



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-03-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

**SA No. 82 of 2020 and
CMP No.1729 of 2020**

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Murugadhas
S/o.Pandurangan, Residing at
Pazayakaruvatchi Village,
Vikravandi Taluk.

..Appellant(s)

Vs

1. Jothi
D/o.Pandurangan,
Pazayakaruvatchi Village,
Vikravandi Taluk
2. Selvamani
W/o.Sakthivel,
Arkadu Village, Tirukoilur Taluk.
(notice dispense with for R2)

..Respondent(s)

Prayer: Second Appeal filed under Section 100 of CPC to set aside the Judgment and Decree dated 05.03.2019 in AS No.37/2017 on the file of the Principal Subordinate Court, Villupuram confirming the Judgment and Decree dated 06.09.2014 in OS No.86/2010 on the file of the Principal District Munsif Court, Tirukoilur.

For Appellant(s): Mr.R.Siddharth

For Respondent(s): Mr.P.Vasanth for R1

No appearance for R2

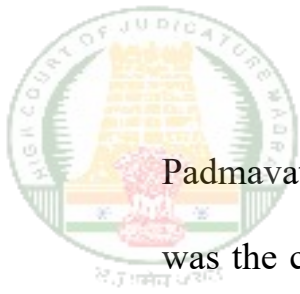


JUDGMENT

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The first defendant in the suit is the appellant herein. The first respondent herein/plaintiff filed a suit in O.S.No.86 of 2010 for partition seeking 1/3rd share in suit A schedule property and half share in the suit B schedule property. The suit was decreed by granting 1/3 share in the suit A schedule property and half share in the suit B schedule property as prayed for by the plaintiff. Aggrieved by the same, the first defendant filed an appeal and the first appellate court allowed the appeal in part and modified the decree by granting 1/3 share in suit A schedule property and half share in Item Nos.1, 3 and 4 of the suit B schedule property. As far as the suit Item No.2 of suit B schedule property is concerned, the plaintiff was granted only 1/3 share measuring 24 cents. Aggrieved by the judgment and decree, the first defendant has filed the present second appeal.

2. According to the first respondent/ plaintiff, the suit properties are self acquired properties of the father of the parties, viz., Pandurangan. He married one Meenakshi and through her a son, namely Kaliyaperumal was born to them. The said Meenakshi died in the year 1960 and Kaliyaperumal died in the year 1990 without any issues. After the death of Meenakshi, the said Pandurangan married the mother of the parties, namely Padmavathy and the plaintiff and defendants 1 and 2 were born to Pandurangan and Padmavathy.



Padmavathy died in the year 1983 and Pandurangan died in the year 2006. It was the case of the plaintiff that the said Pandurangan, immediately before the marriage with Padmavathy, executed a settlement deed in favour of Padmavathy on 07.06.1961, settling the A schedule properties as pre-nuptial gift. Under the said document, Padmavathy was granted life interest with vested remainder to her decedents. Thus, the plaintiff claimed 1/3 share in the suit A schedule property.

3. It was also claimed by the plaintiff that as far as the suit B schedule properties are concerned, Pandurangan executed a gift deed dated 12.06.1985 settling half share each, in favour of the plaintiff and the 2nd defendant. Therefore, on the strength of the above said gift deed, the plaintiff claimed half share in the suit B schedule property.

4. The appellant/first defendant filed a written statement denying various allegations found in the plaint. It was the specific case of the defendant that the settlement deed executed during the year 1961 in favour of Padmavathy was a invalid document and the same was not at all accepted by her. It was also stated by him that the said document was never acted upon and the said property was continued to be enjoyed by Pandurangan as family manager, even after settlement. The first defendant also stated that the revenue documents were not mutated in favour of Padmavathy. He also denied the gift deed dated



12.06.1985 and claimed that the same was never acted upon. According to the first respondent, he was not appointed as a guardian to the plaintiff and the 2nd defendant under the said gift deed and he never accepted the said gift deed on behalf of the minors. The first defendant also claimed that the said Pandurangan issued a legal notice dated 23.06.1992 to the plaintiff as well as the 2nd defendant, claiming that the settlement deed was invalid one. The first defendant further claimed that he and his father Pandurangan enjoyed the suit A and B schedule properties from the year 1961 exclusively for several years and therefore, perfected their title by adverse possession. On these pleadings, he sought for dismissal of the suit.

5. Before the Trial Court, the plaintiff was examined as PW1 and 7 documents were marked as Ex.A1 to Ex.A7 on the side of the plaintiff. The first defendant was examined as DW1 and one Anandamani was examined as DW2. On the side of the defendants, 20 documents were marked as Ex.B1 to Ex.B20.

6. On appreciation of oral and documentary evidence available on record, the Trial Court decreed the suit as prayed for and aggrieved by the same, the first defendant preferred an appeal suit on the file of Principal Sub Court, Villupuram. The first appellate court partly allowed the appeal as stated above. Aggrieved by the same, the first defendant has come before this court.



7. At the time of admission, this court formulated the following substantial questions of law on 31.01.2020.

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a) Whether both the courts are correct in shifting the burden of whether the suit property is ancestral property or self acquired property on the defendant, when the plaintiff has clearly admitted in her cross examination that the suit properties are ancestral properties?

b) Whether both the courts are correct in holding that the settlement deed executed dated 12.06.1963, Ex.A5 and 07.06.1961, Ex.A4 are valid when the same was never accepted and acted upon.

c) Whether the lower appellate court is correct in taking presumption under Section 90 of the Indian Evidence Act with regard to the settlement deed executed dated 12.06.1985, Ex.A5, when the same has not completed 30 years at the time of filing the suit in the year 2010?

8. The learned counsel appearing for the appellant/first defendant by taking this court to the evidence of PW1 submits that the PW1 categorically admitted that the suit property was ancestral property and hence, the settlement deeds relied on by the plaintiff were invalid documents and the decree granted by the Trial Court based on these invalid documents shall be set aside. It is also



submitted by him that Ex.A5 settlement deed was dated 12.06.1985 and on the date of filing of the suit, it was not a 30 years old document. Therefore, the first appellate court committed an error in drawing a presumption under Section 90 of the Indian Evidence Act. The learned counsel vehemently contended that both the settlement deeds marked as Ex.A4 and E.A5 were never acted upon and therefore, the Courts below ought not to have taken into consideration the said documents.

9. The learned counsel for the respondents would submit that the plaintiff proved that the suit properties are self acquired properties of Pandu Rangan by producing the patta in his name and hence, in the absence of any evidence to show that the suit properties are ancestral properties, the courts below are justified in coming to the conclusion that the suit properties are the self acquired properties of the said Pandu Rangan. He also submits that when the donees are residing under the same roof along with donor, the submission made by the learned counsel appearing for the appellant that the settlement deeds were not acted upon pales into insignificance. He would further submit that the execution of settlement deeds were not specifically denied by the first defendant in his written statement. Therefore, the burden of proof on the plaintiff, has been successfully discharged by her.

**10. Answer to question of law 'a':**

In order to prove that the suit properties are self acquired properties of Pandurangan, the plaintiff has not produced any title documents. Though the plaintiff pleaded that the suit properties are the self acquired properties of Pandurangan, the plaintiff has not given any details as to when and where Pandurangan acquired the suit properties. The plaintiff produced only Ex.A1 and Ex.A2 patta issued in the name of Pandurangan to establish that the suit properties are self acquired properties of Pandurangan. If the suit properties are self acquired properties, it must be either purchased by said Pandurangan from another person or assigned by the government in his favour. But the plaintiff has not produced any title documents like sale deed, assignment order or decree of the court etc., to prove that the suit properties are self acquired properties. Merely because the revenue documents stand in the name of Pandurangan, we cannot definitely come to the conclusion that the suit properties are his self acquired properties. Even if the suit properties are ancestral properties, as the eldest male member of the family, the revenue document could have been issued in the name of Pandurangan. Therefore, based on the Ex.A1 and Ex.A2, we cannot come to the conclusion that the suit properties are self acquired properties. More importantly, when the plaintiff was examined as PW1, in more than one place, she categorically admitted that the suit properties are ancestral properties. During her cross examination on 21.01.2013, she admitted as follows:



"வழக்கு சொத்துக்கள் அனைத்தும் பூர்வீக பாத்தியமானது என்றால்

சரி."

Then, on 27.02.2013, she answered to the suggestion of the defendant's counsel, which reads follows:

"எனது அப்பா எனது அம்மாவிற்கு எழுதி வைத்த சொத்துக்கள் பூர்வீக சொத்துக்களா என்றால் அதுகுறித்து எனக்குத் தெரியாது."

The above statement is only an evasive answer, without asserting that the properties were self acquired properties. During further cross examination on 12.07.2013, she categorically admitted as below:

" தாவா ஏ மற்றும் பி பட்டியல் சொத்துக்கள் எங்களின் பூர்வீக சொத்துக்கள் ஆகும். அவற்றை என் தந்தையார் யாரிடமிருந்தும் கிரையம் வாங்கவில்லை"

Therefore, it is clear that the admission made by the PW1 regarding character of the suit property is well pronounced. In view of the categorical admission made by the plaintiff herself during the course of cross examination that the properties are ancestral properties, coupled with the facts that the plaintiff has not produced any title documents, this court come to the conclusion that the character of the suit properties is ancestral in nature. Both the courts below over looked the well pronounced admission of PW1 regarding character of the suit properties. The admission made by the plaintiff as PW1 is not a stray or an isolated admission. In more than one place, at the time of cross examination on



three different dates, the plaintiff admitted that the suit properties were ancestral properties. It is settled law that admission is best evidence. Therefore, the conclusion reached by the courts below that the suit properties are the self acquired properties is vitiated as perversity due to non consideration of material evidence, namely admission of PW1 regarding ancestral character of the suit property. The Question of Law 'a' is answered accordingly in favour of the appellant/first defendant and against the respondent/plaintiff.

11. Answer to question of law 'c':

Ex.A5 settlement deed executed by Pandurangan in favour of the plaintiff and the second defendant was dated 12.06.1985. The suit was filed in the year 2010. Ex.A5 was tendered in evidence on 02.11.2011, as seen from the court endorsement on the document and also evidence of PW1. Hence, it is clear that when the document was tendered in evidence, it was not 30 years old document. The first appellate court, without considering the above fact, on an erroneous view, treated the Ex.A5 as a 30 years old document and pressed into service the presumption available under Section 90 of the Indian Evidence Act. Therefore, the findings of the first appellate court that Ex.A5 is a 30 years old document is vitiated by perversity and hence, the same is liable to be set aside. The question of law 'c' is answered accordingly in favour of the appellant and against the respondents.

**12. Answer to question of law 'b':**

WEB COPY This court already came to the conclusion that the suit properties are ancestral properties. It is settled law that a co-parcener cannot settle his interest in the coparceners property in favour of non co-parcener, without consent of other co-parceners. As far as Ex.A4 is concerned, on the date of said document, the plaintiff and the defendants were not born. However, Pandurangan was not a single co-parcener at that point of time. Admittedly, he got a son namely Kaliyaperumal through his first wife and he died only during the year 1990. Therefore, on the date of execution of Ex.A4, Kaliyaperumal, his son was alive and hence, the Ex.A4 executed by Pandurangan in favour of Padmavathy, a non co-parcener, without consent of Kaliaperumal, shall be treated as invalid document. Further, even assuming that Ex.A4 is a valid document, the plaintiff and the defendants are entitled 1/3 share each as another son of Pandurangan, namely Kaliyaperumal already died without any issues. Once we came to the conclusion that Ex.A4 is an invalid document and the suit properties are ancestral properties, the plaintiff and the defendants are entitled to equal share, as all of them are co-parceners on the date of presentation of the plaint. Hence, the plaintiff is entitled to 1/3 share in the suit A schedule property. To that extent, the judgment and decree passed by the court below need not be interfered with.



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13. In view of the findings reached by this court that the suit properties are the ancestral properties, the settlement deed executed by Pandurangan dated 12.06.1985, marked as Ex.A5 is invalid document, because under the said document, Pandu Rangan executed a gift deed in favour of his minor daughters, who were not co-parceners at that point of time. The Tamil Nadu Act 1 of 1990 amending the Hindu Succession Act, making daughters are co-parceners, came into effect only on 25.03.1989. Therefore, the gift deed executed by Pandurangan in favour of non co-parceners in the year 1985, without getting concurrence of the other co-parceners namely, the first defendant and Kaliyaperumal, a son through his first wife, was invalid document. Once we come to the conclusion that Ex.A5 is an invalid document, the plaintiff cannot claim half share in the suit B schedule property. However, by virtue of Tamil Nadu Act 1 of 1990 and the Central Act 39 of 2025, when the suit was filed by the plaintiff, she is entitled to claim equal share along with son. Therefore, the plaintiff is entitled 1/3 share in the suit B schedule property also. To that extent, the decree passed by the first appellate court requires interference. Accordingly, Question of law 'b' is answered in favour of the appellant and against the respondents.



14. In view of the answer to the questions of law “ a to c ” , the second appeal stands partly allowed by setting aside the judgment and decree passed by the first appellate court in so far as suit B schedule properties are concerned. It is declared that the plaintiff is entitled to 1/3 share in A and B schedule properties. In view of the order passed by the Apex Court in *Kattukandi Edathil Krishnan and others Vs. Kattakandi Edathil Valsan and others* reported in *2022 (16) SCC 71*, the Trial Court is directed to fix a date for initiating final decree proceedings, after issuing notice to both the parties, within a period of six weeks from the date of receipt of copy of the order. There shall be no order as to costs. Connected miscellaneous petition is closed.

09-03-2026

Index: Yes

Speaking order

Neutral Citation: Yes

MST

To

1. The Principal Sub Court, Villupuram.

2. The Principal District Munsif, Tirukoilur.



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S.SOUNTHAR, J.

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