



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-02-2026

CORAM

THE HON'BLE DR.JUSTICE A.D.MARIA CLETE

SA No. 1208 of 2013

&

M.P.No.1 of 2013

Kandavel

..Appellant(s)

Vs

1. Jayalakshmi
2. Saraswathi
3. Subramanian

..Respondent(s)

Prayer: This Second Appeal is filed against the judgment and decree in A.S.No.13 of 2010 dated 03.07.2013 on the file of the Principal Sub Judge, Pondicherry confirming the judgment and decree made in O.S.No.1187 of 2005 dated 15.09.2009 on the file of the II Additional District Munsif, Pondicherry.

For Appellant(s): Mr.P.Dinesh Kumar
for M/s. D. Ravichander

For Respondent(s): Ms.H.Priyanka
for M/s. M. Venkadeshan



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JUDGMENT

Heard.

2. This Second Appeal is filed by the plaintiff in O.S. No.1187 of 2005, assailing the judgment and decree dated 03.07.2013 passed in A.S. No.13 of 2010 by the Principal Sub Judge, Puducherry, whereby the judgment and decree of dismissal dated 15.09.2009 made in O.S. No.1187 of 2005 on the file of the II Additional District Munsif, Puducherry, came to be confirmed.

3. For the sake of convenience, the parties are referred as they were arrayed before the trial Court.

4. The plaintiff filed this suit seeking partition and separate possession of his $\frac{1}{2}$ share in the plaint schedule property, along with mesne profits. He contends that the plaint schedule property is a strip of manai land located on the northern side of the “A” schedule property, which was allegedly left out of the registered partition deed dated 20.03.1971 executed between his father and the 1st defendant’s husband, (who were brothers). Hence, he claims it still remains undivided joint family property and is liable to be partitioned.



5. The defendants denied the plaintiff's claim. They said the registered partition deed dated 20.03.1971 had already fully and finally divided all the joint family properties. They also argued that this very issue had already been decided in earlier cases.

6. According to them, Ganesan, the 1st defendant's husband and father of the other defendants, had earlier filed O.S. No.793 of 1978 for measurement and allotment as per the partition deed. Although that suit was dismissed, A.S. No.107 of 1981 was allowed in his favour, and later S.A. No.701 of 1986 was dismissed, confirming the allotment. After that, execution proceedings were taken in E.P. No.155 of 2000, and delivery was ordered. Even the plaintiff's side filed C.R.P. No.2049 of 2001, which was also dismissed.

7. Therefore, the defendants said the present suit is not maintainable because it is barred by res judicata, since the matter has already been finally decided.

8. The Trial Court after considering the partition deed and the measurement/commissioner materials relied upon by the plaintiff, held that the plaintiff failed to prove the suit strip as a distinct "left out" joint family property and found that the alleged strip lies within the 'A' schedule boundaries, wherein



boundaries prevail over extent; noting that identical objections were earlier negated in S.A. No.701 of 1986 and C.R.P. No.2049 of 2001; it dismissed the suit holding that the claim for partition is barred by res judicata.

9. The First Appellate Court, while confirming the decree of the Trial Court, held that the appellant/plaintiff, though claiming $\frac{1}{2}$ share in the property referred to in the Advocate Commissioner's report, had not produced any document to establish that the plaint schedule property is ancestral/joint family property; it further held that the registered partition deed dated 20.03.1971 (Ex.A9) is binding on the parties and, as the plaint schedule property is not shown to be part of the properties available for partition under Ex.A9, the plaintiff is not entitled to any share.

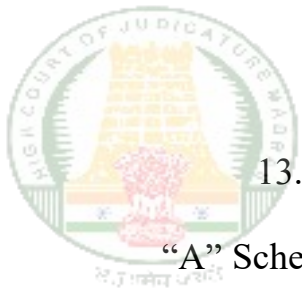
10. Aggrieved, the plaintiff preferred the second appeal contending that the courts below failed to decide whether the plaint schedule strip was left out of, and not covered by, the partition deed dated 20.03.1971. The plaintiff further argues that the courts wrongly ignored the Advocate Commissioner's report. The plaintiff also submits that the suit should not have been dismissed on the ground of res judicata based on the earlier proceedings ending in S.A. No.701 of 1986, because the present strip is claimed to be outside the scope of the partition



deed and O.S. No.793 of 1978. According to the plaintiff, the courts misinterpreted Ex.A2, wrongly treated the earlier suit as one for partition though it was only for division/allotment under the partition deed, and improperly insisted on production of prior title deeds in a partition claim—raising substantial questions of law on these issues.

11. The learned counsel further submits that the courts below dismissed the plaintiff's case mainly on two grounds: (i) res judicata, and (ii) that the plaintiff failed to prove that the suit property was ancestral/joint family property. The counsel argues that the Advocate Commissioner's report is an admitted document, and that it was only through this report that the parties came to know about the alleged excess strip of land. After coming to know of it, the present suit was filed.

12. It is also submitted that the earlier proceedings dealt only with measurement and allotment of the "A" and "B" schedule properties as per the partition deed, and they did not decide anything about the alleged excess strip. Therefore, according to the counsel, res judicata does not apply.



13. The main issue in this suit is whether the suit property is part of the “A” Schedule property allotted to Ganesan, the first defendant’s husband, under the partition deed dated 20.03.1971, or whether it lies outside the “A” Schedule property as described in the partition deed and in the Commissioner’s report filed in O.S. No.793 of 1978.

14. On perusal of Exs. A3 and A4, it appears that the land presently being enjoyed is larger in extent than what is stated in the partition deed dated 20.03.1971. It is a settled principle that when there is a conflict between extent and boundaries, the boundaries will prevail. In Ex. A3, the northern boundary is given as “Kulathu Sandhu” (Tank Lane). This shows that the land situated south of Kulathu Sandhu forms part of the “A” Schedule property allotted to the first defendant’s husband. In the present suit too, the northern boundary of the suit property is described as “Kulathu Sandhu”. Hence, it is clear that the plaintiff is seeking partition of a property that is already part of the “A” Schedule property allotted to the first defendant’s husband.

15. Since the allotment of shares was finally decided in O.S. No.793 of 1978 and those proceedings have reached finality, it cannot be reopened through a fresh, separate suit. Such an attempt is not permissible in law.

16. In this case, both the courts below, after examining the partition deed dated 20.03.1971 and the materials relied on by the plaintiff, have given



the same finding: the plaintiff failed to prove that the plaint schedule strip is a separate “left out” joint family property. They also held that even based on the plaintiff’s own measurement/Commissioner materials, the alleged excess strip lies within the boundaries of the “A” schedule property described in the partition deed. Once the property is identified by its boundaries, the plaintiff cannot claim an “excess” area as a separate property just because the extent/measurement appears more. The Trial Court correctly applied this settled rule, and the First Appellate Court confirmed it. Therefore, no interference is required under Section 100 CPC.

17. It is also well settled that under Section 100 CPC, this Court cannot interfere with concurrent findings of fact unless the appellant shows perversity, illegality, or misapplication of law warranting consideration in this Second Appeal.

18. In view of the above discussion, this Second Appeal stands dismissed at the admission stage itself. There shall be no order as to costs. Consequently, the connected miscellaneous petition, if any, stands closed.

27-02-2026

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

MFA



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To

1. Principal Sub Judge, Puducherry,
2. II Additional District Munsif, Puducherry



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DR.A.D.MARIA CLETE, J.

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