



WEB COPY

SA No. 141 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21-04-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

**SA No. 141 of 2021 and
CMP.No.2861 of 2021**

Mani

S/o. Munuswamy Udayar, South St, Thuthipattu
Village, Ponnankuppam Post, Gingee Taluk,
Tiruvannamalai Dist.

..Appellant(s)

Vs

1. Dayalan
S/o. Munuswamy Udayar, Res At, Thuthipattu
Village Ponnankuppam Post, Gingee Tk,
Tiruvannamalai Dist.
2. BALAJI(died)
S/o. Dayalan, Res At, Thuthipattu Village
Ponnankuppam Post, Gingee Tk,
Tiruvannamalai Dist.
3. Sundaramurthy
S/o.Seenuvasa Gounder, Res At, Thuthipattu
Village Ponnankuppam Post, Gingee Tk,
Tiruvannamalai Dist.
4. Iyyanar
S/o. Kasivel @ @ Kasinatha Gounder, Res At,
Thuthipattu Village Ponnankuppam Post,
Gingee Tk, Tiruvannamalai Dist.
5. Murugan
S/o. Elumalai, , Res At, Thuthipattu Village
Ponnankuppam Post, Gingee Tk,
Tiruvannamalai Dist.
6. A.Krishnamoorthy
S/o. Arumuga Gounder, Res At, Thuthipattu



Village Ponnankuppam Post, Gingee Tk,
Tiruvannamalai Dist.

7. A.Manickam
S/o.Arumuga Gounder, Res At, Thuthipattu
Village Ponnankuppam Post, Gingee Tk,
Tiruvannamalai Dist.

8. Yasodha
W/O.DAYALAN, RES AT, THUTHIPATTU
VILLAGE PONNANKUPPAM POST,
GINGEE TK, TIRUVANNAMALAI DIST ..

(R2 died, R8 brought on record as lr of the
deceased R2 vide court order dated 01/10/2024
made in CMP.Nos 22655,22656 and 22658 of
2022 in S.A.No.141 of 2021)

..Respondent(s)

PRAYER: Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 19.11.2019 made in A.S.No.13 of 2018 on the file of the Court of the Sub Judge, Gingee, confirming the judgment and decree dated 08.01.2018 made in O.S.No.120 of 2010 on the file of the Court of the Additional District Munsif, Gingee.

For Appellant(s): Mr.T.Dhanasekaran

For Respondent(s): Mr.J.Venkataraman for
Mr.J.Agni Selvaraju
for R1, R3 to R8
R2-died

JUDGMENT

This Second Appeal has been filed to set aside the judgment and decree dated 19.11.2019 made in A.S.No.13 of 2018 on the file of the Court of the Sub



Judge, Gingee, confirming the judgment and decree dated 08.01.2018 made in O.S.No.120 of 2010 on the file of the Court of the Additional District Munsif, Gingee.

2. The unsuccessful plaintiff is the appellant herein. The plaintiff has filed a suit for declaration of his title, permanent injunction restraining the defendants 1 and 2 from encumbering the suit properties and for declaration of various sale deeds executed by D1 and D2 in favour of the other defendants as null and void. The suit was dismissed by the Trial Court. Aggrieved over the same, a First Appeal has been filed by the plaintiff. The First Appellate Court has also dismissed the First Appeal and confirmed the findings of the Trial Court. Aggrieved by the concurrent findings of the Trial Court and the First Appellate Court, this Second Appeal has been filed by the plaintiff.

3. According to the appellant / plaintiff, the suit properties are ancestral properties. The plaintiff and the first defendant are brothers. The second defendant is the son of the first defendant. The defendants 3 to 7 are the purchasers from D1 and D2. It was stated by the plaintiff that after the death of the father of the plaintiff and the first defendant in the year 1976, there was oral partition in the family and the suit properties were allotted to the share of the plaintiff. From then onwards, he has been in exclusive possession and enjoyment of the suit properties with patta in his name. While so, D1 and D2



high-handedly sold the portions of the suit properties to other defendants and hence, the plaintiff was constrained to file a suit seeking the above said reliefs.

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4. The defendants 1 and 2 filed their written statement and denied the oral partition pleaded by the plaintiff. The claim of the plaintiff that he has been in exclusive possession and enjoyment of the suit property from the year 1976 was specifically denied by the defendants 1 and 2. It was further case of the defendants 1 and 2 that the suit properties belong to them. It was also stated that even assuming that the suit properties were ancestral properties, in the absence of any partition as pleaded by the plaintiff, he could not maintain the suit. It was also pleaded that in the year 1994, the plaintiff issued a legal notice to the first defendant admitting that there was no partition in respect of the suit properties. In such circumstances, the suit filed by the plaintiff based on the exclusive title was not at all maintainable. The defendants 1 and 2 also claimed that at the most, the plaintiff could maintain the suit only for partition and the suit for declaration of title and permanent injunction was not at all maintainable.

5. Before the Trial Court, the plaintiff was examined as P.W.1 and 17 documents were marked as Exs.A1 to A17. On behalf of the defendants, the first defendant was examined as D.W.1 and the notice issued by the plaintiff to the first defendant dated 19.07.1994 was marked as Ex.B1.



6. The Trial Court, on appreciation of the oral and documentary evidence, came to the conclusion that the plaintiff failed to prove the oral partition pleaded by him and dismissed the suit. Aggrieved by the same, a First Appeal in A.S.No.13 of 2018 has been filed before the Sub Court, Gingee. The First Appellate Court has also confirmed the findings of the Trial Court. Aggrieved by the concurrent findings, the plaintiff is before this Court.

7. The learned counsel for the appellant / plaintiff would submit that the Courts below without taking into consideration the revenue documents in favour of the plaintiff which were marked as Exs.A1 to A5, on an erroneous view, came to the conclusion that there was no partition and thereby negated the exclusive title of the plaintiff over the suit properties.

8. It is an admitted case of the plaintiff that the suit properties were ancestral properties and there was oral partition in the family in the year 1976, after the death of their father. In order to prove the oral partition, the plaintiff has not examined any of the persons who were present at the time of oral partition. The only evidence available on record in support of the oral partition is Exs.A1 to A3. Further Ex.B1 is the notice issued by the plaintiff to the first defendant on 19.07.1994. The plaintiff, who was examined as P.W.1, has clearly admitted that Ex.B1 was issued by his Advocate only on his instructions.



9. The Trial Court, on perusal of Ex.B1, arrived at a finding that the plaintiff had issued a notice to the first defendant in the year 1994, admitting the common enjoyment of the suit properties and sought for partition. In the light of Ex.B1, the plea raised in the plaint that there was an oral partition in the year 1976 gets falsified. When the plaintiff failed to prove the oral partition, the claim of exclusive title set up by him also fails. Therefore, the Courts below were justified in dismissing the prayer for declaration of title. The plaintiff also sought a permanent injunction restraining the respondents from alienating the suit properties based on the prayer for declaration of exclusive title. When this Court comes to a conclusion that the plaintiff failed to establish the exclusive title over the suit properties, the consequential prayer for permanent injunction shall also fail. When the plaintiff failed to establish the exclusive title over the suit properties, the prayer sought to nullify the sale deeds executed by the defendants 1 and 2 in favour of the other defendants also cannot be considered. As a co-owner / first defendant is entitled to alienate his interest in the suit property in favour of the other defendants or third parties and the same cannot be objected to by the plaintiff.

10. In these circumstances, the Trial Court as well as the First Appellate Court, on proper appreciation of the evidence available on record, came to the conclusion that the plaintiff failed to prove the oral partition pleaded by him. Hence, I find no perversity in the findings arrived at by the First Appellate



Court. The appellant has not made out any substantial question of law for consideration.

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11. In the result, this Second Appeal is dismissed. Consequently, the miscellaneous petition is closed. No costs. It is made clear that the dismissal of the Second Appeal will not come in a way of the appellant working out his remedy in a regular suit for partition.

21-04-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

GSK

To

1.The Sub Judge, Gingee.

2.The Additional District Munsif, Gingee.



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S.SOUNTCHAR, J.

GSK

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