



WEB COPY

SA No. 315 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-02-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 315 of 2018

1.Shanthi
2.K.Anandavel(Died)
3.K.Kumaravel
4.K.Arulvel
5.A.Ambika
6.Jegadeeswaran
7.A.Thiruvani
(Appellants 5 to 7 are brought on record as
legalheirs of the deceased A2 vide court order
dated 22.10.2024 made in CMPNos.22098n 2099
and 22100 of 2024)

..Appellant(s)

Vs

M.Nagarajan(Deceased)
1.M.Subbulakshmi
2.Mohana
3.Amudha
4.M.Bhaskar
5.Bharathi
6.M.Venkatesan
7.M.Prabakaran
8.Dhanasekaran
9.M.kalaivanan
10.Pankajam
11.N.Sangeetha
12.N.Karthick

..Respondent(s)

PRAYER: The Second Appeal has been filed under Section 100 of Code of Civil Procedure as against the judgment and decree dated 21.04.2017 made in AS No.484 of 2008 on the file of the VI Additional City Civil Court, Chennai by reversing the judgment and decree in O.S.No.2405 of 2002 dated



06.06.2008 on the file of the II Assistant Civil Court, Chennai and allow the appeal

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For Appellant(s): M/s.Kumar Rajan

For R1 to R4 No appearance

For 5 to R12 Mr.R.Krishnasamy

JUDGMENT

The Second Appeal has been preferred as against the decree and judgment passed by the VI Additional City Civil Court, Chennai in AS No.484 of 2008.

2. The appellants are the legal heirs of one Kathirvelu who is the first defendant in the main suit who filed the first appeal. One Nagarajan being plaintiff filed a suit in O.S.No.2405 of 2022 on the file of the City Civil Court in O.S.No.2405 of 2002 for partition and the same was decreed in favour of the plaintiff by declaring that the plaintiff is entitled to 1/5 share over the suit properties. Aggrieved over the said judgment and decree the first defendant has preferred an appeal in AS No. 484 of 2008 and the first appellate court also dismissed the appeal by confirming the decree and judgment passed by the trial Court.



3. During the pendency of the 1st appeal the appellant died and his legal heirs were impleaded as parties. Now the legal heir of the deceased/first defendant who are appellants 2 to 5 have filed this second appeal.

4. The case of the plaintiff before the trial Court is that originally the suit properties belonged to one Nagappan and the said Nagappan died intestate and his wife Pattammal also died on 23.12.1987 leaving behind her three daughters and two sons as legal heirs to succeed her estate. The first defendant is the son and the defendants 2 to 4 are the legal heirs of son of Nagappan and Pattammal namely S.N.Muthu. The plaintiff is the son of the deceased daughter of the deceased Nagappan. Since the properties are belonging to Nagappan the plaintiffs and the defendants are entitled to share the properties of the deceased Nagappan. The plaintiff is entitled to 1/5 share. The first defendant is entitled to 1/5 share and the defendants 2 to 5 are entitled to 1/5 share and the defendants 6 to 7 are each entitled 1/5 share in the suit properties. When the plaintiff demanded for partition over the properties, the defendants failed to partition the properties and thereby they filed the suit.

5. The case of the defendant before the trial Court is that the relationship of parties are admitted. The first defendant after the demise of his father managed the properties, except 'B' schedule property all the properties are joint family properties. The 'B' schedule property is a separate property which is



business run by the first defendant. So far as 'B' schedule property is concerned, the said business exclusively belongs to first defendant and no one is having any title or right over the 'B' schedule property. The first defendant alone has been in sole control with the help of his son, thereby the suit is liable to be dismissed in respect of 'B' schedule property. So far as A,C,D,E,F schedule properties are concerned the plaintiff received a sum of Rs.2400/- on 10.01.1985, Rs.6000/- on 28.11.1987, Rs.13,900/- on 15.05.1988 and Rs.22,000/- on 12.01.1984 and in total received a sum of Rs.44,300/- and relinquished his right over the property and thereby he has no right or interest over the suit properties. 'A' schedule property was purchased in the year 1954 by payment of Rs.7500/-. The property was purchased in the name of his father. The plaintiff has not contributed any money towards the welfare or upkeeping any schedule of the above mentioned properties and already he was paid sufficient money in lieu of his right over the properties, therefore the suit is liable to be dismissal in respect of 'B' schedule and also filed counter claim for the properties A, C, D, E and F schedules and also the first defendant paid the Court fee under Section 37(3) of the Tamil Nadu Court Fee and suit valuation Act.

6. Based on the above said pleadings and after hearing both sides, the trial Court has framed the following *issues*:

a. Whether 'B' schedule property is the separate property of D.1?

b. Whether the plaintiff is entitled to 1/5th share in the suit properties?



c. Whether the defendants are liable to render accounts in respect of the suit properties from 28.04.1999?

d. Whether the first defendant is entitled to 1/5 share in the suit properties except 'B' schedule property as per the counter claim filed by D.1

e. To what relief the plaintiff and the defendants are entitled to?

7. Before the trial Court, on the side of the Plaintiff, PW1 was examined and Ex.A.1 to Ex.A.5 were marked. On the side of the defendants, DW1 was examined and Ex.B.1 to Ex.B.5 were marked on the side of defendants. ***The trial Court***, after evaluating the oral and documentary evidences adduced on both sides, ***decreed the Suit by passing preliminary decree for partition and divided the suit properties into five equal shares and allotted one such property to the plaintiffs and the first defendant is also entitled to 1/5 share.*** Aggrieved by the said decree and judgment, the first defendant has preferred an appeal Suit in A.S. No.484 of 2008. on the file of the Principal Subordinate Judge, Salem, on various grounds.

8. The First Appellate Court framed the following ***points for determination:***

Whether the appellate Court is warranting to interfere the judgment and decree passed by the learned III Assistant Judge in O.S.No.2405 of 2002 dated 06.06.2008 to set aside or not?



9. The first appellant Court after analysing the evidence and on hearing both sides dismissed the appeal by confirming the decree and judgment passed by the trial Court. During pendency of the appeal the appellant died and his legal heirs were brought on record as 2-5 appellants. Aggrieved by the said judgment and decree the appellants 2 to 5 have preferred this second appeal.

10. For the sake of convenience and brevity, 'the parties' hereinafter will be referred to as per their status / ranking in the Trial Court.

11. The learned counsel appearing for the appellants would submit that the plaintiff who is the first respondent herein has filed a suit for partition for A to F scheduled properties. Infact 'B' schedule property is the business run by the father of the appellant and that is the separate property. So far as other properties are concerned the plaintiff is the sister's son of the first defendant and he received a sum of Rs. 43,300/- and relinquished his right over the property and thereby he has no right or interest over the suit properties and the same was admitted by him. The trial Court failed to consider the same. The trial Court failed to consider evidence adduced by the defendatns that the 'B' schedule property is the business rum of the first defendant. The first appellant Court relying upon the Section 114(g) of the Indian Evidence Act on the presumption that the defendants failed to produce the documents which is



contrary to the claim as the defendants produced the licence of renewal and the licence , unfortunately the first appellate court shifted the blame on the appellant/defendants that they failed to prove their case. The Court also failed to consider that the plaintiff has not produced any document and without considering the same passed preliminary decree, therefore the Court below have shifted the blame on the first defendant when he clearly established the renewal of licence of the 'B' schedule suit property through Ex.P.3. The first appellant Court failed to consider the documents and erroneously held that Section 114(g) of Indian Evidence Act the defendant has failed to prove the case. The Courts below failed to consider that the plaintiff admitted the money received by him in lieu of his share and ignoring the admission of the plaintiff decreed the suit, therefore the judgment and decree passed by the trial Court is liable to be dismissed.

12. The learned counsel appearing for the respondents would submit that originally the properties belonged to one Nagappan. He had two sons and three daughters. The plaintiff is the only son who born through the daughter Nagappan namely Ponnammal. The first defendant is the son of Nagappan and another son of Nagappan namely Muthu died, 2 to 5 defendants are the legalheirs of the deceased Muthu. The defendant's 6 to 7 are daughter of the said Nagappan and thereby the defendants 1 to 7 are entitled to share the properties of Nagappan. The defendants 1, 6 and 7 are each entitled to 1/5 share and the



defendants 2 to 5 are jointly entitled to 1/5 share . The defendants failed to partition the properties thereby filed the suit. In order to prove the same on the side of the Plaintiff, PW1 was examined and Ex.A.1 to Ex.A.5 were marked. On the side of the defendants, DW1 was examined and Ex.B.1 to Ex.B.5 were marked. The defendants claimed that 'B' schedule property is the separate property of Nagappan and there is no sufficient evidence adduced by him to prove that the 'B' schedule property is the separate property and the trial Court also correctly decreed the suit by holding that the properties are joint family properties and therefore the plaintiffs are entitled to 1/5 share over the properties. The first appellate court also after careful analysis came to conclusion that when the defendants have filed the suit they have to prove that 'B' schedule property is a separate property, therefore the Courts below have correctly decreed the suit and concurrent findings of the Courts below warrants no interference and the second appeal is liable to be dismissed.

13. This Court heard both sides and perused the entire materials available on record.

14. In this case there is no dispute in respect of relationship between the parties. According to the plaintiffs originally the properties belonged to one Nagappan. After the demise of Nagappan his wife Pattammal and his two sons namely the first defendant one Muthu and three daughters are entitled his



properties. The deceased Muthu died intestate leaving behind the defendants 2 to 5 as legal heirs. The plaintiff is the son of Ponnammal and during the pendency of the suit Umadevi, 7th defendant also died. Her legal heirs were impleaded as respondents 8 to 10. The first defendant also admitted the relationship between the parties and the properties are joint family properties. 'B' Schedule property is the separate property and according to him he managed the joint family property except 'B' schedule property. The 'B' schedule property was run by him and his family members,. So far as A, C to F properties are concerned the plaintiff already relinquished his rights and received a sum of Rs.43,300/-, therefore it is the duty of the defendants to prove that 'B' schedule property is the self acquired properties and the plaintiff in lieu of his share received a sum of Rs.43,300/- and relinquished his share. There are no documents filed by the defendants to prove that the plaintiff relinquished his right over the properties. So far as 'B' schedule property is concerned he produced Ex/B.1 the licence renewed for the year 1955-1956 and Ex.B.2 to prove the licence. Admittedly the first defendant father and grand father of the plaintiff died in the year 1970 and the first defendant himself admitted that the business mentioned in the 'B' schedule property was started by his father and after receiving a sum of Rs.600/- and that he joined with the father and run the business during year 1946 but in the year 1946 he was only aged about eight years and his age was about 83 years on the date of examination as witness thereby in the year 1946 he could have completed only eight years, thereby his



evidence is not acceptable to that regard. Apart from that no any other documents filed by the first defendant to prove that the said 'B' schedule business was run by him exclusively and the same is his separate property and therefore in the absence of any evidence it is not proper to hold that the said 'B' schedule business was run him and it is to be presumed that it is the joint family property of the plaintiff and the defendants and the plaintiff being son and one of the daughter of Nagappan is entitled to 1/5 shares.

15. So far as properties A, C to F are concerned, the first defendant admitted the relationship and according to him the plaintiff already received a sum of Rs.43,300/- he relinquished his right. In order to prove the same there is no sufficient evidence adduced. The plaintiff also admitted the receipt of amount and according to him that amount was borrowed as loan by him from the first defendant, once the first defendant paid money to the plaintiff in lieu of his share he ought to have obtained registered deed from the plaintiff. The defendant also admitted share of the plaintiff and paid court fee for partition over the other A, C to F schedule properties. In the absence of relinquishment deed from the plaintiff he is entitled to partition over the properties.

16. The trial Court in the judgment after analysing the evidence adduced on both sides fairly came to conclusion that the first defendant admitted that the properties belongs to his father and the 'B' schedule property was started by this



father after borrowing Rs.600/- and he also joined in his father's business during the year 1946 and he is aged about 83 years on the date of examination he could have been 8 years in the year 1946 therefore disbelieved the contention of the first defendant.

17. Further the trial Court also stated that these defendants failed to prove the partition of Nagappan and though the plaintiff admitted the receipt of amount, according to the plaintiff that amount was borrowed as loan by him from the first defendant. While so, the first defendant failed to prove his contention and the said amount was in lieu of the share of the first defendant and the first defendant failed to establish the relinquishment of share by the plaintiff, thereby passed preliminary decree for partition.

18. So far as the judgment of the first appellate court is concerned the first appellate Court also came to conclusion that the plaintiff failed to prove that the 'B' schedule property was a separate property and he failed to produce any licence in his name thereby invoked Section 114(g) of Indian Evidence Act. Further D.W.1 admitted in his cross examination that whether the licence is in his name for the 'B' schedule property, he stated that he did not know and that shop license was mingled with other documents in the year 1960 at the time of construction. Therefore the first defendant failed to produce license in his name



of any documents to show the business run by him thereby invoked Section 114 (g) of Indian Evidence Act and draws adverse inference.

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19. So far as payment of money to the first plaintiff is concerned the plaintiff admitted receipt of money. According to the plaintiff that was loan borrowed by him. While so, the defendants has prove that he paid money for relinquishment of his share and the first defendant failed to obtain any documents for relinquishment of share of the plaintiff in the manner known to law. The said findings of the courts are based on the available evidences. Therefore the first appellate Court after analysing the evidence correctly dismissed the appeal confirming the judgment of the trial Court.

20. The trial Court also rendered findings only based on evidence and both the Court have rendered concurrent findings, based on evidences.

21 In the memorandum of appeal, the appellant raised the following substantial question of law:

`a) Whether the Courts below correct and justified in shifting the blame on the first defendant when the ExB.1 clearly established the renewal licence to suit scheduled -B property?

b) Whether the Courts below correct and justified in question the rights of the defendant on the basis of Section 114 (g) of Indian Evidence Act under the presumption when the first



respondent/plaintiff failed to prove his case?

c) Whether the Courts below correct and justified in not considering the amount received by the plaintiff which was admitted which was not property appreciated by the Courts below regarding the admission?

d) Whether the Courts below correct and justified in ignoring the admission of the plaintiff regarding the payment recovered to waive his right in the suit scheduled property?

22. All the above said substantial question of law are factual aspects and no substantial question of law involved in this case and thereby this Court need not interfere with the decree and judgment passed by the Courts below and thereby the second appeal has no merits and deserves to be dismissed

23. In the result the second appeal stands dismissed confirming the judgment of the trial Court. ***There shall be no order as to costs.***

27-02-2026

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

MJS

To

1. The VI Additional City Civil Court, Chennai

2. The II Assistant Civil Court, Chennai



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P.DHANABAL, J.

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