



SA(MD).No.24



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Judgment reserved on 16.04.2026 | Judgment pronounced on 05.06.2026

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

SA(MD) No.24 of 2020 and
CMP(MD).No. 318 of 2020 and 5073 and 2026

A. Paulchamy

... Appellant / plaintiff

Vs.

V. Thangavelu

.. respondent / defendant

Prayer : Second Appeal filed under Section 100 CPC against the Judgment and Decree dated 25.01.2019 passed in the appeal in A.S.No.39 of 2017 on the file of the Subordinate Court, Thirumangalam (A.S.No.31 of 2016 on the file of the Subordinate Court, Madurai) confirming the Judgment and decree dated 14.03.2016 passed in the suit in O.S.No.191 of 2013 on the file of the District Munsif Cum Judicial Magistrate Court, Peraiyur (O.S.No.646 of 2008 on the file of the District Court, Thirumangalam.)

For Appellant : Mrs. Shiva Shree

for Mr.J. Bharathan

For respondent : Mr.V.N. Arjun

for Mr.N. Vallinayagam



WEB COPY

JUDGMENT

The plaintiff, in a suit for declaration and permanent injunction is the appellant, aggrieved by the concurrent findings of the trial court as well as the first appellate court.

2. The Second Appeal was admitted on 20.01.2020, on the following substantial questions of law:

1) Whether the observation of the Courts below that the suit property also had been directed to be partitioned under the decree in O.S.No.596 of 1974 is an error on the face of the record. While the Judgment and decree exempts the suit property in this case from the decree for partition on the ground that it belonged absolutely to Perumal Ammal and Errammal?

2) Whether the suit for declaration of title filed by the appellant / plaintiff is barred by Order 2 Rule 2 and Order 23 Rule 2(4)(b) of the Civil Procedure Code when the earlier suit in O.S.No.127 of 1997 for bare injunction had been dismissed for default?



WEB COPY

3. I have heard Ms. Shivashree, learned counsel appearing for the appellant, and Mr. V.N. Arjun, learned counsel appearing for Mr. N. Vallinayagam, learned counsel appearing for the respondent.

4. The brief facts that may be necessary to decide the substantial questions of law framed in this Second Appeal are as follows:

(i) The suit property is an extent of 1 acre and 40 cents situated in Survey No.160/3 of Seelanaickenpatti Village and originally belonged to one Subba Naicker. Subba Naicker was blessed with two sons and two daughters. After the death of Subba Naicker, his two sons orally partitioned the family properties, and the northern 70 cents was allotted to Muthaiah Naicker, while the southern 70 cents was allotted to Vasimalai Naicker. Vasimalai Naicker married Errammal, the daughter of Perumalammal, and sold his 70 cents to his wife, Errammal. The mother of Errammal, namely Perumalammal, purchased the northern 70 cents from her brother, Muthaiah Naicker, by a registered sale deed dated 29.06.1962. Perumalammal resided with her daughter Errammal, since Perumalammal had misunderstandings with her husband, namely Veluchamy @ Velandi Naicker. She settled the northern half share purchased by her in favour of Errammal by a registered settlement deed dated 16.03.1994.



By virtue of the said settlement, Errammal became the owner of the entire suit property.

WEB COPY

(ii) Though Errammal did not mutate the revenue records, she was in possession and enjoyment of the suit property. In 1994, Vasimalai Naicker, along with one Palanichamy, attempted to interfere with the suit property, and hence Errammal and Perumalammal filed a suit in O.S. No.1210 of 1994 before the Sub Court, Madurai. Subsequently, the suit was transferred to the District Munsif Court, Thirumangalam, and was taken on file as O.S. No.127 of 1997. The suit was dismissed for default. Though Errammal attempted to set aside the dismissal of the suit by filing an application, the same was subsequently not pressed. In the meantime, the defendant, taking advantage of the dismissal of the suit, included his name in the patta. The plaintiff purchased Errammal's property on 29.08.2008. The defendant caused a lawyer's notice dated 28.10.2008 to be issued to the plaintiff and Errammal, to which the plaintiff sent a reply on 01.11.2008. Soon thereafter, the defendant attempted to trespass into the suit property purchased by the plaintiff. Hence, the suit for declaration and injunction was filed.

(iii) The suit was resisted by the defendant, contending that the suit



SA(MD).No.24

WEB COPY

property originally belonged to Chinna Velammal, the grandmother of the defendant, by way of a sale deed dated 04.04.1993. The said Chinna Velammal was the wife of Subban, and upon her death, her sons and daughters orally partitioned the suit property, with each of them getting 35 cents. The northern 70 cents of the suit property was enjoyed by the father, Velandi, whose first wife was Subbammal. Through Subbammal, Velandi was blessed with four children, namely Bommaiah, Alagarsamy, Chellaiah, and Dhanikodi. Bommaiah had filed a suit in O.S. No.596 of 2004, at which point of time the defendant was a minor, and his mother Perumalammal represented the defendant in the said suit. The southern 70 cents of the suit property belonged to Subbammal and Vasimalai, each having 35 cents, and the defendant was enjoying the southern portion with the consent of the said Subbammal and Vasimalai. The defendant alone was cultivating the suit property. Perumalammal settled the suit property in favour of the defendant on 05.09.1980.

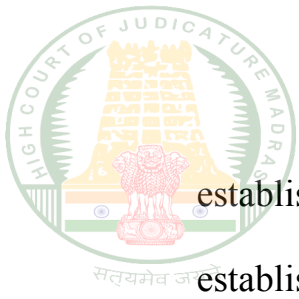
(iv) The suit in O.S. No.596 of 1994, which was filed by Bommaiah, was contested by Perumalammal and the legal heirs of Subbammal, and subsequently they gave up their rights in the suit property. The suit in O.S. No. 1210 of 1994, which was filed by Errammal and Perumalammal, was contested



WEB COPY

by the defendant, and the suit was dismissed. The application to restore the suit was also dismissed. The suit was filed only at the instigation of the husband of Errammal, namely Muthaiah. The suit is barred under Order XXIII Rule 2 CPC. Based on the said claims, the parties went to trial, and the trial court, finding that the plaintiff had no right in the suit property, dismissed the suit. The dismissal was challenged in A.S. No.39 of 2017 before the Sub Court, Thirumangalam. The first appellate court, upon an independent assessment of the pleadings as well as the oral and documentary evidence, concurred with the findings of the trial court that the plaintiff was not entitled to any relief and dismissed the appeal. Aggrieved by the concurrent findings, the present Second Appeal has been filed.

5. The learned counsel appearing for the appellant, Ms. Shiva Shree, would contend that the trial court as well as the first appellate court failed to advert to Exs.A1, A7, A8, and A9, which clearly evidence the fact that Errammal was the absolute owner and in possession of the suit property. She would further state that, when the defendant claimed that Chinna Velammal, wife of Subba Naicker, alone was the owner of the property, it was the burden of the defendant to produce documents of title to establish such contentions. Relying on Exs.A1 and A2, the learned counsel for the appellant would submit that the plaintiff had

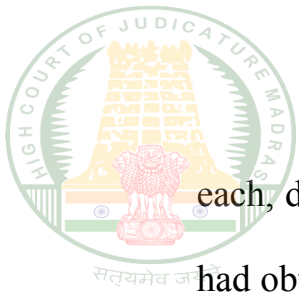


SA(MD).No.24

WEB COPY

established title to the suit property, and the factum of possession was also established by filing the Patta Passbook and kist receipts, namely Exs.A1 and A9. She would further contend that, when the defendant had also set up title, the question of burden of proof became insignificant, and the courts below had erroneously non-suited the plaintiff on the ground that the plaintiff had not discharged the burden of proof cast upon her.

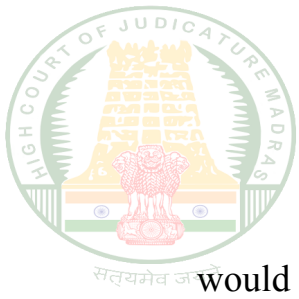
6. The learned counsel would further contend that both Subba Naicker and Chinna Velammal died prior to the coming into force of the Hindu Succession Act, and therefore, the daughters had no right of inheritance, especially when the sons were alive. Hence, there was no error in the partition effected between the two sons, each of them taking 70 cents. She would also point out that the southern boundary in Ex.A2 sale deed dated 29.06.1962 mentions the land purchased by the purchaser from Vasimalai Naicker. In other words, it is the contention of the learned counsel for the appellant that, as early as in 1962, the right of Perumalammal had been recognised. The plaintiff had purchased the entire suit property from Errammal under Ex.A10, and the same was preceded by valid title deeds under Exs.A2 and A3. In such circumstances, she contends that the first appellate court ought not to have accepted the case set up by the defendant that, in an oral partition, the daughters had also obtained 35 cents



each, despite there being no documentary evidence to establish that Subbammal had obtained 35 cents towards her share in the alleged oral partition.

WEB COPY

7. The learned counsel would further contend that, in the absence of pleadings, the court could not have legitimately relied upon the judgment in O.S.No.596 of 1974 before the court below, nor could the courts have legitimately concluded that the said suit also related to the suit property. She would further submit that only the decree passed in O.S.No.596 of 1974 was produced and marked as Ex.B1, and the decree clearly exempts Item No.2, which belongs to Perumalammal and her daughter Errammal. Without noticing the decree, the courts below ought not to have held that the suit property was also directed to be partitioned in O.S.No.596 of 1974. When the suit property had been clearly excluded from the preliminary decree passed in O.S.No.596 of 1974, the courts below erred in observing that the plaintiff could only file a suit for partition and could not seek a declaration of title over the suit property. She would further contend that the appellate court also erroneously held that the parties to the suit in O.S.No.596 of 1974, namely the legal heirs of Velandi and Subbammal, viz., Bommaiah and others, had not been impleaded, and that the same was fatal to the case of the plaintiff.



SA(MD).No.24

WEB COPY

8. Insofar as Order XXIII Rule 2 CPC is concerned, the learned counsel would submit that the suit in O.S.No.127 of 1997 filed by Errammal and her mother was only for bare injunction, and the cause of action for filing the suit was entirely based on imminent threats of interference with enjoyment of the suit property. There was no cloud over title on the date of filing of the suit, warranting a prayer for declaration. She would also point out that, pending the suit, an interim injunction had also been granted, which is evidenced by Ex.A6, thereby confirming that Errammal and Perumalammal alone were in possession of the suit property, from whom the appellant/plaintiff had purchased the property and taken over possession as well.

9. Per contra, Mr. V.N. Arjun, learned counsel appearing for the respondent, would submit that the courts below had not committed any error in dismissing the suit, having clearly found that the plaintiff had no right in the suit property. He would further contend that the plaintiff cannot rely upon the weakness in the defence set up by the defendant, but has to independently establish and prove entitlement to the declaratory relief sought. The antecedent title deeds to establish that the property belonged to Subba Naicker had also not been produced by the plaintiff, who had approached the court on such a claim. Insofar as the earlier suit is concerned, Mr. V.N. Arjun, learned counsel, would



SA(MD).No.24

WEB COPY

submit that, upon the dismissal of the suit filed by the plaintiff, the interim orders that had been in force would automatically merge with the dismissal of the suit, and therefore it cannot be contended that the possession or entitlement of the plaintiff's vendor had been recognised. With regard to the earlier proceedings, he would also submit that the suit filed by Errammal and Perumalammal ought to have included the relief of declaration, and admittedly the suit had been dismissed without any liberty being obtained to file a fresh suit. He would therefore contend that, in terms of Order XXIII Rule 1(4)(b) CPC, the present suit is barred. Though the plaintiff would contend that he is only a purchaser and was not a party to the earlier litigation, when he admittedly claims rights only through Errammal, he is bound by the earlier suit. Mr. V.N. Arjun, learned counsel, would further submit that the suit is also barred by the provisions of Order 23 Rule 1 CPC. In support of his submissions, he relied upon the decision of the Hon'ble Supreme Court ***dated 09.03.2016*** made in ***Civil Appeal Nos.5168 and 5169 of 2011*** in the case of ***Gobind Singh vs. Union of India and others***, as well as the judgment of this Court dated ***24.03.2022*** made in ***C.S.No.246 of 2021*** in the case of ***Dr. Bhairavi Senthil vs. Raiza Wilson***.

10. I have carefully considered the submissions made by the learned



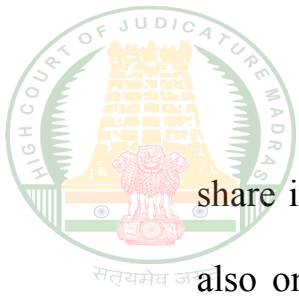
counsel appearing for the parties and perused the records.

WEB COPY

11. Pending the Second Appeal, an application has been filed in CMP(MD).No.5073 of 2026 for receiving additional documents, namely the judgment in O.S.No.596 of 1974 on the file of the District Munsif Court, Thirumangalam. The learned counsel for the petitioner, Ms. Shivashree, would contend that, since only the decree was marked before the trial court and there is an apparent error in the decree by inadvertently referring to a different item of property instead of the suit property, the judgment necessarily has to be examined, as it would throw light on the actual position.

12. The said application is opposed by Mr. V.N. Arjun, learned counsel appearing for the respondent, contending that the petitioner has not satisfied the requirements of Order XLI Rule 27 CPC, and hence additional documents cannot be permitted to be received at the stage of Second Appeal. I shall first take up the CMP for consideration.

13. Admittedly, the decree in O.S.No.596 of 1974 had been marked as an exhibit even before the trial court. The suit was filed by one Bommaiah, son of Subbammal, who was successful in obtaining a decree for partition of a 1/6th



SA(MD).No.24

WEB COPY

share in the properties of his father Velandi. Admittedly, the suit property was also one of the properties in the said suit. The courts below relied upon the decree marked before the trial court and inferred that Bommaiah had also been granted a 1/6th share in the properties of Velandi. However, it is noticed that the courts proceeded only on the basis of Ex.B1 decree, which indicated that a preliminary decree for partition had been granted in respect of the suit properties except Item No.2. It is the case of the appellant that, instead of referring to suit Item No.1, the decree had wrongly referred to Item No.2, which led to the confusion and the consequent errors committed by the trial court and the first appellate court.

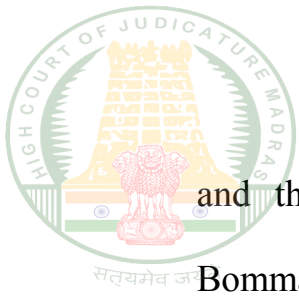
14. It is only for the sake of clarity that the petitioner has come forward with the present application for reception of additional evidence. This Court is empowered to permit reception of additional evidence, even at the Second Appeal stage, in the interest of justice. The fact that O.S.No.596 of 1974 was filed by Bommaiah, son of Velandi and Subbammal, is not disputed. Admittedly, the decree in the said suit was produced only by the defendant/respondent. In such circumstances, when it is contended that there is a mistake in the decree and that, instead of referring to suit Item No.1, the decree wrongly exempted Item Nos.2 and 3 from the preliminary decree, I do



not see any reason as to why the judgment should not be received as additional evidence. The judgment in O.S.No.596 of 1974 would certainly lend clarity, and this Court would be in a position to ascertain the actual decree granted in favour of Bommaiah in the earlier suit proceedings. Consequently, it would also enable this Court to test the findings of the trial court as well as the first appellate court, both of whom had based their findings solely on Ex.B1 decree.

15. In the light of the above, CMP(MD).No.5073 of 2026 is allowed, and the judgment in O.S.No.596 of 1974 is received as additional evidence and marked as Ex.A13.

16. On a perusal of Ex.A13, it is seen that there has been an elaborate discussion by the court regarding the entitlement of Bommaiah to a decree for partition, and specifically, the suit property has been discussed and exempted from the preliminary decree. Unfortunately, the decree, instead of mentioning suit Item No.1, has erroneously referred to suit Item No.2. Thus, the decree is not in consonance with the reasons and findings contained in the judgment. In such circumstances, there is considerable force in the submissions made by the learned counsel for the appellant, Ms. Shivashree, that when the suit property had already been recognised as the property of Perumalammal and Errammal,



WEB COPY

and thereby exempted from the preliminary decree granted in favour of Bommaiah, the question of partition amongst the sons alone and the question of non-joinder of the other legal heirs and parties to O.S.No.596 of 1974 does not and cannot arise.

17. On a careful perusal of the judgment in Ex.A13, I have no hesitation in holding that the property taken out of the purview of the preliminary decree is the present suit property. In such circumstances, the case of the appellant / plaintiff deserves to be accepted. Insofar as the bar under Order II Rule 2 CPC and Order XXIII Rule 1 CPC is concerned, merely because an earlier suit for injunction had been filed, it must still be examined whether the plaintiff had a cause of action at the relevant point of time to seek the relief of declaration. In the earlier suit, Errammal and Perumalammal had asserted rights over the suit property and merely sought to restrain the defendant in O.S.No.127 of 1997 from interfering with their possession. In such circumstances, I am unable to hold that the cause of action for seeking declaration had arisen as early as in the year 1994. Only subsequently, Errammal conveyed the suit property in favour of the plaintiff under Ex.A10 sale deed. In such circumstances, I do not see how the provisions of Order II Rule 2 CPC or Order XXIII Rule 1 CPC could operate as a bar against the plaintiff.



WEB COPY

18. The decision relied upon by Mr. V.N. Arjun, learned counsel for the respondent, in *Civil Appeal Nos.5168 and 5169 of 2011* in the case of **Gobind Singh vs. Union of India and others**, lays down the proposition that a plaintiff seeking permanent injunction must prove actual possession of the suit property as on the date of filing of the suit. Likewise, this Court in the case of **Dr. Bhairavi Senthil vs. Raiza Wilson** held that the burden lies upon the plaintiff to establish his or her case, and that the plaintiff cannot take advantage of the weakness in the defendant's case. There is no dispute regarding the legal propositions laid down in the above decisions.

19. However, I hold that the trial court as well as the first appellate court had misdirected themselves by relying only upon Ex.B1 decree, without appreciating the actual findings in the judgment passed in O.S.No.596 of 1974, now marked as Ex.A13. When the suit property itself had been exempted from the preliminary decree granted in the earlier suit, the question of the defendant contending that the parties to O.S.No.596 of 1974 were necessary parties, or that the vendors of the plaintiff did not possess absolute rights over the property, does not arise at all.

20. In such view of the above, the appellant is entitled to succeed, and the



SA(MD).No.24

WEB COPY

substantial questions of law are answered in favour of the appellant. Though I am conscious of the fact that the exercise of jurisdiction under Section 100 CPC is very limited, when the courts below have misdirected themselves in appreciating material evidence and have misinterpreted Ex.B1 decree, this Court, while exercising jurisdiction under Section 100 CPC, can certainly interfere. Accordingly, the substantial questions of law are answered in favour of the appellant, and the Second Appeal is allowed. The judgment and decree passed in O.S.No.191 of 2013 and confirmed in A.S.No.39 of 2017, are set aside. Consequently, the Second Appeal stands allowed as prayed for. CMP(MD).No.5073 of 2026 is allowed. CMP(MD).No.318 of 2020 is closed. No costs.

05.06.2026

Neutral Citation Case : Yes / No
Speaking / Non-speaking order
Index : Yes/No
trp

To

1. The Subordinate Court, Thirumangalam
2. The District Munsif Cum Judicial Magistrate Court, Peraiyur.



SA(MD).No.24



Note: Registry is directed to mark the document as Ex.A13

WEB COPY



WEB COPY



SA(MD).No.24

P.B.BALAJI.J.

trp

Pre-delivery Judgment made in
SA(MD) No.24 of 2020 and
CMP(MD).No. 318 of 2020 and 5073 and 2026

05.06.2026