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SA No. 948 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-02-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 948 of 2016

P. Jeevanantham
S/o Palanisamy, Perumalpudhur Village
Mattathukulam Taluk

..Appellant(s)

Vs

1.P. Prabakaran
S/o Palanisamy
Perumalpudhur Village,
Mattathukulam Taluk

2.M.K. Palanisamy
S/o S.M. Makaligounder,
Perumalpudhur Village
Mattathukulam Taluk

3.Muthulakshmi
W/o M.K.Palanisamy
Perumalpudhur Village,
Mattathukulam Taluk

4.Kalaivani
W/o P.Prabakaran
Perumalpudhur Village,
Mattathukulam Taluk

5.J. Ushanandhi
W/o Jayakumar,
Gopalapuram Thotathusalai,
Pollachi Taluk, Pollachi

..Respondent(s)



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Prayer: Second Appeal filed under Section 100 of Civil Procedure Code to set aside the judgement and decree dated 31/10/2014 made in A.S.No. 13 of 2013 on the file of I Additional District Court, Tiruppur reversing the Judgement and decree dated 10/08/2012 made in O.S.No.29/2011 on the file of the Sub Court, Udumalipet

For Appellant(s): Mr.Mukunth
Senior Counsel for
M/s.Sarvabhauman Associates

For Respondent(s): Mr.C.Selvaraj for R1 and R4
R-3 and R5 – served – No appearance
R2 – Died

JUDGMENT

This Second Appeal has been preferred as against the Decree and Judgment dated 31.10.2014 passed by First Additional District Court, Thirupur in A.S.No.13 of 2013.

2. The appellant is the plaintiff in the main suit filed in O.S.No.29 of 2011 on the file of the Subordinate Court, Udumalaipet, which was filed for the relief of partition and separate possession. The said suit was decreed by granting preliminary decree for 1/4th share to the plaintiff and aggrieved by the said decree and judgment, the 3rd defendant has preferred the Appeal Suit No.13 of 2013 on the file of the Additional District Court, Thirupur and the First



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Appellate Court allowed the appeal by setting aside the decree and judgment of the trial Court. Aggrieved by the said Decree and Judgment, the plaintiff has preferred this Second Appeal.

3. For the sake of convenience and brevity, the parties herein are referred to as plaintiff and defendants, as referred before the trial court.

4. The brief averment of the plaint are as follows:-

4.1. The suit 1 and 2 Items of the schedule properties are ancestral joint family properties of the plaintiff and defendants. The 1st defendant is the husband of the 2nd defendant and the 3rd defendant is the son of defendants 1 and 2, 4th defendant is the wife of 3rd defendant and 5th defendant is the daughter of defendants 1 and 2. There were ancestral joint family properties, which belongs to the plaintiff and 1 and 3 defendants and the ancestral joint family properties were partitioned between the 1st defendant and his father and brothers through partition deed dated 26.03.1973. In that partition, 'C' schedule property was allotted to the 1st defendant and further, in that partition, they only partitioned the lands and there was a common house and the said common house was partitioned through partition deed dated 16.04.1979. From the date of partition, the property allotted to the 1st defendant were enjoyed by the plaintiff and defendants 1 and 3 through the



income derived from the properties allotted through partition, the 1st defendant and his brothers, purchased the properties in the year 1975-1976 in their name and in the name of their wives respectively.

4.2. The 1st defendant only depending on the income of the agriculture and the defendants 1 and 2, purchased the properties in their name through the income derived from the ancestral properties and brothers of the 1st defendant also purchased the properties in their wives names and thereafter in respect of those properties, they entered into partition through partition deed dated 16.04.1979 through that partition, 'B' schedule was allotted to the 1st defendant and 'E' schedule was allotted to the 2nd defendant. Therefore, both the properties allotted through partition are joint family properties of the plaintiff, defendants 1 and 3. Since the 1st defendant agreed for partition in respect of some properties, the suit filed in O.S.No.22 of 2004 was amicably settled and the other properties were not included in the suit.

4.3. While so, the 1st defendant sold the property to the 4th defendant through sale deed dated 02.12.2010 and the 2nd defendant executed settlement deed dated 02.12.2010 in favour of the 3rd defendant. The above said sale deed as well as the settlement deed came to the knowledge of the plaintiff recently. The defendants 1 and 2 have no any right over the



properties to alienate with those properties. All the properties were purchased through the income derived from the ancestral properties and thereby the plaintiff is having 1/4 share over the suit properties. When the plaintiff demanded for partition, the defendants denied, therefore, the plaintiff filed the suit.

5. The gist of the written statement filed by the 3rd defendant, adopted by the other defendants, are as follows :-

5.1. The 3rd defendant denied the nature and character of the suit properties and the Items 1 and 2 of the suit properties are not ancestral and joint family properties. The properties allotted through partition dated 16.04.1979 to the 1st defendant are his separate properties and the averments that the properties were purchased in the name of wife of 1st defendant are false. In fact, the properties purchased in the name of the defendants 1 and 2 are their separate properties and those properties are not joint family properties. In fact, the suit in O.S.No.22 of 2004 was filed and the properties allotted to the 1st defendant through partition deed dated 26.03.1973 were partitioned between the plaintiff and the defendants. At that time, the suit properties were not included in the said partition, because those properties are separate properties of the defendants 1 and 2. The properties partitioned on 16.04.1979 are the separate properties of the defendants 1 and 2 and



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those properties are not joint family properties. Since the properties are separate properties, they were not included in the previous suit and no any objection was made by the plaintiff at the time of passing final decree in the above said suit. Therefore, the plaintiff is not entitled to any relief.

5.2. The 1st defendant obtained loan from various persons and in order to discharge the loan, he wanted to sell the properties, thereby the 3rd defendant in order to settle the loan paid money and purchased the properties in the name of his minor son Guruprasanna through his wife as guardian from the first defendant and also obtained settlement deed in his favour from the second defendant. The 3rd defendant and his son are in possession and enjoyment of the property pursuant to the sale deed and settlement deed dated 02.12.2010. The plaintiff ought to have sought for relief of declaration in respect of the above said deeds and without seeking declaration in respect of the deeds, the suit for partition is not maintainable. Infact the first defendant is residing in his bunagalow and the adjacent land on the eastern side belongs to the plaintiff. Since the said bungalow is situated in the property allotted to the plaintiff he tried to vacate the defendants 1 and 2 but the defendants 1 and 2 refused for the same, thereby now filed this suit and therefore, the suit is liable to be dismissed.



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

“1. Whether the plaintiff is entitled to 1/4th share over the Items 1 and 2 of the suit schedule properties?

2. To what other reliefs the plaintiff is entitled to?”

Before the trial court on the side of the plaintiff, P.W.1 was examined and marked Exhibits A.1 to A.6. On the side of the defendants, they examined D.W.1 to D.W.3 and marked Ex.B.1 to B.10 and after analysing oral and documentary evidence adduced on both sides, the trial court decreed the suit.

7. Aggrieved by the said Decree and Judgment, the 3rd defendant has preferred Appeal Suit before the the learned Additional District Judge Thirupur on various grounds. The 1st appellate court framed following point for determination. *“Whether the Appeal Suit is liable to be allowed or not?”*

8. After analysing the evidence adduced on both sides and hearing the learned counsel on both sides, the First Appellate Court allowed the Appeal Suit and dismissed the suit, by setting aside the decree and judgment of trial court.

9. aggrieved by the said Decree and Judgment passed by the First Appellate Court, the plaintiff has preferred this Second Appeal. This



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Court, at the time of admitting the Second Appeal on 01.12.2016, formulated the following Substantial Questions of Law:-

“(i) Whether the Appellate Court was correct in dismissing the suit on the ground of non-joinder of son of the 3rd respondent in the suit?

(ii) Whether the Lower Appellate Court is correct in law in overlooking the pleadings of the court in O.S.No.22 of 2004 where the 3rd respondent has admitted the ancestral nature of the properties?”

10. The learned counsel appearing for the appellant would submit that the appellant is the plaintiff, who filed the suit for partition and the suit properties are ancestral joint family properties and already the plaintiff's father, viz., 1st defendant and his brothers along with their father had entered into partition in respect of their properties through partition deed dated 26.03.1973 where the 'C' schedule properties were allotted to the 1st defendant through that partition. Thereafter, again, the 1st defendant and his brothers entered into partition deed dated 16.04.1979 and through that partition, 'B' schedule property was allotted to the 1st defendant and from the date of the above said partition, the 1st defendant along with his sons, viz., plaintiff and 3rd defendant have been in possession and enjoyment of the properties. While so, the 1st defendant executed a sale deed in favour of the 4th defendant on 02.12.2010 and the 2nd defendant executed a settlement deed in favour of 3rd defendant



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on 02.12.2010 and the plaintiff came to know about the sale deeds recently and immediately after knowing the said deeds, he demanded partition but they failed to partition the properties and thereby filed the suit. Before the trial court, on the side of the plaintiff, he was examined as P.W.1 and marked Exhibits A.1 to A.6. On the side of the defendants, they examined D.W.1 to D.W.3 and marked Ex.B.1 to B.10.

10.1. Further, the trial Court after elaborate discussion and after appreciating the evidence in a proper perspective, came to a fair conclusion that the plaintiff is entitled to $\frac{1}{4}$ share and decreed the suit. However, the First Appellate Court without appreciating the evidence in a proper perspective, erroneously dismissed the suit on the ground that the joint family properties were already partitioned through compromise decree in O.S.No.22 of 2004, where these suit properties have not been included, since these properties are separate properties of the defendants 1 and 2. Further the First Appellate court rendered a finding that without impleading the son of the 3rd respondent, in favour of whom the property was sold. The suit is not maintainable and thereby dismissed the suit. The above said finding of the First Appellate Court is erroneous and the First Appellate Court failed to consider the evidence on the side of the plaintiff and without assigning any reasons, set aside the decree and judgment passed by the trial Court. The finding of the First



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Appellate Court dismissing the suit on the ground of non-joinder of necessary party and overlooking the pleadings of the suit in O.S.No.22 of 2004 where the 3rd defendant has admitted -the ancestral nature properties, thereby the Decree and Judgment passed by the First Appellate Court are liable to be set aside and the Second Appeal has to be allowed.

11. The learned counsel appearing for the respondents 1 and 4 would submit that the plaintiff has filed the suit in respect of the separate properties of the defendants 1 and 2. The said Items 1 and 2 of the suit properties have already been sold to the second defendants' son and one of the property was settled in favour of the 3rd defendant, without impleading the son of the 3rd defendant namely Guruprasanna the suit is barred for non joinder of necessary party. Moreover, already the family properties were partitioned and compromise decree was passed in O.S.No.22 of 2004 and in that compromise decree, these properties were not included because the suit properties are separate properties of the defendants 1 and 2, which were purchased in their names and there is no any surplus income proved by the plaintiff to show that the suit properties were purchased through income of the ancestral properties. In fact, the ancestral properties were partitioned between the 1st defendant and his father and brothers through partition deed dated 16.04.1979 and thereafter, some of the properties were purchased in the name of wife of the



1st defendant, who is the 2nd defendant and the brothers and their wives and thereby they entered into partition in respect of separate properties through partition deed dated 16.04.1979, where the 'B' schedule property was allotted in favour of the 1st defendant.

11.1. Therefore, the properties derived through ancestral properties through partition dated 26.03.1973 were partitioned between the family members of the plaintiff, 1st defendant and 3rd defendant in O.S.No. 22 of 2004. Thereafter, the 1st defendant sold the separate properties to the minor son of 3rd defendant through his mother 4th defendant and the 2nd defendant executed the settlement deed in favour of the 3rd defendant. Therefore, the suit properties are separate properties of the 1 and 2 defendants and already they alienated the properties and the properties are not available for partition but the trial court without considering the evidence adduced on the defendants' side, erroneously held that the properties are joint family properties and passed the preliminary decree. However, the First Appellate Court after analysing the evidences came to a fair conclusion that the properties are self acquired properties of the defendants 1 and 2, that's why these properties were not included in the partition suit filed for the family properties and the compromise was arrived at between the parties in the year 2004. At that time, the plaintiff has not claimed right over these properties and



after a long gap, now, the plaintiff has filed the suit after execution of the sale deed and settlement deed, and further the son of 3rd defendant Guruprasanna is not a party to this suit since sale deed is in his favour he is also proper and necessary party. Therefore, the First Appellate Court has correctly allowed the appeal by setting aside the decree and judgment passed by the trial court, therefore, there is no perversity or illegality in the judgment passed by the First Appellate Court and thereby the Second Appeal is liable to be dismissed and moreover, there is no Substantial Question of Law involved in this case, therefore, the Second Appeal is liable to be dismissed.

12. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 1 and 4 and perused the entire documents placed on record.

13. In this case, the plaintiff filed the suit for partition alleging that the properties are ancestral joint family properties of the plaintiff and the defendants 1 and 3. It is admitted by both the parties that already a partition was effected between the 1st defendant and his brother and father through partition deed dated 26.03.1973 and thereafter, again the 1st defendant and his brothers, partitioned their separate properties through partition deed dated 16.04.1079. In that partition deed, the properties derived through previous



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partition deed dated 26.03.1973 have not been referred. Thereafter, the compromise decree was passed in O.S.No. 22/2004 in respect of the properties allotted through partition deed dated 26.03.1973 where the plaintiffs also party to the said suit. The properties covered under the partition between the 1st defendant and his brothers dated 16.04.1979 are not subject matter of the properties of the said suit O.S.No.22/2004 in which the compromise arrived at between the parties. The said compromise decree was passed on 19.03.2004, on that date, the present suit properties were also available but those properties were not included in that suit.

14. It is also admitted fact that the properties were alienated and the 4th defendant purchased the properties from the 1st defendant in the name of her minor child namely Grurprasanna and the 2nd defendant executed settlement deed executed in favour of her son the 3rd defendant. While so, the trial Court decreed the suit holding that the suit properties were purchased through income derived from the partition, thereby the properties are joint family properties. There are no pleadings about the income derived from the properties obtained by the 1st defendant through partition dated 26.03.1973 and the plaintiff have failed to prove the surplus income. Once the properties purchased in the name of individuals, it is a presumption that those properties are separate properties unless the contrary is proved. In this case, the



properties were purchased in the name of the defendants 1 and 2 and there is no evidence adduced by the plaintiff to prove that those properties were purchased from the income of the ancestral properties. In the absence of any evidence that the properties were purchased through income of ancestral properties the Court has to presume that the properties were purchased in the name of individuals when there are sale deeds in the name of the 1 and 2 defendants.

15. Besides the above, it is also admitted fact that the suit in O.S.No.22 of 2004 has been filed and matter has been compromised between the parties and the compromise decree was passed on 19.03.2004, in the said compromise decree, these suit properties have not been included, there is no explanation on the side of the plaintiff as to why these properties were not included in the previous partition where the family properties were subjected for partition. Therefore the contention of the defendants that since the properties are covered under the partition deed dated 16.04.1979 are separate properties of defendants 1 and 2, those properties were not included in the partition suit in O.S.No.22 of 2004 is acceptable. Therefore, the conduct of the plaintiff by non inclusion of the properties purchase by the Defendants 1 and 2 shows that the properties are separate properties of the 1 and 2 defendants. Therefore the defendants 1 and 2 are entitled to deal with their



properties as their wish. Therefore, the plaintiff is not entitled to share over separate properties of the defendants 1 and 2. It is also admitted fact that the 1st defendant sold the properties to one minor Guruprasanna son of 3rd defendant through the 4th defendant as guardian and the 2nd defendant executed a settlement deed in favour of the 3rd defendant. Therefore, the trial Court without considering the same erroneously decreed the suit without any evidence to prove that the suit properties are joint family properties. The trial court failed to consider that no pleading and evidence that the suit properties were purchased through the income derived from the ancestral properties. There are no pleadings and evidence as about the income of the ancestral properties and whether any surplus income derived through the ancestral properties and whether the properties were purchased through that surplus income. Thereby the judgement of trial court is un-sustainable.

16. As far as the Judgment and Decree passed by the First Appellate Court is concerned, the First Appellate Court in the judgment, discussed that in respect of the family properties, the parties filed the suit in O.S.No.22 of 2004 and the final decree has been passed, in that suit, the properties partitioned through partition deed dated 16.04.1979 have not been included, since those properties are separate properties of the defendants. The plaintiff also admitted in his evidence that after knowing the contentions of the



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compromise decree, he signed the compromise memo and at that time itself, he knew about the non inclusion of the properties in respect of the partition deed dated 16.04.1979 and without any protest, the plaintiff signed in the compromise. There are no recitals in the compromise deed in respect of the partition of remaining properties at a later point of time and no steps have been taken by the plaintiff for the non-inclusion of the suit properties in the previous suit. Further, the plaintiff has failed to prove the surplus income derived from the ancestral properties. The plaintiff has not examined any witnesses to prove the income derived from the joint family properties and whether the income is surplus or not. Further the appellate court relied the Ex.A5 settlement deed which was executed in favour of Guruprasanna, who is the son of 3th defendant through 4th defendant as guardian. Without impleading the said Guruprasanna, the suit is not maintainable and thereby dismissed the suit by allowing the appeal.

16.1. The learned counsel appearing for the plaintiff relied on the Judgment of this Court in **S.A.No.527 of 2022 dated 08.11.2024 [Vasumathi and another Vs. Vasudevan and others]**. On a careful perusal of the judgment, it is clear that the *share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue. They take an interest in it by birth, whether they are in existence at the time of partition*



or are born subsequently, such share, however, is ancestral property only as regards, his male issue. As regards other relations it is separate property.

Further, on a careful perusal of the said judgment, it is pertinent to point out that that said judgment will not be applicable to the present facts of the case, because in this case, the earlier partition dated 26.03.1973 was made in respect of the ancestral properties and the subsequent partition dated 16.04.1979 was in respect of their separate properties between the brothers of the 1st defendant, therefore, the said case law is no way helpful to decide the case in favour of the appellant.

16.2. The learned counsel appearing for the respondents also relied on the Judgments of the **Hon'ble Supreme Court, viz., (i) Angadi Chandranna Vs. Shankar and Others reported in 2025 (4) CTC 168 and (ii) Kesharbai alias Pushpabai Eknathrao Nalawade (Dead) by Lrs., and Another Vs. Tarabai Prabhakarrao Nalawade and Others reported in (2014) 4 Supreme Court Cases 707.** On a careful perusal of the said judgments, it is clear that once the partition takes place in a family, presumption would be that all the properties stood partitioned and burden of proof of exclusion of certain property from partition would be on party who asserts same to be joint. Further, it is clear that self acquired property may be impressed with the character of joint family, if voluntarily thrown by owner into common stock with



intention of abandoning his separate claim. Mere fact that other members of the family were allowed to use the property jointly with owner or from failure to maintain separate accounts or other factors, abandonment cannot be inferred.

16.3. In the case on hand also the plaintiff asserted that the suit properties are joint family properties. When the partition suit was filed in the year 2004, in O.S.No.22 of 2004, these properties were not included, so it is the duty of the plaintiff to prove that these properties are also common properties, but there is no evidence to prove the same and for what reasons these properties were not included in the partition has not been explained by the plaintiffs. Therefore, in the view of the above said judgments, the plaintiff has failed to prove that the suit properties are joint family properties and why the suit properties were excluded from the previous partition.

17. Since the plaintiff failed to prove that the suit properties were purchased by the defendants 1 and 2, based on the income derived from the ancestral properties and the properties were stood in the name of the defendants 1 and 2 and they alienated the properties. Moreover the said properties were already alienated prior to the suit and as per Ex.A5 there are recitals that the family properties were partitioned and the property is his separate property and plaintiffs also did not challenge those documents.



Therefore for the above said reasons the plaintiff is not entitled to relief of partition over the suit properties.

18. As far as the (I) Substantial Question of Law "*Whether the Appellate Court was correct in dismissing the suit on the ground of non-joinder of son of the 3rd respondent in the suit?*" is concerned, the First Appellate Court dismissed the suit on the ground of non-joinder of necessary parties for non-including the son of the 3rd defendant in whose favour the sale deed was executed. As per Ex.A5 the property was sold in favour of the son of 3rd defendant minor Guruprasanna through his mother 4th defendant. As per Ex.P.6, the property was settled in favour of the 3rd defendant. Therefore, the First Appellate Court has rendered a correct finding that the suit is bad for non-joinder of necessary parties since the said Guruprasanna in who's name the property was sold has not been implead as party to the suit. Therefore the First Appellate Court dismissed the Appeal Suit by holding that the suit is bad for non joinder of necessary party and the properties are separate properties of the defendants 1 and 2 and thereby they alienated the properties as their wish and the said finding as based on the evidence and in accordance with law. Thus the Substantial Question of Law (i) is answered.



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19. As far as Substantial Question of Law “(ii) *Whether the Lower Appellate Court is correct in law in overlooking the pleadings of the court in O.S.No.22 of 2004 where the 3rd respondent has admitted the ancestral nature of the properties?*” is concerned, the suit in O.S.No.22 of 2004 was filed for partition of the properties in respect of the properties contained in that suit. Admittedly, these suit properties were not included in the previous suit and thereby the pleadings as about the ancestral nature of the properties in the suit in O.S.No.22 of 2004 are no way relevant to decide this case. In the suit in O.S.No.22 of 2004, the properties derived by the 1st defendant through partition deed dated 26.03.1973 alone were included as family properties and the properties partitioned through partition deed dated 16.04.1979 have not been included in that suit, even though those properties were available on the date of filing of the suit. The pleadings in the suit in O.S.No.22/2004 are in respect of the properties of the partition suit and the same cannot be termed as admission in this suit, as the present suit properties are not subject matter of the previous suit. Therefore, in the absence of any explanation of non-inclusion of the suit properties in the previous suit, this Court has to presume that those properties are separate properties of the defendants. Moreover, the plaintiff after passing the compromise decree in the year 2004, has not taken any steps in respect of the suit properties and only after execution of the sale deed and settlement deed in favour of the defendants 3



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and his son, the present suit has been filed. Therefore, the conduct of the plaintiff shows that he filed the suit in respect of the family properties in the year 2004 through O.S.No.22 of 2004. Since the properties covered in O.S.No.22 of 2004, were ancestral properties and these properties are separate properties of defendant 1 and 2 they did not form part of the previous suit. The admission made in the previous suit pleadings in respect of the nature of the properties are no way relevance to this case. Therefore, the First Appellate Court is correct in law by holding that the suit properties are separate properties of the defendants 1 and 2 and not joint family properties of plaintiff and defendants. Thus the Substantial Question of Law (ii) is answered.

20. In view of the above said discussions and the answers to the Substantial Questions of Law, the Second Appeal has no merits and deserves to be dismissed. Accordingly, the present Second Appeal is dismissed and the Judgment and Decree passed by the I Additional District Court, Tiruppur in A.S.No.13 of 2013 dated 31.10.2014 are confirmed. No costs.

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

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To

1. The I Additional District Court, Tiruppur
2. The Subordinate Court, Udumalaipet



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