

S.A(MD)No.38 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.06.2026

Pronounced on : 17.06.2026

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A(MD)No.38 of 2012

and

C.M.P(MD)No.3386 of 2016

1.S.Manikanda Moorthy,
S/o.Late Sankaranarayanan,
Nallammanaickenpatti Village,
Avalsooranpatti Post,
Tirumangalam Taluk,
Madurai District.

2.S.Saroja Ammal,
W/o.Late Sankaranarayanan,
Nallammanaickenpatti Village,
Avalsooranpatti Post,
Tirumangalam Taluk,
Madurai District.

3.S.Renuka Devi,
D/o.Late Sankaranarayanan,
Nallammanaickenpatti Village,
Avalsooranpatti Post,
Tirumangalam Taluk,
Madurai District.

...Appellants/Respondents/Defendants

Vs.

S.Krishna Moorthy,
S/o.Late Sankaranarayanan,
Nallammanaickenpatti Village,
Avalsooranpatti Post,
Tirumangalam Taluk,
Madurai District.

...Respondent/Appellant/Plaintiff



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Prayer: This Second Appeal filed under Section 100 of the Civil Procedure Code, against the reversing judgment and decree passed in A.S.No.196 of 2010 on the file of the Camp Subordinate Judge, Tirumangalam, dated 14.09.2011 filed against the judgment and decree passed in O.S.No.299 of 2007 on the file of the District Munsif Court, Tirumangalam, dated 30.08.2010.

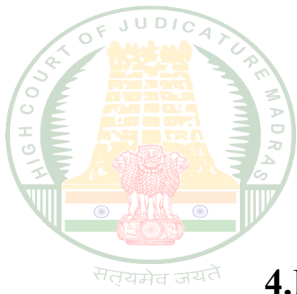
For Appellants : Mr.V.Chandrasekar
For Respondent : Mr.Lakshmi Gopinathan

JUDGMENT

This Second Appeal is preferred against the judgment and decree dated 14.09.2011 passed in A.S.No.196 of 2010 on the file of the Camp Subordinate Court, Tirumangalam, reversing the judgment and decree, dated 30.08.2010 made in O.S.No.299 of 2007 on the file of the District Munsif Court, Tirumangalam.

2.The appellants are the defendants in O.S.No.299 of 2007 on the file of the District Munsif Court, Tirumangalam. The respondent is the plaintiff in that suit.

3.For the sake of convenience, the parties are referred to as plaintiff and defendants as arrayed in O.S.No.299 of 2007 on the file of the District Munsif Court, Tirumangalam.



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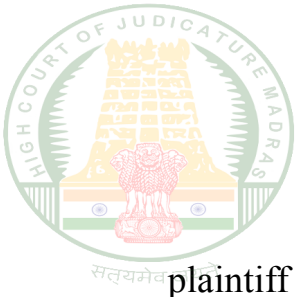
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4.Plaintiff's case:

The suit properties are ancestral properties of one Sankaranarayanan Reddiar. His wife is Saroja Ammal, the 2nd defendant herein. The plaintiff and the 1st defendant are brothers and the 3rd defendant is his sister. Sankaranarayanan Reddiar died on 12.08.2006. The parties are equally entitled to the suit properties as per the Hindu Succession Act. The 1st defendant has made the father to execute two settlement deeds and a Will on 08.08.2006 and on the next day, the father was admitted in hospital and died on 12.08.2006. Since the plaintiff was working in the military, he came to know later that the aforesaid documents were forged ones. Hence, the plaintiff filed the suit for partition and declaration that the documents are forged ones and for a permanent injunction.

5.Case of the 1st defendant:-

The relationship between the parties is admitted. Their father Sankaranarayanan Reddiar purchased the suit properties. Since the suit properties are self acquired properties of the father, he had the absolute right to execute any deed in respect of the suit properties. The settlement deed and Will executed by Sankaranarayanan Reddiar are a valid one. After marriage, the



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plaintiff has not taken care of his parents. As per deeds executed by the father, the 1st defendant is the owner of the suit properties. So, the suit has to be dismissed.

6. Case of the defendants 2 and 3:

The suit properties are self acquired properties of Sankaranarayanan Reddiar and he has every right to dispose of his properties. The plaintiff, being the elder son, has not taken care of the parents and only the 1st defendant has taken care of them. Hence, out of love and affection, Sankaranarayanan Reddiar bequeathed the suit properties in favour of the 1st defendant. At the time of execution of the deeds, Sankaranarayanan Reddiar was hale and healthy and voluntarily executed those deeds out of his own Will. The plaintiff has no right to claim any right over the suit properties. So, the suit is liable to be dismissed.

7.Before the trial Court the following issues were framed:

(1)Whether it is true that the suit properties are ancestral properties of late. Sankaranarayanan Reddiar?



(2)Whether late. Sankaranarayanan Reddiar could dispose of items 1, 2, 3 and 4 as per his wishes?

(3)Whether the plaintiff is entitled to the relief of declaration as prayed for?

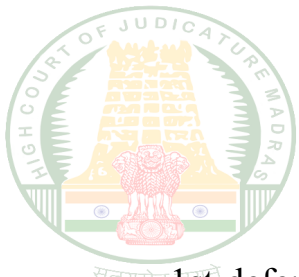
(4)Whether the plaintiff is entitled to the relief of a preliminary decree for partition as prayed for?

(5)Whether the plaintiff is entitled to the relief of a permanent injunction as prayed for?

(6)To what other relief?

8.During the trial, the plaintiff was examined as P.W.1 and the brothers of Sankaranarayanan Reddiar were examined as P.W.2 and P.W.3. Ex.A.1 to Ex.A.5 were marked. The 1st defendant was examined as D.W.1 and the attestors of the settlement deed and Will were examined as D.W.2 to D.W.4. Ex.B.1 to Ex.B.31 were marked. Ex.X.1 to Ex.X.3 were also marked.

9.After hearing both sides, the learned District Munsif, Tirumangalam, held that the suit properties are self acquired properties of late Sankaranarayanan Reddiar and he has every right to execute the deeds. The 1st defendant proved that the settlement deed and Will (Ex.A.2 to Ex.A.4) executed by Sankaranarayanan Reddiar are true and valid and that the



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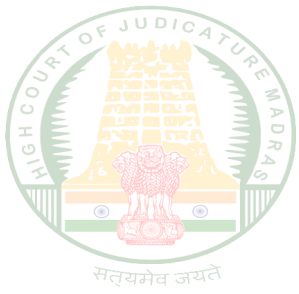
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1st defendant is the owner of the suit properties, thereby dismissed the suit by passing judgment, dated 30.08.2010.

10.Aggrieved by the judgment and decree, the plaintiff has preferred the Civil Appeal in A.S.No.196 of 2010 before the Sub Court, Tirumangalam. Along with the first appeal, the plaintiff has also filed a petition in I.A.No.215 of 2011 to receive additional documents. After hearing both sides, the first Appellate Court has held that the suit properties are not self acquired properties of Sankaranarayanan Reddiar, thereby he has no right to execute any deed as per his wish and also held that the settlement deed and Will (Ex.A.2 to Ex.A.4) are not genuine one and hence, the plaintiff is entitled to share as sought in the plaint. Accordingly, the first Appellate Court has set aside the finding of the trial Court and passed judgment and a preliminary decree, dated 14.09.2011, in favour of the plaintiff, entitling him to a 5/16 share in the suit properties.

11.Challenging the judgment and preliminary decree of the first Appellate Court, the defendants have preferred this Second Appeal and the same has been admitted on the following substantial questions of law:-

"i) Whether the first Appellate Court committed a grave error in holding that the



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properties allotted in a partition are ancestral in nature after the advent of the Hindu Succession Act, 1956?

ii) Whether the judgment and decree of the first Appellate Court can be sustained on the basis of Ex.A.5, which is an unregistered partition deed which could not be pressed into service for any purpose in view of the statutory bar under section 17 of the Registration Act?

iii) Whether the first Appellate Court is right in coming to the conclusion that the deceased Sankaranarayanan Reddiar has no right to execute a Will in respect of the ancestral properties?

12. Head both sides and perused the records in this Second Appeal.

13. The learned counsel for the appellants/defendants has argued that the first item of suit property was purchased by Sankaranarayanan Reddiar on 16.08.1960 and he bequeathed the same in favour of 1st defendant under registered document No.24/2006. The 2nd item comprises three items, which were purchased by Sankaranarayanan Reddiar on 06.07.2000, so they cannot



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be construed as ancestral properties. The said Sankaranarayanan Reddiar executed a registered settlement deed, dated 08.08.2006, in favour of the 1st defendant. The said Sankaranarayanan Reddiar has also purchased item No.3 and executed a settlement deed in favour of the 1st defendant. There is no averment in respect of the 4th item of suit property and in respect of the same, Sankaranarayanan Reddiar executed an unregistered Will in favour of the 1st defendant. Therefore, the plaintiff's plea that the suit properties are ancestral properties is a false one. Moreover, the plaintiff has not disputed those documents and has not sought any relief for cancellation of settlement deeds and the will executed by Sankaranarayanan Reddiar. Therefore, the plaintiff is not entitled to any right in the suit properties. The plaintiff has produced only an unregistered partition deed, which was not pleaded by the plaintiff and hence, without pleading, that document cannot be taken into consideration. The trial Court has correctly appreciated the evidence and rightly dismissed the suit. But the first Appellate Court erred in reversing the finding of the trial Court and hence, the second appeal may be allowed.

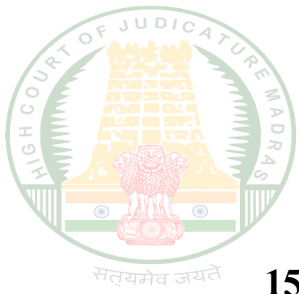
14.Per contra, the learned counsel for the respondent/plaintiff vehemently contended that the unregistered partition deed marked as Ex.A.5



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was marked upon payment of stamp duty penalty as per the order of this Court in C.R.P.Nos.758 and 759 of 2009. The brothers of Sankaranarayanan Reddiar, who were parties to Ex.A.5, were examined as P.W.2 and P.W.3. The suit properties were properly mentioned in Ex.A.5 partition deed. The defendant has not challenged the order of this Court regarding the payment of the stamp duty penalty. Hence, Ex.A.5 has to be taken into consideration for the adjudication of the case. The brothers of Sankaranarayanan Reddiar/P.W.2 and P.W.3 have categorically deposed about the partition deed and allotment of properties to Sankaranarayanan Reddiar. Therefore, the suit properties are not self acquired properties of Sankaranarayanan Reddiar and they are ancestral properties. As per evidence, the Sankaranarayanan Reddiar went to work only in the year 1968, whereas the item Nos.1 and 3 of the suit properties were purchased in the name of Sankaranarayanan Reddiar in 1959 and 1960 and also as per the evidence of D.W.1, the age of Sankaranarayanan Reddiar was 13 years in 1959 and 1960. Therefore, the properties purchased in his name while Sankaranarayanan Reddiar was a minor were out of the joint family income. Therefore, the contention of the defendant that the suit properties are self acquired properties of Sankaranarayanan Reddiar is not correct.



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15.The learned counsel for the respondent/plaintiff has further argued that the plaintiff has specifically raised an objection about the health condition of Sankaranarayanan Reddiar at the time of execution of the alleged settlement deed and Will in favour of the 1st defendant. The plaintiff has clearly proved that Sankaranarayanan Reddiar was admitted in hospital on 09.08.2006, one day prior to that, i.e.. on 08.08.2006, those deeds were executed. Moreover, the said Sankaranarayanan Reddiar was employed in the Railways, so he could sign his name. The deeds in question have borne the thumb impression of Sankaranarayanan Reddiar, except for the first page which showed a signature. Therefore, the alleged deeds create suspicion. The plaintiff clearly pleaded that the said deeds are forged ones. The 1st defendant has not proved that Sankaranarayanan Reddiar was hale and healthy to execute any deed by producing any medical evidence. The plaintiff has sought his 5/16 share only. The trial Court has not appreciated the above aspects based on evidence, but simply dismissed the suit. But, the first Appellate Court has properly appreciated the evidence and passed a preliminary decree in favour of the plaintiff, granting 5/16 share in the suit properties. The first Appellate Court correctly concluded the suit, and there is no infirmity in its decision and there is no need for interference. Therefore, this second appeal may be



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dismissed. In support of his argument, the learned counsel for the plaintiff has relied on the following judgments:

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1) 2003 (7) Supreme 105 in the case of Krishna Mohan Kul @ Nani Charan Kul and Anr. /v/ Pratima Maity and Ors.

2) Judgment of the Hon'ble Supreme Court in the case of Bhagwati Prasad /v/ Shri Chandra Maul in Civil Appeal Nos.964 and 965 of 1964.

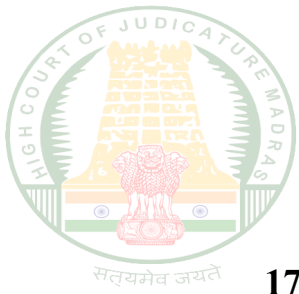
16.On hearing both sides and on perusal of the records, it is clear that the plaintiff, 1st defendant and 3rd defendant are the sons and daughter of one Late.Sankaranarayanan Reddiar through the 2nd defendant. There is no dispute in it. The suit properties consist of four items. The plaintiff's case is that the suit properties are ancestral properties of Sankaranarayanan Reddiar, whereas the defendants' case is that the suit properties are self acquired properties of Sankaranarayanan Reddiar. On perusal of Ex.A.5, the suit properties, i.e., items 1 to 4, were clearly mentioned in Ex.A.5, which is an unregistered partition deed that took place in the year 1974. The brothers of Sankaranarayanan Reddiar, namely Baluchamy Reddiar and Kandhasamy



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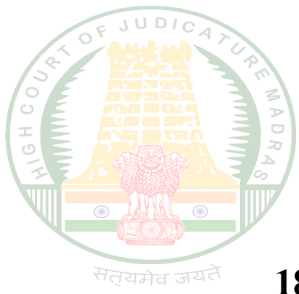
Reddiar, were examined as P.W.2 and P.W.3. The defendants filed document Ex.B.1 and Ex.B.5 to show that Sankaranarayanan Reddiar purchased the suit properties. It is evident that at the time of those deeds, the said Sankaranarayanan Reddiar was aged only 13 years old, and the defendant has not let in any evidence to show the income of Sankaranarayanan Reddiar at the time of those purchases. Therefore, the case of the plaintiff that the 1st schedule and 3rd schedule properties were purchased by Sankaranarayanan Reddiar at his age of 13, out of the joint family income, is an accepted one. The 4th schedule property was allotted to Sankaranarayanan Reddiar in 1974. The 3rd schedule property was not shown in the partition deed. As per the Hindu Succession Act 1956 (as amended in 2005), when a son and daughter are born, the father has no right to execute any will in respect of the entire ancestral property, since the son and daughter acquire an equal interest in the ancestral property by birth. This legal aspect has been confirmed by the Hon'ble Supreme Court in **Vineeta Sharma /vs/ Rakesh Sharma** case reported in **2020**. Therefore, there is an embargo on the father of the plaintiff and defendants 1 and 3 to execute any deed or Will as he had no exclusive right over the ancestral property in its entirety.



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17.Further, it is argued by the plaintiff that the father was not hale and healthy to execute any deed on 08.08.2006, as he was admitted in hospital on 09.08.2006. It was proved by the plaintiff during the appeal under Ex.A.6. This was not objected by the defendants' side. The said Sankaranarayanan Reddiar died on 12.08.2006, which is not a denied fact. Moreover, as rightly observed by the first Appellate Court, on perusal of the settlement deed and Will, it is clear that the said Sankaranarayanan Reddiar put his thumb impression. The defendants have not disputed the fact that the said Sankaranarayanan Reddiar was a railway employee and he could put his signature. On perusal of deeds in question, the said Sankaranarayanan Reddiar put his signature only on the 1st page, and from next pages his LTI was mentioned and hence, the first Appellate Court has rightly observed that the said Sankaranarayanan Reddiar was not physically fit and in a sound disposing state of mind and when a person is unable to complete his signature it can be normally presumed that he had fainted before completing his signature. The alleged attestors of said deeds, namely D.W.2 and D.W.3, could not explain as to why the thumb impression of the said Sankaranarayanan Reddiar was obtained in other pages of the deeds in question. Therefore, the suspicious circumstances create a cloud upon those documents.



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18.It is also pertinent to note that the plaintiff was working in the Indian Military, which is not disputed by the defendants' side. Hence, the contention of the defendants that the plaintiff has not taken care of his father, Sankaranarayanan Reddiar, has no bearing. The argument of the defendants that the plaintiff has not sought any relief for the cancellation of deeds need not arise in the facts and circumstances of this case. In the plaint itself, the plaintiff pleaded that the alleged settlement deeds and Will Ex.A.2 to Ex.A.4 are forged one and hence, it is the duty of the defendant to prove the same as genuine. In a suit for partition, all parties are deemed to be plaintiffs. Hence, the defendants have to prove the settlement deed and Will Ex.A.2 to Ex.A.4, in this case, the defendants miserably failed to prove the same as genuine. The citations relied on by the respondent/plaintiff are applicable to the facts of this case.

19.Therefore, on a thorough consideration of both oral and documentary evidence adduced by both sides, it is clear that the suit properties are not self acquired properties of Sankaranarayanan Reddiar and they are his ancestral properties as pleaded by the plaintiff. The first Appellate Court has correctly appreciated the evidence of both sides and rightly passed a preliminary decree



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in favour of the plaintiff. This Court concludes that the finding of the first Appellate Court is correct and the same need not be interfered with by way of this second appeal. Therefore, the questions of law are answered against the appellants/defendants. Thus, this second appeal fails.

20.In the result, the Second Appeal is dismissed. The judgment and decree, dated 14.09.2011 passed in A.S.No.196 of 2010 on the file of the Camp Subordinate Court, Tirumangalam, reversing the judgment and decree, dated 30.08.2010 made in O.S.No.299 of 2007 on the file of the District Munsif Court, Tirumangalam are confirmed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

17.06.2026

NCC : Yes / No

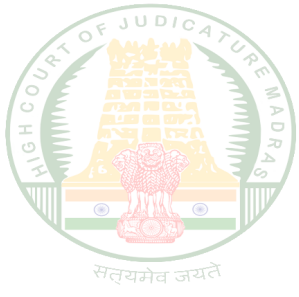
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VSD

To

- 1.The Camp Subordinate Court,
Tirumangalam.
- 2.The District Munsif Court,
Tirumangalam.
- 3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

**Pre-Delivery Judgment made in
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