

SA(MD). No.407 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 05.06.2026

Delivered on : 12.06.2026

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

SA(MD). No.407 of 2024

and

CMP(MD)Nos. 9527 of 2024 & 4521 of 2026

1. 1. Rathinam (Died) / Appellant / Plaintiff
2. R.Krishnanandam,
3. V.Rani,
4. R.Muneeswary,
5. R.Sekar,
6. Sellapappa, ... Appellants 2 to 6//.....
LRs of sole plaintiff

Cause title is accepted vide Court
order dated 15.11.2026 made in
CMP(MD)No.15348/2023

Vs.

Valliammai (Died)
Jegannathan (Died)



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1. Periyasamy

2. Akilandeswari

3. Sarathambal

Jai Ganesh(Died)

4. Deivadurai,

5. Selvaraj,

6. Bhuvaneswari,

7. Chitra

8. Rajesh,

9. Swathi, ... Respondents 1 to 9 / Respondents 1 to 9

10. R.Anbazhagan, ... 10th Respondent / ... /....

PRAYER :- Second Appeal filed under Section 100 of Civil Procedure Code, to call for the records from the Courts below and set aside the judgment and decree in A.S. No.19 of 2009 on the file of the II Additional Subordinate Judge, Tiruchirapalli dated 09.03.2021 confirming the judgment and decree in O.S.No.145 of 2001 on the file of the District Munsif Court, Musiri dated 25.10.2007 by allowing this Second Appeal.

For Appellants : M/s. Maria Vinola

For Respondents : Mr.V.Meenakshi Sundaram, R1 to R9

: No appearance for R10



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JUDGMENT

The plaintiff, who suffered concurrently before the trial Court as well as the first appellate Court in a suit for partition, is the first appellant. The appellants 2 to 6 are the legal heirs of the deceased sole plaintiff.

2. I have heard Ms.Maria Vinola, learned counsel appointed by the Legal Services Authority, on behalf of the appellants and Mr.V.Meenakshi Sundaram, learned counsel for the contesting respondents 1 to 9. I have also gone through the records.

3. The second appeal has been admitted by this Court on 24.07.2024, on the following substantial questions of law:

1. Whether the trial Court and the appellate Court are right in their finding that the property absolutely belongs to Valliammal?

2. Whether the judgment and decree in O.S.No.90 of 1996 on the file of the Sub Court, Kulithalai, is binding upon the plaintiff?



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3. *Whether the trial Court as well as the first appellate Court are right in their finding that the plaintiff is not entitled for any share in the property?*

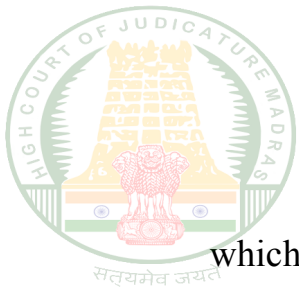
4. *Whether the Courts failed to take into consideration the Exhibits A4 and A5, passport of the plaintiff and his father which establishes the identity of a person under Section 2(b) of the Passport's Act, 1967?*

5. *Whether the appellate Court has committed serious error of procedure, causing prejudice to the plaintiff / appellant in not giving opportunity to rebut the additional evidence under Order 41 Rule 27 of CPC, whether the I.A.No.17 of 2019 was not at all discussed that proves the Genealogy of the original owner?*

4. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

5. Arguments of Ms.Maria Vinola, learned counsel for the appellants:

5.1. Ms.Maria Vinola, learned counsel for the appellants, would contend that the Courts below have failed to accept the genealogy, Ex.A1



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which clinchingly established the fact that the plaintiff was a sole heir of Dharmalingam @ Aravan and the first defendant, who is wife of Dharmalingam @ Aravan. She would point out that the suit property originally belonged to the plaintiff's grand father, Vairaperumal Mooppan, who was blessed with six sons, one amongst whom was Dharmalingam @ Aravan. She would also point out that the first item of the suit property was an extent of 1.7 Acres, which was purchased by the grand father, Vairaperumal Mooppan himself, wayback in 1959. The said sale deed had been exhibited and marked as Ex.A2. According to the plaintiff, the property was purchased in the name of Vairaperumal Mooppan's daughter-in-law, the first defendant, only to avoid to his other sons from claiming any right over the said item of property at a later point of time, claiming to be an ancestral property. She would also point out that the first appellate Court has erred in confirming the erroneous findings rendered by the trial Court, besides also dismissing I.A.No.79 of 2019 for receipt of additional evidence before the first appellate Court. She would further state that the documents that were filed in the first appellate Court and sought to be exhibited as additional evidence were clearly pointing to the fact that it was the plaintiff / appellant, who sent



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money to the first defendant, while he was employed in an estate in Valparai and that the first defendant had no independent source of income and therefore could not have acquired the first item of the suit property in her name. She would point out that the first appellate Court has not followed the mandate of Order 41 Rule 27 CPC and the dismissal of the application denied an opportunity to lead additional evidence and the same being improper, was liable to be set aside. The learned counsel would further state that the suit filed in O.S.No.90 of 1996 by the second defendant against the first defendant for specific performance of an alleged agreement of sale dated 17.06.1998 is not binding the plaintiff and the agreement itself was hit by doctrine of *non est* factum.

5.2. It is the further contention of Ms.Maria Vinola, that even in respect of second item of suit property, the Courts below have failed to ignore the valuable evidence of D.W.1 with regard to the said item of property, measuring 1 ½ cents and comprised in S.F.No.144/2, while proceeding to deny the share even in second item of the property. Pointing out to the substantial questions of law framed at the time of admitting the second appeal, Ms.Maria Vinola, learned counsel would



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contend that the second appeal deserved to be allowed on the above substantial questions of law and the appellant / plaintiff is granted a decree for partition in respect of the appellants' entitlement in the suit properties.

6. Arguments of Mr.V.Meenakshi Sundaram, learned counsel for the contesting respondents 1 to 9:

6.1. Per contra, Mr.V.Meenakshi Sundaram, learned counsel for the contesting respondents 1 to 9 would state that though the plaintiff took a plea of Benami, not only was such a plea is impermissible, but the plaintiff also miserably failed to establish the same by adducing strong evidence to compel the Court to hold that the purchase of the first item of the suit property in the name of the first defendant was a Benami transaction. He would further state that the first defendant, as lawful owner, had entered into an agreement of sale with the second defendant and a suit in O.S.No.90 of 1996 was filed for specific performance. He would further state that the crucial fact remains that the plaintiff was a witness to the said sale agreement entered into between the first defendant and the second defendant and the suit came to be decreed,



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pursuant to which, sale deed was executed by the Court and possession was taken and handed over to the second defendant as well.

6.2. Mr.V.Meenakshi Sundaram, learned counsel would further state that when the plaintiff stood as witness to the agreement of sale dated 27.11.1995 and sale deed was also subsequently registered on 30.04.1999 by the Court and physical possession was also taken in Execution Proceedings and the E.P was also terminated, nothing remains for consideration in the second appeal. He would state that the plaintiff has not chosen to challenge the sale deed in favour of the first defendant and despite passage of several years, the decree for specific performance and various orders passed in execution as well have attained finality. He would state that though a revision was filed as against the execution proceedings before this Court, the said revision petition also came to be dismissed on 11.02.2004 and after the sale deed was executed in favour of the second defendant, mutation of revenue records have also taken place. He would therefore state that the Courts below have rightly denied relief to the plaintiff and the concurrent findings do not warrant interference that too under Section 100 of the Code of Civil Procedure.



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6.3. With regard to second item of the property, viz., 1 ½ cents only, Mr.V.Meenakshi Sundaram, states that the purchaser may not any serious objection by a preliminary decree is granted in respect of second item of the suit property, as the plaintiff in O.S.No. 90 of 1996 cannot be aggrieved in any manner .

7. I have considered the submissions advanced by the learned counsel for the parties. I have also gone through the judgments of the trial Court as well as the first appellate Court.

Analysis:

8. The Courts below have concurrently found that the plea of Benami has not been established by the plaintiff and first item of the property was the absolute property of the first defendant, pursuant to which, she was entitled to deal with the same during her life time. It is in this regard, the decree of the suit in O.S.No.90 of 1996 and further proceedings thereunder assume significance. The plaintiff, as rightly



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pointed out by Mr.V.Meenakshi Sundaram, attested the sale agreement executed by the first defendant in favour of the second defendant.

However, the plaintiff has neither chosen to challenge the purchase in the name of the first defendant, nor the subsequent sale transaction entered into between the first defendant and the second defendant. Even giving a benefit of doubt to the plaintiff that he was a minor at the time of purchase of the property in the year 1959 under Ex.A2, even after attaining the age of majority, the plaintiff did not choose to challenge the sale deed, within the statutory period of three years. The plaintiff has also not examined any independent witnesses to establish that it was a Benami transaction. The Courts below have rightly assessed the oral and documentary evidence available on record and rightly come to the conclusion that the property was the absolute property of the first defendant and had every right to deal with the same. The said findings do not call for any interference.

9. Even with regard to the sale agreement and the suit for specific performance as well, the matter has attained finality and the second defendant had the benefit of the decree in a suit for specific performance,



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pursuant to which, sale deed was executed in his favour and possession was taken through Court and the purchaser also mutated the revenue records in his favour. The attempts made to thwart the execution proceedings also met defeat up to this Court, in revision, which was dismissed on 11.02.2004.

10. In view of the above, I do not see how the plaintiff is entitled to any share in the first item of the suit property. None of the substantial questions of law that have been framed infact arise for consideration in the present second appeal.

11. An application has been taken out in CMP(MD)No.4521 of 2026, invoking Order 41 Rule 27 CPC, pending the second appeal. Mr.V.Meenakshi Sundaram, learned counsel for the contesting respondents, on 03.06.2026, fairly stated that he has no objection for the application being allowed, however, reserving his right to make his submissions on the merits of the additional documents that are sought to be produced.

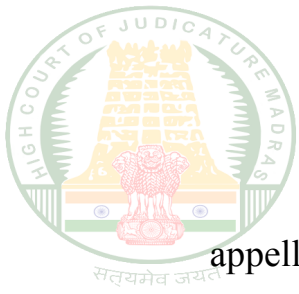


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12. It is the contention of the learned counsel for the appellants, Ms.Maria Vinola, that the documents that are now sought to be produced would clearly reveal that the plaintiff was the only heir of Dharmalingam @ Aravan and the first defendant, viz.,Valliammai. However, the Courts below have doubted the claim of the plaintiff that he was the legal heir of said Dharmalingam @ Aravan and Valliammai/the first defendant. The learned counsel relies on the additional document to establish that the death certificate of the plaintiff clearly reveals the fact that he was born to Dharmalingam @ Aravan and Valliammal and that even in respect of patta, No.746 relating to S.F.No.144/2D, in Devanoor Village, which is the second item of the suit property, it would clearly entitle the appellants to a relief of partition in respect of atleast second item of property if not the first item of property. On considering the arguments advanced insofar as CMP(MD)No.4521 of 2026, at least insofar as the second item of property, the documents on record throw considerable light with regard to the entitlement of the plaintiff to a decree for partition. I have already held in great detail as to how the plaintiff is not entitled to any share in respect of first item of the property, which admittedly belonged to the

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appellants' mother absolutely and even during the life time of the mother, the property had been sold in execution proceedings, arising out of a suit for specific performance and possession had also been handed over to the decree holder. In such circumstances, for the limited purposes of item No.2 of the suit property, the additional documents that are now sought to be produced will be of assistance to this Court. The trial Court as well as the first appellate Court have denied right to the plaintiff, even in respect of the second item, though there is no serious objection on the side of the contesting respondents to the said item of the property.

13. In the light of the above, for the limited purpose of deciding the entitlement of the plaintiff / appellant in item No.2 of the property, I am inclined to allow CMP(MD)No.4521 of 2026. Accordingly, CMP(MD)No.4521 of 2026 is allowed. The death certificate of Rathinam is marked as Ex. A.7 on the side of the plaintiff and the patta, No.746, pertaining to S.F.No.144/2D, Devanoor Village, in item No.2 of the suit property is marked as Ex.A.8.



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14. Though Valliammal was arrayed as first defendant, she did not choose to contest the suit and it was only the second defendant, the purchaser of item No.1 of the suit property, who contested the suit, to protect his purchase. In the light of the above, the respondents cannot have any objection for item No.2 of the property being allotted to the appellants, who are the legal heirs of the deceased sole plaintiff / Rathinam.

15. In fine, the substantial questions of law are accordingly answered against the appellants insofar the item No.1 of the suit property is concerned, while allowing the second appeal insofar as item No.2 of the suit property, viz., 1 ½ cents in S.F.No.144/2D, Devanoor Village, to which the appellants are jointly and equally entitled to a share, being legal heirs of the deceased sole plaintiff /Rathinam, who was the sole surviving heir of Dharmalingam @ Aravan and Valliammal/ first defendant.



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16. This Court places on record its appreciation for the invaluable assistance rendered by Ms. Maria Vinola, who, despite there being no assistance forthcoming from the appellants to project their case and legal grievances before this Court in the second appeal, was able to assist the Court in adjudicating the issues involved, which has resulted in the second item of the property being saved for the family of the plaintiff.

17. For the above reasons, the second appeal is allowed in part, confirming the judgment and decree in A.S. No.19 of 2009 on the file of the II Additional Subordinate Judge, Tiruchirapalli dated 09.03.2021 confirming the judgment and decree in O.S.No.145 of 2001 on the file of the District Munsif Court, Musiri dated 25.10.2007, insofar as the item No.1 of the suit property and reversing the dismissal of the suit in item No.2 of the suit property and granting a decree declaring the appellants to be jointly and equally entitled to a share of item No.2 of the suit property, viz., 1 ½ cents in S.F.No.144/2D, Devanoor Village. There shall be no



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order as to costs. CMP(MD)No.4521 of 2026 is allowed. CMP(MD)No.
9527 of 2024 is closed.

12.06.2026

Internet : Yes/No
NCC : Yes/No
LS

Note: Registry is directed to marked
the documents as Ex.A7 & Ex.A8.

TO

1. The II Additional Subordinate Judge,
Tiruchirapalli.
2. The District Munsif Court,
Musiri.



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3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.B.BALAJI,J.

LS

**Pre-delivery Judgement made in
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12.06.2026