



A.S. No.69 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.03.2026

PRONOUNCED ON : 08.06.2026

CORAM

THE HONOURABLE MR. JUSTICE C.V. KARTHIKEYAN

And

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

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1. Vijaya

2. Harini Priya

... Appellants/ Plaintiffs

(Second Appellant name amended, vide C.M.P.No.12787 of 2024.

Second appellant is declared as major and the first appellant is discharged from Guardianship of the second appellant, vide C.M.P.Nos.12784 and 12786 of 2024, dated 03.07.2024)

-VS-

1. P.N. Selvam @ Selvaraj

2. P.N. Babu

3. Lakshmi

4. M.R. Ravikumar

5. Gudiyatham Municipality,
Rep. By its Commissioner,
Gudiyatham – 632 602.

... Respondents/ Defendants

Prayer: First Appeal filed under Section 96 of CPC, to set aside the judgment and decree dated 07.10.2016 made in O.S.No.11 of 2010, on the file of the learned I Additional District and Sessions Judge, Vellore, Vellore District.

For Appellants

: M/s. J. Lavanya



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For RR 1 to 4 : Mr. K.A. Ravindran
For R5 : No Appearance

JUDGMENT

[Order made by K. RAJASEKAR, J.]

The plaintiffs have come forward with this appeal, challenging the judgment and decree dated 07.10.2016 in O.S.No.11 of 2010 passed by the learned I Additional District and Sessions Judge, Vellore, wherein the Trial Judge had partly dismissed the suit for partition filed by the plaintiffs against the defendants.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Trial Court.

3.1 The first plaintiff is the wife and the second plaintiff is the daughter



of one deceased Deivasigamani. They claim that the deceased Deivasigamani, defendants 1 to 3 are children of one Natesa Mudaliar. The eastern portion of 'A' schedule property was allotted to Natesa Mudaliar, by way of registered partition deed dated 21.06.1966 and remaining portion was purchased by way of registered Sale Deed dated 25.10.1972, hence he became the absolute owner of the 'A' schedule property, which is the house property situated at Gudiyatham Town. He died intestate, leaving behind his wife Dhanalakshmi Ammal, defendants 1 to 3 and the deceased Deivasigamani as his legal heirs. Subsequently, Dhanalakshmi Ammal also died intestate, leaving behind the defendants 1 to 3 and the deceased Deivasigamani to succeed the 'A' schedule property. While so, Deivasigamani died intestate on 13.07.2007, leaving behind the plaintiffs as his legal heirs, thereby the plaintiffs inherit the undivided 1/4th share of Deivasigamani in the suit 'A' schedule property.

3.2 Similarly, the suit 'B' and 'C' schedule of properties originally belongs to one Mylammal, who is the mother of Natesa Mudaliar. The said Mylammal settled the 'B' schedule property in favour of the first defendant and deceased Deivasigamani through a registered Settlement Deed dated 14.12.1964 and settled the 'C' schedule property in favour of the second defendant through a



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registered Settlement Deed dated 13.02.1973. Plaintiffs as legal heirs of the deceased Deivasigamani are entitled for ½ share in the 'B' schedule property.

3.3 The deceased Deivasigamani under the undue influence of defendants 1 and 2, executed a Power of Attorney Deed dated 17.06.1999 in favour of the fourth defendant, who was involved in real estate business for converting the 'B' and 'C' schedule properties into house plots. After obtaining the Power of Attorney Deed, the defendants 1, 2 and 4 colluded together, converted the properties into housing plots, however they did not paid any money to the deceased Deivasigamani. Therefore deceased Deivasigamani cancelled the Power of Attorney Deed executed in favour of the fourth defendant, by way of a registered Cancellation Deed dated 06.08.2001. Subsequently, notice was also sent to the fourth defendant intimating the cancellation of Power of Attorney Deed and also made publication in 'Dinamalar' Tamil Daily on 28.10.2001, cautioning the public regarding purchase of plot and also informing the public about the cancellation of Power of Attorney Deed.

3.4 In view of the same, the defendants 1, 2 and 4 have continuously



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threatened Deivasigamani with dire consequences. While so, on 12.07.2007

Deivasigamani received a telephone call from Gudiyatham, inviting him for settlement regarding the partition, accordingly Deivasigamani left to Gudiyatham, however on the next day on 13.07.2007, the plaintiffs were informed that Deivasigamani was died and his death is not a natural death. Hence, the plaintiffs lodged a complaint, a case has been registered and the same is under investigation. Since the defendants 1 to 3 have not come forward to settle the plaintiff's claim, the plaintiffs have filed the suit for partition.

4. In the written statements filed by defendants 1, 2 and 4, they admitted the relationships made in the plaint and also the fact that the plaintiffs are the legal heirs of the deceased Deivasigamani. However, they denied that defendants 2 and 3 are not having right over the 'B' schedule property and the second defendant was not born at the time of execution of the Settlement Deed dated 14.12.1964, whereby the 'B' schedule property was gifted to Deivasigamani and the first defendant. It is also stated that there is a difference of opinion between the first plaintiff and the deceased Deivasigamani, hence the first plaintiff had left the matrimonial home and living separately. After the death of Deivasigamani, the plaintiffs have filed the suit with an intention to



grab the properties and money from the defendants. The defendants 1 to 3 never denied the shares of the plaintiffs in the 'A' schedule property, however the plaintiffs demanded more share and evaded for amicable partition in the 'A' schedule property. As far as the 'B' schedule property is concerned, a registered Power of Attorney deed was executed in favour of the fourth defendant by the deceased Deivasigamani and defendants 1 and 2, after collecting the entire sale consideration. Subsequently, the fourth defendant, who is doing real estate business converted the land to housing plots and almost 95% of the properties were already sold to various persons and these transactions were known to deceased Deivasigamani during his lifetime, hence there is no 'B' schedule property available for partition. They also stated that the suit has been filed without impleading the purchasers of the 'B' schedule properteis, hence the suit is bad for non-joinder of necessary parties and prayed to dismiss the suit.

5. The Trial Court after considering the pleadings on both sides, framed the following issues:

- 1. Whether the plaintiffs are entitled to 1/4th share in the 'A' schedule property?*
- 2. Whether the plaintiffs are entitled to half share in the 'B' schedule property?*



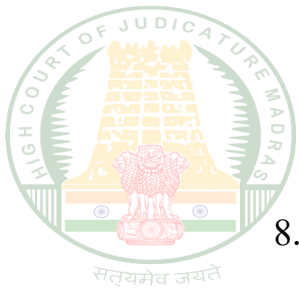
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3. *Whether the General Power of Attorney Deed, dated 17.06.1999 is true and valid?*
4. *Whether the plaintiffs are entitled to permanent injunction as prayed for?*
5. *To what other relief?*

6. On the side of the plaintiffs, the first plaintiff was examined as P.W.1 and through her Exs.A1 to A.19 were marked. On the side of the defendants, the first defendant was examined as D.W.1 and through him Exs.B.1 to B.7 were marked.

7. The Trial Court after considering the evidence placed on record, accepted the case of the plaintiffs and held that plaintiffs are entitled for $\frac{1}{4}^{\text{th}}$ share in the suit 'A' schedule property. As far as the 'B' schedule property, the Trial Court has taken a view that there are several purchasers in the 'B' schedule property and there was no proper description of the 'B' schedule property in the plaint to enable the Court to pass decree for partition and to show whether the 'B' schedule property was available for partition. Accordingly, the suit was partly dismissed for relief of partition of 'B' schedule property and permanent injunction.



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8. Aggrieved over the denial of partition in the 'B' schedule property, the plaintiffs have come forward with this appeal.

9. The learned counsel appearing for appellants submitted that the Trial Court has failed to appreciate the fact that the defendants had failed to prove that entire 'B' schedule property was sold as housing plots to various persons. He also submitted that the first defendant has produced only seven sale deeds out of 68 plots formed and further the fourth defendant has not come forward to adduce evidence, though it is contented that at the time of execution of Power of Attorney Deed in favour of the fourth defendant, entire sale consideration was paid. He also submitted that even, if the evidence of the first defendant is accepted to the extent that some portion of the 'B' schedule property were already sold, still majority portion of the 'B' schedule property were not sold, hence the plaintiffs are entitled to share in the remaining 'B' schedule property. He also submitted that the suit was of the year 2017 and impleading the purchasers and filing a fresh suit would further drag on the proceedings and it would defeat the rights of the parties, more particularly, the first plaintiff, who lost her husband and she needs property to eke out her livelihood, hence prays to allot share to the appellants in the remaining unsold



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lands in the 'B' schedule property.

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10. The learned counsel appearing for the respondents/ defendants submitted that major portion of the 'B' schedule property was sold on the strength of the Power of Attorney Deed dated 17.06.1999, even prior to its cancellation, the properties were in the hands of third parties, whereas the suit for partition was filed for the entire 'B' schedule property. He also submitted that only if other third parties were impleaded and heard, the suit can be properly adjudicated, hence the Trial Court though accepted the case of the plaintiffs that they are having share in the 'B' schedule property, it has refused to grant partition and the same is valid, hence prays to confirm the judgment and decree passed by the Trial Court.

11. We have considered the submissions made on both sides and perused the records.

12. The suit was filed by the plaintiffs, claiming partition in the 'A' and 'B' schedule properties and the Trial Court has held that the plaintiffs are having 1/4th share in the 'A' schedule property. Once it is held that the plaintiffs are



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having share in the 'A' schedule property, they are consequently entitled for permanent injunction in their favour from alienation of their share in the 'A' schedule property. The 'A' schedule property is a dwelling house and the procedure to partition the dwelling house is prescribed under the Partition Act and plaintiffs can proceed with final decree proceedings to get their share in the 'A' schedule property.

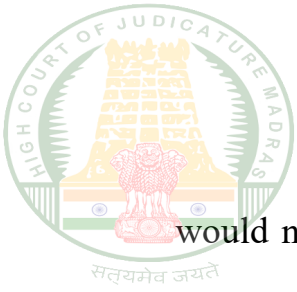
13. As far as the 'B' schedule property, though the Trial Court has accepted the rights of the plaintiffs, it has held that the suit is bad for non-joinder of necessary parties, who are having interest over the property. It is the case of plaintiffs that the entire extent of 'B' schedule property is 4.10 acres, after sale of some plots, 3 acres of land is still available. Since plaintiffs have approached the Court for partition, the burden is on the plaintiffs to show that the properties are available for partition, however the plaintiffs have not identified the unsold portion of the 'B' schedule property. Before the Trial Court, the Encumbrance Certificate, which is marked as Ex.A.15, which reveals that all the plots developed in the 'B' schedule property were sold by the fourth defendant. Therefore, the trial Court has observed that the entire properties were sold to various persons and the Ex.A.15 – Encumbrance Certificate stands against the



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14. On careful perusal of the judgment of the Trial Court, there is no exercise made to find out, whether the entire portion of the 'B' schedule property were sold out or not. As observed by the Trial Court, the defendants had marked sale deeds to *prima facie* establish that the major portion of the property were sold. Though the burden is on the plaintiffs to show whether the property is available for partition, admittedly no exercise was done by the plaintiffs before the Trial Court to show whether the 'B' schedule property is available for partition.

15. The evidence produced shows that total extent of 4.07 acres have been converted into housing layout and the same was sold to various persons on the strength of the Power of Attorney Deed dated 17.06.1999 executed in favour of the fourth defendant, till the Power of Attorney Deed was cancelled by the deceased Deivasigamani on 06.08.2001. Though no evidence placed on record to find out the unsold portion of the land in the 'B' schedule property, even in the absence of the evidence of the fourth defendant, who is the Power Agent, granting declaration of share in the unsold portions of the 'B' schedule property



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would not serve any purpose, unless proper identification of the same. Hence, we are of the view that the Trial Court had properly held that the 'B' schedule property have not been properly described in the plaint and also major portion of the land in the 'B' schedule property were also already been sold to various persons and non-joinder of necessary parties is a valid ground for rejecting the claim made by the plaintiffs over the 'B' schedule property.

16. Considering the fact that the suit was of the year 2010 and the plaintiffs are unable to claim their share, though they are having right in the unsold portion of the 'B' schedule property, we are inclined to remand the judgment and decree to the extent that the plaintiffs shall be permitted to once again produce additional evidence before the Trial Court to enable and enlighten the Trial Court to identify the unsold portion in the 'B' schedule property. If any unsold portion is available in the 'B' schedule property, the Trial Court shall make declaration and pass appropriate decree for partition.

17. As discussed above, the plaintiffs are at liberty to produce additional documents and evidence, if any before the Trial Court to properly describe the unsold portion in the 'B' schedule property and also to amend the

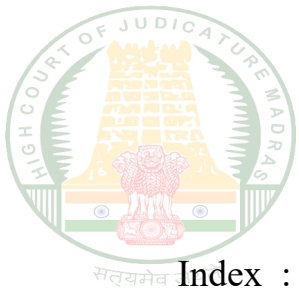


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plaint in respect of the 'B' schedule property, if necessary. The Trial Court, after affording opportunity to both sides shall decide whether there is any unsold portion in the 'B' schedule property and directed to pass suitable order, in accordance with law. Further, if Trial Court finds that the entire portion of the 'B' schedule property were already sold, then the claim of partition made by the plaintiffs over the 'B' schedule property is liable to be dismissed, since the plaintiffs have not challenged any of the sale deeds executed by the fourth defendant in favour of third parties over the suit 'B' schedule property.

18. In the result, the appeal is partly allowed. The judgment and decree passed by the Trial Court, with regard to 'A' schedule property is confirmed. As far as the 'B' schedule property, the same is set aside and further enquiry shall be conducted by the Trial Court, after affording opportunity to both parties and the enquiry shall be continued only to the unsold portion of 'B' schedule property on the date of filing of suit. Consequently, connected civil miscellaneous petition, if any stands closed. There shall be no order as to costs.

(C.V. KARTHIKEYAN, J.) (K.RAJASEKAR, J.)



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Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
stn

To

1. The I Additional District and Sessions Judge, Vellore.
2. The Commissioner,
Gudiyatham Municipality,
Gudiyatham – 632 602.
3. The Section Officer,
V.R. Section,
High Court of Madras.



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AND
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Pre-delivery Judgment made in
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