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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.06.2025

CORAM

THE HON'BLE MR. JUSTICE R.VIJAYAKUMAR

S.A.No.1044 of 2001

- 1.Jayabalan (Died)
- 2.Jeyanthi
- 3.Tharani
- 4.Malarvizhi
- 5.Divya
- 6.Thillai Premnath
- 7.J.Baranitharan

...LR's of the 2nd Defendant/
Appellants 3 -7/Appellants

(Appellants 3 to 6 are declared as major the guardianship of their mother next friend natural guardian 2nd appellant - Jeyanthi is discharged Vide Court order dated 11.09.2024 made in CMP(MD)Nos.12593 & 12594 of 2024 in S.A.No.1044 of 2001.)

Vs.

- 1.Rajendran
- 2.Manickam (Died)
- 3.Kamala
- 4.Bhuvaneswari
- 5.Parvathraj Kumar
- 6.Thillaimuthu
- 7.Rohinidevi
- 8.Tamilkodi

...1st Defendant/Respondent 2

...LR's of plaintiff/Respondents 3 and 4/
Respondents

(7th Appellant and Respondents 4 to 8 are brought as LR's of the deceased 1st Appellant vide Court order dated 30.08.2024, made in CMP(MD)Nos.15205 and 15207 of 2023 in S.A.No.1044 of 2001)

(R2 died, R3 who is already on record is recorded as LR of the deceased R2, in view of the order of this Court dated 04.07.2024, made in CMP(MD)No.15208 of 2023 in S.A.No.1044 of 2001)



PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgement and decree dated 13.01.2000, and made in A.S.No.158 of 1996, on the file of the learned Principal District Judge, Ramanathapuram, confirming the judgment and decree dated 29.02.1996, made in O.S.No.89 of 1991, on the file of learned Principal District Munsif, Ramanathapuram.

For Appellants : M/s.R.Paranjothi for A7
M/s.V.Kasiraja for A2 to A6
A1-died (steps taken)

For Respondents : M/s.A.R.Kannappan for R3
No appearance for R4 to R8
R1-Dismissed for default

* * * * *

JUDGMENT

The defendants 2 and 3 in O.S.No.89 of 1991, on the file of the Principal District Munsif Court, Ramanathapuram, have filed the present Second Appeal challenging the concurrent findings of the Courts below granting preliminary decree for partition in favour of the respondents herein.

2.The defendants 1 to 3 are the sons of one Muthumathalai Thevar. They have jointly purchased the land to an extent of 26 cents in S.No.239/2, on 14.12.1977, under Ex.A1. They have jointly purchased another extent of 13 cents in the same survey number on 16.01.1978, under Ex.A2. There is no dispute that each one of the brothers is entitled to 13 cents out of the total 39 cents.



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3.The first defendant in the suit, namely, Rajendran, has entered into sale agreement with the plaintiff on 06.02.1978, for alienating 11 cents of lands in the south-west portion of the 13 cents covered under Ex.A2. Since the sale deed was not executed as per the agreement, the plaintiff had filed O.S.No.127 of 1982, before the District Munsif Court, Ramanathapuram, as against the first defendant. The suit came to be decreed on 01.02.1983. Relying upon the said decree(Ex.B5), the first defendant has executed the sale deed in favour of the plaintiff on 27.03.1987, under Ex.A5 and on 31.03.1987.

4.Aggrieved over the alienation by one of their brothers, the other two brothers have filed O.S.No.106 of 1987, before the District Munsif Court, Ramanathapuram, seeking partition. The said suit was filed as against the present plaintiff and also other brother, namely, Rajendran, who had alienated the property in favour of the present plaintiff. In the suit schedule property, only an extent of 13 cents purchased under Ex.A2, on 16.01.1978, was shown as the suit schedule property. The trial Court after going through the submissions made on either side has arrived at a finding that the plaintiffs therein(defendants 2 and 3 in the present suit) are entitled to a share of 30 cents each. However, since the suit was laid only for 13 cents covered under Ex.A2, without including



the property to 26 cents covered under Ex.A1, it was dismissed on the ground of partial partition.

5.The present suit for partition has been filed by the purchaser of 11 cents from one of the brothers, namely, Rajendran. In the present suit, the properties covered under Ex.A1 and Ex.A2, both are shown as the suit schedule properties. The plaintiff has sought for preliminary decree for partition for allotment of 11 cents of lands, as per the boundaries mentioned in his sale deed as Ex.A5 and Ex.A6. The trial Court as well as the appellate Court after considering the oral and documentary evidence on either side has decreed the suit as prayed for. Challenging the concurrent findings, the Second Appeal has been filed by the defendants 2 and 3.

6.The Second Appeal was admitted on the following substantial questions of law:-

“i) whether the suit, as framed, is maintainable, since the plaintiff had categorically averred in the plaint that he was in possession of specified area and enjoyed it through his wife, dug up a well and raised jasmine plants till 01.07.1990 and Ex.A-5 refers to south western portion?



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ii) whether the conclusion of the trial Court that the plaintiff should be put in possession of the south western portion of 11 cents out of 13 cents, covered under Ex.B-2, is sustainable, since D2 and D3 are also each entitled to 1/3 share in the 13 cents, covered under Ex.B2?”

7.The learned Counsel appearing for the appellants has submitted that though the plaintiff could not seek for partition and claim for specific extent of 11 cents as per sale deeds Ex.A5 and Ex.A6 dated 27.03.1987 and 31.03.1987. The equities of the purchaser of the property should be worked out only in the final decree proceedings.

8.Per contra, the learned Counsel appearing for the respondents/plaintiffs has submitted that for the specific extent of the property, a sale agreement was executed by one of the brothers, namely, Rajendran. In the sale agreement, he has given a specific undertaking that the sale agreement is being executed on behalf of his other two brothers. He did not come forward to execute the sale deed. The plaintiff was constrained to file a suit for specific performance. In the suit for specific performance, a decree has been passed to an extent of 11 cents within the specific boundaries. Only based upon the specific performance



decree and the sale deed executed by one of the brothers, namely, Rajendran under Ex.A5 and Ex.A6, the present suit for partition has been filed. In such circumstances, the allotment of specific extent as per the boundaries recitals in Ex.A5 and Ex.A6, cannot be assailed by the defendants 2 and 3.

9.The learned Counsel appearing for the respondents/plaintiffs has further submitted that other than these 11 cents, the rest of extent of the property is in occupation of the defendants 2 and 3 by putting up construction. In such circumstances, unless this specific extent of 11 cents as per Ex.A5 and Ex.A6 sale deed are allotted, he would put to great hardship.

10.I have considered the submissions made on either side and perused the materials available on record.

11.The trial Court as well as the appellate Court have arrived at a categorical finding that the plaintiff is entitled to preliminary decree to an extent of 11 cents based upon the sale deed executed by the co-owner, namely, Rajendran under Ex.A5 and Ex.A6. The learned Counsel appearing for the appellants has submitted that they do not have any objections whatsoever, for allotting of 11 cents of lands out of 39 cents. However, their only objection is



with regard to the allotment of 11 cents within the boundaries as mentioned under Ex.A5 and Ex.A6. According to the learned Counsel appearing for the appellants, allotment of 11 cents has to be worked out only during the final decree proceedings. The trial Court as well as the appellate Court have erroneously allotted the specific extent even in the preliminary decree proceedings.

12.The Hon'ble Supreme Court in the judgment reported in *AIR 1966 SC 470*, has specifically found that the purchaser of an undivided share of the property would not be entitled to allotment of that extent within the certain specific boundaries, even though he had purchased some specific extent. In such a view of the matter, the trial Court as well as the appellate Court were not right in allotting 11 cents within the boundaries even in the preliminary decree proceedings. This issue has to be sorted out only during the final decree proceedings.

13.In view of the above said discussions, the questions of law are answered in favour of the appellants.



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14.It is also brought to the notice of the Court that the final decree application filed by the decree holder is pending. In such circumstances, this Court is inclined to pass the following orders:-

a) the allotment of 11 cents in favour of the plaintiff in the preliminary decree in the suit schedule property stands confirmed; and

b) whether it should be allotted within the property covered under Ex.A1 or under Ex.A6 has to be decided only during final decree proceedings. To the said extent, the judgment and decree of trial Court as well as the appellate court are hereby set aside;

15.Accordingly, this Second Appeal stands partly allowed. The plaintiff is at liberty to work out his remedy in the final decree proceedings. No costs.

20.06.2025

NCC: Yes/No
Internet: Yes/No
Index: Yes/No
RJR



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R.VIJAYAKUMAR, J.

RJR

To

- 1.The learned Principal District Judge, Ramanathapuram.
- 2.The learned Principal District Munsif, Ramanathapuram.

Copy to:-

The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.

S.A.No.1044 of 2001

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