



SA No. 324 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-02-2026

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

**SA No. 324 of 2021
and
CMP.No.6316 of 2021**

1. Muthayee
W/o. Kaliyannan, Katoor, Kolaram
Village, Paramathi Velur Tk, Namakkal
Dist

2.Palanivel
S/o. V.S. Rangasamy, No.5/78,
Vaalnayakampalayam, Paramathi Velur
Tk, Namakkal Dist

Appellant(s)

Vs

1. Chettiyammal@ponmani
W/o. Palanisamy, No.6/54, Main Road,
Nallipalayam Village, Namakkal Tk
And Dist.

S.Jothivelu (died)

2.Varuthammal
W/o. Jothivelu, Res At, No.4/98,
Tiruchengode Main Road,
Nallipalayam Village, Namakkal Tk
And Dist, Now At, No.4/216/4v,
Thiru Nagar, Bothupatti Road,
Nallipalayam, Namakkal Dist

3.Rajalakshmi
D/o. Jothivelu, Res At, No.4/98,
Tiruchengode Main Road,
Nallipalayam Village, Namakkal Tk
And Dist, Now At, No.4/216/4v,



Thiru Nagar, Bothupatti Road,
Nallipalayam, Namakkal Dist

4.Selvakumar

S/o. Jothivelu, Res At, No.4/216/4v,
Thiru Nagar, Bothupatti Road,
Nallipalayam, Namakkal Dist

Respondent(s)

PRAYER

Second Appeal filed under Section 100 of Code of Civil Procedure, prays to set aside the judgement dated 10.03.2020 made in AS.No.118/2005 on the file of the Additional Subordinate Court, Namakkal, affirming the judgement and decree dated 25.11.2004 made in O.S.No.188 of 2004 on the file of Additional Munsif Court, Namakkal.

For Appellant(s): MR.A.Sathishkumar

For Respondent(s): Mr.S.Senthil For R1 R2 To R4 -
No Appearance

JUDGEMENT

The appellants have filed this appeal to set aside the judgement dated 10.03.2020 made in AS.No.118/2005 on the file of the Additional Subordinate Court, Namakkal, affirming the judgement and decree dated 25.11.2004 made in O.S.No.188 of 2004 on the file of Additional Munsif Court, Namakkal.

2. For the sake of convenience, the parties herein are referred to as they were ranked in the suit.

3. The plaintiff and the first defendant are the daughter and son of Sengoda Gounder. The first respondent herein filed the suit in O.S. No. 260 of



1996, which was later renumbered as O.S. No. 188 of 2004, seeking the relief of partition and claiming a $\frac{1}{2}$ share in the entire suit property. She contended that the suit properties originally belonged to her father, Sengoda Gounder, by virtue of a settlement deed dated 10.05.1940 executed by his mother, Rasayee. Thereafter, Sengoda Gounder possessed and enjoyed the properties as his separate and self-acquired properties. He died intestate about 35 years ago, leaving behind the plaintiff (daughter), his son Jothi Velu (first defendant), and his wife Marayee as his legal heirs. After his death, they jointly possessed and enjoyed the properties. In August 1996, the plaintiff demanded partition, but the first defendant refused. Hence, she filed the suit claiming a $\frac{1}{2}$ share in the properties.

4. The first defendant filed a written statement admitting the relationship and also admitting that the properties originally belonged to his father under the settlement deed executed by Rasayee. However, he objected to the plaintiff's claim for division. He contended that by a settlement deed dated 04.04.1941, executed by his father in favour of his mother Marayee, a life interest was created in her favour, and thereafter the property would devolve upon the male legal heirs. According to him, after the demise of Marayee, he became the absolute owner of the properties. He further contended that he had been in exclusive possession and enjoyment of the properties after her death, and that the plaintiff was aware of the same. Suppressing these facts, the plaintiff had



filed the suit as if the properties were in joint possession. He also stated that he had sold the properties to the second and third defendants and raised objections to the plaintiff's claim.

5. Before the trial court, both parties adduced oral and documentary evidence. On the side of the plaintiff, PW.1 was examined and Ex.P1 and Ex.P5 were marked. On the side of the defendants D.W. to D.W.3 were examined and Ex.B1 to Ex.B16 were marked.

6. The trial court framed issues, particularly with regard to the plaintiff's right and the validity and effect of the settlement deed dated 04.04.1941. Upon considering the evidence, the trial court found that the "Thana" settlement deed of 1941 relied upon by the defendants (Ex.B1) had not been acted upon. The court observed that even after the execution of the alleged settlement deed, the father and mother of the first defendant had jointly developed and enjoyed the properties, including by availing loans. During cross-examination, the joint patta (Ex.B5) was marked, which revealed that the patta stood in the joint names of the first defendant and his parents, and this was admitted by the first defendant. Therefore, the trial court concluded that the settlement deed of 1941 had not been acted upon and that the properties continued to be jointly possessed and enjoyed by the parents. Accordingly, the issues were answered in favour of the plaintiff, holding that the properties were the separate properties of



Sengoda Gounder and that the plaintiff was entitled to $\frac{1}{2}$ share. The suit was decreed as prayed for.

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7. Challenging the said findings, the first defendant filed A.S. No. 118 of 2005. Pending appeal, he died, and the purchasers of the properties (defendants 2 and 3) contested the appeal. The first appellate court framed separate points for consideration and re-appreciated the entire evidence. In paragraph 16 of the judgment, the first appellate court elaborately discussed the settlement deed of 1941 and held that it had not been acted upon. It also observed that in the year 1950, the father of the first defendant had mortgaged the property, and DW1 admitted the same. Therefore, the first appellate court held that, although there was a settlement deed, possession was never taken pursuant to it, and the property continued to be jointly possessed and enjoyed by the father and mother. He further held that the sale made by the first defendant in favour of defendants 2 and 3 during the pendency of the proceedings would not bind the plaintiff. If any remedy was available to the purchasers, they were at liberty to work out their remedy in respect of the share allotted to the first defendant in the final decree proceedings. Accordingly, the appeal was dismissed. Challenging these concurrent findings, the purchasers have preferred the present appeal.



8. The learned counsel for the appellants submitted that the courts below failed to properly appreciate the settlement deed of 1941 standing in the name of their vendor, which, according to them, established his right and title. They contended that the finding that the settlement deed was not acted upon is erroneous and liable to be set aside. They further submitted that the properties were not jointly possessed by the father and mother as held by the courts below and that substantial questions of law arise for consideration.

9. (i) This Court admitted the second appeal on 07.03.2024, on the following Substantial Question of Law:

“ (A) Whether the Courts are right in law in ignoring the recitals in Ex.A1 and Ex.B1 which would clearly show the right of claiming an inheritance to the suit schedule property? ”

(ii) During the course of hearing, this Court framed the following Substantial Questions of Law for consideration in the Second appeal:

“(B) Whether the Courts below are right in deciding that the 1st defendant is entitled for half share of the subject matter properties?

(C) Whether the Courts below are right in allowing the suit of the respondent when the respondents had miserably failed to prove that she is entitled for the half share?”



10. The learned counsel for the respondent/first plaintiff contended that the court below had rightly held that the alleged settlement deed dated 04.04.1941 was not acted upon. He submitted that, after the filing of the suit on 14.08.1996, the plaintiff came to know that all three items of the suit property had been dealt with by the first defendant in favour of defendants 2 and 3. As on date, the second defendant has put up small shop constructions in the second item of the property; the first item remains vacant; and the third item has been plotted out and sold to various individuals by the first defendant. Such sales are hit by the doctrine of lis pendens. Therefore, the findings rendered by the court below require no interference. At best, the appellants/purchasers may work out their remedy in the final decree proceedings, subject to the principle of equity with respect to the share allotted to the first defendant.

11. Considering the rival submissions, the facts reveal that the plaintiff, being the daughter of Sengoda Gounder, claims 1/2 share in the suit property on the ground that the property belonged to her father as his separate property. It is an admitted fact that the mother of Sengoda Gounder had executed a settlement deed in his favour in the year 1940, which is marked as Ex.A1. Therefore, it is clear that the property is the separate property of Sengoda Gounder. He died intestate, leaving behind his daughter (the plaintiff), his son (the first defendant), and his wife Marayee Ammal. Marayee Ammal has also since passed away. Hence, the plaintiff claims 1/2 share in the property.



However, the first defendant contended that, as per the settlement deed dated 04.04.1941, his father had executed a settlement deed in favour of his mother, Marayee Ammal, granting her a life interest, and thereafter the property was to devolve upon the male legal heirs. On that basis, he claimed to be the absolute owner of the property.

12. Before the trial court, no evidence was adduced by the first defendant to prove that he had taken possession of the property pursuant to the said settlement deed after the death of his mother, Marayee Ammal. On the contrary, he admitted that, as per the patta (Ex.B5), the property was jointly possessed and enjoyed by himself along with his parents and the plaintiff. Further, the plaintiff established that the father had developed the property by raising a loan through mortgage, which is marked as Ex.B5. Thus, it is evident that the property was not taken possession of by the first defendant under the settlement deed and that the said deed was never acted upon. Moreover, the father, mother, and son were in joint possession and enjoyment of the property.

13. Marayee Ammal died in the year 1996, however, the patta continued to stand jointly in the names of Marayee Ammal, her husband, and the first defendant. Therefore, the court below rightly held that the settlement deed was not acted upon. Furthermore, the appeal has not been filed by the first defendant, but only by the purchasers of the property, who were not aware of



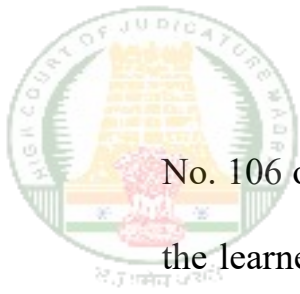
the family affairs of the first defendant. Hence, the finding of the courts below that the settlement deed dated 04.04.1941 was not acted upon is confirmed.

Accordingly, the Substantial Question of Law 'A' is answered.

14. Since the property is the separate property of Sengoda Gounder, the plaintiff is entitled to a 1/2 share therein. The findings rendered by the courts below are well-reasoned and require no interference. Accordingly, the Substantial Questions of Law 'B' and 'C' are answered.

15. As on date, the first item of the property is lying vacant, while in the second item, the appellants have put up certain constructions after purchase. This Court is of the view that dividing the second item, where constructions exist, would cause inconvenience to both parties. Therefore, it is appropriate to allot the entire first item, measuring about 1119 square feet, to the share of the plaintiff. The second item, measuring about 1840 square feet, shall be considered accordingly in the final decree proceedings. In respect of the third item, various sales have been made, as submitted by the learned counsel for the first respondent/plaintiff. The plaintiff is directed to work out her remedy in the final decree proceedings to obtain her 1/2 share in the third item.

16. With the above observations, the Second Appeal is disposed of. The parties are directed to approach the trial court for final decree proceedings. I.A.



No. 106 of 2012, which is pending before the trial court, shall be disposed of by the learned trial Judge within a period of three months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

27-02-2026

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

1. The Additional Subordinate Judge, Namakkal.
2. The Additional Munsif, Namakkal.
3. The Section Officer, VR-Section,
High Court of Madras, Chennai.



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T.V.THAMILSELVI J.
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