

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON
03.03.2026PRONOUNCED ON
12.06.2026

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THE HON'BLE MR.JUSTICE K.KUMARESH BABU

AS No. 644 of 2016
and CMP.No.18895 of 2016

Babu Naidu

S/o Meganantha Naidu, Old Door No.2/4d, New
Door No.7, Thenkadappanthangal Road St,
Thenkadappanthangal Vilalge, Walajapet Tk

..Appellant(s)

Vs

1. Venkatesa Naidu
S/o Meganatha Naidu, Thenkadappanthangal
Village.
2. Janagirama Naidu
S/o Meganatha Naidu, Thenkadappanthangal
Road St, Thenkadappanthangal Village,
Walajahpet.
3. Vasantha
W/o Ranganatha Naidu, Card Of D.Moorthy,
No.8 Samathammal St, 2nd St, Koibedu,
Chennai 107

..Respondent(s)

PRAYER:- First Appeal filed under Section 96 of Civil Procedure Code, to set aside the judgment and decree passed by the Additional District and Sessions Court-II Ranipet, Vellore in OS NO.36/2013 dated 22/03/2016

For Appellant(s): M/s.S.Thamizharasi

For Respondent(s): RR1 & 3 – No appearance
Mr.S.A.Saranraj for R2



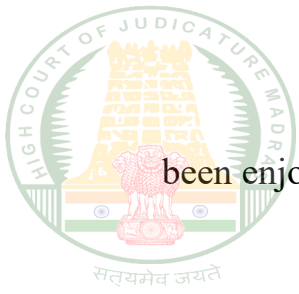
JUDGMENT

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The present first appeal has been filed challenging the judgment and decree passed by the Additional District and Session Court-XI, Ranipet, Vellore in O.S.No.36 of 2013, dated 22.03.2016.

2. The suit seeking a preliminary decree for partition and separate possession of the suit A scheduled property, together with a declaration that the B-schedule property described in the plaint constitutes a common pathway for the use and enjoyment of all the parties, and for consequential reliefs had been instituted. The appellant and respondents 1 and 2 are the sons of late Meganatha Naidu, while the third respondent is their elder sister.

3. According to the appellant, the suit properties were originally ancestral and belonged to the family. During the lifetime of their father, certain ancestral and joint family properties were divided among the family members under a registered Partition Deed dated 29.11.1973, marked as Exhibit A9. Under the said partition, the properties were divided into four schedules, wherein the 'A' schedule properties were allotted to the parents Meganatha Naidu and Rukmaniammal, the 'B' schedule to the first respondent Venkatesa Naidu, the 'C' schedule to the second respondent Janakirama Naidu, and the 'D' schedule to the appellant. Following the partition, the parties took possession of and have

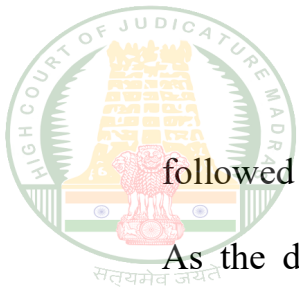


been enjoying their respective shares separately.

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4. The appellant contended that certain portions of the property had not been effectively included in the said partition and therefore continued to remain joint family properties. In particular, the appellant asserted that vacant house sites situated in Survey Nos.215/1D2 and 215/1C3 measuring about 9½ cents were not included in the earlier partition and were therefore liable to be divided among the parties. It was further alleged that the respondents had unlawfully taken possession of portions of the said property and had commenced construction, thereby denying the appellant's legitimate share.

5. The appellant also contended that the lands allotted to the appellant and the first respondent were situated away from the main road and therefore lacked proper access. In order to facilitate access, the father of the parties purchased a strip of land measuring approximately 20 feet in breadth and 350 feet in length from one Govindammal. Though the said land was purchased in the name of the first respondent, it was intended to serve as a common pathway for the benefit of the appellant and other family members, and the same constitutes the B-schedule property in the suit. According to the appellant, the respondents subsequently attempted to interfere with his right to use the said pathway and denied its common character. The appellant therefore issued a legal notice dated 25.01.2013, marked as Exhibit A2, to which the respondents sent a reply



followed by further rejoinder correspondence marked as Exhibits A3 and A4.

As the dispute remained unresolved, the appellant instituted the present suit seeking the aforesaid reliefs.

6. The respondents filed their written statement denying the allegations made in the plaint and contending that the suit was not maintainable. According to the respondents, the appellant had misconstrued the nature of the properties and the earlier arrangements within the family.

7. The respondents admitted the relationship between the parties but contended that the properties had already been effectively partitioned through the registered Partition Deed dated 29.11.1973 (Ex. A9) and that the parties had been enjoying their respective shares independently for several decades. They further contended that subsequent transactions, including settlement deeds and other property arrangements, had clarified the ownership of the respective properties.

8. In particular, the respondents relied upon the Settlement Deed dated 01.09.1990, marked as Exhibit A10, to demonstrate that the properties had been dealt with independently by the parties and that the appellant was fully aware of the arrangement. The respondents denied that the pathway claimed by the appellant was a common pathway and contended that the property purchased in



the name of the first respondent belonged exclusively to him.

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9. The respondents also relied upon several revenue records to demonstrate their possession and enjoyment of the properties. These documents included Patta (Ex. B1), house tax receipts (Ex. B2), water tax receipts (Ex. B3), electricity service records (Ex. B4 and Ex. B5), Chitta extracts (Ex. B6 to Ex. B10), Adangal (Ex. B11) and Field Measurement Sketch (Ex. B13). These documents were relied upon to establish the respondents' possession and the nature of the property. On these grounds, the respondents prayed for dismissal of the suit.

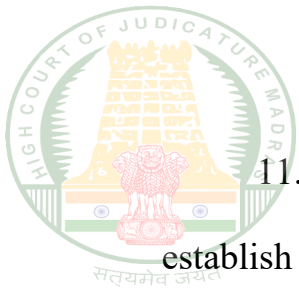
10. The Trial Court on these findings and evidence framed the following issues

1. Whether the appellant has established his right over the suit property and the alleged common pathway?

2. Whether the plaintiff is entitled to the declaration and consequential reliefs sought in the suit?

3. Whether the defendants have established their exclusive right over the disputed property?

4. To what other reliefs the parties are entitled?



11. On issue No. 1, the Trial Court held that the plaintiff had failed to establish that the B-schedule property constituted a common pathway for the use of all the parties. Though the appellant relied upon the oral testimony of PW1, PW2 and PW3 and the surrounding circumstances of the family arrangement, the Court found that the property stood in the name of the first respondent and that no documentary evidence had been produced to show that the said property was intended to be a common pathway. The Court further observed that the appellant had not established any legal right over the pathway apart from his oral assertion. Consequently, the Trial Court answered this issue against the appellant.

12. In view of the finding that the plaintiff had failed to prove that the B-schedule property was a common pathway, the Trial Court as a consequence held that the appellant was not entitled to the declaration sought in answering

13. On issue No.2, the Court observed that the appellant had not established any enforceable right over the property and therefore could not seek consequential reliefs based on such claim.

14. On issue No. 3, while considering the evidence produced by the respondents, the Trial Court took note of the documents marked as Exhibits B1 to B13 & has observed that these documents indicated possession and

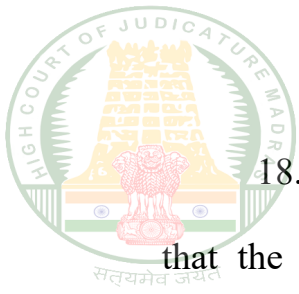


enjoyment of the property by the respondents. On the basis of these revenue records and the evidence of DW1 and DW2, the Trial Court concluded that the respondents had established their possession over the property and that the appellant had failed to disprove the same.

15. On Issue No.4, the Trial Court held that the plaintiff had not established any right to the reliefs sought in the suit. Consequently, the suit was dismissed by judgment and decree in O.S. No.36/2013 dated 22.03.2016, above which the present appeal has been filed.

16. Heard Ms. S. Thamizharasi the learned counsel appearing for the appellant and Mr. Saranraj the learned counsel appearing on behalf of the respondents.

17. The learned counsel for the appellant contended that certain portions of the suit properties had not been included in the earlier partition arrangements and therefore continued to remain joint family properties. He particularly relied upon the existence of vacant house sites situated in Survey Nos.215/1D2 and 215/1C3 measuring approximately 9½ cents, contending that the said property had not been the subject matter of the earlier partition deed, which is framed as A schedule property.



18. In support of his claim, he had examined himself as PW1 and deposed that the said property continued to remain joint. Drawing attention of the deposition of PW2 and PW3, he would contend that the property continuous to retain joint character. The appellants had relied upon documentary evidence marked as Ex. A1 to Ex. A 13, to demonstrate the existence of common property and his entitlement to a share therein. It was further contended on behalf of the appellant that the Trial Court had erred in disregarding the evidence of PW3 on the ground that he was related to the appellant. According to him, the evidence of a related witness cannot be discarded merely on the basis of relationship if the testimony is otherwise credible and consistent.

19. The appellant therefore contended that the Trial Court had failed to properly appreciate the oral and documentary evidence and had wrongly dismissed the suit.

20. On behalf of the respondents, it was contended that the appellant had failed to establish that any portion of the suit property continued to remain joint family property. They had relied upon the registered partition deed dated 29.11.1973, which was marked as Ex. A 9, to demonstrate that the ancestral properties had already been divided among the family members.



21. Taking this court through the deposition of DW1 and DW2, he would contend that the properties had been divided earlier and that each party had been enjoying their respective shares independently. They also stated that an oral partition had taken place in the year 1990, whereby the remaining house sites were also divided among the family members. The respondents relied upon documentary evidence marked as Ex. B1 to Ex. B13, to establish that the parties had been in separate possession and enjoyment of the properties for several years.

22. It was therefore argued that the appellant had not produced any convincing evidence to establish that the suit properties continued to remain joint family properties. According to the respondents, the suit had been filed only with the intention of disturbing the long-standing possession of the respondents and was therefore liable to be dismissed.

23. I have considered the submissions made by the Learned Counsel appearing on either side, and I have perused the materials available on record.

24. The following issues arise for consideration:

1. Whether the Court was right in rejecting the claim of the plaintiff for partition of the A schedule property?



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2. Whether the Court was correct in rejecting the declaration?

Issue No.1:-

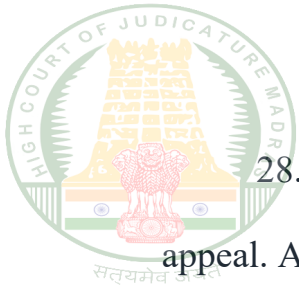
25. In dealing with the claim for partition, the Court had placed reliance upon the Partition Deed Exhibit A9 and the deposition of other parties, with regard to the oral partition in the year 1990, to come to the conclusion that the properties have already been partitioned between them and have been enjoying the same in their own rights, which has also been substantiated by various other documents that were exhibited before it. The appellant herein had also admitted in his deposition that in respect of the A schedule property, he had also been given patta in the year 2004 and also had given a conclusive finding that the defendant were also granted patta as early as in the year 1992, that is after the oral partition in the year 1990, which has also been admitted to by the appellant in his cross-examination.

26. In such a matter, this Court do not find any illegality or the infirmity of the finding that the property had already been partitioned between the parties and have been enjoying the same under their own rights, and hence the said issue is answered against the appellant.



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27. It is an admitted fact that the B schedule property had been purchased by the father in the name of the first defendant. Schedule B property had been purchased under Exhibit A1, and the same is dated 29-10-1973. Only after the purchase of the said property in the name of the first defendant, the partition deed had been entered between the parties under Exhibit A-9, on 29-11-1973. Admittedly, B-schedule property, had not been part of Exhibit A9, which came anterior to ExA1. This would mean that the B-schedule property had been purchased to give an effective partition under Exhibit A-9, as the first defendant had been allotted a property and Schedule B had been purchased to give the first defendant an access to his property that is to be allotted under the partition. Even though it is the claim of the appellant that he had also been using the same as a common pathway, as rightly pointed out by the Trial Court, he had failed to prove that the property had been used in common. The Court has also taken note of Exhibit A2, the legal notice issued by the appellant to also discredit the evidence of PW3 who had supported the case of the appellant in respect of the usage of B scheduled property. In this regard, the Court do not find any infirmity with the findings of the Court below in refusing the declaratory relief sought for by the appellant.



28. For the foregoing reasons, this Court does not find any merits in the appeal. Accordingly, the appeal suit stands dismissed, no costs.

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12.06.2026

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

GBA

To

1. The Additional District and Sessions Court-II,
Ranipet, Vellore
2. The Section Officer,
VR Section,
Madras High Court,
Madras



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K.KUMARESH BABU, J.

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