

---

**(2012) 03 MAD CK 0074**  
**In the Madras High Court**  
**Case No : Second Appeal No. 3 of 2007**

|                                                |            |
|------------------------------------------------|------------|
| Shanmugam, Dhanapal, Sathyanathan and Vasantha | APPELLANT  |
| Vs                                             |            |
| Lakshmiammal and Thanjammal                    | RESPONDENT |

---

**Date of Decision :** 27-03-2012

**Acts Referred:**

**Citation :** (2012) 03 MAD CK 0074

**Hon'ble Judges :** T. Raja, J

**Bench :** Single Bench

**Advocate :** K.V. Ananthakrushnan, for the Appellant; D. Selvaraj, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

T. Raja

1. The unsuccessful plaintiffs, after losing their suit for partition and separate possession of the suit property before the trial Court and also before

the first appellate Court, have brought this second appeal. The first plaintiff is the father of plaintiffs 2 to 4 and also brother of first defendant. The

second defendant is wife of plaintiff's younger brother, Late Parasuram.

2. Brief facts leading to the filing of the second appeal are given as under:-

The suit property is originally owned by one Late Panchatra Pillai, who is the father of the first plaintiff and first defendant. The said Late Panchatra

Pillai is grandfather of plaintiffs 2 to 4 and father-in-law of the second defendant. The said suit property was purchased through a registered sale

deed, dated 20.07.1946, Ex.A1. During his life time, the said Panchatra Pillai had executed a settlement deed, dated 23.09.1985, in favour of the

first defendant, sister of the first plaintiff. By claiming operation of testamentary

proof on the basis of alleged Will said to have been executed by

Late Panchatra Pillai on 16.11.1987, that is coming into operation after the death of Panchatra Pillai on 14.02.1989, the plaintiffs have filed a suit

for partition of the suit property, stating that ever since the date of death of Late Panchatra Pillai on 14.02.1989, the plaintiffs are in possession and

enjoyment of the same on the basis of the Will dated 16.11.1987, therefore, the first plaintiff has got his share and the plaintiffs 2 and 3 have got

one equal share and if both shares are clubbed together, they got 2/4th share in favour of the plaintiffs.

3. A detailed writ statement was filed by the defendants/respondents herein, denying the important points mentioned below:-

(a) that the suit is not ancestral property of the first plaintiff's father, but it is a self-acquired property purchased by Late Panchatra Pillai, through a

registered sale deed, dated 20.07.1947, by using his own earnings gain from his business;

b) that the suit for partition is hit partially, as he has also got other landed properties, which were not included for partition in the suit.

c). that the plaintiffs had not added other sharers of the property, who have got interest in it;

d) that the settlement deed, dated 23.09.1985, executed by Late Panchatra Pillai, in favour of the first defendant, his own daughter, was acted

upon from the date of execution of the settlement deed, by putting the first defendant in possession of the suit property.

e) that, finally, the present suit for partition is liable to be dismissed on the basis of judgment and decree passed by the learned District Munsif

Court, Ranipet, in O.S. No. 230 of 1986, dated 03.01.1990, as the said suit seeking for permanent injunction restraining the defendants from

interfering with the peaceful possession of the suit property was already rejected and the same also reached finality, as they have not preferred any

appeal therefrom.

4. After hearing both sides, the trial Court dismissed the suit filed by the plaintiffs on the following grounds mentioned below;

a) Firstly, the suit for partition filed by the plaintiffs have not brought other landed properties left by father of the first plaintiff, Late Panchatra Pillai,

therefore, the suit for partition is bad for partial partition and also held that the

plaintiffs have not added other sharers of the property, who have got interest in it.

b) Secondly, the plaintiffs have not proved satisfactorily the execution of alleged Will, dated 16.11.1987, in favour of the plaintiffs 2 and 3, sons of the first plaintiff. On this basis, it was held that the alleged Will was not only invalid, but also a fabricated document by the first plaintiff to have a wrongful gain. One another reason to hold the Will as invalid clearly shows that Late Panchatra Pillai, had already executed registered settlement deed, dated 23.09.1985, in favour of the first defendant, which is irrevocable in nature. Therefore, after execution of the settlement deed, dated 23.09.1985, he was not competent to deal with the property, as he has no further right on the suit property.

c) Finally, the plaintiffs have not properly explained as to how the plaintiffs are entitled to have their share in the suit property, even if it is assumed that the same is ancestral property of Late Panchatra Pillai, because if the suit property is treated as ancestral property of Late Panchatra Pillai, he is also entitled to have half share in the suit property, therefore, he is also entitled to part away the same in any manner, as he did by way of settlement deed, dated 23.09.1985. In the same remaining half share, the other sharers including the first defendant is entitled to have a share by way of partition. But when these aspects have not been properly explained, it was held that the suit for partition is devoid of merits.

5. Aggrieved by the dismissal of the suit, when an appeal was preferred, the learned first appellate Court also, by its judgment and decree, dated 31.01.2005, passed in A.S. No. 58 of 2002, agreeing with the reasonings and conclusions reached by the trial Court, dismissed the appeal. Under these circumstances, learned counsel appearing for the plaintiffs/appellants pleaded that the concurrent findings given by the Courts below are liable to be interfered with by this Court.

6. While addressing his submission on the substantial question of law framed by this Court, which is given as under---

Did not the Courts below go wrong in dismissing the suit for partition for not including the other properties and non-joinder of necessary parties, in the absence of particulars of properties and names of the necessary parties, in the pleadings and evidence?

learned counsel pleaded that when the suit for partition was filed by the plaintiffs, the trial Court, without considering whether the suit property is ancestral property or self-acquired property, erroneously dismissed the plaintiffs' case on the ground that the same was bad for partial partition, by accepting the case of the defendants that other landed properties owned by Late Panchatra Pillai have not been shown by the plaintiffs in the partition of the suit. The said reason is totally unjustifiable, he pleaded.

7. At the very outset, it is made clear that the said submission finds no merit or substance. When the plaintiffs/appellants herein had filed earlier suit in O.S. No. 230 of 1986 on the file of the learned District Munsif Court, Ranipet, seeking a prayer for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property, they miserably failed to plead anything on the alleged Will, dated 16.11.1987, said to have been executed by Late Panchatra Pillai. In fact, the case of the plaintiffs in the earlier suit was that Panchatra Pillai, the father of the first plaintiff and the first defendant, had wrongly executed the settlement deed, dated 23.09.1985, in favour of the first defendant without leaving sufficient shares to the plaintiffs. But, unfortunately, in the earlier suit, the plaintiffs had not even mentioned one word on the alleged Will, dated 16.11.1987. However, in the first round of litigation initiated against the very same property covered in O.S. No. 230 of 1986, against the defendants, when the suit was dismissed on 03.01.1990, the plaintiffs failed to challenge the same. Therefore, when the dismissal of the suit in O.S. No. 230 of 1986, dated 03.1.1990, made by the learned District Munsif Court, Ranipet, became final, even this fact was suppressed in the second round of litigation, initiated for partition of the very same property. For these reasons, the suit filed by the plaintiffs was dismissed by the trial Court, giving a clear finding that the plaintiffs has suppressed all the facts, while coming to the Court for partition.

8. In respect of partial partition, the trial Court on the evidence produced by the first defendant, that her father Late Panchatra Pillai had purchased 50 cents from one Ramalinga Pillai and that property was given in favour of the plaintiffs, by settlement deed, dated 23.09.1985, but that property has not been brought for partition in the present suit and the said plea of non inclusion of other properties having been admitted by the plaintiffs in

his cross examination, the trial Court has rightly dismissed the suit for partition, applying the principles of partial partition. Having found that the suit for partition is bad for partial partition and the plaintiffs have admittedly not added other sharers of the properties, who have got the interest in it, I do not know how the appellants can find fault with the concurrent findings of the Courts below, without substantially proving their case that the suit is not bad for partial partition. Admittedly, when there is a finding by the trial Court as confirmed by the first appellate Court that the father of first plaintiff and the first defendant had executed the settlement deed, dated 23.09.1985, in favour of the first defendant, which is irrevocable in nature and after the execution of this settlement, the said Late Panchatra Pillai had no competency or authority to deal with the same property by executing the alleged Will, dated 16.11.1987, the plaintiffs cannot plead any right to have a share in the suit property, that has already been conveyed through settlement deed, dated 23.09.1985, in favour of the first defendant.

9. Further, as rightly held by the Courts below, nowhere the plaintiffs have explained either before the trial Court or before this Court, as to how the plaintiffs are entitled to have 2/4th share in the suit property. Therefore, by looking at the case of the plaintiffs/appellants herein from any angle, when the plaintiffs have miserably failed to succeed in the first round of litigation in O.S. No. 230 of 1986, that was ended on 03.01.1990, the present suit, second round of litigation, ought not to have attempted by suppressing the fact that he was non-suited in the earlier suit. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate Court. In a case where from a given set of circumstances two inferences of fact are possible, one drawn by the lower appellate Court will not be interfered by the High Court in second appeal. Adopting any other approach is not permissible. Therefore, answering the substantial question of law against the plaintiffs/appellants herein, this Court is constrained to dismiss the second appeal. Accordingly, the Second Appeal is dismissed with costs through out. Consequently, the judgment and decree passed by the Courts below are restored.