



SA No.1165 of 1998

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reserved	01/04/2025
Date of Pronounced	13/05/2025

CORAM

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

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Duraisamy Gounder : Appellant/Respondent/
Plaintiff

Vs.

Muthusamy (Died)
represented by their heirs

1.Jayam
2.M.Baskar
3.M.Sumathi
4.M.Jeeva
5.M.Shanthi

: Respondents/Appellants/
Defendants

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed by the District Judge, Trichirapalli, in AS No.123 of 1996, dated 24/12/1997 allowing the appeal and dismissing the decree and judgment passed by the Subordinate Judge of Tiruchirapalli, in OS No.748 of 1989, dated 19/03/1996.

For Appellant : Mr.P.Thiagarajan
for Mr.C.Gobinath

For Respondents : Mr.S.Kumar
for Mr.R.Gowrishankar



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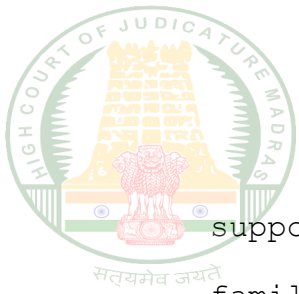
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This second appeal is preferred against the judgment and decree passed by the District Judge, Trichirapalli, in AS No.123 of 1996, dated 24/12/1997 allowing the appeal and dismissing the decree and judgment passed by the Subordinate Judge, Tiruchirapalli, in OS No.748 of 1989, dated 19/03/1996.

2.The plaint averments:-

(i)The second defendant, who is now dead is the father of the plaintiff. The properties are joint family properties of the plaintiff and the second defendant. The plaintiff got married some 21 years ago. At the time of marriage, the plaintiff's wife was presented with substantial seervarisai, cash. The plaintiff purchased properties in his own name by selling jewels belongs to his wife. Some of the suit properties were purchased out of the sale proceeds of the ancestral properties. During joint living, he contributed towards cultivation and development of the properties. In the properties, he got half share. Second defendant is acting under the instigation of one Nallusamy his son in law and sister in law Veerammal. On 01/09/1989, the second defendant executed a sale deed in favour of the first defendant at the instance of Nallusamy. The sale deed was not



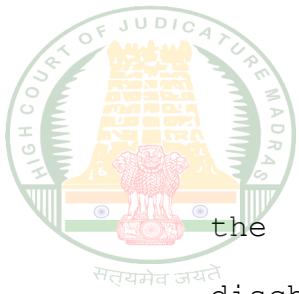
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supported by any consideration and not executed for any family necessity. Even though the properties were sold, still the plaintiff and the second defendant is in joint possession.

(ii) Demanding partition of the suit properties, the plaintiff issued notice on 02/11/1989. Reply was sent by the second defendant on 11/11/1989 containing false averments. So, the suit is laid for partition and separate possession of the plaintiff's half share, future mesne profit, costs.

3. The second defendant remained *ex-parte* before the trial court. The statement filed by the first defendant who is the purchaser, contain the following averments:-

The suit properties are the self-acquired properties of the second defendant. The plaintiff is having no share in the property. The second defendant sold the first item measuring 3.63 Acres in Survey No.404/1 along with well and motor pump-set and land in Survey No.404/2 measuring about 1.10 Acres on 11/09/1989 for valid consideration. The second defendant, at the time of sale represented that he incurred debts on pro-notes and for discharging debts, the sale was executed. In the sale deed itself,



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the second defendant directed the first defendant to discharge the pro-notes, dated 29/06/1986, 30/06/1988 and 27/06/1087. Cash amount of Rs.18,800/- was received for his family and agricultural expenses. The property was purchased by the second defendant on 09/09/1966 out of his own funds. Subsequent to sale deed, the first defendant discharged the pro-note debts. He received possession and now in enjoyment.

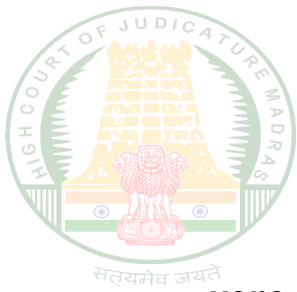
4.Even though, it is not admitted that the suit properties which were purchased by the first defendant belongs to the joint family, then on the ground of equity, he must be allotted the property purchased from the second defendant.

5.On the basis of the pleadings of the parties, the following issues were framed by this court:-

(1)Whether the plaintiff is entitled for partition in respect of the suit properties?

(2)Whether the defendant is liable to pay future income to the plaintiff?

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



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6. On 17/08/1992, the following additional issues were framed by the trial court:-

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(1) Whether the plaintiff is entitled to the relief of partition as prayed for?

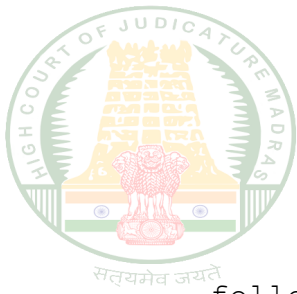
(2) Whether the suit property is self-acquired property of the second defendant?

(3) To what other reliefs?

7. On the side of the plaintiff, one witness was examined and 6 documents marked. On the side of the defendants, 3 witnesses were examined and 16 documents marked.

8. At the conclusion of the trial process, the trial court decreed the suit as prayed for without costs. Against which, appeal was preferred by the 1st defendant namely Muthusamy in AS No.123 of 1996 on the file of the District Court, Trichy. It allowed the appeal by setting aside the decree and judgment passed by the trial court.

9. Against which, this second appeal is preferred by the plaintiff as appellant.



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

(1) Whether the appellate court committed an error by misreading the evidence on record and law to consider the materials on record in negating the claim of partition as prayed for by the appellant/plaintiff?

(2) Whether the suit property is the self-acquired property of the deceased second defendant or whether it is the joint family property of the deceased second defendant as well as his son the appellant/plaintiff herein?

11. Heard both sides.

Substantial Question of Law No.2:-

12. As mentioned in the preamble portion of the judgment, it is not in dispute that the plaintiff herein is the son of the deceased second defendant. The first



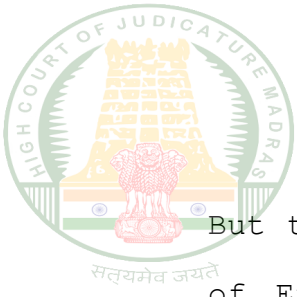
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defendant is the purchaser of the suit property from the second defendant.

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13.It is the case of the plaintiff that the suit property was purchased out of the sale proceeds derived by the second defendant by selling the ancestral property under Ex.A3 and purchased the property under Ex.A4. So, the suit property comes within the ambit of the ancestral or joint family property, in which he got half share. The second defendant has sold the entire property to the first defendant, which is not valid under law and that sale deed is not binding upon him in respect of his half share.

14.Now let us straightaway go to the document. Ex.A3 is the certified copy of the sale deed, dated 12/09/1966, which was executed by the second defendant in favour of one Duraisamy Gounder, wherein it is specifically mentioned by him that the sale is made for the purpose of purchasing some other property. Further, the document reads that the patta is standing in the name of the second defendant's father in respect of the property sold. So, it is seen that the property sold under Ex.A3 is the ancestral property of the second defendant. By right of birth, the plaintiff got share in the property.

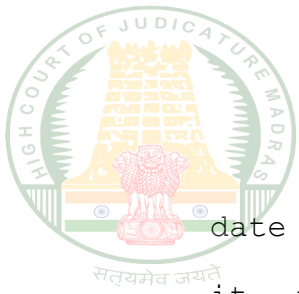


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But the plaintiff did not and does challenge the validity of Ex.A3. Probably on the ground that by selling this property, the second defendant purchased the suit property through Ex.A4. Since the sale price under Ex.A3 was utilized for purchasing the suit property under Ex.A4, naturally it comes under the ambit of the joint family property. Ex.A3 is executed on 12/09/1966, registered on 15/09/1966. Ex.A4 is executed on 09/09/1966, registered on 12/09/1966. So, naturally as pointed out by the plaintiff, the appellant herein the sale price received by the second defendant through Ex.A3 might have been utilized for purchasing the property through Ex.A4.

15.This is the main ground on which the appellate court differed from the judgment of the trial court for reversing the decree and judgment. The appellate court is of the opinion that 3 days prior to the sale, Ex.A4 came into effect. So naturally, the sale proceeds Ex.A3 could not have been utilized for purchasing the property under Ex.A4. This, according to the learned counsel appearing for the appellant, is error apparent on the face of the record in view of the clear recitals in both the documents as to the date of execution. As mentioned above, the date of execution of Ex.A4 is 09/09/1966. The



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date of registration is 12/09/1966. Ex.A3 is concerned, it was executed on 12/09/1996 and presented for registration on 15/09//1966. So, probably as mentioned above, a portion of the purchase price was met out by the second defendant out of the sale proceeds of Ex.A3.

16.So, it is settled and basic principle of Hindu law that even if a portion of the purchase is made, out of the sale proceeds derived from selling the ancestral property, then the purchased property will come under the ambit or the definition of the joint family property. So, naturally the property purchased under Ex.A4 became the joint family or ancestral property of the second dependant in which the plaintiff got half share by right of birth. So, the contra finding recorded by the appellate court is not sustainable, which is error apparent on the face of the record in not properly appreciating the date of the execution of the sale deed as as well as the date of presentation for registration.

17.Having held that the suit property assumes character of the ancestral property, the next question which arises for consideration is whether the judgments cited by the respondents herein are relevant for the present discussion.



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18.In the judgment reported in ***K.V.Ramasamy Vs.***

K.V.Raghavan and others [(2009)4 CTC 440], the point that was raised was whether the property obtained by a father through testamentary succession will come under the category of joint family property. It was held that it cannot. This has no relevancy for our discussion.

19.The judgment reported in ***Ramasamy Gounder @ Senban (Died) and others Vs. Chinnapillai @ Nallammal and others [(2022)3 CTC 703]*** deals about the existence of joint family nucleus, purchase out of the joint family nucleus, profits, etc., facts. So also the unreported judgement of this court in ***Govindammal and others Vs. Anjugam and others (Second Appeal No.1719 of 2008, dated 28/03/2024)***. Here the issue is entirely different as mentioned above. Whether the sale proceeds under Ex.A3 was utilized for purchasing the property under Ex.A4 is the only point, which was raised and was considered in the light of the recitals made in Ex.A3. So, these judgments are not relevant for the present discussion.

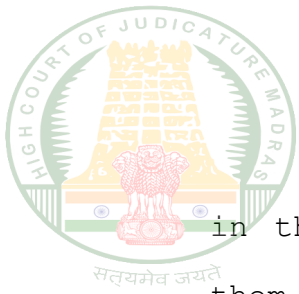
20.Now coming to the other aspect of whether the sale executed by the second defendant in favour of the first defendant is valid and binding upon the plaintiff's share also. Now, it is admitted that the father is the



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Kartha of the joint family and for sometime, they were living together and after that, they separated and the father went to his sister-in-law's house started residing there. What was the issue between the father and son is not very much clear on record. But only stray sentence is available in the evidence of the appellant, wherein he has stated that some of the properties were purchased in his own name by his father. Even though in the plaint, he has stated that those properties were purchased by selling the sreedhana of his wife, but during cross examination, he has stated that some of the properties namely the properties, which were deleted from the plaint were purchased in his name, but denied that it was purchased by him out of the joint family income. There was no enmity between himself and his father. After the death of the mother, they were living together for about two months and thereafter, they separated and the father started living separately, according to him, on the date of the plaint, in the house of his sister-in-law. He denied the suggestion by the first defendant that he pressurised the father to execute the settlement deed in his favour, for which he refused. So, the father was taken to Trichy forcibly. But he would admit that only after the above said incident, the second defendant sold the property to the first defendant. This stray sentence



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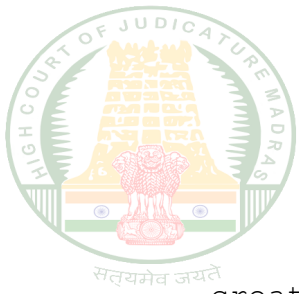


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in the evidence shows that something went wrong between them for some unknown reasons, which the plaintiff has not disclosed, except stating that under the influence of the second defendant's sister-in-law, he sold the property to the first defendant.

21.Now coming to the sale and its validity, it is the specific contention of the first defendant as well as the second defendant before his death while filing the written statement that the property was sold for discharging some debts, which are very much mentioned in the sale deed in favour of the first defendant under Ex.B1. To show that the second defendant was indebted to several persons, the first defendant has examined those creditors as DW2 and DW3. They supported the case of the first defendant that as per the recital made under Ex.B1, debts were discharged by the first defendant. Only a portion of the sale price was received by the second defendant after deducting those discharge of debt amounts.

22.So, from the evidence of DW2 and DW3, it stands established that sale was made by the second defendant for discharging the debts.

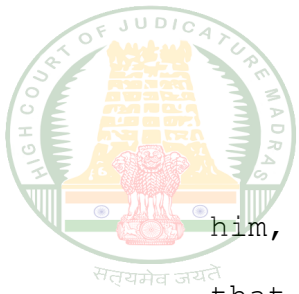


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23. Now the plaintiff says that Exs.B3 to B5 are created documents. I find absolutely no reason to discard those documentary evidence and oral evidence of DW2 and DW3. Even during the course of argument, nothing was brought on record by the appellant herein warranting this court to disbelieve the evidence of DW2 and DW3 and the pro-notes and discharges, etc. From these documents and oral evidence, it stands established on the side of the first defendant that the second defendant sold the property to discharge the debts. So, the next question which arises for consideration is whether those debts were incurred by the father for immoral or illegal purposes.

24. As per the judgment of this court reported in ***Mariammal and another Vs. Subbuthai and others [(2013(5) CTC 49)]***, unless the plaintiff is able to establish by cogent and convincing evidence that the sale was not effected for valid reason or for immoral or illegal purposes, the plaintiff cannot succeed. Here, absolutely no such plea was raised, either in the plaint or during the course of evidence. But at the time of argument, the learned counsel appearing for the appellant would submit that Ex.A3 itself is not a valid consideration, since for two hundred rupees, the property was sold. According to



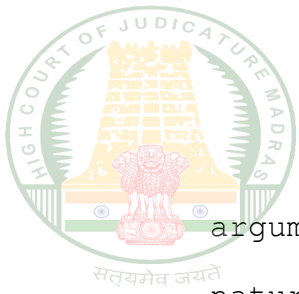
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him, it will show the illegal nature of the sale. But that is not the case of the appellant, as mentioned above, either in the plaint or in the evidence. So, the belated attempt on the part of the plaintiff to impress upon this court that the sale consideration under Ex.A3 is very low and so, the sale itself is illegal will not stand. And if the case of the plaintiff that the sale under Ex.A3 is illegal, he ought to have added that property in the plaint, but he has shown the only property purchased under Ex.A4 in the plaint. So, this argument on the side of the appellant does not lie and cannot be accepted.

25. Another contention is that to defeat the right of the plaintiff, the valuation was shown as very low under Ex.A3. As mentioned above, it is not the case of the plaintiff. Unless and until, the plaintiff is able to establish the illegal or immoral purposes connecting with Ex.B1, the plaintiff cannot succeed. But on the contrary, as mentioned above, nothing was brought on record by him. So, believing the evidence of DW2 and DW3 and the documentary evidence, this court is of the considered view that the property was sold for valid reasons and for discharging the debts. As a pious obligation, sale is binding upon the plaintiff's share also. None of the



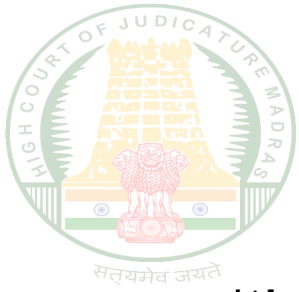
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arguments advanced by the appellant are sustainable in nature and accordingly, are rejected. So, the second substantial question of law is answered that even though the contention was raised by the second defendant that the suit property is his absolute property, it is not correct. It is the joint family of the plaintiff and the second defendant.

Substantial Question of Law No.1:-

26.This substantial question of law is also covered the substantial question of law No.2 regarding the validity of Ex.B1. So, this Substantial Question of Law is answered that no illegality was committed by the trial court in reading the evidence with reference to the binding nature of the sale made by the second defendant in favour of the first defendant, so far as the share of the plaintiff is concerned. Though for different reasons, this court differs from the finding recorded by the appellate court regarding the ancestral character of the suit property. So, this substantial question of law is answered that for different reasons, the judgment and decree of the appellate court are liable to be confirmed and accordingly, confirmed.



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27.In the result, the second appeal is **dismissed**

with costs through confirming the judgment and decree of the appellate court.

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To,

- 1.The District Judge,
Trichy.
- 2.The Subordinate Judge,
Trichy.
- 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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