

**(2011) 09 MAD CK 0102**

**Madras High Court**

**Case No:** S.A. No. 473 of 2009 and M.P. No. 1 of 2009

Mukundan Real Estate and Flat  
Sales Promoters

APPELLANT

Vs

Smt. Pooammal and Others

RESPONDENT

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**Date of Decision:** Sept. 16, 2011

**Hon'ble Judges:** R.S. Ramanathan, J

**Bench:** Single Bench

**Advocate:** V. Raghavachari, for the Appellant; V. Balasubramanian, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Justice R.S. Ramanathan, J.

The 6th Defendant in O.S. No. 190 of 1992 on the file of the District Munsif Court, Poonamallee, is the Appellant.

2. The 1st Respondent/ Plaintiff filed the suit for partition of her 1/5th share in the suit property. The case of the 1st Respondent/ Plaintiff was that the suit property originally belonged to Kistappa Reddy, the father of the 1st Respondent, the Defendants 1, 2 and 4 are the children of Kistappa Reddy and the 3rd Defendant is his widow. As the Kistappa Reddy died intestate, all of them are entitled to share equally and therefore, the 1st Respondent/ Plaintiff is entitled to 1/5th share.

3. The Defendants and the Appellant contested the suit stating that Items 9 and 10 alone were the ancestral properties of Kistappa Reddy and the other items of properties belonged to the Defendants individually and first item of property does not belong to the family and it is owned by the third parties and nobody is entitled to claim any share in that property. Item 2 belonged to the mother namely the 3rd Defendant and therefore the Plaintiff is not entitled to any share. Item 4 belonged to the wife of the 1st Defendant and Item 5 is the self acquired property of the 1st Defendant and Item 6 is the self acquired property of the Defendants 1 to 3 and the Item 7 is the self acquired property of the 1st Defendant and Items 11 and 12

belonged to the 2nd Defendant and Item 13 belonged to the 1st Defendant. Items 4 to 8 and 11 to 13 were sold to the 6th Defendant by the Defendants 1 to 3 and the 2nd Item was also sold to the 6th Defendant and therefore, the Plaintiff/ 1st Respondent is not entitled to the suit for partition.

4. The trial Court decreed the suit holding that the Defendants failed to prove their title to the various items of properties claimed to be the properties of the Defendants and the 1st Defendant also admitted that they were prepared to give share in the properties to the Plaintiff, but the Plaintiff demanded more and therefore he was not given any share. The first appellate Court also confirmed the judgment and Decree of the trial Court holding that the first appeal filed by the present Appellant is also not maintainable as the shareholders did not challenge the decree passed by the trial Court and no proof was adduced by the Appellant to prove that he has purchased the properties from the other Defendants as stated in the written statement and no proof was adduced that the properties are the self acquired properties of the other Defendants. Hence, the Second Appeal.

5. The Learned Counsel for the Appellant submitted that both the Courts without properly appreciating the various documents filed by the Defendants namely Exs. B1 to B29 erred in holding that the 1st Respondent/ Plaintiff is entitled to 1/5th share in the suit properties. The Learned Counsel for the Appellant further submitted that the 1st Respondent being the Plaintiff did not adduce any evidence to prove that the properties are the separate properties of Kistappa Reddy and without proving the same the 1st Respondent/ Plaintiff is not entitled to the decree.

6. The Learned Counsel for the 1st Respondent submitted that the appeal filed by the 6th Defendant is not maintainable and he claimed to be the purchaser from the Defendants 1 to 3 and no document was produced by the Appellant to show that he has purchased the properties and in the absence of any right over the suit properties, the appeal filed by the 6th Defendant is not maintainable. The Learned Counsel for the 1st Respondent further submitted that except the kist receipts no document was filed by the Defendants 1 to 3 to prove the properties are the self acquired properties belonging to them.

7. Heard both sides counsel.

8. The trial Court on the basis of the admission by the 1st Defendant who has examined as DW2 held that the 1st Defendant admitted that they were prepared to give share to the Plaintiff as per the decision of the Panchayat and the Plaintiff demanded more extent and therefore they did not give any share. Further, when the Defendants 1 to 3 claimed that the properties are the self acquired properties purchased by them in their name, it is the duty to prove the same by producing the sale deeds and except the kist receipts no documents were filed by the Defendants 1 to 3 to prove that the properties were their self acquired properties. It is the specific case of the 1st Respondent that the properties belonged to her father Kistappa

Reddy and as a daughter she is entitled to 1/5th share in the properties. It is also admitted by the 1st Defendant that the Plaintiff is entitled to her share and demanded more and therefore she was not given any share. Therefore the trial Court has rightly drawn inference that the properties are the self acquired properties of Kistappa Reddy and the Plaintiff is entitled to 1/5th share. Further, the Defendants 1 to 3 did not file any appeal against the decree passed by the trial Court and only the Appellant herein filed the appeal. As rightly submitted by the Learned Counsel for the 1st Respondent that the Appellant has not produced any document to prove that he has purchased the properties from the Defendants 1 to 3 as stated in the written statement and in the absence of any right over the suit properties he has no locus standi to file an appeal against the preliminary decree passed by the trial Court. Hence, both the Courts below have rightly decreed the suit and I do not find any reason to interfere with the concurrent findings of the fact of both the Courts below and no substantial question of law arises for consideration in the Second Appeal and the Second Appeal is dismissed.

9. In the result, the judgment and Decree of the Courts below are confirmed and the Second Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also closed.