/2021
made in CMP(MD)Nos.8967, 8969 and
8970 of 2021 in SA(MD)No.374 of 2004)

18.Sampathkumar

19.Satagopan

20.Venkatesan Alagiasingam

21.Thiruvadi.A.P.

22.Alagiasingam Raman

: R18 to R22/LR.s of
the deceased R9

(R18 to R22 are brought on record
as LR.s of the deceased **9th respondent**
vide court order, dated 08/11/2022 made
in CMP(MD)Nos.7883, 7886 and 7887 of 2022
made in SA(MD)No.374 of 2004)

PRAYER: Second Appeal is filed under Section 100 of
the Civil Procedure Code, against the judgment and decree
of the Subordinate Judge, Tuticorin in AS No.18 of 2002
dated 23/08/2004 reversing the judgment and decree of the
District Munsif, Srivaikundam passed in OS No.405 of
1994, dated 21/12/2001.

For Appellant : Mr.V.M.Balamohan Thampi
for Mr.B.Ponnu Pandi

For R1 to R4,
R6 and R9 : Died

For R8, R18 to R22 : Mr.K.S.Jeyaganeshan

For R5, R16 & R17 : Mr.D.Srinivasa Raghavan

For R7, R10 to R15 : No appearance



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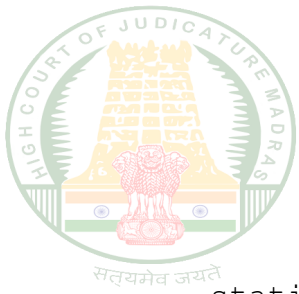
JUDGMENT

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This second appeal is filed against the judgment and decree of the Sub Judge, Tuticorin, passed in AS No.18 of 2002, dated 23/08/2004 reversing the judgment and decree of the District Munsif, Srivaikundam, passed in OS No.405 of 1994, dated 21/12/2001.

2.The plaint averments:-

(i)The 4th defendant namely Garudappan Srinivasa Iyengar is the father of the plaintiff and the defendants 1 to 3. The suit properties are the coparcenary undivided properties. They are in joint possession and enjoyment. All are entitled to 1/5th share equally. But the 4th defendant was acting against the interest of the joint family and was not taking care by the defendants 1 to 3. The plaintiff demanded partition in January 1994. The 5th defendant is a stranger. But from 10/09/1994, he started saying that he purchased the entire property from the 4th defendant and attempted to remove the plaintiff and the defendants 1 and 2 forcibly from the possession. If at all, the 5th defendant can work out his remedy by filing a suit for partition. Hence, the suit is filed seeking partition of the plaintiff's 1/5th share, for permanent injunction, costs.

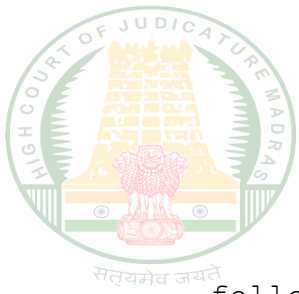


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(ii)The 6th defendant was impleaded on her own stating that she is also having share in the property. So, the plaint was amended.

(iii)The 5th defendant namely Sengamalam Janaki alone contested the matter. The defendants 1 to 4 remained *ex-parte*, later the 6th defendant was deleted from the suit.

3.The statement filed by the 5th defendant:-It is denied that the 4th defendant was acting against the interest of the family property. The 5th defendant purchased the entire properties. It is denied that the sale executed by the 4th defendant is not binding upon the share of the defendants 1 to 3. The 4th defendant for the family expenses and for maintenance of the childrens for valid considerations executed the sale deed, dated 29/10/1982 in favour of the defendant. In the sale deed, the plaintiff's mother and the brother signed as witnesses. The defendants leased out the property in Door No.136 of in favour of one Ramakrishna Moorthy. The other houses are in the possession of the defendants. Since the sale deed was effected by the 4th defendant as Kartha of the joint family, the suit is liable to be dismissed.



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4. On the basis of the pleadings of both sides, the following issues were framed by the trial Court:-

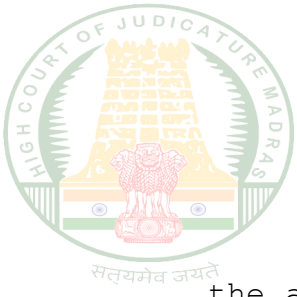
(1) Whether the plaintiff is entitled to get 1/5th share in the suit property?

(2) Whether the plaintiff is entitled to get the relief of permanent injunction as against the 5th defendant?

(3) To what other reliefs, the plaintiff is entitled to?

5. On the side of the plaintiff, 2 witnesses were examined and 2 documents marked. On the side of the defendants, one witness was examined and 8 documents were marked. The Commissioner's report and plan were marked as Exs.C1 and C2.

6. The trial court, by judgment and decree, dated 21/12/2001 passed preliminarily decree for partition as prayed for without costs and permanent injunction was granted. Against which, AS No.18 of 2002 was preferred by the Sub Court, Tuticorin. The appellate court differed from the judgment and decree of the trial court, dismissed the suit by allowing the appeal.



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7. Against which, this second appeal is preferred by the appellant/plaintiff.

8. At the time of admitting the second appeal, the following substantial questions of law were framed:-

(1) Whether the findings of the lower appellate court are vitiated by failure to consider the evidence of P.W. 1 and P.W.2 and the evidence of D.W.1 which is at variance and proved fact that the possession never parted to the 1st respondent on the basis of the Ex.B-17?

(2) Whether the lower appellate court is correct in proceeding on the assumption that the sale under Ex.B1 executed by the 4th defendant as Kartha of joint family in the absence of any recitals in Ex.B1?

(3) Whether the lower appellate court is right in casting the burden of proof on the appellant who is the member of joint family especially when the respondent as alienee failed to establish that the sale under Ex.B-1 is for family necessity?



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9.Heard both sides.

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Substantial question of law Nos.2 and 3:-

10.Since both are connected, taken up together for consideration. The relationship between the parties is admitted. The 4th defendant namely Garudappan Srinivas Iyengar is the father of the plaintiff and the defendants 1 to 3. According to the plaintiff, the suit properties are the ancestral joint family properties belongs to them. As such, each are entitled to 1/5th share each. Conveniently for obvious reasons, the defendants 1 to 4 remained *ex-parte* namely the father also remained *ex-parte*. The contesting defendant is only the 5th defendant. The 5th defendant purchased the suit property from the 4th defendant under Ex.B1, on 29/10/1982. This, according to the plaintiff, is not valid to the extent of his share.

11.Now, we will straightway go to the recitals in Ex.B1 as to see whether any indication is available in it to show that it is the ancestral joint family properties of the defendants 1 to 4. On the side of the plaintiff, only two documents in the form of order passed in RCOP No.1 of 1999 and Ex-order are marked. It is simply stated by the 5th defendant that the 4th defendant being the Kartha of the family and for legal necessity and



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maintenance, the property was sold. There is no specific denial in the written statement filed by the 5th defendant that the properties were not the joint family properties of the defendants 1 to 4, but separate property of the 4th defendant. So, the appellate court mainly concentrated only upon the legal necessity of the sale and binding nature of the same upon the plaintiff. Now before this court, it was submitted that it is the self-acquired property of the 4th defendant.

12.Ex.B1 reads that the suit property and other properties devolved upon him by way of registered Will, dated 28/10/1946. The reason for the sale has been mentioned as for educational expenses of the childrens, discharging the debts, etc. The sale consideration is mentioned as Rs.30,000/-. The 5th defendant was directed to discharge the debts. So, the document reads that the property was bequeathed through the will, dated 28/10/1946. The alleged Will is not produced. The mortgage created by the 4th defendant in favour of the 5th defendant is marked as Ex.B2. So, this mortgage debt mentioned as a part of the sale consideration in Ex.B1. Wherein also, it has been mentioned by him that for the purpose of discharging his debts and for family necessity, the property was mortgaged. After the sale,



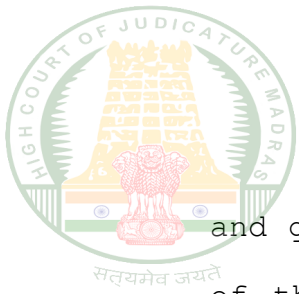
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the revenue records were changed in the name of the 5th defendant.

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13.Now against these documents, as mentioned above, the plaintiff produced Ex.A1 the order passed in RCO No.1 of 1999. It was between the 5th defendant Chengamalam Janaki, 4th defendant namely Garudappan Srinivasa Iyengar and the plaintiff namely Garudappan Ramanujan. Wherein, it has been stated by the 5th defendant that originally the suit building belongs to the Srinivasa Iyengar. It was sold to her on 29/10/1982 (Ex.B1). But the possession was in the hands of Srinivasa Iyengar and the plaintiff herein. The agreement of lease rent is Rs.1,200/- per month. Due to non-payment of rent, RCOP was filed by the 5th defendant.

14.In which counter filed by the 4th defendant. It is stated by him that the sale deed, dated 29/10/1982 is valid only to the extent of his share. The other co-sharers are also living in the premises. The possession on the date of Ex.B1 was not handed over. There was no landlord and tenant relationship between them. Even at the time of Ex.B1, he told the 5th defendant that the entire property does not belong to him. But however, the 5th defendant promised to convince the other co-sharers



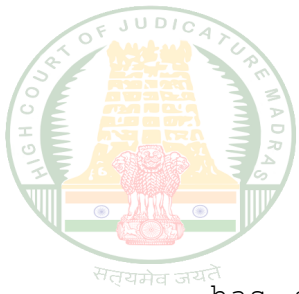
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and get the sale deed from them also. Believing the words of the 5th defendant, the 4th defendant executed the sale deed, mentioning as if the properties belonged to him absolutely.

15. Similarly the plaintiff, who is the second respondent in that matter, filed a counter supporting the case of the 4th defendant. A finding has been recorded that whether the 4th defendant is entitled to sell the entire property is beyond the scope the petition. The 4th defendant, who is his father was not examined as a witness in that RCOP proceedings. Since because the basic ingredients of the landlord and tenant was not established, the petition was dismissed. Against which, it appears that no further proceedings were taken. Based upon this, now it has been stated by the plaintiff that it is the ancestral joint family property of him and the defendants 1 to 4.

16. Now, we will go to the evidence of PW1. He would say that the 4th defendant is a drunkard and involved in immoral activities such as gambling, etc. He was not properly taking care of the family. So, Thiruvengadathan @ Balaji was managing the affairs of the joint family. He was examined as PW2. He supports the evidence of PW1 on that particular issue. We will deal about this later.



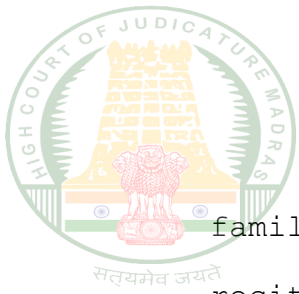
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17.Now coming back to the nature of the property, he has simply stated that it is the ancestral joint family properties. During the course of the cross examination, he would say that it devolved upon them through their grandmother. But would deny that the 4th defendant is a respectable person in the locality. He was born in 1969. The sale made by the 4th defendant was not known to him, at that time. But brought to his notice only in 1982. So, except this oral evidence, no other evidence is available to show that the suit properties are the ancestral joint family of the defendants 1 to 4.

18.More-over, in the RCOP Proceedings, there can be no valid finding that the suit properties are the ancestral properties of the 4th defendant and the plaintiff. Even if any such observation is made in that proceedings, it is not binding upon the civil court. RCOP is only summary in nature. The title, as mentioned in the RCOP proceedings, cannot be gone into. We can exclude Exs.A1 and A2 from our consideration to find the nature of the properties.

19.Now we will go to the judgment of the trial court on that particular aspect. It proceeded solely on the ground that the suit property is the ancestral joint



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family property. But failed to note that the particular recital in Ex.B1 as to the source of tracing of right through Will.

20.Now, we will go to the judgment of the appellate court on that aspect.

21.The appellate court did not also concentrate upon particular recital in Ex.B1. Against the specific recital in Ex.B1, no contra evidence is placed before this court. As mentioned above, in the RCOP proceedings, the execution of the sale deed by the 4th defendant is admitted. But contra to that recital, he filed the counter stating that the property belongs to the ancestral joint family.

22.Section 92 of the Indian Evidence Act permits the oral evidence to contradict the terms only in certain conditions. Now if at all, the proviso (1) to section 92 of the Indian Evidence Act can be pressed into service, which reads as under:-

"S.92.When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral



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agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from its terms:

Proviso (1)-Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto, such as fraud intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law."

23. But here, the 4th defendant has conveniently remained ex-parte for obvious reasons as mentioned above. Even if we take his counter in the RCOP to be his defence in this matter also, it has been simply stated by him that the nature of the property was brought to the notice of the 5th defendant at the time of purchase; But the 5th defendant prevailed upon him to execute the sale deed by mentioning the same as it is his separate property. But this is completely out of place and cannot be believed at all. During the course of the cross examination, nothing was put to DW1 about this particular averment in the counter filed by the 4th defendant in the RCOP proceedings.

24. Now with this in mind, let us go further.



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25.As mentioned above, nothing is brought on record by the plaintiff to show that it is the ancestral joint family properties in which he got 1/5th share.

26.Now we will go to the other aspect of the sale. The validity of the sale deed is attacked by the plaintiff saying that it was not for consideration and execution for immoral or illegal purpose. This plea can be taken only if the plaintiff is able to establish that the suit property belongs to the ancestral joint family properties. When the primary point fails, this point does not arise at all. During the course of the argument, it was submitted by the appellant that the nature of the property is admitted in the written statement filed by the 5th defendant. But there is no such admission as mentioned above. It has been simply stated that the 4th defendant as the Kartha of the family is entitled to sell the property. So, this argument is not correct on record. But however, to set the records right, we can also take up this plea from the angle of plaintiff's case.

27.In Ex.B1 the plaintiff's mother namely Thiruvencatam Janaki and the second defendant namely G.P.S.Alwan have signed as witnesses. But none of them was examined on the side of the plaintiff to show that

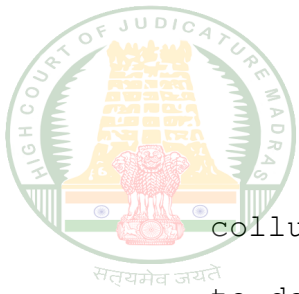


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consideration mentioned in the sale deed is for immoral or illegal purpose. The nature of the consideration was extracted by me earlier. So, it need not be repeated. When the plaintiff's mother and the brother have signed as witnesses in the document, the plaintiff cannot attack this document stating that no consideration was passed. It appears that DW1 was very old lady at the time of her examination before the court in 2001. So, for some of the questions, more particularly with regard to the passing of sale consideration, she was not able to give proper particulars during the course of cross examination. We cannot expect a person at the age of 80 to remember all those facts, which took place in 1982.

28. So, absolutely, there is no evidence on record, except the evidence of PW2 to show that the 4th defendant was not managing the affairs of the family in a proper manner. In fact, that was not his counter in the RCOP proceedings. Except the oral evidence of PW1 and PW2 regarding the character of the 4th defendant and the legal necessity of the same, no other evidences, which are believable in nature were brought on record by the plaintiff. In fact, as mentioned above, the suit was filed to frustrate the sale in an improper manner. So, the suit itself is not proper. It is nothing, but



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collusive suit between the plaintiff and the 4th defendant to defeat the rights of the 5th defendant, who is the *bona fide* purchaser for value. So, the appellate court has appreciated the legal necessity in a proper perspective and binding nature of the same upon the plaintiff. So, the substantial question of law Nos.2 and 3 do not arise at all.

29.The learned counsel appearing for the appellant would rely upon the following judgments:-

(i) Faquir Chand Vs. Sardarni Harnam Kaur (dead) represented by her Lrs. And others (AIR 1967 Supreme Court 727 (V 54 C 151)

(ii) Sangnath and others Vs. Babu s/o. Sidling Ambulge and others (2019(4)AIR Bom.R 616).

30.Per contra, the learned counsel appearing for the 8th respondent would rely upon the following judgment:-

(i) A. Pattammal alies Pachaiyammal Vs. Nagarajan and others (CDJ 1977 MHC 366);

(ii) Elango Vs. Poongodi and others (CDJ 2000 HMC 999);



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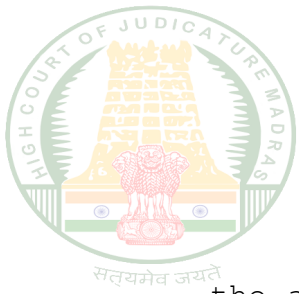


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*(iii) Kehar Singh (Dead) through
Legal Representatives and others Vs.
Nachittar Kaur and others [(2018)14 SCC
445)*

31.Since, it has been specifically mentioned in Ex.B1 that the property devolved upon him by way of Will, it became his absolute property. Neither the plaintiff nor his sons are having any right till the life time of the 4th defendant. So, they cannot challenge the validity of the document.

32.Regarding the first substantial question of law also, the evidence of PW1 and PW2 are not believable in view of the discussion made above and this substantial question of law has been framed on the point possession. Since the right of the the plaintiff has not established, then the possession of the property does not assume any importance at all. To show the nature of the property, commissioner was appointed and now the evidence has been let in by both sides to show the physical nature of the property, which we need not concentrate much upon the point as to who are in possession. So, this substantial question of law is also does not arise.



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33. So for those reasons, the judgment and decree of the appellate court requires no interference.

34. In the result, this second appeal fails and the same is **dismissed**, confirming the judgment and decree of the appellate court. No costs. Consequently, connected CMP is closed.

07/04/2025

Index: Yes/No
Internet: Yes/No
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To,

1. The Sub Judge,
Tuticorin.
2. The District Munsif,
Srivaikundam,
Tuticorin Dt.
3. The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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