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A.S.No.641 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

A.S.No.641 of 2024
and
C.M.P.No.20437 of 2024

1.Aravind Kumar
2.Gokul
3.Valarmathy

... Appellants / Defendants

Vs.

1.Vasanth Kumari
2.Ramesh Babu
3.Shanti Hiteshkumar Jani @ Shanti Jani ...Respondents / Plaintiffs

Prayer: This Appeal Suit is filed under Order 41 Rule 1 and Section 96 of C.P.C., against the Decree and Judgment dated 07.03.2024 in O.S.No.4768 of 2021 passed by the XXIII Additional City Civil Court, Allikulam, Chennai.

For Appellants : Mr.K.Kannan

For Respondents : Mr.T.V.Sai Srujan

J U D G M E N T

(Judgment of the Court was delivered by **R.Kalaimathi, J**)



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This Appeal is preferred by the defendants herein against the judgment and decree dated 07.03.2024 made in O.S.No.4768 of 2021 passed by the XXIII Additional City Civil Court, Allikulam, Chennai.

2. The case of the plaintiffs as set out in the plaint is stated in brief: Plaintiffs No.1 to 3 are the children of late Subburaj and Chandra. Subburaj had two brothers namely Kandasamy and Velusamy and one sister Subbulakshmi. Late Subburaj was running a business in the name and style of M/s.Sri Santhi Transports in the year 1980. Due to certain differences between their father and mother in the year 1990, their mother filed a divorce petition in H.M.O.P.No.42 of 1990 and exparte order of divorce was granted in favour of his mother. All the plaintiffs were under the custody of their mother.

3. It is the further case of the plaintiffs that the plaintiffs' father had two brothers namely Kandasamy and Velusamy and sister namely Subbulakshmi. The defendants No.1 to 3 are the sons and wife of Velusamy. Subburaj's brother Velusamy was working as a lorry driver in the business carried on by Subburaj at Thambu Chetty Street, and later at Lingi Chetty Street, Chennai. The plaintiffs' father had front-ended the

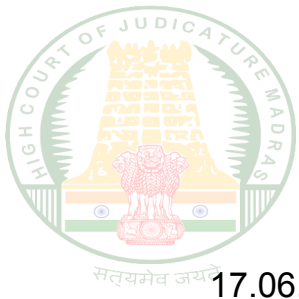


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marriage of the said Velusamy. Valarmathi (3rd defendant herein), who is none other than the daughter of N.Subbulakshmi [Sister of the plaintiffs' father Subburaj and Velusamy]. The 2nd plaintiff was in touch with his father and he used to come and visit his father frequently during college days and used to he stay with his father in Korukkupet house. The 2nd plaintiff assisted his father in his business at Coimbatore region where boilers were manufactured and transported through their transport. He worked in Coimbatore, Mumbai and later in United Kingdom from 2006 to 2008.

4. Meanwhile, during 2001, plaintiffs' father late Subburaj arranged marriage to the 2nd plaintiff and he got married one Latha in 2011 and the wedding expenses were meted out by his father. Thereafter, the 2nd plaintiff moved his residence to Sattur along with his wife and got employment in an Engineering College as Assistant Professor in 2012 and continued teaching till date. In June 2017, plaintiffs' father fell sick and got admitted at Chennai National Hospital on 15.06.2017 and on 22.06.2017, he was transferred to Apollo Hospital, Tondiarpet. The 2nd plaintiff was informed about the condition of late Subburaj over phone by the 1st defendant and immediately the 2nd plaintiff along with his wife went to Chennai in the early morning on



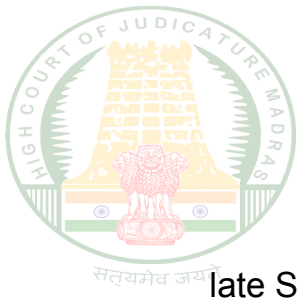
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17.06.2017. The entire medical expenses were paid by using ATM card of plaintiffs father Subburaj. On 08.07.2017, plaintiffs' father died due to brain stroke.

5. Subburaj's brother Velusamy died in the year 2005 itself. It is the plaintiffs' father who had been taking took care of the defendants No.1 and 2 for all their expenses such as education, medical and for even day to day expenses. The defendants No.1 and 2 stayed along with the plaintiffs father and they have the custody of all belongings of plaintiffs father. Post demise of plaintiffs father Subburaj, on the very same day, the 1st defendant started showing his true colour and behaviour differently to the 2nd plaintiff. On 23.07.2017, the 2nd plaintiff came to rituals of his father and on the same day, when he enquired about the belongings of his father, such as details of bank accounts and property documents. The defendants No.1 and 2 replied that they do not have knowledge about any such properties.

6. The 2nd plaintiff came to know that the Death Certificate of his father has already been issued and the said details were suppressed by the defendants. The 2nd plaintiff after sensing that the defendants hide things from him, and got the bank details. Misappropriation of funds of



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late Subburaj by the defendants is listed below:

i) The plaintiffs came to know that their father Subburaj had maintained Savings Bank Account bearing No.205302000004407 in Indian Overseas Bank and also S.B.Account No.602001506280 and Current Account No.602005109124 in ICICI Bank. The 1st defendant forged the signature of Subburaj and presented the cheque bearing No.118810 of Rs.2,55,000/- on 03.10.2017, and due to the steps taken by the plaintiffs, the said account was frozen and cheque amount was reversed. The defendants No.1 and 2 have misappropriated the funds from the bank accounts of Subburaj maintained in ICICI Bank by withdrawing Rs.30,83,652/- from the period from 10.07.2017 to 28.09.2017 by using ATM card of deceased Subburaj. In this regard, plaintiffs' mother also lodged a complaint against the defendants No.1 to 3. Subsequently, a complaint was preferred before Ambattur Police Station on 11.12.2017 and again on 23.01.2018 another complaint was lodged before the Esplanade Police Station. For which C.S.R.No.17 of 2018 was assigned. Subsequently the Officer of IOB had reversed the money to the plaintiffs with the consent of other legal representatives of Subburaj. Another complaint was also lodged before B-1 North Beach Police Station. During enquiry, the 1st defendant claimed that late Subburaj executed a Will bequeathing his entire properties to the 1st



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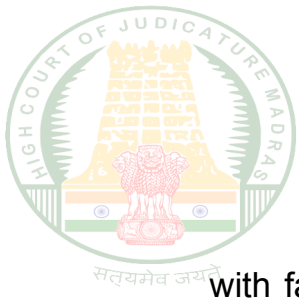
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defendant. Furthermore, the 1st defendant claimed that he is one of the partners in Shanthy Transports.

7. In the above circumstances, the suit is filed for recovery of money of Rs.30,83,652/- with interest which was illegally withdrawn by the defendants from the bank account of Subburaj, Proprietor of Shri.Santhy Transports. The bank account was being maintained in ICICI bank, Chennai main branch. Hence the suit.

8. The details of written statement are stated in brief: The fact that after the mother of the plaintiffs obtained order of divorce from her husband late Subburaj, she along with her children mingled with late Subburaj till his death is totally denied and it is also denied that late Subburaj was staying in his office premises and Velusamy was working as a driver and it is only late Subburaj arranged marriage for Velusamy with the 3rd defendant are also denied. The entire claim details are denied.

9. From the year 1990, late Subburaj has no connection whatsoever with the plaintiffs who were born to Chandra. Without converting into Christianity and the 2nd plaintiff alone had filed complaint

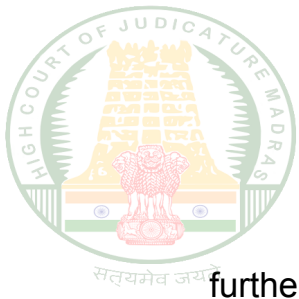


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with false allegation against the defendants and he never included the plaintiffs No.1 and 3. They are all along silent with regard to person and property of Subburaj who was running a transport company with the help and strength of the deceased and the defendants No.1 and 2 who have though completed Engineering Degree, but so as to run a business, sacrificed their career along with Subburaj. But, further the transport business was being run by the defendants No.1 and 2 and that is the reason before late Subburaj died, he executed a Will dated 02.04.2015 in respect of the immovable properties owned by him at Tiruvallur, Tuticorin and vacant land situate at Vadaperumbakkam Village and money lying in ICICI Bank and Indian Overseas Bank, George Town Branch and other movable properties and these facts are known to the 2nd defendant.

10. In the given circumstances, the Bank accounts were being maintained by the deceased Subburaj, and when he fell sick, he was admitted in the National Hospital and the entire transaction was done by the 1st defendant and as such misappropriation of funds does not arise in respect of current account and any other accounts of the respective banks and the defendants are not aware that on 28.09.2017, the plaintiffs gave request letter to freeze the accounts of late Subburaj. It is



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further averred that the properties were purchased by late Subburaj out of his own income from his transport business, in which the defendants No.1 and 2 especially, the 1st defendant had taken active part in the said business.

11. The plaintiffs have been living away from the shadow of late Subburaj and though they claimed that they are the legal representatives of late Subburaj, they have been particularly excluded while executing the Will in favour of the 1st defendant and as such, the plaintiffs cannot make any claim whatsoever, on the properties owned and held by late Subburaj. The question of land grabbing will not arise at all, since the 1st defendant alone is beneficiary under the Will. The plaintiffs have no right whatsoever to question the defendants with regard to money transaction and further no question of misappropriation of funds of late Subburaj arises. Therefore, the suit for recovery of money is not at all maintainable.

12. At trial, the 2nd plaintiff has examined himself as PW1 and 18 documents were marked through him. On the defendants' side, 1st defendant was examined himself as DW1 and 8 documents were marked. Discharge Card of deceased Subburaj issued by Apollo



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hospital is Ex.B1. Copy of the Will dated 02.04.2015 alleged to have been executed by Subburaj in favour of 1st defendant is Ex.B2.

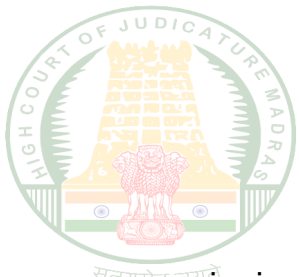
13. The following issues were framed by the trial Court :

- (i) Whether the plaintiffs are entitled to recovery of money from the defendants as prayed for?
- (ii) To what relief if any the plaintiffs are entitled to?

14. The points for consideration arise in this appeal are:

- (i) Whether the trial Court was incorrect in granting money decree as prayed for in the plaint?
- (ii) Whether Will dated 02.04.2015 alleged to have been executed by late Subburaj in favour of the 1st defendant is true, valid, it came into force or not?
- (iii) Whether the Appeal has to be allowed or not?

15. PW1 has filed his proof affidavit in line with the details of the plaint. During the cross examination of PW1, when a question was posed to the effect that before the death of his father, it is the defendants who were taking care of his father was denied by him. He conceded that the last rites as regards his father was performed by his

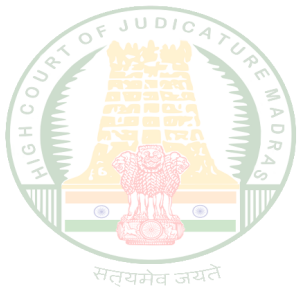


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junior paternal uncle's son Aravindhkumar (1st defendant).
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16. It has come on record through the evidence of DW1 that Subburaj was maintaining account in ICICI Bank, Parrys Corner Branch and Indian Overseas Bank, Parrys Corner Branch. At the time of death of Subburaj, he did not know what is the amount in the credit of the said accounts. After filing of this suit only he came to know that the amount of Rs.30,00,000/- is in the account of late Subburaj. Both the above said bank account details have been shown in the Will as 4th item.

17. It is pertinent to note that after the death of Subburaj, DW1 who was dealing with the Bank accounts of deceased Subburaj [Indian Overseas Bank and ICICI Bank]. After the death of Subburaj, DW1 has presented a cheque for an amount of Rs. 2,55,000/- in the Indian Overseas Bank, but he did not withdraw the money. As regards the Will, he would state that he did not disclose about the Will to the Indian Overseas Bank Officers. When he was posed the question to the effect that when the amounts were withdrawn from the said accounts, why DW1 did not raise objection for the same, for which, he has answered that he does not know anything about it. It is also relevant to note that he has not taken any steps to encash the said cheque for an amount of Rs.2,55,000/-.



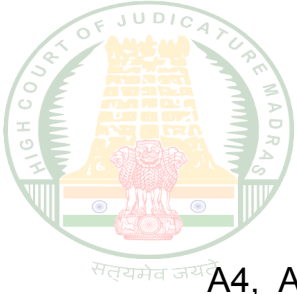
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18. More so, it has also come on record that it is DW1 who has withdrawn the entire amount from the bank accounts as mentioned supra. Exs.A4 , A16 and A17 are the statement of accounts issued by the ICICI Bank dated 31.10.2017, 14.12.2020 and 23.12.2020 respectively. Ex.A18 dated 23.12.2020 are the statement of accounts issued by Indian Overseas Bank. It is also his evidence that the driving of the trailer vehicle bearing Reg.No.TN-04-AA-7886 was prohibited by the Regional Transport Officer. When he was posed a question to the effect that he has answered in affirmative.

19. That apart, it appears that he did not take any steps to vacate the prohibition order passed by the Regional Transport Officer (RTO). It is his further evidence that steps have been taken to probate the Will. DW1 has also stated that he has taken a sum of Rs.30,83,652/- from ICICI Bank and he along with the defendants No.2 and 3 have spent it. He has withdrawn the amount only in the year 2017. He has admitted that he has withdrawn Rs.30,83,652/- from the bank account of Subburaj.

20. It is evident from the evidence of PW1 coupled with Exs.A2,



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A4, A5 and A16 to A18 that the father of PW1 late Subburaj was maintaining the bank accounts in both the above said banks. The sum and substance of the plaint is that the monies kept by the deceased Subburaj in the above two banks were fraudulently withdrawn by the defendants to the tune of Rs.30,83,652/- from the current account and the complaint has been lodged to recover the said amount from the defendants and the account numbers are : Current A/c.No.205302000004407 of Indian Overseas Bank and S.B.A/c. No.602001506280 and Current A/c.No.602005109124 of ICICI Bank, Main Branch, Chennai.

21. It is relevant to extract the evidence of DW1 as under:

சுப்புராஜிக்கு பாரிஸ் கார்னரில் உள்ள ஐசிஐசிஐ மற்றும் ஐஓபி வங்கி கிளையில் வங்கி கணக்கு இருந்தது. சுப்புராஜ் இறந்தபோது அவரது வங்கி கணக்கில் எவ்வளவு தொகை இருந்தது என்று எனக்கு தெரியாது. வாதிகள் இந்த வழக்கை போட்ட பின்னர் தான் சுப்புராஜ் வங்கி கணக்கில் ரூ.30,00,000/- பணம் இருந்த விவரம் தெரிந்து கொண்டேன். இரண்டு வங்கி கணக்குகளும் உயிலில்

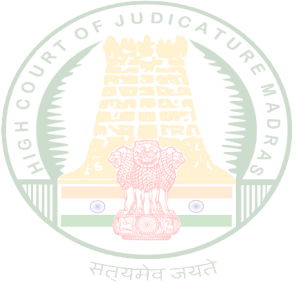


நான்காவது ஐயிட்டமாக காண்பிக்கப்பட்டுள்ளது என்றால் சரிதான். சுப்புராஜ் உயில் எழுதிய விவரம் எனக்கு 2018ம் ஆண்டு தெரிய வந்தது.

சுப்புராஜ் இறப்பதற்கு முன்பும் பின்பும் அவரது ஐஓபி மற்றும் ஐசிஐசிஐ வங்கி கணக்குகளை நான்தான் பராமரித்து வந்தேன். சுப்புராஜ் இறந்த பின்னர் நான் ஐஓபி வங்கியில் ரூ.2,55,000/- த்துக்கான காசோலையை பணமாக போட்டேன். அந்த தொகை ரூ.2,55,000/- நான் எடுக்கவில்லை. என்னிடம் உயில் உள்ளது குறித்து நான் ஐஓபி வங்கி அலுவலர்களிடம் தெரிவிக்கவில்லை. அந்த வங்கி கணக்கில் தொகை உள்ளதா என்று தற்போது எனக்கு தெரியாது. வாதிகள் மேற்படி தொகை ரூ.2,55,000/- த்தை அந்த வங்கி கணக்கில் இருந்து எடுத்து விட்டார்கள் என்றாலும் அதற்கு நான் ஆட்சேபனை எதுவும் தெரிவிக்கவில்லை என்றாலும் அது பற்றி எனக்கு தெரியாது. நான் பணமாக போட்ட காசோலைக்கு ஐஓபி வங்கி பணம் கொடுக்காததை கேட்டு உயில் வைத்துள்ள நிலையிலும் இது நாள் வரை எவ்வித



நடவடிக்கையும் எடுக்கவில்லை. வா.சா.ஆ.4,16 மற்றும் 17 மூலம் ஐசிஐசிஐ வங்கி கணக்கில் மொத்த தொகையும் என்னால் எடுக்கப்பட்டதாகும். இது குறித்து வாதிகள் என் மீது பி.சா.ஆ.7 மூலம் போலீஸ் புகார் கொடுத்தனர். நான் பி.1 வடக்கு கடற்கரை காவல்நிலையத்தில் வெறியே வந்து வாதிகளிடம் ரூ.17,00,000/- த்திற்கான காசோலை கொடுத்தேன் என்றால் போலீசார் எனது மனைவி ஜெயபிரீத்தாவை மிரட்டி அவ்வாறு காசோலை கொடுக்க சொன்னார்கள். அவ்வாறு வாதிகளுக்கு கொடுக்கப்பட்ட காசோலையில் உள்ள கையொப்பம் என்னுடையதாகும். அவ்வாறு காசோலை கொடுத்த போது எனது வங்கி கணக்கில் போதிய தொகை இல்லை என்ற விவரம் எனக்கு தெரியும். எனது முதல் விசாரணை நீரூபண வாக்குமூலத்தில் குறிப்பிட்டுள்ள KA 01 AE 8010, KA 01 AE 8011, TN 04 AA 7886 பதிவு எண் கொண்ட டிரெயிலர் வாகனங்களில் TN 04 AA 7886 தற்போது என்னிடம் உள்ளது. அந்த மூன்று டிரெயிலர்களும் சுப்புராஜ் பெயரில் இருந்தது. KA 01 AE 8010, KA 01 AE 8011, பதிவு எண் கொண்ட டிரெயிலர்களை



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சுப்புராஜ் உயிரோடு இருக்கும்போதே 2015 ம் ஆண்டு
விற்பு விட்டார். TN 04 AA 7886 என்ற வாகனம்
வட்டார போக்குவரத்து அலுவலரால் ஓட்டுவதற்கு தடை
செய்யப்பட்டுள்ளது என்றால் சரிதான். அந்த வாகன
தடையை நீக்கி ஓட்டுவதற்கு நான் எந்தவித
நடவடிக்கையையும் எடுக்கவில்லை.

உயிலை புரோபேட் செய்ய நடவடிக்கை
எடுத்துள்ளோம். அதற்கான ஆவணங்கள் எதையும்
தாக்கல் செய்யவில்லை.

ஐசிஐசிஐ வங்கியில் எடுக்கப்பட்ட தொகை
ரூ.30,83,652/- நானும் 2 மற்றும் 3 பிரதிவாதிகளும்
செலவு செய்தோம்.

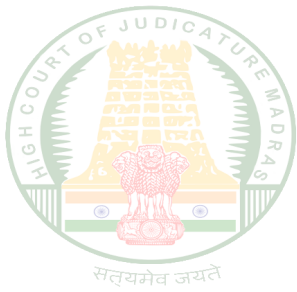
நான் எனது குடும்ப அட்டையில் சுப்புராஜ்
பெயரை தான் குடும்ப தலைவர் என காட்டியுள்ளேன்
என்றால் சரிதான்.

நான் சுப்புராஜ் வங்கி கணக்கில் இருந்து



ரூ.30,00,000/- 2017 ம் ஆண்டு எடுத்தேன். உயில்
போலியான ஆவணம் என்றால் சரியல்ல. 2017ம்
ஆண்டு உயில் நடைமுறையில் இல்லை என்றாலும்,
நான் உள்நோக்கத்துடன் பணத்தை
எடுத்துக்கொண்டேன் என்றாலும் சரியல்ல.

22. From a careful perusal of testimony of DW1, it is made clear that it is DW1 who handled the bank accounts of late Subburaj, after his demise he alone was handling the accounts of late Subburaj. DW1 is also aware of the fact that the plaintiffs have taken steps to withdraw Rs.2,55,000/- from the bank account of Subburaj and he would also admit that on the other hand, though he had presented a cheque to the bank with Rs.2,55,000/- he did not take any steps to encash the same would explicate that as the plaintiffs were taking hectic steps, he would not succeed in encashing the cheque of the deceased. In this regard, DW1 has feigned ignorance, which shows his *malafides*. It is his further clear admission that he has withdrawn an amount of Rs.30,00,000/- from the bank account of the deceased Subburaj. It is also evidence of DW1 that when the complaint was lodged by the 2nd plaintiff with the Beach Police Station, he has issued a cheque for Rs.17,00,000/- and it was dishonoured.

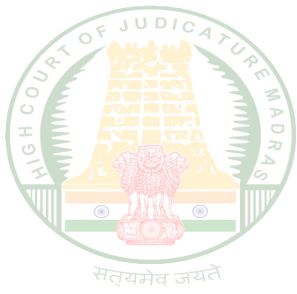


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23. It also appears that the exparte order of divorce dated 30.04.1997 was passed in HMOP No.42 of 1990(filed by Deceased Subburaj). As per Ex.A3, legal heirship Certificate issued pursuant to the death of Subburaj dated 04.10.2017, name of the plaintiffs are given as the legal heirs of Subburaj. As per Section 8 of Hindu Succession Act, the plaintiffs are entitled to succeed to the estate of the deceased Subburaj.

24. If a Will is put-forth by any person which cuts the line of succession, execution of this Will has to be proved in the manner known to law. More so, original of the Will has to be produced by the person who claims so. Execution of the Will has to be proved as per Section 63 of Indian Succession Act, and Section 68 of the Evidence Act. As regards this point, when DW1 was posed a question during his cross-examination, he would state that Probate Original Petition has been filed by them with regard to Ex.B2 Will and the proceedings is pending. But, no case number is furnished in the written statement. DW1 was examined from October to November 2023. Subburaj died on 17.07.2017.



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25. Further, no steps have been taken by him either to produce the original Will or no witness connected to the Will was examined. It has been stated that late Subburaj acquired immovable properties at Tiruvallur, Turicorin and Vadaperumbakkam Village, Tiruvallur District besides having bank accounts at George Town branches and in the ICICI Bank and IOB. As no steps have been taken by the defendants as to the probate of the alleged Will, the defendants cannot lay any claim based on the said document.

26. From the above said statement of bank accounts, it is clear that the amounts to the tune of Rs.30,83,652/- have been stealthily withdrawn by the 1st defendant which is clearly admitted by DW1, who is an Engineer. The defendants have forgotten the fact that though wife of late Subburaj, Chandra got an exparte decree of divorce in HMOP No.42 of 1990, as per law, the plaintiffs who are the children of late Subburaj and Chandra are the legal representatives of late Subburaj.

27. As per the Bank regulations, the ATM card has to be operated by the account holder only, since the amount of Rs.30,83,652/- has been established to have been withdrawn by the 1st defendant and further more it is his evidence(DW1) that all the defendants together



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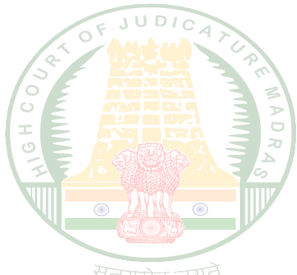
have spent the money, withdrawal of money from the bank account of late Subburaj by the defendants is not legal. Therefore, the trial Court has rightly held that the defendants are jointly and severally liable to pay Rs.30,83,652/- to the plaintiffs.

28. In view of the above said discussions, we are of the considered view that the point Nos.1 and 2 are answered against the appellants/defendants. Further more, we also find no good reason to interfere with the findings of the Trial Court.

29. Based on the aforestated discussions and observations, this Appeal Suit stands dismissed and the Decree and Judgment dated 07.03.2024 in O.S.No.4768 of 2021 passed by the XXIII Additional City Civil Court, Allikulam, Chennai, is confirmed. No costs. Time for payment is four months from the date of receipt of copy of this judgment. Consequently, connected civil miscellaneous petition is closed.

(J.N.B. J.,) (R.K.M. J.,)
30.09.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case: Yes/No



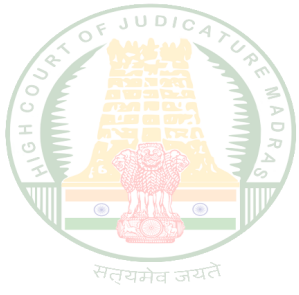
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To
The XXIII Additional City Civil Court,
Allikulam, Chennai.

J. NISHA BANU, J.,
and
R.KALAIMATHI, J.,
ssn

A.S.No.641 of 2024
and
C.M.P.No.20437 of 2024



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30.09.2024