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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-03-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

SA No. 697 of 2021 and

CMP.No.13944 of 2021

Sundaram

..Appellant(s)

Vs

1. Flore Bakkia Lilia

2. Sharmila Mathu

3. Vinodhini

Represented by Power agent P. Sivacoumarane

4. Sreedevi

5. P. Sivacoumarane

..Respondent(s)

Prayer :Second appeal is filed under Section 100 of Code of Civil Procedure code, praying to set aside the judgment and decree dated 20.11.2019 passed in A.S.No.17 of 2017 on the file of the Principal District Judge, Cuddalore District, Cuddalore confirming in the judgment and decree dated 02.07.2016 passed in O.S 182 of 2010 on the file of the Principal Sub Judge, Cuddalore and thus render justice.

For Appellant(s): R.Gururaj

For Respondent(s): M/s. T.S. Baskaran



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JUDGMENT

The plaintiff in O.S.No.182 of 2010 is the appellant. He filed a suit seeking declaration that he has got preferential right to purchase the suit properties and also for mandatory injunction directing the defendants to sell the suit property to the plaintiff for market value. The suit was dismissed by the trial court. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.17 of 2017. The first appellant court affirmed the findings of the trial court. Aggrieved by the concurrent findings, the plaintiff in O.S.No.182 of 2010 has come before this court by way of second appeal.

2. According to the plaintiff, he along with his brother deceased Purushothaman and his father Vaithilinga Padayachi constituted a Hindu Joint Family owning ancestral properties. There was a partition on 09.04.1986 involving the father, deceased 1st defendant and plaintiff and they were allotted properties under schedule A, B and C to the partition deed respectively. The Schedule 'D' in the partition deed was motor and electricity service connection and the same was agreed to be enjoyed jointly by plaintiff and defendants. It was also stated that the family house was allotted to the plaintiff and the defendants. The plaintiff had taken eastern half and the defendants had taken western half. The defendants filed a suit in OS.No. 80 of 2009 seeking partition of house property and the same is being contested by the plaintiff.



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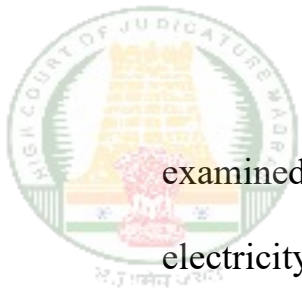
3. As far as agricultural lands are concerned, the entire extent of 2 acres 85 cents was in one block. The defendants were allotted western 1.42 ½ acres and the plaintiff was allotted eastern 1.42 ½ acres. The father Vaithilinga Padayachi was allotted 0.72 cents of lands for his share. Thereafter, as per the understanding, the plaintiff had taken the defendants' portion of the house and the defendants had taken the land allotted to the father. Thus, according to the plaintiff, the defendants had been in possession of 1.42 ½ acres of agricultural land originally allotted to him and 0.72 cents of land allotted to the share of the father. It is further pleaded that the deceased 1st defendant planned to go abroad and hence, he wanted to dispose of the suit properties. The plaintiff allegedly expressed his willingness to purchase the suit properties at a prevailing market rate in exercise of the preferential right available to the co-owner. The deceased 1st defendant refused to accede to the said request and hence, the above said suit was filed seeking declaration of preferential right and for mandatory injunction to direct the defendants to sell his share to the plaintiff.

4. The defendants filed a written statement and resisted the suit on the ground that in the partition dated 09.04.1986, the house property was not properly divided with reference to linear measurements and hence, the defendants had filed a separate suit for re-opening the partition in OS.No. 80 of 2009. The allegation in the plaint as if the plaintiff had taken defendants'



portion of the house and the defendants had taken the land allotted to father was specifically denied. It was the case of the defendants that they purchased 0.72 cents of land allotted to father under registered sale deed dated 21-12-1995 for valid consideration and hence, they have been in possession and enjoyment of the said property as absolute owners. The allegation in the plaint as if the defendants wanted to sell away their properties was specifically denied. It was the specific case of the defendants that deceased 1st defendant had no idea of going abroad. The allegation in the plaint as if he is the co-owner of the property and hence, he expressed his willingness to purchase the suit property at the prevailing market rate was also denied by the defendants. The defendants sought for dismissal of the suit on the ground that there was no cause of action for maintaining the suit.

5. The present suit seeking declaration of preferential right filed by the plaintiff and the suit for partition filed by the defendants were tried together and evidence was recorded in the suit filed by the defendants seeking partition in OS.No.80 of 2009. The deceased 1st defendant in the present suit, who is 1st plaintiff in OS.No.80 of 2009 was examined as PW1 and two documents namely partition deed dated 09.04.1986 and the sale deed executed by father in favour of deceased 1st defendant were marked as Ex.A1 and Ex.A2. The plaintiff in the present suit and the defendant in OS.No.80 of 2009 was

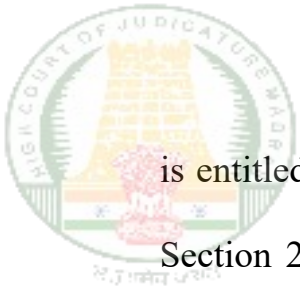


examined as DW1 and four documents like Patta, Chitta, application to electricity board and house tax receipts were marked as Ex.B1 to Ex.B4.

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6. The trial court found that under Ex.A1 partition, the western portion of the house was allotted to the defendants in the present suit and the eastern portion was allotted to the plaintiff. Hence, the suit for partition filed by the defendants in OS.No. 80 of 2009 was dismissed on the ground that already there was a partition between the parties under Ex.A1. The suit filed by the plaintiff seeking declaration of preferential right was dismissed on a specific finding that there was no attempt by the defendants to alienate the property. Aggrieved by the same, both the plaintiff and defendants filed appeals. The plaintiff in the present suit seeking declaration of preferential right filed appeal in AS.No.17 of 2017 and the present defendants, who are plaintiffs in partition suit, filed AS.No. 60 of 2016 on the file of District Court, Cuddalore. Both these appeals were dismissed by confirming the judgment and decree passed by the trial court. Aggrieved by the concurrent findings, the plaintiff in the suit for declaration of preferential right alone filed this second appeal. The present defendants, who are plaintiffs in partition suit has not filed separate second appeal challenging the dismissal of their claim for partition. Therefore, the said finding had attained finality.

7. The learned counsel for the appellant/plaintiff would vehemently contended that the present plaintiff is a co-owner of the property and hence, he



is entitled to preferential right to purchase the property of the defendants under Section 22 of Hindu Succession Act. The learned counsel also submitted that the preferential right available to a co-owner under Hindu law is not only a statutory right and the same is also founded on principles of equity. In support of his contentions, the learned counsel relied on the following decisions.

1) Collector of Bombay Vs Municipal Corporation of the city of Bombay and others reported in 1951 AIR(SC) 469.

2) Gurunath Vs Kamalabai and others reported in 1955 AIR(SC) 206.

3) Byram Pestonji Gariwala Vs Union Bank of India and Others reported in 1991 AIR(SC) 2234.

4) Smt.Ganga Bai Vs Vijay Kumar and others reported in 1974 AIR(SC) 1126.

8. The learned counsel for the respondents submitted that the suit for partition filed by the respondents/defendants in the suit seeking declaration of preferential right was dismissed by both the Courts below by holding that properties were partitioned under Exhibit A1. Therefore, according to them, the appellant is not a co-owner of the property and he is only a divided brother. In such circumstances, according to the counsel, appellant is not entitled to claim any preferential right by invoking Section 22 of the Hindu Succession Act. The learned counsel further submitted that both the Courts below factually came to a



conclusion that there was no attempt by the defendants to sell the property. In such circumstances, there is no cause of action for maintaining the prayer.

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9. A perusal of the averments in the plaint would indicate that there was a partition between the plaintiff and the defendants and also his father under Exhibit A1 dated 09-04-1986. The suit item 1, agricultural lands were divided between the plaintiff and the defendants. The plaintiff was allotted the eastern half and the defendants were allotted the western half. The 2nd item of the suit property was allotted to the share of father namely Vaithilinga Padayachi. Therefore, even as per the averments found in the plaint, the family properties were already divided and as on today, the plaintiff is not a co-owner of the property and he is only an absolute owner of the property allotted to him. In fact, the respondents filed a separate suit in OS.No.80 of 2009 seeking to reopen the partition on the ground that house property was not properly divided with reference to linear measurements and the said suit was dismissed by affirming the partition under Exhibit A1. In such circumstances, there is a considerable force in the arguments made by the learned counsel for the respondents that appellant/plaintiff is not a co-owner and he is a divided brother. In these circumstances, he is not entitled to claim any preferential right by invoking Section 22 of Hindu Succession Act.

10. A perusal of Section 22 of Hindu Succession Act would indicate that it only talks about the preferential right available to an heir in respect of his



interest in immovable property of a person who died intestate. In the case on hand, the properties were already divided. The plaintiff and defendants are owners of separate portion of the property as per the partition deed under Exhibit A1. When plaintiff is not a co-owner, he is not entitled to invoke Section 22 of the Hindu Succession Act seeking preferential right to purchase the property already allotted to his brother. In this regard, it would be appropriate to refer to decision of Hon'ble Orissa High Court in ***Bhagirathi Chhatoi Vs Adikanda Chhatoi*** reported in ***AIR 1988 Orissa 285***.

11. It is seen from the judgment of the courts below that based on the evidence of present plaintiff, who was examined as PW1, they came to a factual conclusion that there was no attempt by the defendants to alienate the property. In fact, in the written statement, the defendants clearly pleaded that they had no intention to sell the property to others. When plaintiff was examined as PW1, he clearly admitted that the defendants never informed him that they wanted to dispose of the properties. There was a rumour regarding alienation by the defendants. He also admitted that the defendants has not sold any portion of the suit property to third party. He further stated that since the defendant was suffering from illness, he expected that he would sell the property. The evidence of PW1 clearly establish that the suit was filed by plaintiff on an apprehension that the defendants would sell the property to third party. The preferential right can be invoked only in case of sale of his interest by co-owner. When there is



no sale by the defendants, the plaintiff is not entitled to invoke the preferential right available under Section 22 of the Hindu Succession Act. In this regard, it would be appropriate to refer to decision of this Court in ***Nagammal Vs. Nanjammal*** reported in ***1970(1) MLJ 358***. The relevant observation there in reads as follows.

“8. The right conferred under section 22(1) of the Hindu Succession Act cannot be enforced and a transfer secured if the alienating co-heir only intends to make a transfer. He or she could, at any time, abandon the proposal for transfer. It will be perfectly open to a person who is negotiating for a sale to a stranger, to withdraw from the negotiations and abandon the proposal for sale or his co-heir intervening to enforce his preferential right purely out of feelings of animosity towards the co-heir. Such conduct is not unknown. A proposal to transfer any become manifest only on an irrevocable act of transfer. It is the sale against the right of the co-heirs that would constitute an infringement of the right conferred under section 22(1). To-repeat the cause of action is a sale to a third party, without reference to the other co-heirs who might have purchased the property for the proper price, if it had been offered. Shall we say that a firm proposal comes into existence vis-a-vis the other coheirs, when execution of the deed of transfer in favour of the stranger is taken up, and eo instanti the statutory right of purchase by the other co-heirs attaches itself to the property.”



12. The citations relied on by the learned counsel for the appellant are not applicable to facts of the present case, where plaintiff is not a co-owner and also there is not sale by defendant. In such circumstances, those citations will not be helpful to the case of the appellant.

13. In view of the discussions made earlier, the submissions made by the learned counsel for the appellant are rejected. I do not find any substantial question of law arising for consideration in this second appeal. Accordingly, the same is dismissed by affirming the judgment and decree dated 20.11.2019 in A.S.No.17 of 2017 on the file of the Principal District Judge, Cuddalore confirming the judgment and decree dated 02.07.2016 passed in O.S.No. 182 of 2010 on the file of the Principal Sub Judge, Cuddalore. Consequently, the miscellaneous petition is closed. No costs.

25-03-2026

Index: Yes

Speaking order

Neutral Citation: Yes

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To

1. The Principal District Judge, Cuddalore.
2. The Principal Sub Judge, Cuddalore



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S.SOUNTHAR, J.

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