



SA(MD)No.187 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 24.06.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.(MD)No.187 of 2025

Vijayan @ Alagarsamy

... Appellant / Plaintiff

Vs

1.A.R.Murugesan

... 1st Defendant / 1st Respondent / 1st Respondent

2.A.R.Kandasamy @ Selvam

... 1 and 2 Defendants / 1 and 2 Respondents /

1 and 2 Respondents

3.Selvam @ Alagarsamy

... 4th Defendant / 3rd Respondent / 3rd Respondent

Prayer : This Second Appeal is filed under Section 100 C.P.C., to set aside the judgment and decree passed in A.S.No.12 of 2018, on 19.07.2019, on the file of the Subordinate Court, Thirumangalam, confirming the judgment and decree, passed in O.S.No.60 of 2006, on 26.10.2017, on the file of the District Munsif Court, Thirumangalam and thereby allow this Second Appeal.



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For Petitioner : Mr.F.X.Eugene

For Respondents : Mr.V.N.Arjun
for Mr.N.Vallinayagam,
Senior Counsel

ORDER

The unsuccessful plaintiff is the appellant. The Second Appeal is filed challenging the judgment and decree dated 19.07.2019 in A.S.No. 12 of 2018, on the file of the Subordinate Court, Thirumangalam, confirming the judgment and decree dated 26.10.2017 in O.S.No.60 of 2006 on the file of the District Munsif Court, Tirumangalam.

2. The parties are referred to as per their litigative status before the trial court.

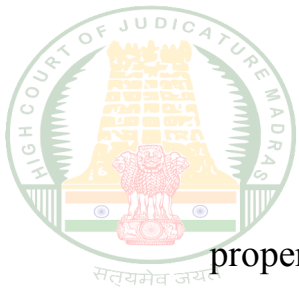
3. It is case of the plaintiff that originally, the suit property was purchased by his father from the legal heirs of one Perumal Naicker namely Subbammal, Nallakumar Naicker and Perumal Naicker through a registered sale deed dated 31.03.1951 in Ex.A1. Plaintiff's father namely Gurusamy Naicker @ Chinna Gurusamy Naicker had two brothers and one sister namely Periya Gurusamy Naicker, Raju Naicker @ Gurusamy



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Naicker and Guruvammal. It is the further case of the plaintiff that when he was 4 ½ years old, his father Chinna Gurusamy Naicker died in the year 1966 and his mother Perumallakkal also died. He was adopted and taken care of by the Periya Gurusamy Naicker and Aunt Guruvammal. While so, Periya Gurusamy Naicker had wrongly divided the suit property which was exclusively purchased by his father in Ex.A1, granting 1/3 share to Raju @ Gurusamy Naicker, which vested now with the 1 and 2 defendants and he retained 1/3 share with himself, which now vested with the 4th defendant and only the balance 1/3 share was allotted to the plaintiff. It is the further case of the plaintiff that only in the year 1995, his aunt Guruvammal informed the plaintiff that the suit property is an absolute property belonging to the plaintiff, since it was exclusively purchased by his father in Ex.A1. Thereafter, the plaintiff had come up with this suit seeking for declaration and recovery of possession.

4. The defendants resisted the suit contending that though the sale deed dated 31.03.1951 stood in the name of the father of the plaintiff in Ex.A1, it was purchased out of the joint family funds and registered, only for convenience, in the name of the plaintiff's father. Further the other



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properties that were purchased in the name of the other brothers ie., the father of the defendants, were also thrown into a common hotchpot and enjoyed as a joint Hindu family property. In or about 1966, the parties have divided the entire properties along with the suit property and in the suit property the Eastern side having 49 cents in Survey No.39/2 was allotted to the defendants 1 and 2, the middle portion of 48 cents was allotted to the plaintiff and the western portion of 48 cents was allotted to the 3rd defendant. It is the further case that likewise, even the properties which were purchased and registered in the names of the fathers of the defendants and the brother of Chinna Gurusamy Naicker were also divided and in respect of one such property in S.No.78/2C1 which stood in the name of the father of defendants 1 and 2, to an extent of 21 cents was allotted in favour of the plaintiff, which he has also sold in favour of one Paramasivam through a sale deed dated 08.09.1997. As such, the claim made by the plaintiff claiming exclusive right over the suit schedule property is not sustainable. Further they contended that partition having been effected in the year 1966, the suit is barred by limitation and sought for dismissal of the suit.



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5. During trial, the plaintiff examined himself as P.W.1 and marked Ex.A1 to Ex.A8. On the side of the defendants, the first defendant examined himself as D.W.1 and the fourth defendant was examined as D.W.2 and documents in Ex.B1 to Ex.B6 were marked. The trial Court after analysing the evidences dismissed the suit holding that the plaintiff cannot claim exclusive right over the suit property by placing reliance on the admission made by P.W.1 and also the sale deeds filed by the defendants particularly in Ex.B4. On appeal, the lower appellate Court also dismissed the appeal, confirming the judgment and decree of the trial Court, accepting the case of the defendants holding that there had been a partition in which the suit property has been allotted to all the parties. Assailing the concurrent finding of fact, the plaintiff is before this Court on appeal.

6. The appeal has not been admitted and this Court by order dated 10.02.2025, had only issued notice to the respondents.

7. Mr.F.X.Eugene, learned counsel appearing for the appellant argued that when admittedly the sale deed in Ex.A1 stands in the name of the father of the plaintiff for the suit property, it is to be presumed that it



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is an exclusive property and the plaintiff being the only son, is entitled for the entire extent of A schedule property and whereas the defendants have come forward with the case claiming that there was an oral partition in the year 1966, then the burden was on them to prove that there was an oral partition in view of Section 101 of the Evidence Act.

8. Learned counsel further contents that the defendants failed to establish that even though the suit property was purchased in the name of the father of the plaintiff, the same was voluntarily thrown into the common hotchpot where by the suit property was treated as a joint family property and unless there is necessary pleading and evidence the defendants cannot successfully prove the theory of blending.

9. It is the further contention that as far as the sale made by the plaintiff, in the reply statement filed, he had specifically contended that he got right over the extent of the property through exchange with one of the defendants and the Courts below have not appraised the evidence in a proper perspective and therefore the findings are perverse and sought for interference of this Court.



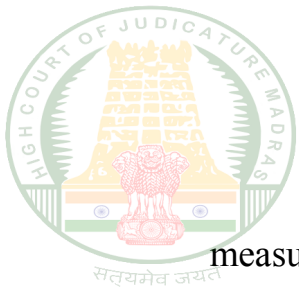
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10. Per contra, learned counsel appearing for the respondents submitted that the defendants by filing the document in Ex.B4 which is the sale deed executed by the plaintiff himself in respect of the property that stands in the name of the father of the defendants 1 and 2 and also by cross examination of P.W.1, have successfully proved that all the properties were treated as joint family properties and there had been an oral partition and in the partition, the 'A' schedule property has been allotted to all the parties who are the legal heirs of the three brothers including the plaintiff. The Courts below have rightly appreciated the documents and have concurrently rendered a finding which is based on materials available on record and need no interference and sought for dismissal of the appeal.

11. Heard the rival submissions and perused the materials available on record.

12. Originally one Perumal Naicker had three sons namely Chinna Gurusamy Naicker, Periya Gurusamy Naicker, Raju @ Gurusamy Naicker and one daughter Guruvammal. Admittedly, the suit property



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measuring an extent of 1.47 acres were purchased in the name of the plaintiff's father Chinna Gurusamy Naicker on 31.03.1951 in Ex.A1 = Ex.B2. Chinna Gurusam Naicker died in the year 1966 and immediately thereafter his wife Perumallakkal also died when the plaintiff was a minor, only 4 ½ years old. Even according to the case of the plaintiff, he was adopted and taken care by his uncle and aunt Periya Gurusamy Naicker and Guruvammal. The plaintiff had come up with the suit for declaration and recovery of possession mainly on the ground that since the property was purchased by his father in Ex.A1, and since he was a minor while his parents died, he was not aware of the details of the purchase made by his father and only in the year 1995, his aunt Guruvammal had informed about the exclusive purchase made by his father in Ex.A1. In the meantime, his uncle Periya Gurusamy Naicker had divided the suit properties into three shares and by retaining one share with him which had gone to the fourth defendant his son, had allotted one share to his brother Raju @ Guru samy Naicker which went to the share of his sons defendants 1 and 2 and had allotted the balance 1/3 share in favour of the plaintiff. It is the specific case of the plaintiff that when his father had purchased the suit schedule property, his uncle

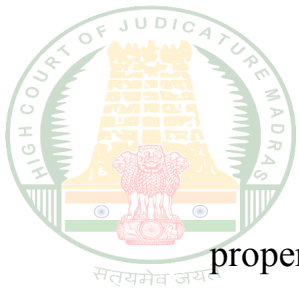


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Periya Gurusamy Naicker had no right to partition the suit property into three shares, when the plaintiff as the son is entitled for the entire share of the suit schedule property.

13. It is specific case of the defendants that the properties have been purchased in the name of different brothers only as per the convenience and the properties were purchased from out of the common funds of the family and all the properties purchased were all along treated as joint family properties and were in common enjoyment. It is the further case of the defendants that there was a oral partition in the year 1966 and in the oral partition, the suit property and all other properties were partitioned among the legal heirs and the 'A' schedule property also was partitioned into three shares out of which 1/3 share was allotted to the plaintiff.

14. When the defendants have come forward to resist the suit on the ground that there had been oral partition in the year 1966 and though the suit property was purchased in the name of the plaintiff's father, still the same was purchased through the joint family funds and the suit



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property was treated as a joint family property, the burden was on the defendants to establish the facts pleaded by them to the effect that the suit property is a joint family property. To prove the said contentions pleaded by them, the defendants have cross examined P.W.1 and also filed documents, particularly the sale deed executed by the plaintiff in Ex.B4.

15. The perusal of the sale deed executed by the plaintiff in Ex.B4 goes to show that he has executed a sale deed in favour of one Paramasivam in respect of an extent of 21 cents in Survey No.78/2C1. The sale deed has been executed by the plaintiff stating that he got the properties through his ancestors. The plaintiff also admitted in his cross examination that he has sold the 21 cents in Ex.B4 to one Paramasivam. It is also admitted by the plaintiff that the 21 cents which he has sold to Paramasivam in Ex.B4 is out of the property that was purchased in the name of Raju @ Gurusamy naicker who is the father of defendants 1 and 2. When the sale deed specifically stands in the name of the father of the defendants 1 and 2 namely Raju @ Gurusamy naicker, the plaintiff had sold 21 cents out of that property by stating that he got this property



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through his ancestors. Further, when the plaintiff has also admitted that this property stands in the name of the father of defendants 1 and 2, he had only stated in his reply statement that he got this property through exchange. However, during trial, the plaintiff has not come forward to produce any documents to prove his contention that he got this property from out of an exchange carried out between the defendants. In the absence of any proof on the part of the plaintiff that he got this property in exchange and when the plaintiff admits that he has executed a sale deed in Ex.B4 to a third person for a property that stands in the name of the father of the defendants 1 and 2, the defendants have successfully pleaded and established the fact that even though the properties were purchased in the names of the brothers, which has been done for convenience, there had been a partition in the year 1966 whereby all the properties were put together and the shares were allotted to all the parties including the suit schedule property.

16. The Courts below have analysed the documents and evidence and from the admission made by the plaintiff and also the documents filed by the defendant in Ex.B4, had rendered a finding to the effect that



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the plaintiffs cannot claim exclusive right over the suit property. As there had been a partition in which the 'A' schedule property has been divided into three shares and only one share has been allotted in favour of the plaintiff, the concurrent finding of fact rendered by the Courts are based on the materials available on record and this Court does not find any illegality or perversity in the findings arrived at.

17. No substantial question of law arises for the consideration of this Court in the above appeal. In such circumstances, this Second Appeal is dismissed. However, there is no orders as to costs.

24.06.2025

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

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- To
1. The Subordinate Judge, Thirumangalam.
 2. The District Munsif , Thirumangalam.
 - 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ARUL MURUGAN, J.

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