



SA(MD). No.394 of 2017

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**  
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DATED : 07.04.2026

CORAM

**THE HONOURABLE MR. JUSTICE P.B.BALAJI**

**SA(MD). No.394 of 2017**  
**and**  
**CMP(MD)No.8365 of 2017**

1.Maharajan  
2.Ramarpandi  
3.Marisamy

... Appellants/ Appellants /  
Plaintiffs

Vs.

1.Kathana  
2.Muthu

... Respondents /Respondents /  
Defendants

PRAYER :- Second Appeal is filed under Section 100 of the Civil Procedure Code, against the decree and judgment of the Sub Court, Sankarankovil, passed in A.S.No.66 of 2014 dated 08.06.2015 confirming the decree and judgment of the Additional District Munsif Court, Sankarankovil, passed in O.S.No.302 of 2012 dated 20.08.2014.

For Appellants : Mr..V.Meenakshisundaram

For Respondents : Mr.S.Meenakshi Sundaram, Senior Counsel  
for Mr.R.T.Arivukumar



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## **JUDGMENT**

The plaintiffs, aggrieved by concurrent findings of the trial Court and the first Appellate Court, in a suit for declaration and permanent injunction, are the appellants herein.

2. The Second Appeal was admitted by this court on 01.12.2023, on the following substantial questions of law:-

*“1) When the sale deed dated 20.04.1993 executed by husband of 1st defendant regarding 93 cents in S.No.225/1 is admitted in the written statement, whether the Courts below are correct in dismissing the suit for declaration and injunction in toto instead of granting lesser relief?*

*2) When the case of the defendant in the written statement that the oral partition between Chinnaramasamy Thevar, Pandi @ Periyasamy Thevar and Subbiah Pandian is not proved and there is a defective title in the sale deed dated 27.05.1998 of the husband of the 1st defendant, whether the courts below are correct in ignoring this vital aspects and thereby*



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*dismissed the suit and the warrants interference under  
Section 100 of CPC?”*

3. I have heard Mr.V.Meenakshisundaram, learned counsel for the appellants / Plaintiffs and Mr.S.Meenakshi Sundaram, learned Senior Counsel for Mr.R.T.Arivukumar, learned counsel for the respondents / defendants.

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

5. Brief facts that may be necessary to decide the second appeal are as hereunder:

An extent of 1.86 Acres, forming part of a larger extent of 2.80 cents was originally belonging to the father, Chinnaramasamy Thevar and his two sons, viz., Pandi @ Periyasamy Thevar and Subbaiah Pandiyan. The plaintiffs allege that the two sons, viz., Pandi @ Periyasamy Thevar and Subbaiah Pandiyan had sold an extent of 1.40 cents each, in excess of their 1/3 entitlement share, totally effacing the

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right and interest of their father, Chinnaramasamy Thevar. According to the plaintiffs, the father Chinnaramasamy Thevar had settled the property measuring 93 cents in favour of the plaintiffs by a settlement deed dated 13.06.1990 and it was in respect of his 1/3 entitlement in total extent of 1.86 Acres, which was the northern portion of the larger extent of 2.80 Acres, comprised in Survey No.225/1. Hence, the plaintiffs claimed the relief of declaration and permanent injunction.

6. The suit was resisted by the defendants, contending that even 40 years back, there was an oral partition amongst the father Chinnaramasamy Thevar and his two sons viz., Pandi @ Periyasamy Thevar and Subbaiah Pandiyan, in and by which the property measuring 2.80 Acres was allotted to the two sons, viz., Pandi @ Periyasamy Thevar and Subbaiah Pandiyan, equally, each of them entitled to 1.40 Acres and the father was not allotted any property or share in this property, but, was compensated in other property. It was therefore the case of the defendants, the father Chinnaramasamy Thevar did not have any subsisting right to settle the property in favour of the plaintiffs.



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7. Before the trial Court, the first plaintiff examined himself as P.W.1 and exhibited Ex.A1 to Ex.A11. On the side of the defendants, the first defendant examined herself as D.W.1 and exhibited Ex.B1 to Ex.B5.

8. The trial Court, based on the admissions of the plaintiffs in cross examination, answering in the affirmative the issue regarding oral partition, dismissed the suit. On appeal, the first appellate Court confirmed the findings of the trial Court. As against the said concurrent findings, the plaintiffs are before this Court.

**9.Arguments of the learned counsel for the appellants:**

Mr.V.Meenakshisundaram, learned counsel for the appellants would firstly contend that the Courts below ought not to have dismissed the suit in entirety as admittedly an extent of 93 cents being the middle portion was purchased by the plaintiffs under sale deed dated 20.04.1993 from Marisamy Thevar under whom the defendants in fact claimed right. He would further state that the sons, viz., Pandi @ Periyasamy Thevar and Subbaiah Pandiyan, had mutated patta in their names, behind the



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back of the father and in any event, patta was mutated thereafter in the joint names of both the defendants and the plaintiffs and therefore, the defendants had failed to establish oral partition as claimed by them. In such circumstances, Mr.V.Meenakshi Sundaram, learned counsel for the appellants would state that the Courts below have concurrently erred in non suiting the plaintiffs, when admittedly the sale dated 25.07.1978 in favour of the husband of the first defendant was defective as the vendors did not have right in excess of 1/3 share in the total property.

**10. Arguments of the learned counsel for the respondents:**

Per contra, Mr.S.Meenakshi Sundaram, learned Senior Counsel appearing for the respondents, would state that the plaintiffs had categorically admitted to the oral partition between the father Chinnaramasamy Thevar and his two sons, viz., Pandi @ Periyasamy Thevar and Subbaiah Pandiyan and therefore, according to the learned Senior Counsel no substantial question of law arises for consideration in the second appeal. He would invite my attention to the findings of the trial Court as well as the first Appellate Court in this regard, to non suit



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the plaintiffs solely on the basis of the admissions made by P.W.1 in the witness box. The learned Senior Counsel would state that there is no merit in the second appeal and he would therefore pray for the second appeal being dismissed.

**Analysis:**

11. I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the judgment of the trial Court as well as the first Appellate Court, besides the pleadings as well as the oral and documentary evidence brought on record by the parties.

12. The plaintiffs claiming right under a settlement deed executed by Chinnaramasamy Thevar in respect of 93 cents on the northern side and a sale by one Marisamy Thevar in respect of another 93 cents being the middle portion, sought for relief of declaration of their right and interest and also for consequential permanent injunction to restrain the



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defendants from interfering with the peaceful possession and enjoyment of the plaintiffs.

13. The suit was resisted by the defendants mainly contending that the father Chinnaramasamy Thevar and two sons, viz., Pandi @ Periyasamy Thevar and Subbaiah Pandiyan, had entered into an oral partition under which father did not get any share and the entire extent of 2.80 Acres was divided equally between two sons, each taking 1.40 Acres. It is therefore the contention of the defendants that there is no excess sale over and above the entitlement of the sons and what was sold to the defendants was the rightful and legitimate entitlement of the respective vendors.

14. The specific contention of the defendants was that father Chinnaramasamy Thevar could not have executed a settlement deed in respect of an alleged 1/3 share in the total extent, viz., 93 cents on the northern side, when the father was not allotted to any share in oral partition amongst himself and two sons, viz., Pandi @ Periyasamy



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Thevar and Subbaiah Pandiyan. When P.W.1 was confronted with the said oral partition, P.W.1 clearly admitted that there was an oral partition between Chinnaramasamy Thevar and his two sons, viz., Pandi @ Periyasamy Thevar and Subbaiah Pandiyan about 40 years back. He would also state that in the said oral partition, properties were allotted only to the two sons, viz., Pandi @ Periyasamy Thevar and Subbaiah Pandiyan and further even admitted to the fact that various other properties alone were allotted to the father Chinnaramasamy Thevar. In the light of the unequivocal admissions of P.W.1 regarding the oral partition and taking right note of the same, the trial Court proceeded to non suit the plaintiffs as the father could not have executed the settlement deed, settling 93 cents in favour of the plaintiffs, when he was not given any share in the first place in the oral partition.

15. Therefore, I do not see any requirement for the defendants to have established the plea of oral partition, when it has been admitted by P.W.1 himself in cross examination. In such view of the matter, I do not see any infirmity in the findings of the trial Court and the first Appellate



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Court to non suit the plaintiffs. Hence, the second substantial question of law is answered accordingly, in this regard.

16. Mr.V.Meenakshisundaram, learned counsel for the appellants would contend that at least in respect of the entitlement of the plaintiffs, the Courts below ought to have granted and lesser relief, by restricting the prayer sought for in the suit to the actual entitlement of the appellants / plaintiffs. In this regard, Mr.V.Meenakshisundaram, learned counsel has taken me through the findings of the first appellate Court and also would state that even if the plaintiffs had not established their entitlement for the entire extent of 1.86 Acres, atleast in respect of 93 cents that has been purchased under sale deed dated 20.04.1993, the plaintiffs ought to have been granted a decree. I find force in the submissions of the learned counsel for the appellants.

17. In order to better appreciate whether the plaintiffs are entitled to any relief, it becomes necessary to trace the title to the suit property, particularly in the context of the oral partition, as already discussed, the



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two sons, viz., Pandi @ Periyasamy Thevar and Subbaiah Pandiyan became entitled to 1.40 Acres each. Pandi @ Periyasamy Thevar sold his 1.40 Acres in and by sale deed dated 26.05.1980. viz., Pandi @ Periyasamy Thevar sold his entitlement of 1.40 Acres to the first defendant's husband, viz., Marisamy Thevar. Similarly, the other son viz., Subbaiah Pandiyan, sold his 1.40 Acres to one Ramarpandi in and by sale deed dated 03.12.1974, who in turn sold it to Marisamy Thevar on 27.05.1978. The defendants are the legal representatives of Marisamy Thevar and Marisamy Thevar himself during his life time, conveyed an extent of 93 cents, being the middle portion, in favour of the plaintiffs. This fact is not disputed by the defendants also. In the circumstances, admittedly the plaintiffs were entitled to 93 cents out of the total extent of 2.80 Acres, if not 1.86 Acres. The plaintiffs themselves claimed right only under Marisamy Thevar, who in turn had traced title to Subbaiah Pandiyan, who had claimed and asserted right over the 1.40 Acres. Therefore, even from this angle, it is not open to the plaintiffs to contend that the defendants have no title and that their vendors sold the extents over and above the entitlement. However, in view of the plaintiffs



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admittedly having purchased an extent of 93 cents from Marisamy Thevar, under whom the defendants themselves claimed, the Courts below ought to have granted a declaratory relief and consequential injunction atleast limited to the extent of 93 cents, which was purchased from Marisamy Thevar. The first appellate Court has in fact categorically found and rightly, in my considered opinion, that under Ex.A2 sale deed, the middle portion of 93 cents belonged to the plaintiffs, together with right in the well and electricity supply in service connection No.280. When the first appellate Court had found the plaintiffs to be entitled to atleast 93 cents being the middle portion, the appellate Court ought to have moulded the relief and granted the declaration and injunction atleast in respect of the middle portion measuring 93 cents. In fact, in paragraph No.12 of the written statement, the defendants also admit the factum of sale of 93 cents in favour of the plaintiffs by Marisamy Thevar.

18. The learned Senior Counsel, Mr.S.Meenakshi Sundaram, also fairly submitted to the fact that the defendants do not dispute the



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entitlement of the plaintiffs to 93 cents alone being the middle portion and they have only disputed the additional extent of 93 cents claimed under the settlement deed executed by father Chinnaramasamy Thevar.

19. In the light of the above, the appellants are entitled to a declaratory relief consequential injunction relief in respect of the middle portion measuring 93 cents, comprised in Survey No.225/1. Courts certainly have got power to mould the relief, having found that the plaintiffs are not entitled to the relief as prayed for, but, being entitled to a lesser relief, the court ought to have granted the lesser relief to which the plaintiffs were found entitled to. Substantial question No.1 is therefore, answered in favour of the appellants.

20. In fine, the Second Appeal is partly allowed, declaring that the plaintiffs are entitled to 93 cents being the middle portion forming part of the total extent 2.80 Acres, comprised in survey No.255/1, Narikudi Village, Sankarankovil Taluk, Tenkasi District, bounded on the north by defendants lands, south by defendant's lands, east by Madasamy



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Thevar's lands and west by Chellaiya Thevar's lands together with the right of the enjoyment in the well and electricity supply, as conferred on the plaintiffs, under the sale deed dated 25.08.1993. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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NCS : Yes/No  
Index : Yes / No  
Internet : Yes / No  
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TO

1. The Sub Court,  
Sankarankovil.
2. The Additional District Munsif Court,  
Sankarankovil.
3. The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**P.B.BALAJI,J.**

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