



SA(MD)No.376 of 2004

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 24/03/2025

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

SA(MD)No.376 of 2004

1.Petchimuthu

2.Sudalai

: Appellants/Appellants/
Defendants

Vs.

1.Ramu Ammal

2.Pitchaiammal

3.Alagumuthu

: Respondents/Respondents/
Plaintiffs

PRAYER:-Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the Principal District Judge, Tuticorin, in AS No.74 of 2003, dated 23/03/2004 confirming the judgment and decree of the District Munsif of Srivaikundam in OS No.40 of 2002, dated 22/01/2003.

For 1st Appellant : Mr.J.Ashok

For 2nd Appellant : Mr.M.Mohammed Asif

For 1st Respondent : Dismissed as default

For R2 and R3 : Mr.S.Siva Thilakar

J U D G M E N T

This Second Appeal is filed against the judgment and decree of the Principal District Judge, Tuticorin, passed in AS No.74 of 2003, dated 23/03/2004 confirming the judgment and decree of the District Munsif, Srivaikundam in OS No.40 of 2002, dated 22/01/2003.

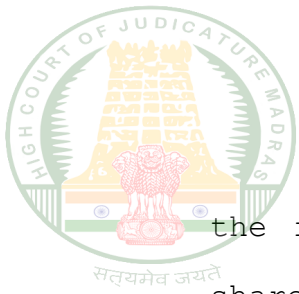


SA(MD)No.376 of 2004

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2. The plaint:- The suit property originally belongs to one Subbiah Pillai @ Ayyapillai Thevar. The first plaintiff is the wife. The plaintiffs 2 and 3 and the defendants are the childrens. Subbiah Pillai @ Ayyapillai Thevar died on 20/10/1999 intestate. The plaintiffs and the defendants are the legal heirs. They inherited the property and in possession as joint family. On 13/05/2000, the defendants tried to interfere into the possession. The defendants have 1/5th share in the property. So, the suit is laid for partition and separate possession of the plaintiffs 3/5th share and for permanent injunction, costs.

3. The statement filed by the second defendant adopted by the first defendant:- It is denied that the property originally belongs to Subbiah Thevar @ Ayyapillai Thevar. The suit is bad for partial partition, since the house where the second defendant residing is not included in the plaint. The plaint 1st item in the 4th schedule situated in Survey No.170/2A/2 measuring about 0.36.0 Hectares belongs to the defendants by way of purchase, in which the plaintiffs and others have no right or interest. After the death of Subbiah Thevar @ Ayyapillai Thevar, there was a family arrangement in the first week of November 1999. By that family arrangement,



SA(MD)No.376 of 2004

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the first plaintiff agreed that she is not entitled any share and she must be maintained by the defendants till her life time. In so far as the second plaintiff is concerned, even during the lift time of Subbaih Thevar @ Ayyapillai Thevar, she was provided with sufficient sreedhana and married. So, she agreed that she is not having any share. The third plaintiff converted to Muslim, married a Muslim girl and living with her. He also relinquished his share in the property. So, by that family arrangement, the entire properties owned to the Subbiah Thevar @ Ayyapillai Thavar belongs to the defendants. Apart from that, other customary denials were made.

4.**Additional statement**:-The particulars of amendment and the suit property is not properly valued.

5.On the pleading of both parties, The trial court framed the following issues:-

(1)Whether the plaintiffs are entitled to 3/5th share in the suit properties?

(2)Whether the plaintiffs are entitled to permanent injunction?



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SA(MD)No.376 of 2004

(3)Whether the 1st item in the 4th schedule exclusive belongs to the 2nd defendant?

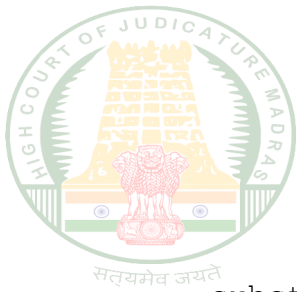
(4)Whether the suit properties are undervalued?

(5)to what relief, the plaintiffs are entitled to?

6.Before the trial court, on side of the plaintiffs, one witness was examined and 10 documents marked. On the side of the defendants, one witness was examined and one document marked. Through Court, CW1 was examined and Ex.X1 has been marked.

7.At the conclusion of the trial process, the trial court dismissed the suit without costs. Against which, Appeal in AS No.176 of 2008 was filed before the Principal District, Tiruchirappalli, which also came to be dismissed, concurred with the judgment and decree of the trial court.

8.Against which, this second appeal is preferred by the appellants.



SA(MD)No.376 of 2004

WEB COPY

9. At the time of admission, the following substantial questions of law were framed:-

(1) Whether the court below are justified in holding that as the defendants had failed to prove his title to the suit properties, the title of the plaintiffs has to be accepted?

(2) Whether the courts below are justified in holding that the trial court is having pecuniary jurisdiction to try the suit without considering the material evidence available in the suit?

(3) Whether the courts below are justified in holding that the parties to the suit were in joint possession on no evidence?

10. The 1st substantial question of law was wrongly framed, so, it is recasted as follows:-

(1) Whether the finding of the trial court and the appellate court that the



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SA(MD)No.376 of 2004

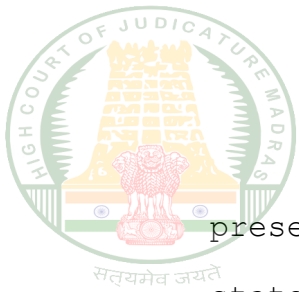


***oral family arrangement pleaded by the
appellants was not proved?***

11.Heard both sides.

12.A simple suit for partition. The relationship between the parties is admitted. Similarly, the ownership of the properties, except the 1st item in 4th schedule is also admitted. The meaning thereby that those properties belonged to Subbiah Thevar @ Ayyapillai Thevar. It is also admitted that the properties are self-acquired properties of Subbiah Thevar @ Ayyapillai Thevar. Being the first class legal-heirs, the plaintiffs and the defendants are equally entitled to get 1/5th share in respect of all those properties.

13.Now a plea is raised by the defendants 1 and 2 that after the death of Subbiah Thevar @ Ayyapillai Thevar, a family arrangement took place in the month of November 1999. We will see that family arrangement was properly brought on record by the defendants by acceptable evidence. DW1 is the 2nd defendant. During the course of cross examination of DW1, it was suggested by him that on the day of the ceremony of the deceased, a family arrangement took place. But the date in whose



SA(MD)No.376 of 2004

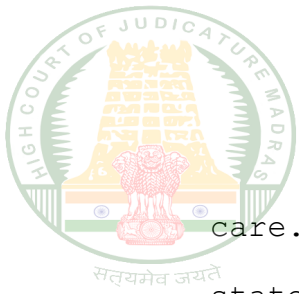
presence, the family arrangement took place is not stated.

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14.Now we will go to the evidence of DW1. According to him, on the 11th day of the death of the father, family arrangement was made. As mentioned above, he has not stated any particulars regarding the arrangement. So, except the evidence of DW1 on this aspect, no other evidence is available.

15.More-over, the properties are all immovable properties. If any release of share is made, by any of the sharers, it can be effected only by way of a registered document. But no such document was executed by the persons. Even though, the family arrangement can be made orally, but when the valuable rights are involved that too release is subject matter, then mere oral release is not permissible in law. With this in mind, we will go further.

16.Now, according to the defendants, as per the above said arrangement, he would say that the house property was given to him. The first plaintiff was not given any share in the property, but her maintenance was ordered to be taken care and the defendants must take

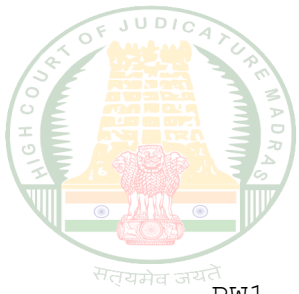


SA(MD)No.376 of 2004

WEB COPY

care. Similarly in respect of the second plaintiff, it is stated that during the life time of the father, she was given in marriage by providing sufficient properties. So, the second plaintiff is also not entitled for any share in the property. Absolutely, this sort of contention or plea without proper proof, either oral or documentary cannot be taken into account at all. The plea raised by the defendants on that score is rejected outright not only by the trial court, but also the appellate court for valid reasons. Since it is a factual finding, unless the appellant is not able to brought on record, perversity or illegality in those findings, the second appellate court cannot interfere. So, *prima facie*, the first plaintiff and the second plaintiff are entitled equal share.

17. Now coming to the third plaintiff, it is admitted that he converted himself to Islam. After that, he married. Even on the death of the father, he did not attend. Later for the 11th day ceremony, he attended. Except the oral evidence of the parties, no other documentary evidence is available. In fact, he was also not examined as a party witness to deny those specific pleas. So, naturally adverse inference has to be drawn against the third plaintiff.



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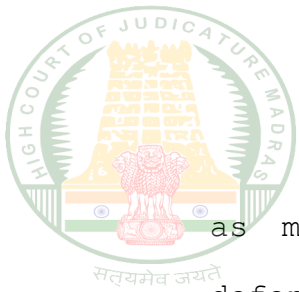


SA(MD)No.376 of 2004

18. In this context, we will go to the evidence of PW1. She would say that the third plaintiff did not attend the funeral rites. 18th day ceremony was performed whether on that day, the third plaintiff participated, there is no evidence. Even at the time of argument, it was submitted by the respondents that in view of the specific finding recorded by the trial court and the appellate court, naturally the third plaintiff cannot get any share in the property after conversion as it is disqualified as per the Hindu Succession Act. According to him, the share must be modified, accordingly, he got automatically 1/4th share instead of 1/5 share.

19. In view of the above said specific argument advanced by the respondents, no more discussion is required. On that account, the third plaintiff is not entitled any share in the property.

20. During the course of trial process, a stand was taken by the defendants that as if the suit property never belonged to Subbiah Thevar @ Ayyapillai Thevar. There is specific admission in the written statement to the effect that except the first item in the 4th schedule, all the properties originally belongs to Subbiah Thevar @ Ayyapillai Thevar. But during the course of the evidence,



SA(MD)No.376 of 2004

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as mentioned above, a new stand has been taken. The defendants ought to have permitted to withdraw the specific attempt and even, they have not stated that an attempt was made without verifying the proper particulars. So, the belated attempt made on the part of the appellant during the course of the evidence cannot be taken into account at all.

21. But however, to set the records right, the evidence of PW7 may be recorded, since the right of the father was denied. During the course of the cross examination, PW1 was recalled and examined in chief further on 05/12/2001. At that time, she produced documents showing the purchase made by Subbiah Thevar @ Ayyapillai Thevar. Those documents were marked as Exs.A5 to A7. The certified copies of the sale deed standing in his name. She has given the detailed description of the properties. She was not cross examined with reference to those documents by the defendants. So, this itself clearly indicates that a plea was taken by the defendants to the attempt made by the defendants during the course of the evidence was not considered by the trial court and the appellate court.



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SA(MD)No.376 of 2004

22. So, the concurrent finding of the trial court as well as the appellate court regarding the oral arrangement, I find absolutely no perversity or illegality has been committed, either by the trial court or the appellate court in appreciating the evidence. So, the substantial questions of law are answered accordingly.

23. The trial court has framed the issue regarding the valuation of the property and recorded a finding that it was not established on record that the plaintiffs have valued the suit for lessor amount. In this regard, the evidence of CW1 was rejected by the trial court for valid reasons. Before the appellate court, that plea was not properly raised. So, the finding recorded by the trial court is corrected. So, no discussion is required in the second appellate stage.

24. But as mentioned above, the third plaintiff is not entitled for the property. But neither the trial court, nor the appellate court has taken that into account. Accordingly, a preliminary decree was passed by the trial court, as confirmed by the appellate court requires to be modified to the effect that except the first item in the 4th schedule, the plaintiffs are entitled for 1/4th share each.



SA(MD)No.376 of 2004

25.With the above said modification, this second

appeal stands **dismissed** with costs.

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24/03/2025

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To,

- 1.The Principal District Judge,
Tuticorin.
- 2.The District Munsif,
Srivaikuntam,
Tuticorin.
- 3.The Section Officers,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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SA(MD)No.376 of 2004

G.ILANGOVAN, J

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SA(MD)No.376 of 2004

24/03/2025