



A.S. No.1033 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.03.2026

PRONOUNCED ON : 30.04.2026

CORAM

THE HONOURABLE MR. JUSTICE C.V. KARTHIKEYAN

And

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

A.S. No.1033 of 2012

1. Ramanathan
2. Amirthalakshmi
3. Gnanasoundari

... Plaintiffs/ Appellants

-VS-

1. Ilayaperumal (Died)
2. Subramanian
3. Rajavel
4. Janakakumari

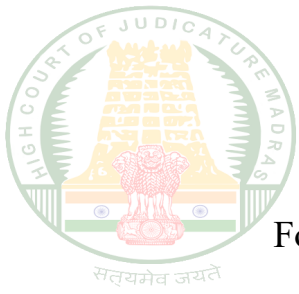
... Defendants/ Respondents 1 to 4

5. Janava

... 5th Respondent

(R5 is brought on record as LR's of deceased R1,
vide order of the Court, dated 01.04.2024 made
in C.M.P.No.18040/ 2022 in A.S.No.1033/ 2012)

Prayer: First Appeal filed under Section 96 and Order 41 Rule 1 of the Civil Procedure Code, to set aside the judgment and decree of the learned Principal District Judge of Cuddalore dated 06.08.2012, passed in O.S.No.187 of 2010.



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For Appellants : Mr. R. Gururaj
For RR 3 and 4 : Mr. S. Mukunth (Senior Counsel)
For M/s. R. Ajitha
For R5 : No Appearance

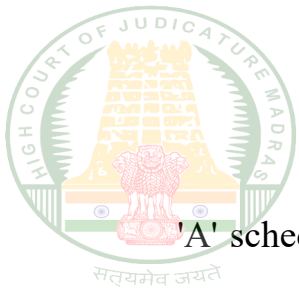
JUDGMENT

[Order made by K. RAJASEKAR, J.]

The unsuccessful plaintiffs have come forward with this appeal, aggrieved over the dismissal of the suit filed for partition in O.S.No.187 of 2010, vide judgment and decree dated 06.08.2012 passed by the learned Principal District Judge, Cuddalore.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Trial Court.

3. The case of the appellants/ plaintiffs is that, they are the son and daughters of the first defendant. Originally, Hindu undivided family constituting the first defendant, the second defendant and the plaintiffs were in possession of



'A' schedule property. The first defendant, as the Karta of the joint family, sold the 'A' schedule property and purchased the 'B' schedule property and they were in possession and enjoyment of the same. Without the consent of other coparceners, the first defendant sold the 'B' schedule property in favour of the defendants 3 and 4, who are the husband and wife, vide sale deed dated 13.03.2003. The plaintiffs are having 3/5th share in the 'B' schedule property, now they have come forward with the suit for partition and allotment of shares by metes and bounds. Before the Trial Court, the first defendant was set ex-parte, the second defendant supported the case of the plaintiffs and the defendants 3 and 4 contested the suit.

4. The case of the third and fourth defendants is that, the 'A' schedule property was not a joint family property and the 'B' schedule property was purchased by the first defendant from the income earned by him, as a carpenter. The 'A' schedule property was inherited by him, after the death of his father and mother. Further, the first defendant had sold the 'B' schedule property as early as in the year 2003 and the suit was filed after lapse of several years, alleging that the sale deed executed in favour of the third and fourth defendants was not known to them, which is clearly false. The third and fourth defendants purchased



the property by paying proper sale consideration, hence prays to dismiss the suit.

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5. The Trial Court after considering the pleadings on both sides, framed the following issues:

1. *Whether the sale deed dated 13.03.2003 executed by the first defendant in favour of the defendants 3 and 4 is void?*
2. *Whether the plaintiffs are in joint possession of the suit properties?*
3. *Whether proper and correct court fees have been paid?*
4. *Whether the suit is collusive in nature?*
5. *Whether the plaintiffs are entitled to 3/5th shares in the suit properties?*
6. *To what reliefs are the plaintiffs entitled to?*

6. On the side of the plaintiffs, P.W.1 to P.W.6 were examined and Exs.A.1 to A.5 were marked. On the side of the defendants, D.W.1 to D.W.3 were examined and Exs.B.1 to B.7 were marked. Court Document was marked as Ex.X.1.

7. The Trial Court after considering the evidence placed on record, held that plaintiffs have approached the Court with unclean hands, by making false



claim and also mis-leading the Court. It has also observed that plaintiffs have not made out the case, that the 'A' schedule property was a joint family property and out of the sale consideration of the 'A' schedule property, 'B' schedule property was purchased. Accordingly, the Trial Court has dismissed the suit.

8. Aggrieved over the dismissal of the suit, the plaintiffs have come forward with this appeal. During pendency of this appeal, the first defendant was died and his legal heir was added as fifth respondent in this case.

9. The question arises for consideration before this Court is as follows:

1. *Whether the plaintiffs have established that the 'A' schedule property was a coparcenary property of plaintiffs and defendants 1 and 2?*
2. *Whether the 'B' schedule property was purchased from the sale proceed of the 'A' schedule property or not?*
3. *Whether the sale deed executed by the first defendant in favour of defendants 3 and 4 is valid?*
4. *Whether the appeal has to be allowed or not?*

10. The learned counsel appearing for appellants submitted that admittedly, a partition was effected between the family of the first defendant, as



early as in the year 1973 and through this partition, the 'A' schedule property was allotted to the first defendant, thereby plaintiffs by birth are entitled to the share in the coparcenary property, hence the 'A' schedule property is a joint family property. He also submitted that, as the Karta of the family, the first defendant sold the same on 22.09.1993 (Ex.A.1) and out of the sale consideration of the 'A' schedule property, he purchased the 'B' schedule property on 23.08.1995 (Ex.B.1), therefore, the 'B' schedule property retained the character of the joint family property. He further submitted that the Trial Court has not properly appreciated the evidence on record, more particularly, the documentary evidence produced in support of the plaintiffs, prays to set aside the judgment and decree of the Trial Court and allot the share to the plaintiffs.

11. The learned counsel appearing for defendants 3 and 4 submitted that the plaintiffs have failed to prove the nature of the 'A' schedule property and also there is a clinching evidence to show that the 'A' schedule property was sold only for a small amount of Rs.18,000/-, whereas the 'B' schedule property was purchased by the first defendant for a sum of Rs.60,000/-. He also submitted that there is no proximity between the sale and purchase of the 'A' schedule and 'B' schedule properties, respectively. Hence the plaintiffs have not made out the



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case, therefore the Trial Court has rightly dismissed the suit, hence prays to dismiss the appeal.

12. We have considered the submissions made on both sides and perused the records.

13. Though, it is submitted by the plaintiffs that the 'A' schedule property was allotted to the first defendant by way of a partition deed executed in the year 1973, the said partition deed was not produced before the Court to show the nature of the property allotted to the first defendant. Further, on perusal of the sale deed dated 22.09.1993 (Ex.A.1), it shows that the first defendant, as a guardian of his sons namely Minor Subramanian and Minor Ramanathan and along with his mother namely Chellakannu Ammal had sold the property to one Padmanabhan. It shows that the minors were also parties to the aforesaid sale deed (Ex.A.1).

14. By way of Ex.A.1, two properties were sold. It is recited that the first item of property in Ex.A.1 was allotted to the mother of the first defendant namely Chellakannu Ammal, and the second item of the property was allotted to



the first defendant, as per the partition deed dated 30.10.1973. The sale deed was executed on 22.09.1993 and the first plaintiff and the second defendant were party to the aforesaid sale deed (Ex.A.1). The properties was sold for the total sale consideration of Rs.18,000/- and it is also stated that for the purpose of meeting out their family expenses, they all joint together and sold the property.

15. It is alleged by the plaintiffs that from the sale consideration of 'A' schedule property, 'B' schedule property was purchased, as per the sale deed dated 23.08.1995 (Ex.B.1). Whereas on perusal of Ex.B.1, it reveals that the sale consideration paid for the purchase of the 'B' schedule property is Rs.60,000/-. Ex.A.1 shows that the portion of the property sold belongs to the mother of the first defendant, such being the case, the sale consideration paid to the mother of the first defendant could not be considered as joint family funds.

16. The 'A' schedule property was sold only for a sum of Rs.18,000/- whereas the 'B' schedule property was purchased, after two years for a sum of Rs.60,000/-. It is also admitted evidence that the first defendant was a carpenter by profession and used to earn income by doing carpentry activities. There is no documents produced on the side of the plaintiffs to show that, what are the



properties allotted in the partition, executed in the year 1973 and also the nature of properties partitioned. In the cross examination of P.W.1, he had admitted that the 'A' schedule property was purchased by his grandfather namely Thangavel and there is no evidence to show that property purchased by the father of the first defendant was ancestral or joint family property of Thangavel and his family. There is no evidence to show that the property allotted to the first defendant and his mother (Chellakannu ammal), retains the character of coparcenary property. As a grandchildren, when their father (first defendant) is alive, the plaintiffs are claiming share in the property derived from their grandfather Thangavel. The Trial Court has observed that, since the plaintiffs claim share in the property belongs to their grandfather, in the absence of any documents to show that the 'A' schedule property was an ancestral property, they are not entitled for claiming right over the suit property. Similarly, the 1st item in the 'A' schedule property belongs to the mother of the first defendant, the plaintiffs are not entitled to claim that the 1st item of the 'A' schedule property sold under Ex.A.1 is a coparcenary property.

17. Though, the first plaintiff and the second defendant were added as parties in the Ex.A.1 – sale deed, the same would not confer any right to the



plaintiffs, to claim that they are coparceners, unless there is a evidence to show that, what was sold under Ex.A.2 ('B' schedule property) is the coparcenary property. The burden is on the plaintiffs to prove that the 'A' schedule property was the ancestral property and the fact that out of that sale consideration, 'B' schedule property was purchased.

18. As observed in the earlier paragraph, the 'A' schedule property was sold only for a sum of Rs.18,000/-, in which both the first defendant and his mother are having share and when the first defendant is alive, the plaintiffs are no longer entitled to claim right in their grandfather's property, unless there is an evidence to show that the property allotted to the first defendant, as per the partition is an ancestral coparcenary property, but the plaintiffs failed to establish the above basic facts. It is also to be noted that in the Ex.A.2 – sale deed executed by the first defendant in favour of the defendants 3 and 4, the first defendant had made a declaration that he had purchased the property ('B' schedule property) in the year 1995 out of his own income and after 8 years, he had come forward to sell the same. Therefore, the plaintiffs have failed to establish the nature of the 'A' schedule property and the sale deed executed by the first defendant in favour of defendants 3 and 4 was of the year 2003, which has



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been challenged in the year 2010, hence this Court is of the view that, the suit has been filed with a malafide intention.

19. In view of the discussions made above, this Court finds that the Trial Court after considering the oral and documentary evidence placed on record, including the facts of possession of the property and other aspects has rightly held that the plaintiffs have failed to establish that the property said to have been partitioned and allotted to the first defendant is a joint family property and they are not having share in that 'A' schedule property. We are of the view that the plaintiffs have failed to establish that they are having share in the suit property and there is no infirmity in the findings of the Trial Court.

20. In the result, the appeal is dismissed. Consequently, connected civil miscellaneous petition, if any stands closed. There shall be no order as to costs.

(C.V. KARTHIKEYAN, J.) (K.RAJASEKAR, J.)

30-04-2026

Index : Yes/No
Internet: Yes/No



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Speaking order/Non-Speaking order
Neutral Citation : Yes/No

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C.V. KARTHIKEYAN, J.
AND
K. RAJASEKAR, J.

stn

To

1. The Principal District Judge, Cuddalore.
2. The Section Officer,
V.R. Section,
High Court of Madras.

**Pre-delivery Judgment made in
A.S. No.1033 of 2012**



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