



S.A.No.571 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 03.06.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.571 of 2023
and C.M.P.No.18006 of 2023

Arunachala Padayachi (died)

1.Indira Gandhi

2.Pannerselvam

Kasiammal (died)

3.Santha

... Appellants

vs.

1.Chokkanatha Konar

2.Ramasamay Konar

3.Annakili

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside Judgment and Decree dated 22.12.2022 made in A.S.No.119 of 2004 on the file of the Additional Sub-ordinate Judge, Viruthachalam, confirming the Judgment and Decree dated 19.03.2003 passed in O.S.No.704 of 1985 on the file of the Principal District Munsif Court, Viruthachalam.



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For Appellants : Mr.R.Venkatesulu
for M/s.Usha Ramman

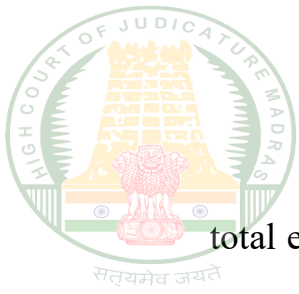
For R1 and R2 : No Such Addressee

For R3 : No Appearance

J U D G M E N T

The unsuccessful defendants 1 to 3 are the appellants. The respondents 1 and 2 filed a suit for declaration of title and permanent injunction with alternative prayer for recovery of possession. The suit was decreed by the Trial Court granting the relief of declaration of title and permanent injunction. The first appeal filed by the defendants 1 to 3 was also dismissed by the First Appellate Court by affirming the judgment and decree passed the Trial Court. Aggrieved by the concurrent findings, the defendants 1 and 3 have come before this Court.

2. According to the respondents 1 and 2/plaintiffs, the suit property originally belonged to one Appavu Vagaiyara. The said Appavu and two others namely Ayyakannu and Anjapuli owned 1.46 acres of land in Old Survey No.102/8. They sold 1.33 acres of land on the southern side out of



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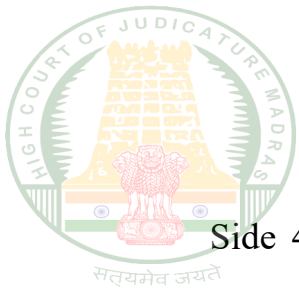
total extent of 1.46 acres to one Minor-Sivasubramani, who was represented by his father-Thangavelu under Sale Deed dated 09.05.1972 marked as Ex.A3. After purchase, the said Sivasubramani enjoyed southern 1.33 acres and then sold the same to 1st plaintiff on 14.06.1978 under Ex.A5. Later, the 1st plaintiff acquired the remaining 13 cents of land in the Northern Side from the Appavu Vagaiyara by Sale Deed dated 24.07.1978 marked as Ex.A6. Thus, 1st plaintiff became owner of entire extent of 1.46 acres in Old Survey No.102/8. It is further averred in the plaint that though the property was purchased in the name of 1st plaintiff, the same was treated as joint family property. In the year 1983, there was oral partition between the plaintiffs and Southern Side 80 cents in Survey No.102/8 was allotted to the share of 2nd plaintiff and Northern Side 66 cents in the said survey number was allotted to the share of 1st plaintiff. Thus, the 2nd plaintiff became owner of the Southern Side 80 cents in Survey No.102/8, which has been subdivided as S.No.102/8B (the present suit property). The defendants 1 to 3 colluded together and claimed that they have purchased 49 cents of suit property from 4th defendant, who is the daughter of above mentioned Ayyakannu. The defendants attempted to interfere with the plaintiffs' possession over the suit property, therefore, the above said suit was filed.



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3. The 2nd defendant filed written statement and the same was adopted by the defendants 1 and 3. In the written statement, it was stated by the defendants that Appavu Vagaiyara sold different property situated in S.No.100/3 to minor son Sivasubramani on 09.05.1972. However, in the Sale Deed the survey number was wrongly mentioned as S.No.102/8 instead of 100/3. It is further submitted that the boundaries found in the Sale Deed executed by Appavu Vagaiyara refers to only Survey No.100/3 and not suit survey number 102/8. It is further stated that there was a oral partition between Ayyakannu son Arasan, Appavu and Anjapuli son Varadarajan on 25.06.1976, wherein the present suit property was also included. The southern part of 49 cents in the suit property was allotted to the share of Ayyakannu son Arasan. It is further stated that Ayyakannu had one son-Arasan and two daughters-Annakili, the 4th defendant therein and one Panchavarnam. It is further stated that Ayyakannu died intestate leaving behind his son and daughters. The above mentioned Arasan and Panchavarnam also died unmarried leaving behind the 4th respondent as their only heir. Thus, 4th defendant was entitled to exclusive right over Southern Side 49 cents and the same was sold by her in favour of the 2nd defendant under the Sale Deed dated 07.03.1994. Thus, claiming right over Southern



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Side 49 cents in the suit property under a Sale Deed executed by the 4th defendant in favour of 2nd defendant, the suit was resisted by the defendants.

4. Before the Trial Court, the 2nd plaintiff was examined as PW.1. The vendor of the plaintiffs, Thangavelu was examined as PW.2. One Subramaniam was examined as PW.3. On behalf of the plaintiffs, 27 documents were marked as Exs.A1 to A27. The 3rd defendant was examined as DW.1 and one Ramakrishnan was examined as DW.2. On behalf of the defendants, 10 documents were marked as Exs.B1 to B10.

5. The Trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the 2nd plaintiff established his title over the suit property and decreed the suit granting declaration of title and permanent injunction. Aggrieved by the same, the defendants 1 to 3 preferred an appeal in A.S.No.119 of 2004 on the file of the Additional Subordinate Court, Virudhachalam. Pending first appeal, the 1st defendant-Arunachala Padayachi died and his legal heirs were brought on record as appellants 5 and 6. The First Appellate Court affirmed the findings of the Trial Court. Aggrieved by the same, the appellants/defendants 1 to 3 filed this second appeal.



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6. The learned counsel appearing for the appellants would vehemently contend that the plaintiffs' vendor-Thangavelu purchased only property in Survey No.100/3 with four specific boundaries and he has not purchased the property in Suit Survey No.102/8. He submitted that the Courts below without taking into consideration the said fact, upheld the title of the 2nd plaintiff in the suit. The learned counsel also submitted that subsequent to the alleged sale in favour of Thangavelu, there was a Partition in the family of Appavu Vagaiyara under Ex.B1 and in the said Partition, the suit property has been included. In such circumstances, the claim made by the plaintiffs as if, their vendor-Thangavelu purchased the suit property in the year 1972 is not at all acceptable.

7. It is seen from the typed-set of papers that Appavu Vagaiyara purchased the suit property from one Periyasamy under Ex.A1, dated 14.12.1961. The title to Appavu Vagaiyara over the suit property has been admitted by both the parties. There is no dispute with regard to the same. The revenue document in the name of Appavu is also marked as Ex.A2. The original owner Appavu Vagaiyara executed a Sale Deed in favour of one minor Sivasubramani represented by his father under Ex.A3, selling of 1.33 acres of land on the Southern Side of Suit Survey No.102/8. Ex.A4 is the

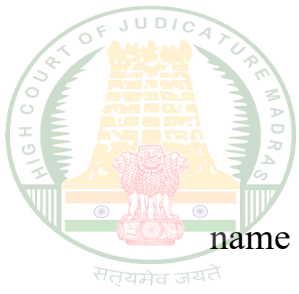


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revenue document in the name of purchaser minor Sivasubramani.

Therefore, it is clear immediately after purchase of Southern 1.33 cents in Suit Survey Number under Ex.A3, the mutation had taken place and revenue records changed in the name of Sivasubramani. Subsequently, the said Sivasubramani represented by his guardian Thangavelu sold the above mentioned 1.33 cents in favour of 1st plaintiff under Ex.A5. The 1st plaintiff also purchased 13 cents retained by Appavu Vagaiyara under Ex.A6, dated 24.07.1978. Thus, 1st plaintiff became owner of the entire 1.46 acres of land in Suit Survey No.102/8. The patta in the name of 1st plaintiff for the suit property was marked as Ex.A7. The Tax Receipt in the name of 1st plaintiff has also been marked as Ex.A9. Therefore, it is clear that 1.46 acres of land in Suit Survey No.102/8 have been purchased and enjoyed by the 1st plaintiff.

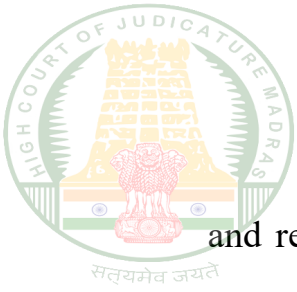
8. As per the plaint averment, though the suit property was purchased in the name of the 1st plaintiff, it was treated as joint family property as there was a oral partition between the 1st plaintiff and 2nd plaintiff. In the said Partition, the Southern 80 cents, (i.e) suit property in Survey No.102/8B has been allotted to the share of 2nd plaintiff. The Patta stands in name of the 2nd plaintiff has been marked as Ex.A8. Various Tax Receipts issued in the



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name of 2nd plaintiff for the suit property has been marked as Exs.A10, A11 and A18 to A26. Therefore, the revenue documents filed by the plaintiffs would establish that the Southern 80 cents in the suit property was allotted to the share of the 2nd plaintiff and he has been in possession and enjoyment of the same.

9. It is the case of the defendants that though under Ex.A3-Sale Deed, Appavu Vagaiyara sold the property in Survey No.102/8 to Sivasubramani represented by his father-Thangavelu, as per four boundaries mentioned in the said document, the subject matter of the same refers to some other property in Survey No.100/3. The purchaser-Thangavelu himself was examined as PW.2 on behalf of the plaintiffs. He clearly deposed that he purchased only property in Survey No.102/8 and enjoyed the same for six years on behalf of minor Sivasubramani and then sold it to 1st plaintiff. The revenue documents in the name of the Thangavelu guardian of minor Sivasubramani, for the Suit Survey Nnumber has been marked Ex.A4. The oral evidence of PW.2 coupled with the revenue documents in his name clearly establish Appavu Vagaiyara sold only property situated in Suit Survey No.102/8 under Ex.A3. The case of the defendants that Ex.A3 relates to some other survey number is falsified by oral evidence of PW.2



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and revenue document which has been marked as Ex.A4. Both the Courts below also compared the boundaries found in the title documents produced by the parties and came to a factual conclusion that the plaintiffs purchased only property in Suit Survey Number.

10. It is contended by the learned counsel appearing for the appellants that subsequent to the alleged sale in favour of Thangavelu, the suit property was included in the Partition entered into among Appavu Vagaiyara under Ex.B1. After selling the property the vendors of the plaintiffs' vendor Appavu Vagaiyara are not entitled to deal with the property and include it in the Partition Deed entered into among themselves. Merely because, the suit property has been included in the Partition Deed among Appavu Vagaiyara, to which the plaintiffs are not parties, we cannot say the plaintiffs purchased the different property in some other survey number.

11. In the light of the evidence of PW.2 and revenue documents produced by the plaintiffs, the 2nd plaintiff established his title as well as possession over the suit property and both the Courts below on proper appreciation of oral and documentary evidence available on record, gave a



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finding that the 2nd plaintiff established his title over the suit property. I do

not find any perversity in the said findings reached by the Courts below.

Accordingly, finding no substantial question of law arising for consideration in this second appeal and the same is dismissed.

12. **In Nutshell:-**

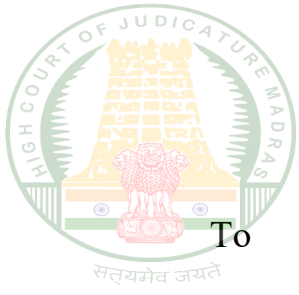
(i) The Second Appeal stands dismissed.

(ii) Consequently, the connected civil miscellaneous petition is closed.

(iii) In the facts and circumstances of the case, there will be no order as to costs.

03.06.2026

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm



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To

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1.The Additional Subordinate Court,
Viruthachalam.

2.The Principal District Munsif Court,
Viruthachalam.



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S.SOUNTHAR, J.

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