



A.S.No.934 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.01.2026

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR
and
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

A.S.No.934 of 2024
and
C.M.P.No.10631 of 2024

R.Ramados, S/o Late Raghavan

.. Appellant

Vs.

D.Balammal (deceased)

1. D.Ramesh, S/o Devaraj

2. D.Kumar, S/o Devaraj

3. D.Viji, D/o Devaraj

4. D.Shanthi, D/o Devaraj

5. D.Vasanthi, D/o Devaraj

represented by her Power Agent D.Ramesh

.. Respondents

Appeal Suit filed under Order 41 Rule 1 and under Section 96 of CPC,
against the judgment and decree dated 25.07.2024 on the file of the VII
Additional Judge, City Civil Court, Chennai, passed in O.S.No.3514 of 2021.

For appellant : Mr.Meiyappan Mohan for M/s.K.Chandru

For respondents: Mr.G.Ilangovan

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JUDGMENT

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(The Judgment of the Court was delivered by N.Sathish Kumar, J)

Aggrieved by the judgment and decree of the trial Court in partly decreeing the suit filed for declaration to the plaintiffs in respect of the suit property and directing the recovery of possession, besides damages, for occupation of the suit property by the defendants, the present First Appeal (Appeal Suit) is filed by the defendant.

2. The plaintiffs are wife and children of one Devaraj, and the defendant is the brother of the said Devaraj.

3. It is the case of the plaintiffs that the said Devaraj had purchased the property out of his own income during the minority of the defendant and two properties were purchased in joint names, though the first defendant was minor at that point of time by virtue of the sale deed dated 15.08.1969 and also the sale deed, dated 12.11.1979. Later, the said Devaraj had also purchased the suit property by virtue of sale deed, dated 05.02.1980, registered in the Sub-Registrar Office, Sembium. The said Devaraj died on 07.01.1993 and after his death, the defendant had taken the possession of the suit property and documents, except vacant site as if the defendant is managing the property as a



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Trustee of the plaintiffs. The first plaintiff is the illiterate widow and other plaintiffs are minor children at that point of time and they permitted the defendant to be in possession of the suit property. Since all the documents were taken over by the defendant, the plaintiffs are not aware of the other properties purchased by the said Devaraj. During the year 1999, when the plaintiffs insisted the defendant to hand over the property, the defendant demanded 50% of the charge over the property which were purchased by the said Late Devaraj. However, the defendant did not hand over the property, but on the contrary, the defendant had filed a suit in O.S.No.5801 of 1970 before the 7th Assistant Judge, City Civil Court, Chennai, for bare injunction against the plaintiffs. After disposal of the said suit, the demand of the plaintiffs was not met, however, they had illegally and unlawfully settled the property outside measuring 1200 Sq.Ft. in S.F.No.81 in favour of the defendant's son by registered sale deed, dated 05.05.1980, despite the fact that the defendant had only 50% share in that property.

4. The suit property is the absolute property of the said Devaraj and the defendant is in permissive possession and the suit had been laid for recovery of possession.

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5. Admitting the relationship between the parties, it is the contention of the defendant that he discontinued the education from 7th Standard and he started doing the family business, namely the Well business and has contributed Rs.500/- to their brother for purchase of the suit property. When the suit property was purchased, the defendant was major and hence, according to the defendant, he had also contributed for purchase of the suit property and is in absolute possession and occupation of the suit property.

6. It is the further contention of the defendant that the first plaintiff is not the legally wedded wife of the said Devaraj and the plaintiffs are not the children of the said Devaraj. Hence, the suit is opposed.

7. Based on the above pleadings, the trial Court framed the following issues:

- (i) Whether the plaintiffs are the absolute owners of the suit property ?
- (ii) Whether the defendant is only a permissive occupier of the suit property?
- (iii) Whether the plaintiffs are entitled for recovery of possession as prayed for ?



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(iv) Whether the defendant is liable to pay a sum of Rs.7,00,000/- as damages to the plaintiffs for the illegal and unlawful use and occupation of the suit property ?

(v) Whether the defendant is liable to pay a sum of Rs.50,000/- per month as damages to the plaintiffs for the illegal and unlawful use and occupation of the suit property ?

(vi) Whether the plaintiffs are entitled to any other relief as prayed for ?
and

(vii) To what other relief, if any, the plaintiffs are entitled to ?

8. On the side of plaintiffs, the second plaintiff was examined as P.W.1 and Exs.A-1 to A-21 were marked. On the side of defendant, he was examined as D.W.1 and Exs.B-1 to B-4 were marked.

9. Though the defendant had taken a stand that the plaintiffs are not the legal heirs of the said Devaraj, in the cross-examination of P.W.1, it is admitted by the defendant that the said Devaraj is the father of P.W.1. The nature of suggestion put to P.W.1 itself indicates that there is evasive defence taken by the defendant only in order to protract the suit. The stand that the plaintiffs are not the legal heirs of the said Devaraj, is not established. The nature of question put



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to cross-examination of P.W.1 shows that the plaintiffs are none other than the legal heirs of the said Devaraj.

10. Learned counsel for the appellant submitted that though the property was purchased by the said (late) Devaraj, the plaintiff was major at the relevant point of time and he has contributed the amount for purchase of the suit property. He was helping the said brother Devaraj in the family business. Therefore, the plaintiffs cannot lay a claim over the property as the absolute property of the said Devaraj, whereas, the learned counsel for the respondents submitted that, apart from the suit property, the other two properties were purchased by the said Devaraj out of his income and the defendant was minor at that point of time and his name was also shown as a purchaser. The suit property was the absolute property purchased by the said Devaraj. If actually the defendant had contributed any amount, the property would have been purchased in the joint name. When the said Late Devaraj was capable of purchasing the suit property in the name of the minor, he would not have left the defendant in the subsequent documents and it is clearly indicated that the suit property is the absolute property of the said Devaraj.

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11. In the light of the above submissions, the points that arise for consideration in this Appeal Suit are as follows:

(i) Whether the suit property is the absolute property of the said Late Devaraj ? and

(ii) Whether the defendant had contributed any amount for purchase of the suit property ?

12. Though Exs.A-1 and A-2 are filed by the plaintiffs to show that during the minority of the defendant, his brother Devaraj has also purchased the suit property in his name, the fact remains that the suit property has been purchased only when the defendant was major.

13. The specific contention raised by the defendant is that he had contributed amount for purchase of the suit property. It is relevant to note that the defendant had just attained majority at the relevant point of time, when the suit property was purchased, he was below 21 years and with regard to the nature of the business and how much the defendant had contributed, except the vague details, nothing had been established. There is nothing whatsoever available on record. Though the documents Exs.A-1 and A-2 are filed in respect of different property to show that the defendant had equal share in those



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property. If really Devaraj had purchased with the intention of the property to the benefit of his brother, the same would have been reflected in the documents relating to the suit property.

14. Therefore, we are of the view that when the suit property was purchased when the defendant had already become major, it cannot be said that, in the absence of any evidence to show that the defendant is having independent income to contribute such amount for purchase of the property, he is entitled to share over the property.

15. Further, the sale deed clearly shows that for the other properties, the defendant had also joined with the plaintiffs for sale of a portion of the property. Having joined, now the strange defence is taken as if the plaintiffs are not the legal heirs of the said Devaraj. Therefore, the said contention of the defendants cannot be countenanced for any reason.

16. As there was no evidence to show that the defendant had contributed any amount, the property is admittedly in the name of the said Devaraj, the legal heirs of the said Devaraj are certainly entitled to the same and are entitled to recover the possession over the suit property and for declaration of the property



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and for recover of the possession, and it is not the case of the defendant that he had perfected title by adverse possession. Further, it is not the case of the defendant that there was undivided family and the property is purchased only for the benefit of the coparcener to claim any exemption under the Benami Transactions (Prohibition) Act.

17. Further, it is not the case of the defendants in the written statement that the suit property was held by their brother only as a Trustee of the defendant. In the absence of any such pleading, the mere contention that the defendants have contributed amount for purchase of the suit property, they cannot make a claim over the suit property.

18. Therefore, we do not find any merits in this Appeal Suit. The points framed are answered as above and the impugned judgment and decree of the trial Court are confirmed.

19. Admittedly, the defendants are in occupation of the entire suit property. The trial Court fixed damages of Rs.21,000/- per month. Taking note of the nature of the property, we confirm the said damages.



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20. Though the defendants state that they have taken a plea of non-joinder of necessary parties, the same has not been established. Further, we are of the view that even if such a legal plea is available, as stated in the written statement, the judgment and decree would enure to the benefit of Class-I legal heirs of the original owner though they are not before Court. In such view of the matter, we do not find any merits in this appeal. This appeal is accordingly dismissed with costs. The impugned judgment and decree of the trial Court are confirmed. Consequently, the Miscellaneous Petition is closed.

(N.S.K., J) (R.S.V., J)
23.01.2026

Index: Yes/no
CS

To

1. The VIIth Additional Judge,
City Civil Court,
Chennai.
2. The Record Keeper,
V.R. Section,
High Court, Madras.

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N.SATHISH KUMAR, J

and

R.SAKTHIVEL, J

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