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SA No. 180 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-03-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

**SA No. 180 of 2020 and
CMP.No.3600 of 2020**

Jeeva (died)

1. Ponnambalam
2. Maheswari
3. Kalaivani
4. Shanmuga Sundaram

..Appellant(s)

Vs

1. Panchalai (died)

2. Amudha
3. Chithra
4. Punidha
5. Navaneendam
6. Selvamani
7. Bakiyaraj
8. Krishnan
9. Veerapandian
10. Senthamarai
11. Maheswari
12. Rajeswari

(R1 died, R8 to R12 are brought on record as
LR's of the deceased R1 vide court order dated
13/08/2024 made in CMP.No.12741 of 2022)

..Respondent(s)

Prayer: Second appeal is filed under Section 100 of Code of Civil Procedure, praying to set aside the Judgment and Decree dated 10.09.2018 made in AS.No.4/2017 on the file of the III Additional District Court, Vellore at Tirupathur confirming the Judgement and Decree dated 19.08.2016 made in OS.No.84 of 2015 on the file of the Sub Court, Vaniyambadi.

For Appellant(s):

M/s.R.Ramesh



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For Respondent(s): R1 - Died
M/s.D.Rameshkumar for R2 to R12

JUDGMENT

The unsuccessful 1st defendant in the suit is the appellant. The 1st respondent/plaintiff filed a suit for partition claiming 4/20th share. The Trial Court decreed the suit and granted preliminary decree for partition of 4/20 share in the suit property. Aggrieved by the same, the 1st defendant preferred an appeal in A.S.No.4 of 2017. The first appeal was also dismissed. Aggrieved by the same, the 1st defendant has come before this court by way of second appeal.

2. For the sake of convenience, the parties are referred to as per their ranking in the suit.

3. The plaintiff and the defendants 1 to 3 are sisters. The defendants 4 to 7 are children of another deceased sister of plaintiff namely Jaya. The suit properties originally belonged to one Kandasamy, father of the plaintiff, defendants 1 to 3 and deceased Jaya. After his death, plaintiff, defendants 1 to 3 and legal representatives of deceased Jaya are entitled to 4/20th share each. Hence, the above mentioned suit was filed seeking partition.

4. Initially, the suit was filed only in respect of 1st item and after filing of written statement by the contesting defendants raising a plea regarding availability of other lands, item 2 was included in the suit property..



5. The appellant/contesting 1st defendant filed a written statement and resisted the suit only in respect of item 1 of the suit property. According to the 1st defendant, item 1 of the suit property was purchased in the name of Kandasamy by utilising the funds provided by husband of the 1st defendant. It was also stated that Kandasamy, during his lifetime, orally gifted the property in favour of 1st defendant and the revenue documents mutated in her favour. It was also stated that 1st defendant had been enjoying item 1 of the suit property for more than 20 years and hence, sought for dismissal of the suit.

6. Before the Trial Court, the plaintiff was examined as P.W.1 and one independent witness was examined as P.W.2. On behalf of the plaintiff, 7 documents were marked as Ex.A1 to Ex.A7. On behalf of the defendants, 1st defendant was examined as D.W.1 and yet another witness was examined as D.W.2. On behalf of the defendants, 20 documents were marked as Ex.B1 to Ex.B20.

7. The Trial Court, on appreciation of oral and documentary evidence available on record, disbelieved the plea of oral gift raised by the 1st defendant and granted preliminary decree for partition as prayed for. Aggrieved by the same, the 1st defendant preferred first appeal in A.S.No.4 of 2017 on the file of III Additional District Court, Vellore at Tiruppattur. The first appellate court confirmed the findings of the Trial Court. Aggrieved by the same, the present second appeal is filed.



8. The learned counsel for the appellant/1st defendant vehemently contended that even during the lifetime of her father Kandasamy, the revenue records had been mutated in favour of 1st defendant's name and hence, the courts below committed an error in disbelieving the plea of oral gift pleaded by the 1st defendant. It is also stated that the debt incurred by 1st defendant for celebrating the marriage of other daughters were repaid by 1st defendant's husband and hence, the suit property was given to the 1st defendant.

9. It is the specific case of the 1st defendant that the suit property was purchased in the name of Kandasamy out of funds provided by 1st defendant's husband Ponnambalam. Ex.A1 is a certified copy of the sale deed dated 03.09.1973 regarding item 1 of the suit property and the same stands in the name of Kandasamy. Therefore, there is no dispute that the property was purchased in the name of Kandasamy. As far as the defence raised by the 1st defendant that the property was purchased out of funds provided by 1st defendant's husband, after coming into force of the Prohibition of Benami Transaction Act, 1988, the 1st defendant is not entitled to raise such a plea. Further, the 1st defendant has not placed any worthwhile evidence to establish that property was purchased in the name of Kandasamy out of funds provided by her husband Ponnambalam. Therefore, the defence raised by the 1st defendant that suit property was purchased in the name of Kandasamy out of funds provided by 1st defendant's husband, Ponnambalam is not acceptable to



this Court.

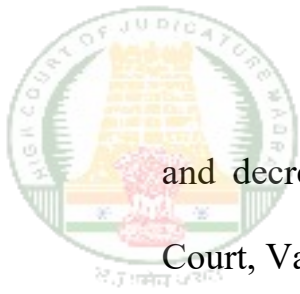
10. It is settled law that a gift of immovable property worth more than one hundred rupees shall be made only by registered document. In the case on hand, the 1st defendant claims that item 1 of the suit property was gifted orally by her father Kandasamy. The said plea raised by the 1st defendant, on the face of it, is not sustainable. In support of the alleged oral gift, it was contended by the learned counsel for the appellant that even during the lifetime of Kandasamy, the revenue records were mutated in the name of 1st defendant and patta was issued in her name under Ex.B1.

11. The trial Court, referring to Exhibit B1, categorically observed that it was only a patta issued under Natham Nilavari Thittam. Exhibit A4 is the patta passbook stands in the name of Kandasamy. DW1, during the course of cross-examination, clearly admitted that originally patta stood in the name of her father Kandasamy and Exhibit A4 was marked through cross-examination of DW1. Therefore, it is clear that said Kandasamy enjoying the property as his own property by obtaining revenue records in his name. Though the first defendant produced Exhibit B1, patta under Natham Nilavari Thittam in her name, there is no evidence produced to show that patta which stood in the name of Kandasamy was transferred to her name by any order passed by the competent authority. Exhibit B1 appears to be a fresh patta issued under Natham Nilavari Thittam. In the absence of any patta transfer order, no weightage can be given to Exhibit B1, patta issued under Natham Nilavari



Thittam in the name of first defendant. Further, it is settled law that revenue documents will not prevail over the title documents. In the case on hand, by producing Exhibit A1, the plaintiff categorically proved property was purchased in the name of Kandasamy, Exhibit A4 also proves the said Kandasamy enjoyed the property by mutating revenue records in his name. In these circumstances, merely based on Exhibit B1, patta under Natham Nilavari Thittam, the first defendant cannot claim the property was orally gifted to her and she had been in possession and enjoyment of the suit property as her exclusive property. It is settled law that the physical possession of one of the co-owner is not only for her benefit but also for the benefit of other co-owners. In such circumstances, even assuming the first defendant established her physical possession of the suit property, the same will not help her to claim title over the property. The first defendant pleaded ouster by making a specific plea. In the case on hand, the first defendant claims title over suit property and she never admitted joint title of other co-owners and pleaded exclusive possession for more than statutory period. In these circumstances, the trial court as well as the first appellate court rightly came to the conclusion that the first defendant miserably failed to establish both the pleas raised and dismissed the suit. I do not find any substantial question of law arising for consideration in this second appeal.

12. Accordingly, the second appeal stands dismissed by affirming the judgment and decree dated 10.09.2018 made in AS.No.4/2017 on the file of the III Additional District Court, Vellore at Tirupathur confirming the judgement



and decree dated 19.08.2016 made in OS.No.84 of 2015 on the file of Sub Court, Vaniyambadi.

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13. It is stated by the learned counsel for the first respondent/plaintiff that his client already filed final decree petition in IA.No.120 of 2017. The trial court is directed to proceed with the final decree proceedings in accordance with the law. Consequently, the connected miscellaneous petition is closed. No costs.

09-03-2026

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

1. The III Additional District Court, Vellore, Tirupathur
2. The Sub Court, Vaniyambadi.



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S.SOUNTHAR, J.

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