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S.A.No.388 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.388 of 2022

1.Paneerselvam
2.Singaravelu

... Appellants

vs.

Radhakrishnan (died)
1.Thanjaimani
2.Chozhavendan
3.Tamilnesan
4.Thangamani
5.Premalatha

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 02.09.2021 passed in A.S.No.26 of 2014 on the file of the Principal Sub Judge, Nagapattinam and to confirming the Judgment and decree dated 19.03.2014 in O.S.No.62 of 2010 on the file of the District Munsif and Judicial Magistrate, Vedaranyam.

For Appellants : Mr.S.Parthasarathy

For Respondents :Ms.BA.Nalini
for M/s.G.V.Balamurugan
for R1, R2, R4 and R5
R3-left



J U D G M E N T

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The defendants are the appellants.

2. The respondents herein filed a suit for declaration of title and recovery of possession. The suit was partly decreed, granting declaration of title and delivery of possession to the respondents/plaintiffs. The appeal filed by the defendants was also dismissed by First Appellate Court by confirming the findings of the trial Court. Hence, challenging the concurrent finding, the appellants/defendants has come before this Court.

3. According to the respondents/plaintiffs, the suit property is originally allotted in family partition to plaintiff's father, defendant's father and their brothers. Subsequently, there was a partition between the plaintiff's father namely Govindasamy Gounder and the defendant's father. In the said oral partition, 78 cents out of total extent of 1.56 acres in S.No.78/4 was allotted to the share of plaintiff's father. Likewise, 20 cents out of 23 cents in S.No.78/5 was allotted to the share of his father. The plaintiff's father had been in possession and enjoyment of the property allotted to his father. After his death, the plaintiff's sister filed a suit for partition in OS No.125 of 1976 seeking partition of the properties including the present suit property,

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which was shown as item Nos.13 and 14 in the suit filed by the sister of the plaintiff in the suit.

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4. It is the further case of the plaintiffs that the defendants encroached the portion of the property allotted to the plaintiffs in S.Nos.78/4 and 78/5. The plaintiffs preferred a police complaint against the defendants. Though the defendants assured to remove the encroachment and hand over possession to the plaintiffs, they failed to do so. Therefore, the plaintiffs filed a plaint for declaration of title and recovery of possession.

5. The appellants/defendants filed a written statement and denied the averment in the plaint as if 78 cents in S.No.78/4 and 20 cents in S.No.78/5 were allotted to the share of the plaintiff's father. Though the defendants admitted the partition as pleaded by the plaintiffs, it is the specific case of the defendants that only 41 cents in S.No.78/4 was allotted to plaintiff's family. Likewise, according to the defendants, only 8 cents in S.No.78/5 was allotted to the plaintiff's family. It was also stated by the defendants that the patta for the suit property stands jointly in the name of the plaintiffs and defendants, and hence they sought for the dismissal of the suit,



6. Before the trial court, the plaintiff was examined as P.W.1 and two other witnesses were examined as P.W.2 and P.W.3. Ten documents were marked on the side of the plaintiffs as Exs.A1 to A10. On behalf of the defendants, the first defendant was examined as D.W.1 and paternal uncle was examined as DW.2. On behalf of the defendants, fourteen documents were marked as Exs.B1 to B14.

7. The trial Court on consideration of evidence available on record came to the conclusion that the plaintiffs proved the allotment of suit properties to their father in the earlier oral partition and hence decreed the suit for declaration and for recovery of possession. Aggrieved by the same, the defendants preferred an appeal in A.S. No.26 of 2014 on the file of the Subordinate Judge, Nagapattinam. The First Appellate Court also confirmed the finding of the trial Court and dismissed the appeal by confirming the judgment and decree passed by the trial Court. Aggrieved by the said concurrent finding, the appellants/plaintiffs preferred the second appeal.



8. The learned counsel appearing for the appellants vehemently contended that the courts below relying on the decree passed in the earlier suit filed by the plaintiff's sister in O.S.No.125 of 1976 decreed the present suit and the same is not sustainable as the defendants were not made as party to the earlier suit. The learned counsel also submitted that though the plaintiffs claim 78 cents in S.No.78/4 and 20 cents in S.No.78/5 were allotted to their share in the oral partition, there is no proof to substantiate the same. Therefore, the judgment and decree passed by the courts below are liable to be set aside.

9. A perusal of the pleadings would indicate that there is no dispute between the parties with regard to the oral partition between the plaintiffs' father and defendant's father. In the written statement filed by them, they clearly admitted the partition as pleaded by the plaintiffs. The dispute is only with regard to the extent of the property allotted to the plaintiffs. According to the plaintiffs, 78 cents in S.No.78/4 and 20 cents in S.No.78/5 have been allotted to plaintiff's father's share in the oral partition. On the other hand, the defendants claimed that lesser extent of 41 cents in S.No.78/4 and 8 cents in S.No.78/5 only allotted to the share of the plaintiffs.



10. In support of the contention, the original plaintiff (since deceased) was examined as P.W.1 and two other witnesses were examined on their side.

11. It is pertinent to mention that the present suit properties were shown as properties of the plaintiffs family in the suit for partition filed by the plaintiff's sister namely Jegathammal in OS No.125 of 1976 on the file of Subordinate Court, Nagapattinam.

12. A perusal of the preliminary decree passed in the said suit which has been marked as Ex.A4 would indicate the present suit properties were shown as item Nos.13 and 14 in the said suit. The above said suit was filed by sister of the plaintiff in the year 1976, nearly 34 years prior to the present suit. If the suit properties were not allotted to the share of the plaintiffs' father, absolutely there was no occasion for original plaintiff's sister to include the suit properties also in the suit for partition. Further it is pertinent to mention that the defendant's junior paternal uncle namely Chokalingam was examined as P.W.5 in suit in OS No.125 of 1976 and his deposition was marked as Ex.A8.



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13. Likewise, the father of the defendants therein also examined as a witness in the earlier suit in OS.No.125 of 1976 and his deposition has been marked as Ex.B5. Though the First Appellate Court in its finding recorded that Ex.B5 is not readable, it is also said that in Ex.A8, deposition of defendant's paternal uncle, Chokalingam, he clearly mentioned about partition of the properties between father of the plaintiffs and defendants father and allotment of the properties to their respective shares. He also stated that both of them have been enjoying the respective properties allotted to them.

14. If the extent of 78 cents in S.No.78/4 and 20 cents in S.No.78/5 have not been allotted to the share of plaintiff's father, certainly PW5 and PW7 in the above suit property, namely the father of the defendants and junior paternal uncle of the defendant would not have been deposed in favor of the plaintiffs therein in this said suit.

15. Taking into consideration the evidence of PW.5 in the earlier suit which was marked as Ex.A8 and the other evidence available on record,



both the courts below came to the conclusion that the plaintiffs proved allotment of suit properties to their father in the oral partition. The said factual conclusion is based on proper appreciation of evidence available on record.

16. I do not find any perversity in the approach of the courts below. No substantial question of law arising for consideration in the second appeal and accordingly the same stands dismissed. Consequently, the connected Civil Miscellaneous Petition is closed. No costs.

09.04.2026

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To
WEB COPY

1.The Principal Sub Judge,
Nagapattinam.

2.The District Munsif and Judicial Magistrate,
Vedaranyam.



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S.SOUNTHAR, J.

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