



SA(MD)No.789 of 2009

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2026

CORAM

THE HON'BLE MRS.JUSTICE.N.MALA

S.A (MD).No.789 of 2009

1. Ramu,
S/o. Irulandi Thevar

2.Thillaimuthu,
S/o. Irulandi Thevar

Both residing at
Pullamadam Village,
Sundaramudaiyar Post,
Ramanathapuram District.

... Appellant(s)

Vs.

1.Arumuga Thevar (Died)
S/o.Irulandi Thevar.

2.Irulayee,
W/o.Balu Thevar,
Maravar Street, Rameswaram Town,
Ramnad District.

3.Kalimuthu,
S/o.Palani Thevar.



SA(MD)No.789 of 2009

WEB COPY

4.Sethuramu,
S/o.Palani Thevar.

5.Mariammal,
W/o.Arumuga Thevar.

6.Baby,
W/o.Ganesan,
Vattanvalasai,
Sembadaiyarkulam Post,
Ramnad District.

7.Ramasamy Thevar,
S/o.Muniyandi Thevar.

8.Thirumaran, (Died)
S/o.Irulappa Thevar.

9.Balu Thevar,
S/o.Irulandi Thevar,
Maraikayar Pattinam Village,
Ramnad District.

10.Karmega Konar,
Udayarvalasai Village,
Sundaramudaiyan Post,
Ramnad District.

11.Irulandi,
S/o.Muniasamy.

12.Kaliyammal,
D/o.Ramu.



SA(MD)No.789 of 2009

WEB COPY

13.Muthumani,
S/o.Muthamani.

14.Irulayee, (Died)
W/o.Thirumaran.

15.Anitha,
W/o.Yuvaraja.

16.Velli,
S/o.Thirumaran

17.Lenin Kumar,
S/o.Thirumaran.
Respondents 1,3,4,5,7,8,11 to 17 all are
residing at Pullamadam Village,
Sundaramudaiyan Post,
Ramnad District.

**Respondents 6,8 and 11 to 13 set exparte
in the appeal notice not necessary to them**

**Memo presented in Court and recorded as RR8 and 14 are died, RR15 to 17
who were already on record and recorded as Lrs. of deceased RR8 and 14,
vide Court order dated 8/8/19**

18.Irulayee,
W/o.Late Arumuga Thevar.



SA(MD)No.789 of 2009

WEB COPY

19.Murugesan,
S/o.Late Arumuga Thevar.

20.Kumar,
S/o.Late Arumuga Thevar.

21.Nagaraj,
S/o. Late Arumuga Thevar.

22.Ganesan,
S/o.Late Arumuga Thevar.

23.Pagampiriyal
D/o.Late Arumuga Thevar.

RR18 to 23 are brought on record as Lrs. of deceased R1, vide Court order dated 8/8/19 made in CMP.3415 to 3417/19 in S.A.No.789/2009

24.Parameshwari,
D/o.Late Baby

25.Panrani,
D/o.Late Baby

26.Sekar,
S/o. Late Babe

RR24 to 26 are brought on record as Lrs. of deceased 6th Respondent, vide Court order dated 8/8/19 made in CMP.3418 to 3420/19 in SA.(MD).No. 789/2009

... Respondents



SA(MD)No.789 of 2009

WEB COPY

Second Appeal is filed under Section 100 of Code of Civil Procedure, praying to allow the Second Appeal and set aside the judgment and decree dated 05.06.2009 made in A.S.No.72/99 on the file of the Additional District and Session Judge, Fast Track Court, Ramanathapuram confirming the judgment and decree dated 31.07.1998 made in O.S.No.243/92 on the file of the Principal District Munsif Court, Ramanathapuram.

For Appellant(s) : Mr.PTS.Narendravasan

For Respondent(s) : Mr.J.Lawrance
for R10
R1,R8,R14- Died
R5 and R7- Died
R6, R11 to R13- Exparte

R2 to R3, R4, R9, R18 to 23, R15 to
R17, R24 to R26- No appearance

JUDGMENT

The unsuccessful plaintiffs are the appellants in the second appeal. The second appeal is filed against the concurrent judgments of the Courts below, dismissing the plaintiffs' suit for declaration of their title and for permanent injunction.



SA(MD)No.789 of 2009

WEB COPY

2. The parties will be referred to as per their rank in the suit.

Gist of Facts of the Parties:-

3. The plaintiffs trace their exclusive right, title, interest and possession over the suit properties through their paternal grandfather, Ramu Thevar. According to the plaintiffs, on the death of Ramu Thevar, the property devolved on their father Irulandi Thevar and that on his death, the plaintiffs succeeded to the suit properties as his legal heirs. The plaintiffs contend that the joint patta was erroneously issued in the name of the plaintiffs' paternal grand mother, who was acting as their guardian, by including the names of her daughters along with Irulappa Thevar and Muniyandi Thevar. The plaintiffs contend that none of the co-pattadhars had any title to the property, however, by taking advantage of the erroneous joint patta, Thillaimuthu Ammal and Muniyayee Ammal, executed the sale deed in favour of Sivanayee Ammal, and so also Ramayee Ammal executed the sale deed in favour of Muniyayee Ammal. The plaintiff's contend that they objected to the sale in favour of Muniyayee Ammal, in the suit in O.S.No.350 of 1963, before the District Munsif, Ramanathapuram, and succeeded in the same.



SA(MD)No.789 of 2009

WEB COPY

The plaintiffs placing heavy reliance on the decree in O.S.No.350 of 1963, marked as Ex.A1, sought for declaration of their title to the suit properties and for permanent injunction.

4. The defendants contended that the plaintiffs claim of exclusive title and right to the suit properties was misconceived and untenable, in view of the partition deed executed by the original ancestors of the plaintiff's under Ex.B11 dated 03.03.1960. The defendants contended that the original extent of the property was 24 acres and that in the partition under Ex.B11, the female members were allotted a share, i.e., eight acres. The defendants relying on certain subsequent sale transactions under Ex.B19, Ex.B21 to Ex.B23, contend that the said documents fortified their contention that the properties were partitioned under Ex.B11 and a share was allotted to the female members. The defendants further denied the plaintiffs contention that their names were wrongly included in the joint patta, by stating that the challenge by the plaintiff to such wrong inclusion was negatived by the Revenue Divisional Officer, in the appeal filed by the plaintiff, which was later confirmed by the District Revenue Officer, on



SA(MD)No.789 of 2009

WEB COPY

further appeal. As regards the suit in O.S.No.350 of 1963, the defendants contended that the suit itself was a collusive one and hence Ex.A1 decree in O.S.No.350 of 1963, was not reliable and deserved to be rejected. The defendants hence prayed for dismissal of the suit.

5. The Trial Court while considering plaintiffs title to the property found that the only document relied on by the plaintiffs to establish their title was Ex.A1, *Viz.* the decree in O.S.No.350 of 1963. The trial Court declined to accept Ex.A1, the decree in OS.No.350 of 1963, in the absence of the pleadings and judgment copy. The trial Court on a perusal of Ex.A1, found that as none of the defendants were parties to the said suit, the decree was not binding on them and hence the plaintiffs could not succeed on the strength of Ex.A1. The trial Court held that the plaintiff's had approached the Court with unclean hands, since the plaintiffs, until the amendment application, failed to disclose that they sold 5 acres to one Nagu Konar. The trial Court on the basis of the plaintiffs failed attempt to challenge the joint patta granted in favour of the defendants held that the defendants case that they were co-sharers of the suit property was proved.



SA(MD)No.789 of 2009

WEB COPY

The trial Court accepted the defendants case that even the female members were given a share in the partition dated 03.03.1960, that on the death of the plaintiffs' father Irulandi Thevar, the plaintiffs were entitled to 4 acres only and that even though the plaintiffs were entitled to only 4 acres, they sold 5 acres, to one Nagu Konar, which was more than their entitlement and hence they had no right to the suit properties.

6. On the issue of injunction, the trial Court after analyzing the entire evidence found that of all the kist receipts filed by the plaintiff to establish their possession, only Ex.A10 related to the suit property, and that it was not sufficient to prove the plaintiffs exclusive possession. The trial Court therefore found that the plaintiffs had failed to prove their possession and enjoyment of the suit properties and hence rejected the relief of permanent injunction. On such findings, the trial Court dismissed the suit.

7. Aggrieved by the trial Court's judgment and decree, the plaintiffs filed an appeal before the lower Appellate Court. The lower Appellate Court, relying



SA(MD)No.789 of 2009

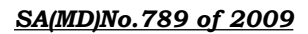
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on Exs.B19, B21, B22 and B23, held that the defendant's contention that the female members were allotted 8 acres in S.No.205, was established. The Lower Appellate Court rejected Ex.A1 as an incomplete decree and in the absence of any other document to prove the plaintiffs' title, it declined to declare the title in favour of the plaintiffs. On the issue of injunction, the Appellate Court found that the documents produced by the plaintiffs were insufficient to prove their possession, as on the date of the suit and therefore rejected the prayer for injunction.

8. Aggrieved by the concurrent judgments of the Courts below, the plaintiff filed the above Second Appeal.

9. At the time of admission of second appeal, this Court framed the following substantial questions of law.

“A. Whether the courts below right in finding that partition was effected among the parties on 3-3-1960 under Ex.B11 and as per the said documents plaintiffs are not entitled to the relief for declaration of title, particularly when



B. Whether the Courts below are correct in dismissing the suit just relying on the oral and documentary evidence on the side of the defendants alone, without any discussion about the oral and documentary evidence of the plaintiffs.

10. At the time of hearing of the second appeal, the learned counsel for the appellants argued on the substantial question of law A and C alone.

11. The learned counsel for the plaintiffs submitted that the Courts below erroneously relied on Ex.B11, an unregistered partition deed for non-suiting the



SA(MD)No.789 of 2009

WEB COPY

plaintiff, overlooking that Ex.B11 was inadmissible in evidence. The learned counsel further submitted that the Court's below failed to note that Ex.B11 could not be relied even for collateral purpose. The learned counsel submitted that the Courts below, failed to note that Ex.A1, (decree in O.S.No.350 of 1963), sufficiently proved the title of the plaintiffs and rejection of the said document on the ground that the pleadings and the judgment copy were not filed was untenable. The learned counsel therefore prayed that the second appeal be allowed.

12. The learned counsel for the respondents submitted that the trial court and the lower Appellate Court had given cogent, logical and justifiable reasons for their findings for accepting Ex.B11 for collateral purpose and for rejecting Ex.A1 and therefore this Court in the absence of any perversity in the factual findings of the Courts below ought not to interfere with the judgment and decree of the Courts below in exercise of the jurisdiction under Section 100 of Code of Civil Procedure, 1908.



SA(MD)No.789 of 2009

WEB COPY

13. I heard both the learned counsels and perused the materials placed on record.

14. The plaintiff's claim exclusive right and title over the suit properties on the premise that the suit property originally belonged to the plaintiffs' grandfather Ramu Thevar and after his death, it devolved on their father/husband, and after his death, the plaintiffs succeeded to the suit property as his legal heirs Initially, the suit was filed for declaration of title to 12 acres, but later, it was restricted to 7 acres, since the plaintiffs admitted the sale of 5 acres, to Nagu Konar and to such extent, amended the extent of the suit property. The defendants specifically pleaded that the original extent of the suit property was 24 acres, and that it was divided into 3 shares. The defendants contended that out of the three shares, one share [8 acres] was allotted to the female members [i.e.,] Sethumakalai Ammal, Thillai Muthu Ammal and Muniyayee Ammal, and the other two shares were allotted to the plaintiffs' father and his pangalis [i.e.,] Irulappa Thevar and Muniyandi Thevar. Muniyandi thevar was allotted 8 acres and Irulappa Thevar and Irulandi Thevar were each allotted 4 acres. The defendants further contended



SA(MD)No.789 of 2009

WEB COPY

that the plaintiffs sold 5 acres to one Nagu Konar, which was beyond their share of 4 acres. The defendant therefore contended that the plaintiffs were not entitled to any share in the suit property and therefore declaration and injunction sought for deserved to be rejected.

Substantial Question of law -A and C:

15. The pivotal issue raised by the appellants is that Ex.B11 is inadmissible in evidence, as it requires registration under Section 17(1)(b) of the Registration Act and also that it could not be taken in evidence under Section 49 of the Act even for collateral purpose. Admittedly, Ex.B11 is a compulsorily registrable document under Section 17(1)(b) of the Registration Act. That being the conceded position, it remains to be seen, if there is a total bar in admitting the document in evidence under Section 49 of the Registration Act. Section 49 of the Registration Act reads as follows:

“No document required by S. 17 or by any provision of the Transfer of Property Act, 1882, to be registered, shall—

- (a) affect any immovables comprised therein; or*
- (b) confer any power to adopt, or*
- (c) be received as evidence of any transaction affecting such*



SA(MD)No.789 of 2009

WEB COPY

property or conferring such power unless it has been registered;

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Ch. II of the Specific Relief Act, 1877, or as evidence of part performance of a contract for the purpose of S. 53-A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument”.

16. The following can be deduced from the provisions of Section 49 of the Act:

1) That Section 49 is substantive law declaring that the document required by Section 17(1)(b) to be registered shall effect any immovable property comprised in the document, only if it is registered.

2) Section 49(c) deals with evidence and it states that an unregistered document, cannot be received as evidence of any transaction effecting such property.

3) That there is no total bar to the admission in evidence of an unregistered document and that the bar is restricted only to transaction effecting the property comprised in the document.

The proviso clarifies that an unregistered document can be received in evidence for other purpose. The contention of the learned counsel for the appellants that Ex.B11 requires registration is conceded. However, the contention



SA(MD)No.789 of 2009

WEB COPY

that it cannot be accepted even for collateral purpose from the language of Section 49, cannot be endorsed. The Division Bench of this Court as also Hon'ble Supreme Court in a number of judgments interpreted the meaning of collateral purpose. The Division Bench of this Court in the case of ***C.S.Kumaraswami Gounder vs. Aravagiri Gounder and another***, reported in ***AIR 1974 Mad 239***, had an occasion to deal with the meaning of collateral purpose with reference to Partition Deed. The Division Bench at para 9 held as follows:

“9. A partition in a joint Hindu family may denote either of two things: (1) a division in status as between the members of the coparcenery; and (ii) an actual division of the properties belonging to the joint family by metes and bounds as between the different members of the family. The expression ‘partition’ has been used indiscriminately to denote either one or the other of the two things. Once a partition of the properties by metes and bounds has taken place, naturally there will be the consequential transaction of the parties, to whom the properties have been allotted separately, taking possession of these properties. Thus it will be seen that in the case of an express, completed partition there will be three different stages—(i) the stage of effecting a division in status, (ii) the stage of dividing the properties by metes



SA(MD)No.789 of 2009

WEB COPY

and bounds, and (iii) the stage of each party taking possession of the properties allotted to his share. As far as these three stages are concerned, it is conceded, having regard to the decided cases, that each and every one of them can be effected orally without there being a document. Even if there is a written document in respect of the first and third stages, then also it is contended that the document does not require registration, because neither the division in status nor the actual taking possession of the properties can be said to create, declare, assign, limit or extinguish any right, title or interest to or in immovable property. Therefore, it is only with regard to the second stage, namely, division of properties into different shares and allotment thereof to the various members, if the same is reduced to writing, it requires registration under S. 17(1)(b) of the Act. Under the Hindu law, it is well settled that, severance in status can take place either by the unilateral declaration of one of the coparceners or by agreement between all the coparceners. Where severance is effected as above, it is not a transaction which requires any writing and even if it is effected by means of any instrument in writing, that will not fall within the scope of S. 17(1)(b) of the Act. Similar will be the position with regard to taking possession of the properties. From the very nature of the case, once a division of the properties by metes and bounds has taken place as between the members of a



SA(MD)No.789 of 2009

WEB COPY

coparcenary and the parties take possession as exclusive owners of the respective items allotted to them, such a partition assumes a division in status having taken place between the parties. Therefore, though an unregistered partition deed cannot be admitted in evidence to prove the terms of the partition it can certainly be admitted in evidence for proving the division in status and the fact of partition, as pointed out by several decisions based on the judgment of the Privy Council in Rajangam Iyer v. Rajangam Iyer. Similarly taking possession of the shares allotted to each one of the parties at the partition will be a purpose collateral to the purpose of partition and such taking possession not creating declaring, assigning, limiting or extinguishing any right, title or interest to or in immoveable property, will not require registration, and therefore, an unregistered deed of partition can be used for the collateral purpose, namely, for proving the nature and character of the possession of the respective items of properties in the hands of the members of the coparcenary....”

So also, the Hon'ble Supreme Court in the case of ***K.B.Saha and Sons Private Limited Vs. Development Consultant Limited***, reported in (2008) 8 SCC 564, while considering the admissibility of an unregistered lease deed summed up the



SA(MD)No.789 of 2009

WEB COPY

legal position in para '34' as follows:

“34.From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that:

1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.

3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.”

17. From the aforesaid judgments, it is clear that collateral transaction is one which is ancillary to a principle transaction or a subsidiary transaction to the main transaction. The root meaning of the word 'collateral' is running together or running in parallel lines. A collateral transactions in other words is a transaction which may be said to be a part and parcel of the main transaction, but



SA(MD)No.789 of 2009

WEB COPY

nevertheless a transaction which runs together with or on parallel lines with the same.

18. Applying the above principle to the facts of the case, it is to be seen if Ex.B11 could be used for collateral purpose. The Division Bench judgment referred to above clearly spells out that unregistered partition deed cannot be admitted in evidence for proving the terms of the partition, but can certainly be admitted in evidence for proving the division in status, possessions and the fact of partition. The Division Bench in the aforesaid judgment divided the stages of a partition into 3 stages (i) effecting a division in status, (ii) division of properties by metes and bounds, and (iii) taking out possession of the properties allotted to each sharer. The Division Bench held that for effecting division in status and for taking possession, no written document is required, since neither of them create, declare, assign, limit or extinguish any right, title or interest to or in immovable property. The Division Bench therefore held that an unregistered Partition Deed could be admitted in evidence for proving division in status and the factum of partition.



SA(MD)No.789 of 2009

WEB COPY

19.Coming to the facts of the case, the plaintiffs' specific case was that the female members were not allotted any share in the joint family properties. However, the subsequent independent dealing of the property by the female members under Exs.B19, B21 and B23 was found to probablise the case of the defendants that the female members were allotted shares in the family partition under Ex.B11. Therefore, the Courts below were right in placing reliance on the unregistered Partition Deed for the collateral purpose of evidencing severance in joint status of the family and possession. Ex.B11 was not relied on to confirm the allotment of specific shares to the female members nor the terms of the Partition Deed were relied on. The unregistered Partition Deed was relied on for the collateral purpose of division in status and possession by the individual sharers. From the subsequent registered sale transactions under Exs.B19, B21 and B23, and the conduct of the parties, it was inferred that the partition claimed under Ex.B11 was probablised. This Court, therefore finds absolutely no illegality or infirmity in the reliance placed on Ex.B11, by the Courts below, for it was relied for the limited purpose of corroborating the independent dealing of the property by the female members under registered sale transactions in Exs.B19, and B21



SA(MD)No.789 of 2009

WEB COPY

and B23. The Courts below apart from relying on the aforesaid documents also relied on Ex.B22, the Sale Deed executed by the plaintiffs 1 and 2's grand-mother acting as their guardian to find that the plaintiffs were entitled only to 5 1/4 Kurukkam, particularly since they did not dispute the document.

20. The next question that arises for consideration is whether the Courts below were justified in rejecting Ex.A1, decree passed in O.S.No.350 of 1963. The suit in O.S.No.350 of 1963 was filed by the plaintiffs against their paternal grand-mother and one Sivanayee Ammal. In the said suit, the plaintiffs obtained an *ex parte* decree and based on the said *ex parte* decree, they claim exclusive right to the suit property. Ex.A1 was rejected by the Courts below on the ground that the defendants were not parties to the suit and that in the absence of pleadings and judgments in the suit, the Court could not place reliance on the same.

21. It is seen that the plaintiffs' entire case is founded on Ex.A1, decree in O.S.No.350 of 1963. The plaintiffs filed the suit in O.S.No.350 of 1963, against their grand-mother Ramayee Ammal and one Sivanayee Ammal, questioning the



SA(MD)No.789 of 2009

WEB COPY

sale executed by Ramayee Ammal in favour of Sivanayee Ammal. The plaintiffs, however, filed only the decree copy and based on the same contended that their rights were declared in the said suit.

22. As rightly pointed out by the Courts below, in the absence of the copy of the pleading and the judgment copy, it is not possible to determine what were the foundational facts and the issues involved in the suit, so as to determine whether the decree was binding on the defendants. Moreover, since the decree copy reveals that the defendants were not made parties to the suit, it cannot have any binding effect on the defendants. Hence, this Court finds that the Courts below were justified in rejecting Ex.A1.

23. Apart from Ex.A1, the other documents filed by the plaintiffs are revenue receipts for payment of kist, which by no stretch of imagination can form the basis for a declaratory relief. It is trite legal proposition that title to the property cannot be decided on mere revenue records. Factually, the Courts below have found that even the revenue records produced by the plaintiffs, were not sufficient to establish the plaintiffs possession of the suit properties. This being



SA(MD)No.789 of 2009

WEB COPY

the factual position, this Court finds no compelling reasons to interfere with the factual findings of the Courts below.

24. In view of the above discussion, the Substantial Questions of Law A and C are answered against the plaintiffs. This Court finds absolutely no merit in the second appeal. Accordingly, second appeal is dismissed. No costs.

16.02.2026

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

1. The Additional District and Session Judge,
Fast Track Court, Ramanathapuram.
- 2.The Principal District Munsif, Ramanathapuram.
- 3.The Section Officer
VR Section, Madurai Bench of Madras High Court.



WEB COPY



SA(MD)No.789 of 2009

N.MALA, J.

dsn / AP

S.A (MD).No.789 of 2009

16.02.2026