



WEB COPY

SA No. 96 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-03-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

SA No. 96 of 2020

N.Mayavan, S/o. Narayanasamy,
Vandayankuppam Village,
Manjakollai And Post,
Bhuvanagiri Taluk,
Cuddalore District.

..Appellant(s)

Vs

P.Elavazhagan, S/o. Pattusamy,
Vandayankuppam Village,
Manjakollai And Post,
Bhuvanagiri Taluk,
Cuddalore District.

..Respondent(s)

Prayer: Second Appeal filed under Section 100 of CPC to set aside the Judgment and Decree dated 25.07.2019 passed in A.S.No.38 of 2019 on the file of the II Additional District Judge, Chidambaram, Confirming the Judgment and Decree dated 31.08.2016 passed in OS.No.142/2011 on the file of the Additional District Munsif, Chidambaram.

For Appellant(s): Ms.V.Sivani
for Mr. K.V.Babu

For Respondent(s): M/s.A.Muthukumar



JUDGMENT

The unsuccessful defendant is the appellant herein. The respondent herein/plaintiff filed a suit for permanent injunction and it was decreed by the Trial Court. The findings of the Trial Court was affirmed by the first appellate court. Challenging the concurrent findings of the courts below, the defendant has come before this court.

2. According to the respondent/plaintiff, there was a partition in the family of the plaintiff and the defendant on 04.02.1960 under Ex.A1. In the said family partition, A schedule property was allotted to the plaintiff's grand father Gurusamy and the B schedule property was allotted to the defendant's father Narayanasamy. The suit properties are part of A schedule property allotted to the said Gurusamy. It is the case of the plaintiff that after partition, Gurusamy and Narayanasamy enjoyed their respective properties allotted to them. After the death of Gurusamy, his sole heir, Pattu samy enjoyed the suit property along with other properties. After the demise of Pattusamy, the properties devolved on the heirs of Pattusamy, including the plaintiff and the plaintiff has been in possession and enjoyment of the suit properties. The defendant, who has no right over the suit properties attempted to interfere with the possession of the plaintiff over the suit properties during agriculture operation. Hence, the present suit was laid seeking permanent injunction.



3. The appellant/defendant filed a written statement, admitting the partition deed dated 04.02.1960 and allotment of the properties to Gurusamy and Narayanasamy. However, it was the specific case of the defendant that there was a oral exchange between the father of the plaintiff, namely Pattusamy and father of the defendant, namely Narayanasamy and as per the oral exchange, the properties allotted to the share of Pattusamy were given to the defendant's father Narayanasamy and the properties allotted to the share of Narayanasamy were given to plaintiff's father Pattusamy. Further it was stated by the defendant that from the date of oral exchange, the suit properties had been in possession of Narayanasamy and after his death, the defendant has been in possession of the same. It is also contended by the defendant that in the year 2010, there was a partition in the family of the defendant, wherein, the suit properties were allotted to the share of the defendant and subsequently, the defendant mutated the revenue records in his name. Hence, the defendant sought for dismissal of the suit.

4. Before the trial court, on the side of the plaintiff, he examined himself as PW1 and 11 documents were marked as Ex.A1 to Ex.A11. On the side of the defendant, he himself examined as DW1 and 14 documents were marked as Ex.B1 to Ex.B14. One court witness was examined as CW1 and through him one document was marked as Ex.C1.



5. The Trial Court, on appreciation of evidence available on record, came to the conclusion that the defendant failed to prove his plea of oral exchange and hence, decreed the suit. Aggrieved by the same, the defendant preferred an appeal in A.S.No.38 of 2019 on the file of II Additional District Court, Chidambaram and the first appellate court confirmed the findings of the trial court. Challenging the concurrent findings of the courts below, the defendant has filed the present second appeal.

6. The learned counsel for the appellant/defendant would submit that in the sale deed executed by the plaintiff under Ex.B1, the plaintiff referred about the oral partition. Therefore, there is serious cloud over the title of the plaintiff and hence, a simple suit for bare injunction, without prayer for declaration of title is not maintainable. The learned counsel further submits that the defendant produced revenue documents in respect of certain items of the suit properties and the courts below failed to take into consideration the said vital evidence.

7. A perusal of the pleadings of the parties would indicate that there is no dispute with regard to the partition in the families of the parties on 04.02.1960 under Ex.A1. Under the said partition deed, the suit properties were allotted to the share of plaintiff's grand father Gurusamy and some other properties were allotted to the defendant's father Narayanasamy. With regard to the said partition, there is no dispute between the parties.



8. It is the case of the plaintiff that after the death of Gurusamy in the year 1974, his only son Pattusamy succeeded to the suit properties and enjoyed the same. After the death of Pattusamy in the year 2005, the plaintiff and other heirs of Pattusamy succeeded to the suit properties and hence, the plaintiff has been in possession and enjoyment of the same. On the other hand, it is the specific case of the defendant that even though the suit properties were allotted to the share of plaintiff's grand father Gurusamy under a registered partition deed, thereafter, there was a oral exchange between the plaintiff's father Pattusamy and defendant's father Narayanasamy and under the said oral exchange, the suit properties were given to the defendant's father Narayanasamy and as such, the defendant has been in possession and enjoyment of the same.

9. The defendant, though in the written statement raised the plea of oral exchange, there is no specific plea on which date the oral exchange had taken place and on which date the suit properties were handed over to the defendant's father Narayanasamy. In order to establish the plea of oral exchange, the defendant has not examined any independent witness. The only evidence available on record is the interested testimony of defendant as DW1 and the same is not sufficient to prove the oral exchange pleaded by the defendant.



10. The plaintiff has proved his right over the suit property by producing Ex.A1- registered partition deed, which was also admitted by the defendant.

The plaintiff also produced patta - Ex.A4, Agangal extract- Ex.A5 and patta passbook - Ex.A7 in the name of his grand father Gurusamy. etc. to prove his physical possession over the suit properties. More over, the plaintiff also filed Ex.A10 and Ex.A11, the judgment and decree passed in a suit in O.S.No.37 of 2012 filed by him against the brother of the present defendant. In the above said suit, the court below, negated the plea of oral exchange raised by the defendant thereon, who is none other than the brother of the defendant in the present suit. The courts below, taking into consideration all these documents, came to the conclusion that the plaintiff proved the allotment of suit properties to his grand father Gurusamy and also his possession over the suit properties. On the other hand, the defendant, who raised the plea of oral exchange and allotment of suit properties to his father Narayanasamy under oral exchange, failed to prove the same by examining any independent witness. The revenue records produced by the defendant are subsequent to the filing of suit. Therefore, the same cannot be safely relied on. In Ex.B1 - sale deed executed by the plaintiff, there is a reference about the oral partition, however, there is no reference about the oral exchange pleaded by the defendant. Further, in Ex.A6 - partition deed entered into among the defendant and his family members, there was no reference about the oral exchange pleaded by the defendant.



11. It is the specific case of the defendant that the suit properties, which were allotted to the share of plaintiff's grandfather Gurusamy were given to the defendant's father Narayanasamy by oral exchange involving the plaintiff's father Pattusamy and defendant's father Narayanasamy. Therefore, the defendant is claiming right over the suit properties only under the oral exchange. Had it been true, in the partition deed entered among the family members of the defendant, there should be a reference about the oral exchange. In the absence of any reference in the partition deed with regard to the oral exchange, the said plea raised by the defendant is highly doubtful, since the defendant failed to lead any evidence to prove the said oral exchange and hence, a mere plea *per se* will not create any cloud over the title of the plaintiff.

12. In view of the above discussion, the submissions made by the appellant is not acceptable to this court and I do not find any illegality or perversity in the findings reached by the courts below based on the appreciation of oral and documentary evidence.

13. Accordingly, the second appeal stands dismissed, confirming the findings of the courts below. There shall be no order as to costs.

25-03-2026

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

MST



To

1. The II Additional District Judge, Chidambaram.
2. The Additional District Munsif, Chidambaram.

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SA No. 96 of 2



S.SOUNTHAR, J.

MST

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