



A.S.(MD)Nos.258 and 259 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 27.07.2023

PRONOUNCED ON:19.10.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

A.S.(MD)Nos.258 and 259 of 2008

and

C.M.P.(MD)No.4237 of 2019

A.S.(MD)No.258 of 2008:

1.S.L.Mothi Lal
2.S.L.Kuppammal @ Lakshmi
3.Anusuya @ Lakshmi Ammal
4.Parbhavathi
5.Indira
6.S.L.Sivaji
7.S.N.Usha : Appellants/Defendants 2 to 6, 8 and 9

Vs.

1.S.L.Kupplusamy(died) : Respondent / Plaintiff
2.S.L.Chinna Kuppusamy
3.V.N.Sai Prasanna Devi : Respondents/Defendants 1 and 7
4.Santhimathi
5.Kamalesh
6.Pathmavathi(died) : Respondents

(Respondents 4 to 6 are brought on
record as LRs of the deceased 1st respondent



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vide order dated 28.03.2023 made in
C.M.P.(MD)Nos.12806, 12926 and
11946 of 2022

Death of the sixth respondent is recorded
and the respondents 4 and 5 who are already
on record are recorded as LR's of the
deceased R.6)

PRAYER:- Appeal Suit filed under Section 96 of the Code of Civil
Procedure against common judgment dated 09.04.2008, rendered in
O.S.No.60 of 2006, on the file of the Additional District Judge (Fast
Track Court), Ramanathapuram.

For Appellants : Mr.S.Subbiah
Senior Counsel
for Mr.G.Aravinthan
for A.1 to A.5
: Mrs.P.Jessi Jeeva Priya
for R.6

For Respondents :Mr.S.Parthasarathy
for Mr.K.Govindarajan

A.S.(MD)No.259 of 2008:

S.L.Sivaji
: Appellant/Plaintiff

Vs.

S.L.Kupplusamy(died) : Respondent / Defendant



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2.Santhimathi
3.Kamalesh
4.Pathmavathi(died) : Respondents

(Respondents 2 to 4 are brought on record as LR's of the deceased sole respondent vide order dated 28.03.2023 made in C.M.P.(MD)Nos.12806, 12926 and 11946 of 2022

Death of the fourth respondent is recorded and the respondents 2 and 3 who are already on record are recorded as LR's of the deceased R.4)

PRAYER:- Appeal Suit filed under Section 96 of the Code of Civil Procedure against common judgment dated 09.04.2008, rendered in O.S.No.31 of 2007, on the file of the Additional District Judge (Fast Track Court), Ramanathapuram.

For Appellant : Mrs.P.Jessi Jeeva Priya

For Respondents :Mr.S.Parthasarathy
for Mr.K.Govindarajan
for R.2 and R.3

: R.1 and R.4 - died



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COMMON JUDGMENT

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These Appeal Suits are directed against the common judgment passed in O.S.No.60 of 2006 and O.S.No.31 of 2007, dated 09.04.2008, on the file of the Additional District and Fast Track Court, Ramanathapuram.

2. The suit in O.S.No.60 of 2006 is for partition. The suit in O.S.No.31 of 2007 is for permanent injunction.

3. The facts not in dispute are:

(i) One S.K.Lakshmi Narayanan had two wives and through his first wife Padmavathy, he had three sons – the plaintiff and the defendants 1 and 2 and a daughter – third defendant. After the death of the first wife Padmavathy, he married the fourth defendant – Anusuya @ Lakshmi Ammal and through her, he had a son - 8th defendant and four daughters – defendants 5 to 7 and 9.

(ii) Items 1 to 20 of the suit properties along with many other properties were the ancestral and joint family properties of the said



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S.K.Lakshmi Narayanan and that the said Lakshmi Narayanan has entered into a partition deed on 14.11.1969 along with his sons born through his first wife and whereunder “A” schedule properties therein (the present suit items 1 to 20) were allotted to the share of S.K.Lakshmi Narayanan, “B” schedule properties were allotted to the share of the plaintiff and “C” and “D” schedule properties were allotted to the shares of the defendants 1 and 2 respectively.

4. The case of the plaintiff is that before the second marriage of S.K.Lakshmi Narayanan, when the said Lakshmi Narayanan wanted to marry second time, the elders of the family advised him that he should make some permanent arrangements for his children born through his first wife and on that basis, the partition deed dated 14.11.1969 came to be executed, that they have also entered into an arrangement at the time of Ex.A.1-partition to the effect that the properties so allotted to Lakshmi Narayana were to be enjoyed by him for his life time and after his death, the said properties to be divided among the plaintiff and the defendants 1 and 2, that the said Lakshmi Narayanan has purchased items 21 to 24 of the suit properties, out of the income derived from the suit items 1 to 20, that the said Lakshmi Narayanan died on 03.01.2006 and after his



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demise, as per the arrangements arrived at between the parties, the plaintiff and his brothers – defendants 1 and 2 derived rights over the suit properties and that since the defendants 1 and 2 were not amenable for partition, the plaintiff was constrained to file the above suit for partition and allotment of 1/3rd share in the suit properties.

5. The plaintiff has also taken a stand that his father S.K.Lakshmi Narayanan was of unsound mind and not keeping his good health two years prior to his death and apprehending that some documents were proposed to be taken from his father, he was forced to send a legal notice by setting out the illness of his father and that even after the death of his father, the defendants have been creating documents in the name of the 8th defendant.

6. The seventh defendant had remained exparte.

7. The defence of the other defendants is that during the life time of their father S.K.Lakshmi Narayanan, he executed a settlement deed dated 27.08.2003 settling item No.6 of the suit properties to all his daughters – defendants 3, 5 to 7 and 9, that subsequently he executed



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another settlement deed dated 27.01.2004 settling items 1 to 5, 7 and 21 to 23 upon the 8th defendant and also executed a Will on 27.01.2004 itself bequeathing the items 8 to 20 of the suit properties in favour of the 8th defendant and that therefore, the plaintiff is not entitled to claim any share in the suit properties.

8. It is their further defence that the suit items 21 to 23 were purchased by the father Lakshmi Narayanan after Ex.A.1 partition and the same are his absolute properties, that suit item 24 was purchased by the 8th defendant and it is his separate property and that after the death of their father Lakshmi Narayanan, the 8th defendant has become the owner of the items 1 to 5, 7 to 23 of the suit properties through the settlement and will executed by the said Lakshmi Narayanan and item 24 being his separate property.

9. The learned Judge upon considering the above pleadings has framed the following issues:

(1) Whether the plaintiff is entitled to get 1/3rd share in the suit properties?



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(2) Whether all the suit properties except item 6, were owned by the 8th defendant?

(3) What other relief, the plaintiff is entitled to?

10. Before filing of the suit in O.S.No.60 of 2006, the 8th defendant has filed a suit in O.S.No.65 of 2005, claiming permanent injunction against the defendant (the plaintiff in O.S.No.60 of 2006), on the file of the District Munsif Court, Paramakudi in respect of two items of properties which were allotted to his father S.K.Lakshmi Narayanan in the partition effected on 14.11.1969 and that subsequently, the above suit was transferred to the Additional District and Fast Tract Court, Ramanathapuram and the same was renumbered as O.S.No.31 of 2007.

11. The case of the 8th defendant in O.S.No.31 of 2007 is that his father Lakshmi Narayanan has executed a registered settlement deed dated 27.01.2004 settling 9 items of properties including the suit properties therein and since the settlement, the 8th defendant has been in possession and enjoyment of the properties, that the plaintiff who is not having right, title or interest over the said properties, after getting the tax receipt and the electrical consumption receipts and other documents for



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verification, has attempted to interfere with the possession of the 8th defendant and that therefore, the 8th defendant was constrained to file the said suit for permanent injunction restraining the defendant and his men from interfering with his possession and enjoyment of the property.

12. The defendant (the plaintiff in O.S.No.60 of 2006) has filed a written statement raising the contentions made in the plaint in O.S.No.60 of 2006.

13. The learned trial Judge, upon considering the above pleadings, has framed the following issues:

(1) Whether the plaintiff is liable to pay the Court fees under Section 27(a) of the Tamil Nadu Court Fees and Suit Valuation Act?

(2) Whether the plaintiff is entitled to get permanent injunction as claimed?

(3) To what other relief, the plaintiff is entitled to?

14. Admittedly, both the suits were tried jointly and the evidence was ordered to be recorded in the suit in O.S.No.60 of 2006. During trial, the plaintiff has examined himself as P.W.1 and exhibited 10



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documents as Exs.A.1 to A.10. The defendants have examined the 8th defendant as D.W.1 and two other witnesses viz., Dr.V.N.Thulasiraman and P.S.Janarthanan as D.W.2 and D.W.3 respectively and 30 documents as Exs.B.1 to B.30. The learned trial Judge, upon considering the evidence both orally and documentary and on hearing the arguments of both sides, has passed the common judgment dated 09.04.2008, by holding that all the suit properties items 1 to 24 were belonging to the deceased S.K.Lakshmi Narayanan, has passed a preliminary decree that the plaintiff is entitled to get 1/10th share in the suit properties and dismissed the suit in O.S.No.31 of 2007.

15. The learned trial Judge in the body of the judgment, after recording a finding that all the properties were belonging to S.K.Lakshmi Narayanan, has held that the children of S.K.Lakshmi Narayanan through his first wife and the second wife and the second wife are entitled to get 1/10th share each, but in the final paragraphs, it was concluded that the plaintiff is entitled to get 1/3rd share in suit items 1 to 24 of the suit properties. It is clearly evident that it is only a mistake committed by oversight and the same cannot be taken advantage of by the parties. Aggrieved by the impugned common judgment and separate decrees



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passed in O.S.No.60 of 2006 and O.S.No.31 of 2007, the defendants 2 to 6, 8 and 9 have preferred the appeal in A.S.(MD)No.258 of 2008 and the 8th defendant has preferred the appeal in A.S.(MD)No.259 of 2008.

C.M.P.(MD)No.4237 of 2019:

16. The above petition is filed for reception of additional evidence. The 8th defendant in the affidavit filed in support of the above petition has stated that when he was examined as D.W.1, he could not produce the sale deed dated 11.03.1994 executed in his favour, on the file the Sub-Registrar, Parasala, as the same has been misplaced and could not be traceable, that since the sale deed was not produced evidencing the item 24 of the suit properties standing in his name, the trial Court has given a finding that the said item also belonged to his father and that therefore, he was constrained to file the present application for producing the registration copy of the sale deed, dated 11.03.1994 as additional evidence to prove the ownership over item 24 of the suit properties.

17. The respondent/plaintiff has not filed any counter or objection to the above petition.



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18. The point for consideration in the above petition is as to whether the copy of the sale deed dated 11.03.1994 is to be received as additional evidence?

19. The learned Senior Counsel for the appellants would submit that the trial Court has held that items 1 to 20 of the suit properties allotted to S.K.Lakshmi Narayanan are the separate properties allotted to him in Ex.A.1 – partition is very much against the settled Hindu Law, that when the joint family properties came to be divided, the properties allotted to co-parceners would be his separate properties so long as no son was born to him and once a son is born by birth, the son so born becomes a co-parcener along with his undivided father and all the properties allotted to the share of the father under the partion deed would become the joint family properties at their hands and that since the 8th defendant was born to S.K.Lakshmi Narayanan subsequent to Ex.A.1 partition, the 8th defendant becomes a member of the joint Hindu family with his father and as such, the plaintiff cannot claim any right in respect of the coparcenary properties of his father with the 8th defendant, as the plaintiff being a separated and divided son could not be a member in the joint family consisting of his father and the 8th defendant.



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20. The learned Senior Counsel would further submit that S.K.Lakshmi Narayanan had acquired three more properties items 21 to 23 and according to the plaintiff, items 21 to 24 were purchased by S.K.Lakshmi Narayanan from the income derived from items 1 to 20, that item 24 was shown to be standing in favour of the 8th defendant and in the absence of any pleadings by the plaintiff that item 24 was the separate property of S.K.Lakshmi Narayanan, the trial Court erred in giving a finding that item 24 also belongs to his father only on account of the sale deed standing in the name of the 8th defendant was not produced by him, that the appellants have produced the registration copy of the sale deed dated 11.03.1994 pertaining to item 24 of the suit properties as additional evidence in C.M.P.No.4237 of 2019 and that therefore, the same may be received as additional evidence as it pertains to the very subject matter of the suit

21. The learned Senior Counsel would further contend that an objection was raised that the original of the sale deed dated 11.03.1994 had been registered in the Sub Registrar Office, Parasala and as such, the same is inadmissible in evidence, that the said document was registered



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on 11.03.1994, but the amendment to the Registration Act, Section 28(b) of the Registration Act came into force only from 29.03.1997 and that therefore, the objections raised cannot be sustained.

22. The learned Senior Counsel would further submit that S.K.Lakshmi Narayanan has executed the settlement deed dated 27.01.2004 in favour of the 8th defendant over items 1 to 5, 7 and 21 to 23 and also executed a Will dated 27.01.2004 pertaining to items 8 to 20 and even prior to the above two documents, he executed a settlement deed under Ex.B.3 dated 27.08.2003 in favour of his daughters in respect of item 6 of the suit properties, that the defendants in order to prove Ex.B.1 – settlement deed and Ex.B.2 Will, have examined two attestors to the said documents viz., D.W.2, who is the brother-in-law of the plaintiff and D.W.3 – friend of the plaintiff's brother-in-law, that D.W.2 being the Surgeon is more competent to speak about the execution of Exs.B.1 and B.2 documents and though he did not speak as expected by the plaintiff, what is required is the consideration of his entire evidence and a combined reading of the evidence of D.W.2 and D.W.3 would make it clear that the above documents came to be executed before D.W. 2 and he was a witness for the thumb impression affixed by the testator



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Lakshmi Narayanan through his second wife – defendants 5 to 7 and 9 are also entitled to become coparceners along with the 8th defendant, as per the judgment of the Hon'ble Supreme Court in *Vineeta Sharma's case* reported in **2020(9) SCC 1**.

24. The learned Senior Counsel would submit that connected O.S.No.31 of 2007 related to two items of properties and it is also admitted that the plaintiff was residing in item 1, though the character of possession is in dispute and in respect of item 4, the plaintiff as P.W.1 had admitted that one year prior to the institution of the suit, the 8th defendant broke open the lock and took its possession and he was residing there and that the trial Court has erred in allotting 1/10 share in the suit properties and dismissed the suit for bare injunction filed in O.S.No.31 of 2007.

25. The learned Counsel for the respondent/plaintiff would submit that though the defendants have taken a stand at the trial that the suit item 6 was said to have been settled by father Lakshmi Narayanan in favour of his daughters under Ex.B.3 dated 27.08.2003, the above settlement deed has not been pleaded by the contesting defendants and for the first time,



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the same was projected only at the time of giving evidence and hence, the same was disbelieved by the trial Court, that though Exs.B.1 and B.2 are documents requiring compulsory attestation, the execution and attestation have to be proved independently, that D.W.3 has not stated anything about the execution of settlement deed and Will by father Lakshmi Narayanan, that D.W.2 has also not stated anything about the execution and attestation of Exs.B.1 and B.2 as expected by law, that both D.W.2 and D.W.3 have not given any special proof in respect of Exs.B.1 and B.2 as contemplated under Section 63 of the Indian Succession Act, that D.W.2 has also not even identified the signature in documents Exs.B.1 and B.2 and that the above would go to show that Exs.B.1 and B.2 alleged to have been executed by father Lakshmi Narayanan have not been proved in a manner known to law.

26. The learned Counsel would further submit that the trial Court has rightly decided that the suit properties are the absolute properties of the Late Lakshmi Narayanan and after his demise, it got devolved upon the plaintiff and the defendants and as such, each of them are entitled to get 1/10 shares and that the trial Court, after coming to a such decision, in prayer paragraph as if the plaintiff is entitled to 1/3 share, but the same



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is wrong and it can only be taken as 1/10 share and that such error is nothing but an error on the face of records.

27. The learned Counsel would further submit that the 8th defendant has filed a suit in O.S.No.31 of 2007 against the plaintiff in respect of suit items 1 and 4 for permanent injunction and that since the trial Court has come to a decision that Ex.B.1 settlement deed has not been proved in the manner known to law and has no evidentiary value, rightly negatived the injunction relief and dismissed the suit and that therefore, the common judgment passed in both suits did not warrant any interference and as such, the appeals are liable to be dismissed.

28. The points for determination are :

(1) Whether the learned trial Judge erred in rendering a finding that the properties allotted to S.K.Lakshmi Narayanan under Ex.A.1 partition were his separate properties, despite showing that after the birth of the 8th defendant, the said properties have acquired the character of joint family properties and the said properties cannot be treated as separate and absolute properties of S.K.Lakshmi Narayanan subsequently?



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(2) When the sale deed in respect of item 24 was standing in the name of the 8th defendant, whether the trial Court erred in holding that item No.24 was also the separate property of S.K.Lakshmi Narayanan on the ground that the sale deed was not produced by the 8th defendant and more particularly when the plaintiff and the other defendants have not shown that the said property was owned by Lakshmi Narayanan?

(3) Whether Ex.B.1 – settlement deed and Ex.B.2 – Will and Ex.B.3 settlement deed alleged to have been executed by S.K.Lakshmi Narayanan are true, valid and are proved in accordance with law?

(4) Whether the impugned common judgment dated 09.04.2008 made on O.S.No.60 of 2006 and O.S.No.31 of 2007 is liable to be interfered with?

(4) To what other reliefs, the parties are entitled to?

29. Admittedly, the suit items 1 to 20 and some other properties were owned by S.K.Lakshmi Narayanan ancestrally and he entered into a partition with his sons born through his first wife – the plaintiff and the defendants 1 and 2 on 14.11.1969 under Ex.A.1, wherein the father Lakshmi Narayanan was allotted with “A” schedule properties ie., items 1 to 20 of the present suit properties and his three sons were allotted with



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“B”, “C” and “D” schedule properties respectively. The plaintiff has taken a stand that at the time of execution of Ex.A.1 – partiton deed, they have entered into another arrangement wherein the properties allotted to father Lakshmi Narayanan were to be enjoyed by him for his lifetime and after his death, the said properties to be divided among the plaintiff and the defendants 1 and 2. But the plaintiff, in his cross-examination before the trial Court would specifically admit

“ வா.சா.ஆ.1 முலமாகத்தான் நாட்கள் பாகம் பிரித்துக் கொண்டாம்.
..... எனக்கு ஒதுக்கப்பட்ட சொத்துக்களுக்கு என் பெயருக்கு
தனியாக பட்டா வழங்கப்பட்டுள்ளது. வா.சா.ஆ.1 – ல் அவரவர்
பாகத்திற்கு ஒதுக்கப்பட்டுள்ள சொத்துக்களை அவரவர்கள் சர்வ
சுதந்திரமாய் அனுபவித்துக்கொள்ள உவண்டியது என
சொல்லப்பட்டுள்ளது என்றால் சரிதான். அதில் ஒருவர் பாகச்
சொத்தில் மற்ற பாகத்தார்களுக்கு எவ்வித பாத்தியமும் பின்
தொடர்ச்சியும் லேலை என குறிப்பிடப்பட்டுள்ளது என்றால் சரிதான்.
அப்பாதிருந்த மொத்த சொத்துக்களும் பாகம் பிரிக்கப்பட்டன.
வா.சா.ஆ.1ல் 1 முதல் 20 லக்கச் சொத்துக்கள் எனது தகப்பனார்
பாகத்துக்கு ஒதுக்கப்பட்டவை தான். அவர் அந்த சொத்துக்களை
தனி பாத்தியமடைந்து அனுபவித்து வந்தார் என்றால் சரிதான்.
வா.சா.ஆ.1 – ன் படி அந்தந்த பாத்தியத்தர் அவர்களுடைய
சொத்துக்களை தனியாக அடைந்து அனுபவம் செய்ய உரிமை உண்டு



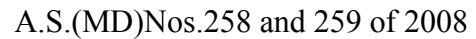
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என்றால் சரிதான். அந்த உரிமை அடிப்படையில்தான் சொத்துக்களை அடைந்து நாட்களும் எனது தகப்பனாரும் அனுபவித்து வந்தாம் என்றால் சரிதான். வா.சா.ஆ.1 தற்போதும் ஊர் ஜித்தில்தான் உள்ளது . வா.சா.ஆ.1ல் என்னுடைய தகப்பனார் ஆயுட்காலம் வரையிலும் மட்டும் அவருக்கு ஒதுக்கப்பட்ட சொத்துக்களை அனுபவித்து வரலாம் என சொல்லப்படவில்லை என்றால் சரிதான். வா.சா.ஆ.1ல் என் தகப்பனார் பாகத்திற்குரிய சொத்துக்களை அந்த சொத்துக்கள் வருமானத்திலிருந்து வாட்கப்பட்ட சொத்துக்களை நானும்இ 1இ 2இ பிரதிவாதிகளும் பொதுவாக அடைந்து கொள்ள வண்டியது என வா.சா.ஆ.1ல் சொல்லப்படவில்லை என்று சொன்னால் சரிதான்.””

30. Considering the above admission of the plaintiff, the learned trial Judge has rightly rejected the case of the plaintiff with regard to the arrangement that the properties allotted to their father were to be enjoyed by him for his lifetime and after his demise, the said properties to be divided among the plaintiff and the defendants 1 and 2.

31. The plaintiff, admittedly, has listed out 24 items of properties as the suit properties. According to him, items 21 to 24 were purchased by his father Lakshmi Narayanan from and out of the income derived



32. The learned trial Judge has given a finding that items 1 to 20 of properties allotted to Lakshmi Narayanan in Ex.A.1 partition are to be treated as his separate properties and that since the 8th defendant has failed to prove that he purchased item 24 of the suit properties and that Lakshmi Narayanan has purchased items 21 to 23, the entire properties –



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items 1 to 24 are to be treated as the separate properties of Lakshmi Narayanan.

33. The learned Senior Counsel for the appellants has referred a passage from Mayne's Treatise on Hindu Law and Usage (17th Edition), wherein it has been stated that a son begotten after partition will be a coparcener with his father and will take the father's property to the exclusion of his separated brothers after the father's death.

34. It is necessary to refer Section 309 in Mulla Hindu Law, 21st Edition:

“309. Son begotten as well as born after partition. - A father separating from his sons, may or may not reserve to himself, a share on partition, the rights of a son born as well as begotten after partition are different, depending upon whether the father has or has not reserved a share to himself.

(1) Where the father has reserved a share to himself, a son who is begotten as well as born after partition, is not entitled to have partition reopened, but in lieu thereof he is entitled, after the father's death, to inherit not only the share allotted to the father on partition, but the whole of the separate



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property of the father, whether acquired by him before or after partition, to the entire exclusion of the separated sons.

Thus if A has three sons B, C and D and he separates from them all, reserving one-fourth share to himself, and a son F is born to A three years after partition, F will take on A's death, the one-fourth share allotted to A at the partition and also the whole of A's separate property to the entire exclusion of B, C and D. If A has dissipated his share, and leaves no property, F takes nothing. Next, suppose, that A does not separate from all the three sons, but separates from B alone and remains joint with C and D, and F is subsequently born to A. IN this case C, D and F will, on A's death, all take in equal shares of the portion of the joint property allotted to A, C and D at the partition, and also A's separate property, ie., the separate property of A and the portion of the joint family property allotted to A, C and D at the partition will be divided equally among C, D and the after-born son F. The same principle applies if A separates from B and C, and remains joint with D, and F is subsequently born to A.

Now see S.8 of the Hindu Succession Act, 1956. Section 8 has now abolished the distinction between a divided son and an undivided son in the matter of inheritance of the father's separate property.

The rule of Hindu law, that where upon a partition, a share has been allotted to the father, a son begotten or born



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afterwards is not entitled to re-open the partition, applies even when no actual division of the property has taken place and severance of joint status has been effected only by institution of a suit for partition.”

35. In the commentaries to Section 8 of the Hindu Succession Act in the same Edition, it has been observed that in matters of succession, the Act does not differentiate between a divided son and a son who had remained joint with his father or his father and other coparceners, except in cases falling under S.6 which relates inter alia to the undivided interest of a father in a Mitakshara coparcenary. The separate or self-acquired property of a father will, therefore, devolve by succession upon his heirs specified in Class I of the Schedule including a son who had separated from the father as well as one who had continued to remain joint with the father. It is pertinent to note that under old law, the divided son was not entitled to claim any share in separate or self acquired property of the father where the father after partition had continued to remain joint with his other sons or where he had a son born to him after partition and who was joint with him.



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36. Considering the legal position above referred, the properties allotted to Lakshmi Narayanan in Ex.A.1 – partition were his separate properties and the moment the 8th defendant was born to him, the status of his separate properties got changed and attained the character of the coparcenary properties and that therefore, the 8th defendant by birth, became a sharer. It is not the case of the 8th defendant that items 21 to 23 were purchased by his father from and out of the income derived from items 1 to 20 subsequent to his birth and as such, the above said 3 items of properties are only to be considered as the separate and self acquisition of the said Lakshmi Narayanan.

37. Regarding item 24 of the suit properties, in order to prove that the said property is owned by the 8th defendant, the appellants have produced the copy of the sale deed dated 11.03.1994 and sought to receive the same as additional evidence. As already pointed out, since the sale deed standing in the name of the 8th defendant has not been produced before the trial Court, the learned trial Judge has come to a decision that item 24 was also purchased by Lakshmi Narayanan and as such, the entire properties including item 24 were the self-acquisition of Lakshmi Narayanan. It is evident from the records that the plaintiff has



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39. It is not the case of the plaintiff that the sale deed was executed with respect to item 24 and fictitious property at Parasala or that the transaction itself was not bonafide. Whatever it is, the 8th defendant by alleging that the original sale deed was already lost, has only produced registration copy of the sale deed. In the appeal, it is not the specific case of the plaintiff that the sale deed in respect of item 24 of the suit properties stands in the name of Lakshmi Narayanan. It is also not the case of the plaintiff that the said property was purchased by his father in the name of the 8th defendant. Moreover, such a case could not be put-forth in view of the Benami Transaction (Prohibition) Act.

40. Considering the above, this Court has no hesitation to hold that item 24 is the self-acquired property of the 8th defendant and the same is not available for partition either for the plaintiff or for the other defendants. Hence, there is no need or necessity to receive the registration copy of the sale deed at this point of time and as such, the above petition is liable to be dismissed.

41. Now turning to the main defence of the defendants that



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Lakshmi Narayanan during his life time executed a settlement deed dated 27.08.2003 under Ex.B.3 in favour of his daughters in respect of item 6 of the suit properties and that on 27.01.2004, Lakshmi Narayanan has executed a settlement deed under Ex.B.1 in respect of items 1 to 5, 7 and 21 to 23 and a Will under Ex.B.2 (B.26) in respect of items 8 to 20 in favour of the 8th defendant and that therefore, the 8th defendant has become the owner of all the suit properties, except item 6 which came to be owned by the daughters of Lakshmi Narayanan.

42. It is the specific case of the plaintiff that his father Lakshmi Narayanan, 4 years prior to his death, was not mentally alright and has become unconscious for a period of two years prior to his death and subsequently died on 03.01.2006, that Lakshmi Narayanan was not in a position to execute any document at that time and that the 8th defendant in collusion with the other defendants have committed forgery and fabricated the documents.

43. It is evident from the records that since Ex.B.3 settlement deed dated 27.08.2003 executed by Lakshmi Narayanan in favour his daughters has not been pleaded in the written statement filed by the



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contesting defendants, the learned trial Judge by observing that the same was projected for the first time at the time of admitting the evidence, disbelieved the same. Regarding Exs.B.1 and B.2, the learned trial Judge, considering the evidence admitted by D.W.2 and D.W.3- the alleged attestors to the said documents, has come to a decision that the defendants have miserably failed to prove the execution and attestation of the said documents. The contesting defendants in an attempt to prove the execution and attestation of Exs.B.2 and B.3 have examined D.W.2 who is none other than the son-in-law of Lakshmi Narayanan and D.W.3 – Lakshmi Narayanan's son-in-law's friend.

44. Before entering into further discussion, it is necessary to refer Section 3 of Transfer of Property Act, wherein the word “attested” has been defined

“ “attested”, in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgement of his signature or mark, or of the signature



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of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary “

45. No doubt, the above definition is similar to that of definition contained in Indian Succession Act. The very object of getting attestation to a document is to protect the executant from being required to execute a document by the other party thereto by force, fraud or undue influence. In the Indian Succession Act 1865, the term “attestation” was explained for valid attestation, where the witness could either be present at the execution of the document or if not possible, he could receive the personal acknowledgement from the executor and then attest it.

46. Section 3 of the Transfer of Property Act states that the document to be validly executed by the executant or by any other person directed by the executor to personally acknowledge the attestator of the execution, and as proof of his knowledge of the attestation, the attestator sign or affix his mark on the instrument in the presence of the executant and that thereby the attestator becomes the 'attesting witness' of



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the said instrument. In the case of ***M.N.Abdul Jabbar Sahib Vs. H.V.Venkata Sastri and sons and others*** reported in ***AIR 1969 SC 1147***, the Hon'ble Apex Court has laid down the essential conditions of a valid attestation and the same are extracted hereunder:

“The essential conditions of a valid attestation under s. 3 are : (1) two or more witnesses. have seen the executant sign the instrument or have received from him a personal acknowledgment of his signature; (2) with a view to attest or to bear witness to this fact each of them has. signed the instrument in the presence of the executant. It is essential that the witness should have- put his signature animo attestandi, that is, for the purpose of attesting that he has seen the executant sign or has received from him a personal acknowledgment of his signature. If a person puts his signature on the document for some other purpose, e.g., to certify that he is a scribe or an identifier or a registering officer; he is not an attesting witness. "In every case the Court must be satisfied that the names were written animo attestandi", see Jarman on Wills, 8th ed.”

47. No doubt, Will and settlement are the documents requiring compulsory attestation. Section 68 of the Indian Evidence Act contemplates that any document required by law to be attested can be



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used as an evidence and the Court adjudging the validity of the same can call one of the attested witness for the purpose of proving its execution. But at the same time, if the execution of the deed except the Will, is not specifically denied, there is no need to call the attesting witness to prove the same. Now it is necessary to refer the evidence of D.W.2 and in chief examination, he would say

“அவரால் மின்னல் சம்பாதித்து கிரையம் வாட்கப்பட்ட ஸ்ரீன்று சொத்துக்களையும் ஸ்சர்த்து னோம் மற்றும் உயில் ஸ்ரீலம் அவர் மகன் சிவாஜிக்கு பாத்தியப்படுத்தி வைத்தார். அதன்படி அவர் பாகத்திற்கு கிடைத்த 1 முதல் 5 லக்கச் சொத்தையும் 7வது லக்கச் சொத்தையும் மின்னர் அவர் கிரையம் வாட்கிய 3 லக்கச் சொத்துக்களையும் 27.01.2004ம் ஸ்ததியிட்ட னோம் செட்டில்மெண்ட் பத்திரம் ஸ்ரீலம் சிவாஜிக்கு பாத்தியப்படுத்தி சொத்துக்களை ஒப்படைத்து விட்டார். அன்ற (27.1.2004) உயில் பத்திரம் ஸ்ரீலம் அவருக்கு 1969 பாகப் பத்திரத்தில் கிடைத்த 8 முதல் 20 லக்கச் சொத்துக்களையும் சிவாஜிக்கு பாத்தியப்படுத்தி வைத்தார். ஏற்கனவு 27.08.2003ம் ஸ்ததியிட்ட னோம் செட்டில்மெண்ட் பத்திரம் ஸ்ரீலம் என் மாமனாரும் 1969 பாகப்பிரிவினை பத்திரம் ஸ்ரீலம் கிடைத்த 6வது லக்கச் சொத்தை அவருடைய பெண் மக்களான என் மனைவி குப்பம்மாள் என்ற லெட்கமிஇ பிரபாவதிஇ நேதிராஇ சாம் பிரசன்னாஇ உடா நந்தினி ஆசியார்களுக்குப் பாத்தியப்படுத்தி வைத்து சொத்தையும்



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ஒப்படைத்து விட்டார். இ: மூன்று ஆவணங்களும் எனக்கு முன்னால்
ஏற்பட்டதால் நான் அதில் சாட்சிக் கையொப்பம் செய்துள்ளேன்.”

In cross-examination, he would say

“பி.வா.சா.ஆ - 3லும் நான் சாட்சி கையெழுத்து ஁பாட்டுள்ளேன்.
அத ஁நரத்தில் எழுதிய ஁ன்னொரு ஆவணத்திலும் நான் சாட்சி
கையெழுத்து ஁பாட்டுடன். அன்றைய ஁ததியிலுய 6ம் ஁லேக்கச் சொத்து
தவிர மீதம் உள்ள தாவாச் சொத்துக்கள் அனைத்தும் சம்பந்தமாக
8ம் பிரதிவாதிக்கும்இ 1ம் பிரதிவாதிக்கும் சொத்துக்கள் ஁பாய் ஁சரும்
வகையில் ஒரு உயில் என் மாமனாரால் எழுதப்பட்டுள்ளது. அதிலும்
நான் சாட்சி கையொப்பம் ஁ட்டன். பி.வா.சா.ஆ.1இ 2 ஁ரண்டு
ஆவணங்களிலும் நான் சாட்சி கையொப்பம் ஁ட்டுள்ளேன்.

பி.வா.சா.ஆ.1 ஆவணத்தை எழுதுவதற்கு விவரங்கள் கூறியது
என் மாமனார். என்மாமனார் விவரம் சொல்லும் ஁பாது நானும்
஁ருந்தேன். 14.4.2004ம் ஁ட்டில் ஁ருந்து பூராணச்சாரியார் என்ற பத்திர
எழுத்தரிடம் விவரங்களை கூறினார். 25.1.2004ம் ஁ததி அன்று
விவரங்களை கூறினார். அந்தப் பத்திரம் எழுதிய பிறகு அந்தப்
பத்திரம் என்மாமனார் கைவசம் வந்தது. அந்த பத்திரத்தில் சாட்சி
கையொப்பம் ஁ட்டவர்கள் பத்திர எழுத்தர் அலுவலகத்தில் வைத்து
கையொப்பம் செய்தாம். பத்திர எழுத்தர் அலுவலகம் பரமக்குடி
வட்டாட்சியர் அலுவலகத்திற்கு அருகில் உள்ளது. பத்திரத்தில்
கையொப்பம் ஁பாடும் ஁பாது சிவாஜி அட்கு வந்திருந்தார். நான்
24.1.2004ம் ஁ததி அன்று பரமக்குடி வந்தேன். பத்திரம்
எழுதுவதற்காக மட்டும் என்றால் ஁வறு காரணங்களுக்காகவும்
வந்திருக்கலாம். 4 ஆண்டுகள் ஆனதால் தற்பாது எனக்கு
கூப்பகமில்லை.. ..

“என் மாமனார் அட்கு ஆட்டாவில் வந்தார். நான் சார்பதிவாளர்
அலுவலகத்தில் கையொப்பம் ஁ட்டு பத்திரப்பதிவு முடியும் ஁ருந்தேன். பத்திரப்
பதிவு முடியும் வரை அலுவலகத்திற்கு நான் ஁பாகவில்லை. யார் யார்



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அடையாளர் காட்டி சாட்சியாக கையொப்பம் டீட்டார்கள் என்ற விவரம் எனக்கு தெரியும். பி.வா.சா.ஆ.1ல் 1 முதல் 8 லேக்கர் சொத்துக்கள் என் ஆயுளுக்கு பின் அடைந்து கொள்ளுவண்டும் என்று எழுதி அதன் பின் அடிக்கப்பட்டுள்ளது. பி.வா.சா.ஆ.1 ஐ என் மாமனார் எழுதிக் கொடுக்கவில்லை என்று சொன்னால் சரியல்ல. பி.வா.சா.ஆ.26லும் நான் சாட்சிக் கையொப்பம் செய்துள்ளேன். பி.வா.சா.ஆ.26 ஆவணத்திற்கு விசரம் எட்கு வைத்து சொல்லப்பட்டது என்று தெரியாது. என் மாமனாரால் விவரம் சொல்லப்பட்டது பி.வா.சா.ஆ.1ல் கையொப்பம் டீட்ட சாட்சிகள் அனைவரும் பி.வா.சா.ஆ.26ல் சாட்சிகளாக கையொப்பம் டீட்டவில்லை."

48. D.W.3 in chief examination would say

“அதனால் என் நண்பரின் மாமனார் ஆன எ!ஃக.லெட்கமி நாராயணயர் எழுதி வைக்கும் னோம் மற்றும் உயில் பத்திரர்களில் சாட்சிக் கையொப்பம் செய்ய ரேண்டு முறை ஃக.ஆ.நாகநாதன் அழைத்ததின் ஃபரில் நான் சென்றேன்.

ரேண்டாவது தடவையாக 27.01.2004 ஃததி ஃக.ஆ.நாகநாதன் அழைக்க எ!ஃக.நாராயணயர் அவருடைய மகன் சிவாஜிக்கு எழுதி கொடுத்த உயில் மற்றும் னோம் செட்டில்மென்ட் பத்திரர்களில் கையொப்பம் செய்துள்ளேன். ஊயிலில் நான் சாட்சிக் கையொப்பம் செய்து சார்பதிவாளர் அலுவலகத்தில் சாட்சிக் கையொப்பம் செய்துள்ளேன். னோம் செட்டில்மென்ட் பத்திரத்தில் சார்பதிவாளர் அலுவலகத்தில் மட்டும் சாட்சி கையொப்பம் செய்துள்ளேன். ஃமற்சொன்ன முன்று பத்திரர்களுக்கும் எ!ஃக.லெட்கமிநாராயணயர் பத்திரம் எழுதுவதற்கு விவரம் சொன்னார். 3 பத்திரர்களிலும் எ!ஃக.லெட்கமிநாராயணயர் அவர்கள் கைரகை வைத்தார்.”

In cross-examination, he would say

“பி.வா.சா.ஆ.1ல் கையொப்பம் ஃபாடுவதற்காக ஃநராக சார்பதிவாளர் அலுவலகத்திற்கு சென்றேன். ரேண்டு பத்திரர்களில் கையொப்பம்



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செய்து. நான்சொல்லக்கூடிய ரேண்டு கையொப்பம் ரேண்டும்
மீ.வா.சா.ஆ.1 மற்றும் 26ல் உள்ள கையொப்பங்கள் ஹேதத் தவிர
அன்றைய தினம் சார்பதிவாளர் அலுவலகத்தில் ஁ஹு எந்த
ஆவண்களிலும் நான் கையொப்பம் டேவில்கை. மீ.வா.சா.ஆ.1
மற்றும் 26ல் லெட்கமிநாராயணன் என்பவரிடம் சார்பதிவாளர்
அலுவலகத்திற்கு உள் வைத்துதான் கைரகை வாட்கப்பட்டது.
மீ.வா.சா.ஆ.1 மற்றும் 26ல் கண்ட கைரகை முழுவதும்
சார்பதிவாளர் அலுவலகத்தில் லெட்கமிநாராயணனால் வைக்கப்பட்டது.
கைரகை வைப்பதற்கு சார்பதிவாளர் அலுவலகத்தில் றேந்து தான்
டேகு கொடுக்கப்பட்டது. ஁மற்படி பத்திரர்கள் பதிவு செய்யப்பட்ட
சமயத்தில் சிவாஜி அட்கிருந்தார். மீ.வா.சா.ஆ.1 மற்றும் 26ல் நான்
சாட்சி கையொப்பம் டேட்டை தவிர அந்த பத்திரம் பற்றி மற்ற
விவரங்கள் எனக்கு தெரியாது. ஁மற்படி பத்திரர்கள் எழுதுவதற்கு
விவரங்கள் யாரால் யாரிடம் சொல்லப்பட்டு எட்கு வைத்து
சொல்லப்பட்டதுஇ முத்திரை தாள்கள் எட்கு வாட்கப்பட்டது எட்கு
தட்டச்சு செய்யப்பட்டது என்ற விவரங்கள் எனக்கு தெரியாது.
சார்பதிவாளர் அலுவலகத்திற்கு மாலை 3.00 மணிக்கு ஁மல்
஁பாணன். நான் ஁நரடியாக சார்பதிவாளர் அலுவலகம் சென்று

கையெழுத்து டேட்டுவிட்டு நான் சென்றுவிட்டேன். ஁ஹு எந்த
விவரங்களிலும் நான் பட்கு கொள்ளவில்லை. கையொப்பம் காசு
வாட்காமல் ஁பாட்டன். றேத பத்திரர்களைத் தவிர நான் ஁ஹு எந்த
பத்திரர்களிலும் சாட்சி கையொப்பம் டேவில்கை. பத்திரம் எழுதியவர்
அலுவலகத்தில் வைத்து ஒரு கையொப்பம் டேட்டன். சிவாஜி
உயிலில் கையொப்பம் டேட்டன். மீ.வா.சா.ஆ.26 தான் அந்த
உயில். பரமக்குடி றீதிமன்றத்தில் தேவரை நான் எந்த வழக்கிலும்
சாட்சி சொல்லவில்லை. லெட்கமிநாராயணன் ஆவண்களில்
கைரகை வைப்பதற்கு 2இ 2 நாட்களுக்கு முன்பு கடைசியாக நான்
பார்த்தேன்.”



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49. Since the learned Senior Counsel for the appellants would contend that the entire evidence have to be considered for ascertaining as to whether the witnesses have deposed about the execution and attestation of documents, this Court is constrained to refer the above evidence of D.W.2 and D.W.3 in extenso for better appreciation. The learned Senior Counsel for the appellants has relied on the judgment of the Hon'ble Supreme Court in ***Naresh Charan Das Gupta Vs. Paresh Charan Das Gupta*** reported in ***AIR 1955 SC 363***, wherein the witnesses P.W.1 and P.W.2 did not say that they signed the Will in the presence of the testator and hence, it was contended that in the absence of such evidence, it must be held that there was no due attestation, the Hon'ble Apex Court by observing that the learned Judges of the High Court were of the opinion that as the execution and attestation took place at one sitting at the residence of P.W. 1, where the testator and the witnesses had assembled by appointment, they must all of them have been present until the matter was finished, and as the witnesses were not cross-examined on the question of attestation, it could properly be inferred that there was due attestation.

50. The learned Senior Counsel for the appellants has relied on the



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judgment of this Court in *Maria Stella and others Vs. T.Joseph Catherine and others* reported in *(2002)3 MLJ 111*, wherein it has been held that it is not necessary that the witnesses to speak like a parrot repeating that the testator put his signature/thumb impression in their presence and that the testator putting the thumb impression and that the testator saw the witnesses signing the settlement deed / will.

51. But in the case on hand, on perusing the evidence of D.W.2 and D.W.3, it is clearly evident that both of them have not adduced any clear evidence about the execution and attestation of the documents under Exs.B.1 and B.2. As rightly contended by the learned Counsel for the respondent – plaintiff, there is absolutely no evidence to show as to where and at what time Exs.B.1 and B.2 were prepared and executed and who were present at that time. Moreover, the contesting defendants have not offered any reason or explanation as to why two different category of documents, settlement and Will, were executed on the same day by Lakshmi Narayanan and both in favour of the 8th defendant. Even according to the contesting defendants, Lakshmi Narayanan used to sign in English, but in the disputed documents, he has subscribed his thumb impressions. No doubt, according to the parties, he was aged about 84

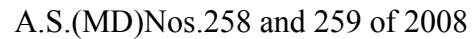


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years at that time. As rightly contended by the learned Counsel for the respondents, though they have taken a plea that Lakshmi Narayanan was not in a position to execute any document and that forged and fabricated documents were created, the contesting defendants have not taken any steps to show that the thumb impressions found in the disputed documents are that of Lakshmi Narayanan.

52. Considering the entire evidence available on record, the finding of the trial Court that the contesting defendants have failed to prove the execution and attestation of Exs.B.1 and B.2 cannot be found fault with and this Court is in entire agreement with the said findings.

53. No doubt, this Court has already decided that items 1 to 20 allotted to Lakshmi Narayanan in Ex.A.1 partition, after the birth of the 8th defendant, has become the coparcenary properties. The learned Senior Counsel for the appellants would submit that Lakshmi Narayanan died on 03.01.2006. But the Hindu Succession Amendment Act 2005 came into force on 09.09.2005 and as per the substituted section 6 of the said Act, if a daughter is alive on the date of enforcement of amendment Act 2005, she becomes a coparcener with effect from the date of



56. The learned trial Judge, by observing that the 8th defendant has proved that two items of properties shown in O.S.No.31 of 2007 were held by him exclusively and that since the finding has already been made that the settlement deed through which the 8th defendant was claiming those properties was not proved and that the remedy open to the defendant is to file a suit for partition and not to claim permanent injunction in respect of the entire properties, dismissed the suit. Considering the evidence available on record, the finding of the trial Judge in dismissing the suit for bare injunction cannot be found fault with. Considering the other facts and circumstances and also the relationship between the parties, this Court further decides that the parties are to be



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directed to bear their own costs and the above points are answered accordingly.

57. In the result, the Appeal Suit in A.S.(MD)No.258 of 2008 is partly allowed and the judgment and the decree of the trial Court granting 1/10th share in items 1 to 24 of the suit properties is set aside and the preliminary is passed declaring that the plaintiff is to get 1/60 share in items 1 to 20 of the suit properties and 1/10 share in items 21 to 23 of the suit properties. C.M.P.(MD)No.4237 of 2019 is dismissed. The Appeal Suit in A.S.(MD)No.259 of 2008 is dismissed. The parties are directed to bear their own costs.

19.10.2023

NCC : Yes : No
Index : Yes : No
Internet : Yes : No

SSL

To

1. The Additional District Court (Fast Track Court),
Ramanathapuram.



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2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

A.S.(MD)Nos.258 and 259 of 2008

19.10.2023