



S.A.(MD)No.257 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.01.2026

Pronounced on : 12.02.2026

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD)No.257 of 2022

V.Kathiravan

... Appellant/
Appellant/
Plaintiff

Vs.

1.Veluchamy

2.Geetha

3.Deepa

... Respondents/
Respondents/
Defendants

PRAYER : Second Appeal filed under Section 100 of Civil Procedure Code, against the decree and judgment passed dated 18.11.2019 made in A.S.No.144 of 2018 on the file of the Principal District Judge, Dindigul confirming the judgment and decree passed dated 08.02.2018 made in O.S.No.204 of 2013 on the file of the Additional Sub Court, Dindigul.



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For Appellant : Mr.G.Gomathi Sankar

For Respondents : Mr.S.Srinivasa Raghavan for R1

No appearance for R2 & R3

JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.144 of 2018 dated 18.11.2019 on the file of the Principal District Court, Dindigul, confirming the judgment and decree passed in O.S.No.204 of 2013 dated 08.02.2018 on the file of the Additional Subordinate Court, Dindigul.

2. The appellant is the plaintiff. He filed a suit claiming partition and allotment of $\frac{1}{4}$ share in the suit properties.

3. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status / ranking in the trial Court.

4. The case of the plaintiff, in short, is as follows:

(a) The plaintiff is the son and the defendants 2 and 3 are the



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daughters of the first defendant. The first item of the suit properties and some other properties originally owned by one Aanaipappillai, father of the first defendant. After the death of the said Aanaipappillai, the first defendant and his brothers entered into a partition on 21.08.1967 and in that partition, the first defendant was allotted with the first item of the suit properties. The first defendant purchased 2nd and 3rd items of the suit properties on 28.11.1981 from and out of the income derived from the first item of the suit properties and hence, the said 2nd and 3rd items of the suit properties were also enjoyed as joint family properties. The first defendant asked the plaintiff to manage the suit properties in January 2009 and since then, he has been managing the same.

(b) The first defendant at the instigation of her daughters, defendants 2 and 3 claimed maintenance against the plaintiff in M.C.No. 7 of 2012 before the Court of the Chief Judicial Magistrate, Dindigul and in pursuance of the order of the said Court, the plaintiff has been paying monthly maintenance of Rs.6,500/-. The plaintiff also paid Rs.1,25,000/- towards maintenance arrears with the help of loan obtained by him. Since the plaintiff is earning meager income in his fertilizer shop, demanded the first defendant to partition the suit properties and allot his share, but



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the defendants colluding with each other are not agreeable for partition.

Hence, the plaintiff was constrained to file the above suit for partition and allotment of his $\frac{1}{4}$ share in the suit properties.

5. The defence of the first defendant, in short, is as follows:

(a) The plaintiff contention that the first item of the suit properties allotted to the first defendant in 1967 partition is ancestral property and 2nd and 3rd items of the suit properties purchased from and out of the income derived from the first item of the suit properties are also joint family properties, are all false and untenable. The first defendant and his brothers entered into a partition on 21.08.1967 but the plaintiff does not know the partition personally. In the partition, the properties available through their father Aanaipappillai were allotted to the first defendant's brothers, whereas, the properties available through their mother Vellaiammal were allotted to the share of the first defendant, which came to be purchased by his mother in 1924 and that their sister Ponnuthai was given money instead of property. Since the first defendant was allotted with the properties owned by their mother Vellaiammal, the first item of the suit properties cannot be considered as a joint family property. The



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first defendant worked as a spinning master for about 50 years in Dindigul Annamalaiyar Spinning mill and he purchased the 2nd and 3rd items of the suit properties vide sale deed dated 28.11.1981 through his own funds. Since all the suit properties are the separate properties of the first defendant, neither the plaintiff nor the defendants 2 and 3 had any right to claim a share in the said properties.

(b) The first defendant, after his retirement, started a fertilizer shop by name Ram Balaji Agency along with his eldest son-in-law Muthusamy. The first defendant obtained a permit to run mini bus service in 2000 and continued with it for seven years. The plaintiff, to start a new business had mortgaged the properties belonging to the first defendant. The plaintiff sold the permit for the mini bus service and retained the income himself. The first defendant's hearing capacity got reduced due to old age and he had joint pain and heart issues, but the plaintiff did not take care of the first defendant and his wife. The plaintiff, who was managing the suit properties, utilized the income for himself and never cared for his old aged parents and hence, the first defendant was constrained to file a maintenance petition in M.C.No.7 of 2010 and the same was ordered. The first defendant alone repaid the loan amount



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obtained from Corporation Bank by the plaintiff. The first defendant executed a Will dated 20.07.2009 and the plaint allegation that the first defendant has been attempting to execute a Will, is false and untenable. Since the plaintiff is not having any right in the suit properties, he is not entitled to claim partition. Hence, the suit is liable to be dismissed.

6. The defendants 2 and 3 had remained *ex-parte*.

7. The learned trial Judge, upon considering the pleadings of both the parties, framed the following issues,

1. *Whether the suit properties are the ancestral joint family properties of the plaintiff and defendants herein?*
2. *Whether the Will dated 20.07.2009 is true and valid?*
3. *Whether the plaintiff is entitled to 1/4th share in the suit properties and a preliminary decree for partition of his share as prayed?*
4. *To what other relief is the plaintiff entitled to?*

8. During trial, the plaintiff examined himself as P.W.1 and exhibited registration copy of the partition deed dated 21.08.1967 as Ex.A1. The first defendant examined himself as D.W.1 and exhibited



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copy of the sale deed standing in his name dated 28.11.1981 as Ex.B1 and copy of the sale deed standing in the name of the first defendant's mother Vellaiammal and one Arukkaniammal dated 05.06.1924 as Ex.B2.

9. The learned Additional Subordinate Judge, Dindigul, considering the pleadings and the evidence both oral and documentary and on hearing the arguments of both the sides, passed a judgment and decree dated 08.02.2018 dismissing the suit. Aggrieved by the dismissal of the suit, the plaintiff preferred an appeal in A.S.No.144 of 2018 and the learned Principal District Judge, Dindigul, upon considering the materials available on record and on hearing the arguments of both the sides, passed the impugned judgment and decree dated 18.11.2019 dismissing the appeal and thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the first appeal, the plaintiff has filed the present Second Appeal.

10. Though the second appeal is pending from 2022 onwards, the same is not yet admitted and hence, Substantial Question of Law was not formulated.



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11. Heard Mr.G.Gomathi Sankar, learned counsel appearing for the appellant / plaintiff and Mr.S.Srinivasa Raghavan, learned counsel appearing for the first respondent / first defendant.

12. Before entering into further, it is necessary to refer the mandate of Hon'ble Supreme Court for High Courts in deciding the second appeal under Section 100 of the Civil Procedure Code, given in the case of ***Gurnam Singh (dead) by LRs., and others Vs. Lehna Singh (dead) by LRs.***, reported in ***AIR 2019 SC 1441***, that the jurisdiction of the High Court in an appeal under Section 100 of the Code of Civil Procedure is strictly confined to the case involving substantial question of law and the relevant passage is extracted hereunder:

“18. Before parting with the present judgment, we remind the High Courts that the jurisdiction of the High Court, in an appeal under Section 100 of the CPC, is strictly confined to the case involving substantial question of law and while deciding the second appeal under Section 100 of the CPC, it is not permissible for the High Court to re-appreciate the evidence on record and interfere with the findings recorded by the Courts below and/or the First Appellate Court and if the First



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Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in Second Appeal. We have noticed and even as repeatedly observed by this Court and even in the case of Narayanan Rajendran v. Lekshmy Sarojini, (2009) 5 SCC 264, despite the catena of decisions of this Court and even the mandate under Section 100 of the CPC, the High Courts under Section 100 CPC are disturbing the concurrent findings of facts and/or even the findings recorded by the First Appellate Court, either without formulating the substantial question of law or on framing erroneous substantial question of law.”

13. The Hon'ble Supreme Court in the case of **Chandrabhan Vs. Saraswati and others** reported in **2022 SCC OnLine SC 1273** has specifically held that right of appeal is not automatic and right of appeal is conferred by statute and when statute confers a limited right of appeal restricted only to cases which involve substantial questions of law, it is not open to the High Court to sit in appeal over the factual findings arrived at by the First Appellate Court and the Hon'ble Supreme Court summarized the principles relating to Section 100 C.P.C., which are as



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follows;

“(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents and involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is



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still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iii) The general rule is that the High Court will not interfere with findings of facts arrived at by the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

14. Bearing the settled legal position in mind, let us proceed to examine the present case.

15. Admittedly, the plaintiff and the defendants 2 and 3 are the children of the first defendant. The plaintiff alleging that the suit properties are the ancestral and joint family properties filed the above suit for partition against his father and sisters.



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16. The main contention of the plaintiff is that the first item of the suit properties was allotted to the share of the first defendant in a partition entered into between the first defendant and his brothers on 21.08.1967 under Ex.A1 and, therefore, the same constitutes ancestral property. It is the further case of the plaintiff that the first defendant, with the aid of the income derived from the first item of the suit properties, purchased items 2 and 3 of the suit properties on 28.11.1981 and, as such, they also form part of the joint family properties.

17. No doubt, the first defendant, in his written statement, has specifically admitted that the first item of the suit properties was allotted to his share in the partition under Ex.A2 and according to him, the properties owned by their mother Vellaiammal was allotted to him, whereas, the properties owned by their father Aanaipappillai were allotted to his brothers. It is the specific contention of the first defendant that since he was allotted with the properties owned by their mother Vellaiammal, the same has to be considered as separate properties. But the said contention was not accepted by the Courts below, since the properties of the first defendant's parents were pooled together and after



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the death of their father Aanaipappillai, the first defendant and his brothers partitioned the suit properties.

18. Before proceeding further, as rightly contended by the learned counsel appearing for the first defendant, since the plaintiff has asserted that the suit properties are ancestral and joint family properties, the initial burden lies upon him to substantiate the same. It is well settled that the party who claims a property to be ancestral must plead and prove that the property descended from a common ancestor and that there existed a sufficient ancestral nucleus from which the subsequent acquisitions could have been made. Mere proof of the existence of a joint family is not sufficient for this purpose. In the present case, as rightly pointed out by the learned counsel appearing for the first defendant, it is for the plaintiff to establish that the first item of the suit properties is ancestral in nature and that there was sufficient surplus income from the said property, out of which items 2 and 3 of the suit properties were purchased.

19. It is pertinent to note that it is not the case of the plaintiff that the properties partitioned under Ex.A1 were originally owned by the



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father or grandfather of Aanaipappillai and that, therefore, the first defendant and his brothers had partitioned the ancestral or joint family properties available in their family. On the other hand, considering the evidence available on record, the Courts below have specifically held that the properties partitioned under Ex.A1 were owned by Aanaipappillai and his wife, Vellaiaimall, and that after their demise, the first defendant and his brothers partitioned the said properties under Ex.A1.

20. The learned counsel appearing for the plaintiff would rely on a decision of this Court in *M.Balasubramani Vs. Rajendiran and others* passed in *S.A.No.534 of 2013 dated 13.03.2017*, wherein, it was held that properties derived under partition deed can be treated as joint family properties if blended with ancestral properties and enjoyed as such. In the present case, as already pointed out, since the properties of their parents were partitioned, the properties derived under Ex.A1 partition cannot be treated as joint family properties and as such, the above decision cannot be made applicable to the case on hand.



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21. The learned counsel appearing for the plaintiff would also place reliance on the decision of this Court in ***S. Sampoornam Vs. C.K.Shanmugam and others*** reported in ***2022 (3) CTC 641***, wherein, it was held that since the plaintiff's great grandfather, Thalaivirichan Reddy, had died even prior to the coming into force of the Hindu Succession Act, 1956, the property in question was governed by Mitakshara Law and that whatever was inherited by the sons of Thalaivirichan Reddy would continue to retain the character of coparcenary property in their hands. It was further observed that even after partition of joint family properties and allotment to individual sharers, such property would retain the character of individual property only until the birth of a son and/or daughter, and upon such birth, they would acquire a right by birth in the said property.

22. There is no quarrel with regard to the legal principles laid down in the aforesaid decision; however, the same has no application to the facts of the present case.

23. The learned first appellate Judge has rightly relied on a



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decision of this Court in *M.Palaniappan and another Vs. Nachimuthu* reported in **2017 2 L.W. 343**, wherein, it was held that properties derived by first defendant from his father could only be treated as separate properties not as joint family properties of first defendant and his son and when son inherits property, as per Section 8 of the Hindu Succession Act, he does not take it as Kartha of his own undivided family, but takes it in his own individual capacity.

24. As already pointed out, in the present case, the properties owned by the first defendant's father Aanaipappillai and mother Vellaiammal were partitioned by the first defendant and his brothers, the properties obtained through Ex.A1 partition by the first defendant can only be considered as separate properties of the first defendant and not as ancestral properties.

25. Now turning to the 2nd and 3rd items of the suit properties, though the plaintiff has alleged that the said properties were purchased only from and out of the income derived from the first item of the suit properties, there is absolutely no evidence to substantiate the same.



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26. As per the settled legal position, the plaintiff is required to establish that the first item of the suit properties yielded sufficient surplus income and that such income was utilised for the purchase of items 2 and 3 of the suit properties. However, since the first item of the suit properties has already been held to be the separate property of the first defendant, even assuming that it had generated surplus income which was utilised for the purchase of items 2 and 3, the said acquisitions cannot be treated as joint family properties and would only partake the character of the separate properties of the first defendant.

27. As rightly observed by the trial Court, merely because the plaintiff, along with his parents, was living together as a family and the first defendant had permitted the plaintiff, being his only son, to manage the properties, that by itself would not confer any legal right upon the plaintiff to claim a share in the suit properties.

28. It is pertinent to note that the first defendant, in his written statement, has specifically stated that he has already executed a Will. Since the suit properties are the separate properties of the first defendant,



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he is entitled to deal with the same in any manner known to law, including by executing a Will or any other testamentary instrument. Inasmuch as the first defendant is very much alive, the validity and legality of the said Will cannot be gone into at this stage.

29. In view of the foregoing discussion, the findings of the Courts below that the plaintiff is not entitled to claim partition in the suit properties cannot be faulted.

30. It is pertinent to note that the appellant / plaintiff has not shown that any material evidence was ignored by the Courts below or that there was no evidence. It is not their case that any wrong inference had been drawn by the first appellate Court from the proved facts by applying the law erroneously. On perusal of the judgments of the Courts below and as rightly contended by the learned counsel appearing for the first respondent / first defendant, no question much less Substantial Question of Law is made out. Hence, this Court concludes that since no Substantial Question of Law is made out in the Second Appeal, the same is liable to be dismissed. Considering the other facts and circumstances



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and the relationship between the parties, this Court further decides that the parties are to be directed to bear their own costs.

31. In the result, the Second Appeal is dismissed, confirming the concurrent judgments made in O.S.No.204 of 2013 dated 08.02.2018 on the file of the Additional Subordinate Court, Dindigul and made in A.S.No.144 of 2018 dated 18.11.2019 on the file of the Principal District Court, Dindigul. Parties are directed to bear their own costs.

12.02.2026

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
csm

To

1. The Principal District Judge, Dindigul.
2. The Additional Subordinate Judge, Dindigul.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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K.MURALI SHANKAR, J

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Pre-Delivery Judgment made in
S.A.(MD)No.257 of 2022

Dated : 12.02.2026