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S.A.No.1127 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 26 / 09 / 2024

JUDGMENT PRONOUNCED ON : 19 / 11 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

S.A.NO.1127 OF 2021
AND CMP NO.21700 OF 2021

1.L.Veeraian
2.V.Uma
3.S.Janani

... Appellants 1 to 3 /
Appellants 1 to 3 /
Defendants 1 to 3

Versus

1.S.Thirupurasundari
2.Dharani
3.Dhatchana

... Respondents 1 to 3 /
Respondents 1 to 3 /
Plaintiffs 1 to 3

4.The Trimax
No.84, Loganathan Garden,
Adyar, Chennai – 600 020.

5.The Rasi Frame Work
Prop. Abdle Khadar
No.88, L.B. Road, Adyar,
Chennai – 600 020.

6.The Saravana Rice Mandi
Prop. Mr.Dharmarajan
No.88, L.B. Road, Adyar,
Chennai – 600 020.



S.A.No.1127 of 2021

7.The Coffee Day
Prop. Subramani
No.88, L.B.Road, Adyar,
Chennai – 600 020.

Mr.Birlath Rao
Goldsmith Work (Died)

8.Mr.Hem Raj
Karani Electricals
No.84, Loganathan Garden,
Adyar, Chennai – 600 020.

9.Mr.Natrajan
S/o. Loganathan Chetty

10.Mr.R.Sivaraman

Mrs.L.Vijaya @ Vijayam (Died)

11.Lakshmi

12.Jayalakshmi

13.Dhanammal

14.Ranjana

15.Praveen Kumar

16.Seema Shivashankar

... Respondents 4 to 16 /
Respondents 4 to

7,

9 to 11 and 13 to 18 /
Defendants 4 to

7,

9 to 11, 13 to 18

Note: Vide this Court's Order dated February 12, 2024, made in CMP No.151 of 2024 in S.A.No.1127 of 2021, the Respondents 1 to 3 / Plaintiffs have amended the schedule property of the Plaint in O.S.No.3505 of 2016, substituting the Town Survey Numbers as T.S.Nos.35, 43/1 and 44 in place of T.S.Nos.35 and 42.



S.A.No.1127 of 2021

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, 1908 against the Judgment and Decree dated August 10, 2021 made in A.S.No.114 of 2019 on the file of the V Additional City Civil Court, Chennai, confirming the Judgment and Decree dated March 4, 2019 made in O.S.No.3505 of 2016 on the file of the XIII Assistant Judge, City Civil Court, Chennai.

For Appellants	:	Mr.S.Kalyanaraman
For Respondents 1 to 3	:	Mr.T.Aarumugam
For Respondents 4 to 6, 8 and 11	:	Served – No Appearance
For Respondents 7,9,10, and 12 to 16	:	Second Appeal Dismissed <i>qua</i> this Court's Order dated October 17, 2023

J U D G M E N T

This Second Appeal is directed against the Judgment and Decree dated August 10, 2021 passed in A.S.No.114 of 2019 by the 'learned V Additional Judge, City Civil Court, Chennai' [henceforth 'First Appellate Court'], wherein and whereby the Judgment and Decree dated March 4, 2019 passed in O.S.No.3505 of 2016 by the 'learned XIII Assistant Judge, City Civil Court, Chennai' [henceforth 'Trial Court'] was confirmed.

2. For the sake of convenience, hereinafter, the parties will be



S.A.No.1127 of 2021

denoted as per their array in the Original Suit.

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CASE OF THE PLAINTIFFS

3. In the amended Complaint, it is stated that the Suit Property and larger extent of properties were originally owned by one Raji Chettiar. The said Raji Chettiar executed a Settlement Deed in favour of his son - Loganathan Chettiar on April 21, 1930 in respect of the Suit Property and some more extent of properties. The said Loganathan Chettiar had three wives namely, Radhabai, Kamatchi and Lakshmi. Through his first wife Radhabai, daughter - Vijaya @ Vijayam (12th defendant) was born. The said Vijaya @ Vijayam had two sons and one daughter namely, Senthil, Uma (2nd defendant) and Sivaraman (11th defendant). The first plaintiff is the wife of said Senthil and Plaintiff Nos.2 and 3 are their children. The first defendant - Veeraiyan is the son of said Loganathan Chettiar born through said Lakshmi. Second defendant - Uma is the wife of first defendant while the third defendant is the daughter born to them. The Defendant Nos.4 to 9 are tenants of the Suit Property The 10th defendant is son of Loganathan Chettiar born through said Kamatchi. Defendants



S.A.No.1127 of 2021

Nos.13 to 15 are purchasers from the 1st defendant.

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3.1. The case of the plaintiffs is that the plaintiffs are in joint possession and enjoyment of the Suit Property. The plaintiffs are residing in a small portion of the Suit Property. Post the demise of Senthil, who is the husband of the first plaintiff, the Defendant Nos. 1 to 3 are trying to illegally evict the plaintiffs from the said portion and not giving the plaintiffs' legal share in the rent of Rs.75,000/- collected from Defendant Nos.4 to 9, tenants of the Suit Property, despite the various complaints preferred by the plaintiffs before various authorities. Further, lately, the first defendant has paid tax in his name for the small portion of the Suit Property where the plaintiffs reside, with a view to defeat and defraud the plaintiffs legitimate rights over the Suit Property.

3.2. Further case of the plaintiffs is that the Defendant Nos.1 to 3 attempted to alienate an extent of 600 *Sq.ft.* in the Suit Property, which was stopped by the plaintiffs' objection for the same before Sub Registrar Office [SRO], Adayar. Further, the first defendant fraudulently



S.A.No.1127 of 2021

made a Release Deed on February 3, 2016 from the mother-in-law of first plaintiff - Vijaya @ Vijayam, who has mostly been mentally unsound after she suffered a fall in October 2013. Further, on May 4, 2016, when the plaintiffs obtained encumbrance certificate, it came to light that during the lifetime of Senthil, husband of first plaintiff, without his knowledge, the first defendant had fraudulently sold some of the Suit Property on various occasions viz., September 19, 1990, November 9, 1994 and February 4, 2000.

3.3. Hence, the plaintiffs filed the Suit for declaration that the aforesaid Sales and Release Deed are null and void; for partition of the plaintiffs 1/6th share in the Suit Property; for direction against the first defendant to deposit the rent amount of Rs.75,000/- from the date of Plaint till the date of partition; for permanent injunction against the Defendant Nos.1 to 3 restraining them from alienating the Suit Property and from interfering with the plaintiffs' possession and enjoyment of Suit Property; and for costs.

CASE OF DEFENDANT NOS.1 TO 3 AND 12

4. The Defendant Nos.1 to 3 and 12 filed a common Written



S.A.No.1127 of 2021

Statement denying the Plaint averments. The defendants aver that the 10th defendant is not a son of said Loganathan Chettiar and that he is a stranger to the Suit and therefore, the Suit is bad for mis-joinder of unnecessary party. Further, the Suit is bad for non-joinder of necessary parties, namely Dharani and Dhakshana, who are daughters of the first plaintiffs as well as Minor Pavan and Minor Anusri, who are grandchildren of the first plaintiff.

4.1. They aver that Raji Chettiar settled 1 Acre 06 Cents and not just 40 Cents as alleged by the plaintiffs, in favour of his son – Loganathan Chettiar, who died intestate leaving behind the 1st and 12th defendants as his legal heirs. The 12th defendant - Vijaya @ Vijayam, who is the mother in law of the first plaintiff, released her share vide registered Release Deed dated February 3, 2016. The 12th defendant is very well alive and therefore, the question of her survivorship will not arise. The defendant Nos.1 to 3 alone are now looking after the 12th defendant and therefore, the 12th defendant is voluntarily residing with the defendant Nos.1 to 3. The Release Deed was duly registered as per the Registration Act, 1908 and hence, there is a presumption that the parties were in sound



S.A.No.1127 of 2021

mind at the time of execution of the documents and it is for the plaintiffs to disprove the presumption. Tax Receipts and Electricity Receipts stand in the name of the first defendant. The plaintiffs have no right or title over the Suit Property.

4.2. While it is true that the plaintiffs are in possession and enjoyment of an extent 10 X 10 *Sq.ft.* in the Suit Property, the plaintiffs are mere permissive occupants thereof. The plaintiffs are not in joint possession and enjoyment of the remaining extent of Suit Property. Hence, the Court Fee paid under Section 37 (2) of the 'Tamil Nadu Court-Fee and Suits Valuation Act, 1955' ['T.N.C.F. Act' for short] is incorrect.

4.3. The Defendant Nos.4 to 9 were inducted by Loganathan Chettiar during his lifetime and except Defendant No.5, everyone are paying rent to 1st defendant without any default. However, the amount of rent viz., Rs.75,000/- alleged by the plaintiffs is wrong. As regards the relief with respect to deposit of rent, the plaintiffs ought to have approached the Rent Control Court.

4.4. Further, the Genealogy Chart / Family Tree filed by the



S.A.No.1127 of 2021

plaintiffs is not correct and the claim that Kamatchi, who is the mother of 10th defendant, is the wife of Loganathan Chettiar is not correct. The alleged Sale Deeds executed on September 19, 1990, November 9, 1994 and February 4, 2000 in favour of Defendant Nos.13 to 15 are in respect of other properties of Loganathan Chettiar and not Suit Property. There is no pleadings as to how the plaintiffs arrived at the calculation of 1/6th share for partition. The Defendant Nos.1 to 3 and 12 are the co-owners of the Suit Property. Hence, injunction against the co-owners cannot be granted. Accordingly, they prayed to dismiss the Suit.

CASE OF DEFENDANT NOS.5 AND 9

5. The Defendant Nos.5 and 9 filed Written Statement stating that they are tenants. Their Written Statement supports the case of the plaintiffs.

CASE OF DEFENDANT NO.10

6. The 10th defendant filed Written Statement claiming that he is the son of Loganathan Chettiar born through the second wife - Kamatchi. The Genealogical Chart / Family Tree as filed by the defendants



S.A.No.1127 of 2021

is incorrect. He claims to have 1/3rd share in the Suit Property. He supports the case of the plaintiffs.

6.1. To be noted, the Written Statement said to have been filed by the 10th defendant has been signed and verified by one Lakshmi and not by the 10th defendant whose name is Natrajan.

CASE OF DEFENDANT No.11

7. The 11th defendant filed Written Statement stating that he is none other than the son of 12th defendant. The Written Statement filed by the 11th defendant supports the case of the plaintiffs. He claims to have 1/6 share in the properties left behind by Loganathan Chettiar including the Suit Property.

CASE OF DEFENDANT NOS.13 & 14

8. The 13th and 14th defendants filed Written Statement stating that they have purchased the Suit Property from the 1st defendant, who suppressed the factum of plaintiffs' rights over the Suit Property. Their Written Statement supports the case of the plaintiffs.



S.A.No.1127 of 2021

TRIAL COURT:

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9. Based on these pleadings, the Trial Court framed the following issues:

“1. Whether the suit is bad for non joinder of necessary parties?

2.

Whether the suit is barred by limitation?

3. Whether the suit was properly valued and proper court fee was paid?

4. Whether the plaintiffs are entitle for the relief of declaration with respect to sale deed in document No.3795 of 1990?

5. Whether the plaintiffs are entitle for the relief of declaration with respect to sale deed in document No.4649 of 1994?

6. Whether the plaintiffs are entitle for the relief of declaration with respect to sale deed in document No.1393 of 2000?

7. Whether the plaintiffs are entitle for the relief of declaration with respect to release deed dated 03.02.2016?

8. Whether the plaintiffs are entitle for 1/6th share in the suit property?

9. Whether the plaintiffs are entitle to the relief of depositing the rent?

10. Whether the plaintiffs are entitle to the relief of permanent injunction with respect to alienation of suit property?

11. Whether the plaintiffs are entitle to the relief of permanent injunction with



WEB COPY



S.A.No.1127 of 2021

respect of possession and enjoyment of the suit property?”

10. Before the Trial Court, first plaintiff was examined as P.W.1, one Mr.D.Sudhakaran was examined as P.W.2 and Ex-A.1 to Ex-A.33 as well as Ex-X.1 to Ex-X.4 were marked on the side of the plaintiffs. On the side of the defendants, third defendant was examined as D.W.1 and Ex-B.1 to Ex-B.10 were marked.

11. After analyzing the oral and documentary evidence, the Trial Court arrived at the following findings:

- (i)** The children of the deceased – Senthil were impleaded as 2nd and 3rd plaintiffs vide its Order passed in I.A.No.12936 of 2017; hence the Suit is not bad for non-joinder of necessary parties.
- (ii)** The plaintiffs, in Plaint prayer : 15 (a), 15 (b), 15 (c), sought for declaration that the Sale Deeds in favour of Defendant Nos.13 to 15 in Document Nos.3795 of 1990, 4649 of 1994 and 1393 of 2000 are null and avoid. They are hit by Article 59 of the Limitation Act, 1963. Moreover, the properties covered thereunder are adjacent properties and not the Suit Property. Hence,



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S.A.No.1127 of 2021

the plaintiffs are not entitled to the aforesaid relief of declaration.

- (iii) The plaintiffs are in joint possession and enjoyment of a portion of Suit Property. Hence, the Suit has been valued properly and the Court Fee paid under Section 37 (2) under Section of T.N.C.F. Act is correct.
- (iv) The defendants 1 to 3 failed to prove that Ex-A.5 – Release Deed and Ex-B.4 – Rectification Deed were executed by the executor in sound state of mind without any undue influence. Hence, the same are null and void.
- (v) 10th defendant is not related to the Loganathan Chettiar's family and he is not entitled to a share in the Suit Property. After the demise of Loganathan Chettiar, the 1st and 12th defendants are entitled to $\frac{1}{2}$ share each in the Suit Property. The plaintiffs are the legal heirs of the predeceased son of the 12th defendant. The 12th defendant passed away pending the Suit leaving behind the plaintiffs, the 2nd defendant - Uma (daughter) and the 11th defendant – Sivaraman (son). Accordingly, the plaintiffs are entitled to $\frac{1}{3}$ share in the 12th defendant's $\frac{1}{2}$ share *i.e.*, $\frac{1}{6}$ share in the Suit Property.



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S.A.No.1127 of 2021

- (vi) Though it is an admitted fact that the Defendant Nos.4 to 9 are tenants in the Suit Property, the plaintiffs failed to adduce sufficient evidence to prove the alleged quantum of rent *viz.*, Rs.75,000/- per month. Hence, the relief of direction against the first defendant to deposit before Court the rent amount of Rs.75,000/- per month from the date of Complaint till the date of partition, cannot be granted.
- (vii) Defendant Nos.1 to 3 tried to alienate the Suit Property by executing a Sale Agreement and hence, the plaintiffs are entitled to the relief of permanent injunction against the Defendant Nos.1 to 3 not to alienate the Suit Property and also not to disturb the plaintiffs' peaceful enjoyment of the portion of Suit Property where they were residing, both till the effect of partition and allotment of respective shares to the plaintiffs.

11.1. Accordingly the Trial Court answered the issues and partly – decreed the Suit for partition, for declaration *qua* Released Deed, and for permanent injunction in the manner stated *supra*.



S.A.No.1127 of 2021

FIRST APPELLATE COURT

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12. Feeling dissatisfied with the Trial Court's Judgment and Decree, the Defendant Nos.1 to 3 preferred an appeal in A.S.No.114 of 2019 before the First Appellate Court, which after hearing both sides, concluded that the alleged Release Deed – Ex-A.5 and the alleged Rectification Deed - Ex-B.4 said to have been executed by the 12th defendant in favour of 1st defendant are null and void. At the time of executing Ex-A.5 – Release Deed, the 12th defendant was suffering from Paralysis and she was in unsound state of mind. Further, no independent witness was examined to prove Ex-A.5 – Release Deed. No reason was attributed as to why no property was given to his son / 11th defendant. Ex-A.5 is unconscionable. The 1st defendant did not enter into the witness box. Considering the cumulative facts and circumstances of the case, the First Appellate Court concurred with the findings of the Trial Court and dismissed the first appeal.

SECOND APPEAL

13. Feeling aggrieved with the concurrent findings of the Trial Court as well as the First Appellate Court, the Defendant Nos.1 to 3 filed



S.A.No.1127 of 2021

this Second Appeal on December 29, 2021, which was admitted on

January 10, 2022 on the following substantial questions of law:

- “ i. Whether a person who is suffering from hemiparesis in the year 2013 who is mentally sound and can execute a release deed in favour of her brother of her own free will and accord without any influence in the year 2016, can be challenged without proving with proper evidence regarding her mental condition on the date of executing the release deed?*
- ii. Whether a document registered before the Sub-Registrar after identification of the parties and witnessed by the witnesses can be questioned, since Section 34(3)(a) and (b) of Registration Act provides presumption that registered document is valid and legal?”*

ARGUMENTS

14. Mr.S.Kalyanaraman, learned Counsel for the appellants 1 to 3 / defendants 1 to 3 would argue that the Suit Property and some more properties owned by Raji Chettiar were settled by him in favour of Loganathan Chettiar vide Ex-A.1–Registered Settlement Deed. Loganathan Chettiar died on June 18, 1960 leaving behind the 1st and 12th defendants. Thus, both are entitled to ½ share in the properties covered under Ex-A.1. The 12th defendant - Vijaya @ Vijayam executed Ex-A.5 = Ex-B.3 -



S.A.No.1127 of 2021

Released Deed in favour of the first defendant. Further, the 12th defendant filed Written Statement along with 1st to 3rd defendants stating that she voluntarily executed Ex-A.5 = Ex-B.3 and Ex-B.4 – Rectification Deed. Further, the 12th defendant was very well alive on the date of Suit. The plaintiffs did not choose to record her evidence. Hence, the plaintiffs are precluded from taking a stand that Ex-A.5 = Ex-B.3 and Ex-B.4 were obtained by undue influence and accordingly, the Suit is not maintainable.

14.1. Further would argue that the plaintiffs, whose case is that Ex-A.5 = Ex-B.3 and Ex-B.4 were obtained by undue influence, bears the entire burden to prove the same. The plaintiffs did not adduce any evidence with regard to the health condition and status of the 12th defendant. First plaintiff examined as P.W.1, is not competent to depose about the health conditions of the 12th defendant / executor at the time of execution of Ex-A.5 = Ex-B.3 and Ex-B.4. At the time of execution, the 12th defendant was in a sound state of mind. The plaintiffs filed Ex-A.19 – Compact Disk containing an alleged conversation that happened on February 3, 2017 between the 12th defendant, Defendants 1 to 3 and



S.A.No.1127 of 2021

plaintiffs as well as Ex-X.1 – Compact Disc containing an alleged conversation between the plaintiffs, defendants 1 & 2 and others. In the absence of Certificate under Section 65-B of Indian Evidence Act, 1872, they both are inadmissible. In this regard, he would rely on **Anvar P.V. -vs- P.K.Basheer and others** reported in **AIR 2015 SC 180**. Hence, the findings of the Trial Court as well as the First Appellate Court with regard to Ex-A.5 = Ex-B.3 and Ex-B.4 are perverse. Accordingly, he would pray to allow the Second Appeal.

15. Per contra, Mr.T.Aarumugam, learned Counsel for the Respondent Nos.1 to 3 / plaintiffs would submit that the 1st and 12th defendants were born to Loganathan Chettiar. The 12th defendant is none other than the mother-in-law of the widowed first plaintiff. The 2nd defendant, namely Uma, the daughter of 12th defendant, was married to first defendant. 11th defendant, namely Sivaraman, who is the son of 12th defendant, married the 3rd defendant, namely Janani, who is the daughter of the 1st defendant.

15.1. He would further submit that after the demise of the first



S.A.No.1127 of 2021

plaintiff's husband - Senthil, 1st to 3rd defendants colluded together and created Ex-A.5 - Release Deed, with a view to defeat and defraud the lawful share of the plaintiffs and to expel them from the Suit Property. At the time of execution of Ex-A.5, the alleged executant / 12th defendant was aged more than 78 years and was suffering from Left Hemiparesis and hence, she could not have put her left hand thumb impression voluntarily. Further, she was a literate who always used to put her signature in writing. By taking advantage of her age, illness and mental infirmity, 1st and 3rd defendants colluded together and caused the execution of Ex-A.5 by undue influence. In this regard, he would rely on the Judgment of Hon'ble Supreme Court in ***S.P.Changalvaraya Naidu -vs- Jagannath***, reported in ***(1994) 1 SCC 1***. The Trial Court as well as the First Appellate Court rightly concluded that Ex-A.5 is void *ab initio* and there is no reason to interfere with the said finding.

15.2. He would further submit that the 12th defendant is entitled to ½ share in the properties covered under Ex-A.1 – registered Settlement Deed. The plaintiffs are entitled to 1/6 share in all the properties left behind by the 12th defendant as well as in the income arising



S.A.No.1127 of 2021

therefrom. The plaintiffs are entitled to the relief of rendition of accounts under Order XX Rule 18 of the Code of Civil Procedure, 1908 ['CPC' for short] as a further relief. The findings of the Trial Court as well as the First Appellate Court that the plaintiffs are entitled to 1/6 share in the Suit Property are correct. Accordingly, he would pray to dismiss the Second Appeal and confirm the concurrent findings.

DISCUSSION

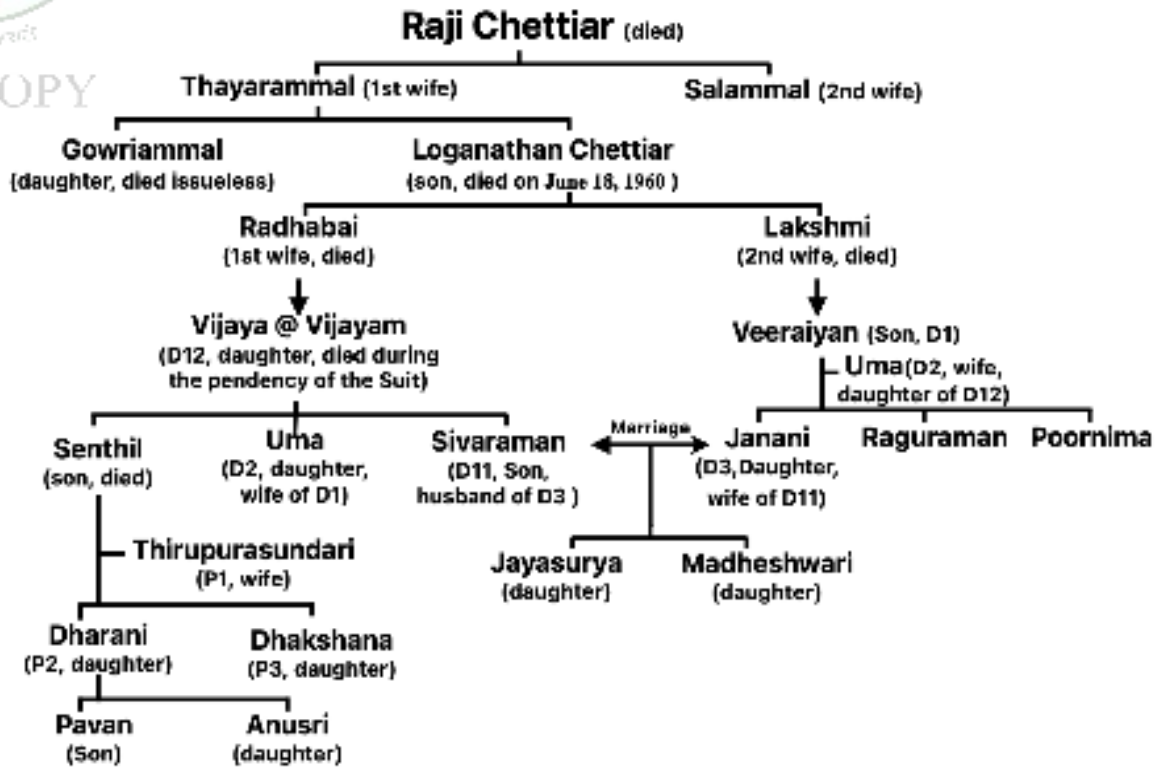
16. This Court has heard either side and perused the materials available on record in light of the Substantial Questions of Law.

Admitted relationship between the parties

17. The following genealogy chart drawn based on the available pleadings and evidence, helps to better appreciate the facts of the case:



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18. One Raji Chettiar is the common ancestor of the plaintiffs and the Defendant Nos.1 to 3, 11 and 12. He had two wives, namely Thayarammal and Salammal. Through first wife – Thayarammal, Loganathan Chettiar and Gowriammal were born. Loganathan Chettiar had two wives, namely Radhabai and Lakshmi. Through 1st wife - Radhabai, the 12th defendant was born and through the 2nd wife - Lakshmi, the 1st defendant was born. In the Complaint, it is stated that Loganathan had another wife by name Kamatchi through whom he had



S.A.No.1127 of 2021

one son, namely Natarajan / 10th defendant. Though the 10th defendant is said to have filed Written Statement, he did not participate in the Trial.

Further, as stated *supra*, the Written Statement said to have been filed by him, is signed and verified by one Lakshmi. The defendants marked Ex-B.1 - Kamatchi's Death Certificate, Ex-B.9 - Natrajan's Voter ID and Ex-B.10 - Natrajan's Daughter's Marriage Invitation. In Ex-B.9, Natrajan's father's name has been mentioned as Kumarasamy. In Ex-B.10, Kamatchi's husband's name has been mentioned as Kumarasamy. The same is corroborated by Ex-B.1. Moreover, 1st plaintiff in her evidence as P.W.1, has admitted that Kamatchi's husband is Kumarasamy. Hence, it is clear that Kamatchi is not a wife of Loganathan Chettiar as stated in the Complaint and the 10th defendant is not his son. The Trial Court as well as the First Appellate Court concurrently arrived at the same finding, which has reached finality as no appeal was preferred over the same. Hence, they do not warrant any interference.

Character of properties covered under Ex-A.1 = Ex-B.2 – Settlement Deed in the hands of Loganathan Chettiar

19. Raji Chettiar executed Ex-A.1 - Registered Settlement



S.A.No.1127 of 2021

Deed dated April 21, 1930 in favour of Loganathan Chettiar in respect of properties of extents of Acre 0.45 in Survey No.16 (4); Acre 0.66 in Survey No. 24 (3); and Acre 0.95 in Survey No.26, all in Pallipattu village, Saidapet, Chengalpattu District (now Adyar, Chennai). Ex-A.1 has a condition that Loganathan Chettiar shall maintain his mother from and out of the income derived from 'A' Schedule Properties therein. Further, Ex-A.1 would recite that the properties covered thereunder are Raji Chettiar's self-acquired properties and that he has executed a separate Will in favour of his 2nd wife – Salammal and their children. Admittedly, Thayarammal died. Moreover, though initially the plaintiffs claimed the Suit Property to be ancestral property, later they amended the Plaint to the effect that the Suit Property is not ancestral property. Hence, the properties covered under Ex-A.1 are separate properties in the hands of Loganathan Chettiar. Therefore, upon Loganathan Chettiar's demise on June 18, 1960, the 1st and 12th defendant would be entitled to equal share therein as co-heirs and co-owners, as per Section 8 of the Hindu Succession Act, 1956.



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Whether execution of Ex-A.5 =Ex-B.3 & Ex-B.4 has been proved?

20. Ex-A.27 is the Family Card of 12th defendant, issued in the year 2005. It could be evinced from Ex-A.27 that in the year 2005, the age of the 12th defendant was 63 years. As per the Legal Heir Certificate annexed in Ex-B.3, the age of the 12th defendant in 1982 was 48 years and as per her Voter ID annexed in Ex-B.3, her age in the year 2006 was 66 years. As per Ex-A.6 – Discharge Summary, the age of the 12th defendant in 2013 was 74 years. D.W.1 in her evidence has deposed that at the time of execution of Ex-A.5 – Release Deed, the 12th defendant would have been 78 years old. Conjoint reading of the above documents would show that in the year 2017, the 12th defendant was aged between 77 and 83 years.

21. The contention of the plaintiffs is that the 1st defendant, during the last stages of the 12th defendant's life, took her to his home with a view to usurp the Suit Property. The 3rd defendant in her evidence as D.W.1 has admitted that between 2005 and 2009, the 3rd and 11th



S.A.No.1127 of 2021

defendants and their children were residing along with 12th defendant under one roof at Lattice Bridge Road (L.B. Road), Adyar. Ex-A.27 – 12th defendant's Family Card would corroborate the same. D.W.1's admission coupled with Ex-A.27 would show that the 12th defendant was initially living with her son / 11th defendant. The first plaintiff in her evidence as P.W.1 has deposed that on October 22, 2013, the 12th defendant fell down and she was admitted as in-patient in Hospital till October 30, 2013; that she took care of the 12th defendant and the 1st defendant was least bothered when 12th defendant was admitted in Hospital; and that thereafter, the 12th defendant is mostly mentally unsound. She would rely on Ex-A.6 – Discharge Summary to say that the 12th defendant suffered from Left Hemiparesis after the fall. Relevant portion of Ex-A.6 reads thus:

“COURSE IN HOSPITAL: PATIENT ADMITED WITH ABOVE MENTIONED COMPLAINTS. NERVOLOGIST OPINION OBTAINED, AND DIAGNOSED TO HAVE LEFT HEMIPARESIS AND TREATED WITH IVFLUIDS ANTIBIOTICS, ANTIHYPERTENSIVE THROMBOLYTICS, AND PHYSIOTHERAPY. PATIENT GC IMPROVING WELL.



S.A.No.1127 of 2021

HENCE PATIENT DISCHARGED."

22. Further, 3rd defendant / D.W.1 in her evidence has deposed to the effect that 12th defendant was suffering from Left Hemiparesis till her passing in 2017. Relevant extract is hereunder:

“ . . . வா.சா.ஆ6 படி விஜயம் மருத்துவமனையில் சிகிச்சை பெற்ற சமயத்தில் அவரது இடது கை செயலிழப்பு ஏற்பட்டு அவரது இறப்பு வரை அது சரியாகாத இருந்த நிலையில் அதை சரி செய்வதற்காக ஏதேனும் மருத்துவ சிகிச்சை எங்களால் மேற்கொள்ளப்பட்டதா என்றால் மருத்துவ சிகிச்சை மேற்கொள்ளப்பட்டது. அதற்காக ஆவணம் தாக்கல் செய்யவில்லை. . . .”

23. First plaintiff / P.W.1 in her evidence has deposed that her husband – Senthil died on October 29, 2015; and that before his demise, her mother-in-law / 12th defendant was forcibly shifted from their house to the first defendant's house with an ulterior motive to obtain a Release Deed in first defendant's favour forcibly.

24. It is the case of plaintiffs that in December 2016, the 1st plaintiff preferred complaints with Police as well as Corporation to stop



S.A.No.1127 of 2021

some illegal construction in the Suit Property. Pursuantly, the Corporation officials visited the first defendant's house for enquiry. At that time, in the presence of the plaintiffs as well as the defendants 1 to 3, they enquired the 12th defendant and recorded the same. Compact Disk containing the said recording along with its transcription and printouts of some screenshots (photos) of the recording showing the 12th defendant, has been marked as Ex-A.19. 3rd defendant / D.W.1 in her evidence admits the factum of video recording and that the person depicted in the said printouts of screenshots is the 12th defendant. But she denies the contents of Ex-A.19. Relevant extract of D.W.1's evidence is hereunder:

“ . . . டிசம்பர் 2016ல் எனது தகப்பனார் போலீஸ் மற்றும் கார்பரேஷனுக்கு புகார் கொடுத்தார் என்றால் சரிதான். அந்த புகாரின் அடிப்படையில் போலீசார் விசாரணைக்கு வந்தனரா என்றால் போலீஸ் வரவில்லை. கார்பரேஷன் அதிகாரிகள் வந்தனர். விஜயா என்கிற விஜயம் 5.8.2017ம் தேதி இறந்துவிட்டார். டிசம்பர் 2016, கார்பரேஷன் அதிகாரிகள் எங்கள் வீட்டிற்கு விசாரணைக்கு வந்தார்கள் என்றால் சரிதான். அதற்கான ஆவணம்தான் வா.சா.ஆ.19 என்றால் சரிதான், வா.சா.ஆ.19ல் உள்ள புகைப்படங்களில் உள்ளது விஜயத்தின் புகைப்படம் என்று சொன்னால் சரிதான். அவர்களை கார்பரேஷன் ஜோனல்



S.A.No.1127 of 2021

அதிகாரிகள் விசாரித்தனர் என்றால் சரிதான். அந்த விசாரணையின்போது வாதி, பிரதிவாதிகள் 1 முதல் 3 ஆகியோர் உடன் இருந்தனர் என்று சொன்னால் அதை நான் சரியாக கவனிக்கவில்லை. வா.சா.ஆ.19, பக்கம் 2ல் திரிபுர சுந்தரிக்கு ஒரு பங்கு இருப்பதாகவும் அவருக்கு தான் கொடுக்காமல் யார் கொடுப்பார்கள் என்று விஜயம் குறிப்பிட்டுள்ளார்கள் என்றால் அது சரியல்ல. . . .”

25. Though the first plaintiff / P.W.1 has deposed that it was her daughter who captured the screenshots of the 12th defendant from the said video recording, she has failed to adduce Section 65-B Certificate. However, since, the 3rd defendant / D.W.1 has admitted the said screenshots, this Court is of the view that the said screenshots are admissible in evidence but not the transcription for lack of Section 65-B Certificate [See *Anvar's Case (supra)*].

26. As stated *supra*, the 12th defendant is aged between 77 and 83 years. When she fell down in 2013, it is the first plaintiff who admitted her in the hospital and took care of her. Then from around 2015, the 12th defendant is under the custody of the first defendant. The 1st



S.A.No.1127 of 2021

plaintiff is a widow living along with her two daughters in a small portion

of the Suit Property with inadequate facilities. These facts could be inferred

from the evidence available on record. Except 1st to 3rd defendants,

including 11th defendant [husband of 3rd defendant], have not denied the

right of the plaintiffs in the Suit Property. As stated *supra*, the Suit

Property and some more extent of properties adjacent to the Suit Property

were settled upon the 1st and 12th defendants vide Ex-A.1 – Registered

Settlement Deed. In other words, there were more properties other than the

Suit Property. In these circumstances, an ordinary prudent woman would

not bequeath her properties entirely on her half-brother, excluding her son

as well as widowed daughter-in-law who has two daughters. Though the

nomenclature of Ex-A.5 suggests that it is a Release Deed, there is no

passing of consideration and it would recite that out of love and affection,

the 12th defendant is giving properties to first defendant. There is no

mention of her own son or her grandchildren viz., plaintiff Nos.2 and 3.

There is no whisper about why they were not provided any properties. A

cumulative reading would show that it is a Gift Settlement Deed and not a

Release Deed.



27. Further, admittedly, the 12th defendant studied in Dayasadan School at Egmore, Chennai. In Ex-A.26 - Letter dated September 10, 1958 written by 12th defendant, she has signed in English. Similarly, in Ex-A.1 to Ex-A.4 – Sale Deeds also, she has signed in English. As stated *supra*, after her fall in the year 2013, the 12th has been suffering from Left Hemiparesis which persisted till her death on August 5, 2017. To be noted, at the time of execution of Ex-A.5 = Ex-B.3 dated February 3, 2016, the 12th defendant was under the custody of the first defendant. Further, the plaintiff has pleaded that that the first defendant restricted access to the 12th defendant, preventing the plaintiffs and the 11th defendant from meeting her. Further, it is pleaded by the plaintiffs that the 12th defendant was often not in a sound mental state due to her fall and advanced age. The plaintiffs have also pleaded that the 12th defendant had assured the first plaintiff to give share in the property and the sale consideration. Furthermore, there are no independent witnesses to the execution of Ex-A.5. The document has two attesting witnesses, who are the 2nd and 3rd defendants themselves, and they also acted as the identifying witnesses. Ex-A.5 has been prepared by an advocate who filed



S.A.No.1127 of 2021

Written Statement on behalf of the 1st to 3rd and 12th defendants and appeared throughout the trial for them. The same goes for Ex-B.4 – Rectification Deed also, except for the fact that it was drafted by a different person instead of the said advocate. Further, the original of Ex-A.5 has also not been marked.

28. Generally, if a person is suffering from Left Hemiparesis (weakness or inability to move the left side of the body), their right hand is typically unaffected and retains normal strength and coordination. Therefore, they should generally be able to sign using their right hand without difficulty, provided there are no other impairments. Given the above facts and circumstances, the fact that the 12th defendant affixed her left thumb impression on Ex-A.5, despite suffering from Left Hemiparesis, instead of signing it as she had done on previous documents, raises significant doubts as to whether Ex-A.5 was voluntarily executed out of free consent. The learned Counsel for the appellants / defendants 1 to 3 would submit that the 12th defendant filed Written Statement along with the defendants 1 to 3. It has to be noted here that even in the Written Statement, the 12th defendant has affixed her left thumb impression. There



S.A.No.1127 of 2021

is no evidence to show the extent of impairment caused by Left Hemiparesis. But, generally, it is not easy for a person suffering from Left Hemiparesis to voluntarily move their left hand and affix their thumb impression. Assuming that she could not sign at that time, in view of her medical condition, 12th defendant would have been more comfortable in affixing her right thumb impression. Though not in isolation, when seen cumulatively with the other facts and circumstances, this too creates suspicion.

29. From the facts and circumstances of the case narrated above, it is discernible that the defendants 1 to 3 were in a position to dominate the will of the 12th defendant. The transaction under Ex-A.5 is unfair and unconscionable. By reason of advanced age, illness and mental infirmity, the 12th defendant was in a weak state of mind. The relationship between the 12th and the defendants 1 to 3 is a fiduciary one. While normally the burden of proof lies upon the party who asserts lack of free consent, given these facts and circumstances of the case, it is the defendants 1 to 3 on whom the initial burden lies to prove that Ex-A.5 was executed by the executor in a sound and disposing state of mind in the



S.A.No.1127 of 2021

absence of any coercion or undue influence. In this regard, it is fruitful to cite here the Judgment of this Court in ***Venkatrama Aiyar -vs- Krishnammal***, reported in ***1926 SCC OnLine Mad 446***. Relevant extract is hereunder:

*“12.... There is a difference between the case of Wills and the cases of contracts or gifts or settlement deeds as regards the burden of proof. In the case of Wills it is for the person who impeaches the Will as having been executed under undue influence to set up and prove it. **But in the case of gifts or settlements where the donee or the settle, if such an expression might be used, is shown to have been a person in real or apparent authority or in a fiduciary relationship to the donor or settlor or where the donor or settlor's mental capacity was temporarily or permanently affected by reason of age, illness, or mental or bodily distress, the onus is upon the donee or the settlee to prove that the gift or settlement was not brought about by undue influence.** There are quite a number of relationships which come within the rule laid down in Section 16, Clause (2)(a) and (b) of the Indian Contract Act, such as that of attorney and client, doctor and patient, confessor and penitent, Guru and Sishya and others, too numerous to enumerate here...”*

*(**emphasis supplied by this***

Court)



30. Hence, as stated *supra*, the burden of proof lies on the defendants 1 to 3 to prove that Ex-A.5 was executed out of free will and consent and to remove any clouds surrounding its execution. Now, this Court shall examine whether the defendants 1 to 3 have discharged their burden. Firstly, the 1st defendant did not enter into the witness box and examine himself and no acceptable reason was attributed for the same. Secondly, while there is no independent witness for Ex-A.5 as stated *supra*, the sub-registrar has not been examined in this case. Thirdly, as regards Ex-B.4, the said document writer was also not examined in this case. Fourthly, the 12th defendant, an educated person who generally affixes signature instead of thumb impressions, has affixed left thumb impression in Ex-A.5, that too while suffering from Left Hemiparesis. The defendants 1 to 3, if really were acting in good faith and in a *bona fide* manner, ought to have brought the said fact to the notice of the sub-registrar which would have prompted him to ascertain the sound and disposing state of mind of the 12th defendant. The defendants 1 to 3 have failed to do so which also gives rise to suspicion. It is also to be noted here that Ex-A.5 was executed without the presence of any independent witnesses and if really there was good faith and *bona fides*, the defendants



S.A.No.1127 of 2021

1 to 3 would have added an independent witness as an attesting witness.

Moreover, it cannot be said that the plaintiffs did not take any steps to obtain examine the 12th defendant in the Trial. The 12th defendant passed away before framing of issues. While the issues were framed by the Trial Court on November 15, 2017 and the Trial commenced on November 24, 2017, the 12th defendant passed away on August 5, 2017 itself. But the plaintiffs have preferred a Civil Revision Petition in C.R.P.(PD) No.2111 of 2017 and obtained an Order on June 30, 2017 directing the Trial Court to expedite the Trial. Moreover, the defendants 1 to 3, with whom the 12th defendant spent her last stage of life, would definitely know her health status and condition and ought to have taken steps to record her evidence in advance. The learned Counsel for the respondents 1 to 3 / plaintiffs would rely on ***Changalvarayan's Case*** for the proposition that Fraud vitiates all solemn acts. There is no proof for any Fraud committed by the defendants in this case and hence, it is not applicable to this case. The Trial Court as well as the First Appellate Court has concurrently held that the defendants 1 to 3, who are in a dominant position, have not discharged their burden and hence, Ex-A.5 and Ex-B.4 are liable to be declared as null and void. This Court is of the view that there is no need to interfere with



S.A.No.1127 of 2021

the same. Substantial Question of Law No.(i) is answered accordingly.

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31. The certificate of registration given under the Registration Act, 1908 is not itself sufficient to prove the execution of a compulsorily attestable document, especially in case of such nature where there are suspicious circumstances surrounding the execution of the document, as in the instant case. Hence, in this case, mere registration of Ex-A.5 does not amount to its proof. Substantial Question of Law No.2 is answered accordingly.

32. The defendants 1 to 3 contend that the plaintiffs are in joint possession and enjoyment of a small portion of the Suit Property measuring 100 *Sq.ft.* only and hence, the Court Fee paid under Section 37(2) OF T.N.C.F. Act is wrong. As narrated above, the 1st and 12th defendants are co-heirs and co-owners. The 12th defendant passed away on August 5, 2017 leaving behind the 2nd and 3rd plaintiffs as well as 2nd and 11th defendants as her legal heirs as per Section 15 (1) (a) of the Hindu Succession Act, 1956. Hence, the plaintiffs 2 and 3 as well as defendants 1, 2 and 11 are all co-owners. It is settled legal position that co-owners are deemed to be in joint possession and enjoyment, and that



S.A.No.1127 of 2021

possession of one co-owner is deemed to be possession of the other co-owner(s) too, unless ouster or exclusion is proved [See **Neelavathi -vs- Natrajan**, reported in **AIR 1980 SC 691**]. Hence, the Court Fee paid under Section 37(2) of T.N.C.F. Act is correct.

33. After the demise of Loganathan Chettiar, the 1st and 12th defendants are entitled to $\frac{1}{2}$ share each in the properties left by him. The Plaintiff Nos. 2 and 3 are the children of the predeceased son of the 12th defendant. The 12th defendant passed away pending the Suit leaving behind the Plaintiff Nos. 2 and 3, the 2nd defendant - Uma (daughter) and the 11th defendant – Sivaraman (son) as per Section 15 of the Hindu Succession Act, 1956. Accordingly, the plaintiffs are jointly entitled to $\frac{1}{3}$ share in the 12th defendant's $\frac{1}{2}$ share *i.e.*, $\frac{1}{6}$ share in the Suit Property. To that extent, the Plaintiff Nos. 2 and 3 are entitled to a preliminary decree.

34. Admittedly rental income is arising out of the Suit Property. The defendants 4 to 9 are the tenants therein. But since the plaintiffs failed to establish the quantum of rent, the Trial Court dismissed



S.A.No.1127 of 2021

the Suit *qua* prayer – 15 (f) viz., direction to deposit the rent amount of

Rs.75,000/- from the date of Complaint till the date of actual partition. In a Suit

for partition the plaintiff is entitled to their proportionate share in the

income arising out of the Suit Property also. The defendants 1 to 3 have

admitted that all the tenants in the Suit Property (defendants 4 to 9) except

the 5th defendant are paying rent to the first defendant without any default.

Hence, the Plaintiff Nos.2 and 3 are entitled to 1/6 share in the rental

income arising from the Suit Property. In a Suit for partition, consequential

relief is rendition of accounts under Order XX Rule 18 of CPC and not

mesne profits under Order XX Rule 12 of CPC. It is settled law that a Suit

for partition governed by Order XX Rule 18 of CPC, it is open to the Court

to direct the defendants to render accounts in the final decree proceedings

though there is no prayer for such relief in the Complaint (See ***Subba Reddiar***

vs Hazra Bibi, reported in ***1972 SCC Online Mad 33*** and ***T. Nadaraja***

Achari -vs- Balambal Ammal reported in ***AIR 1980 Mad 222***).

Accordingly, the plaintiff Nos.2 and 3 are entitled to the relief of rendition

of accounts.

35. As far as permanent injunction is concerned, there are sufficient evidence available on record to prove that defendants 1 to 3 have



S.A.No.1127 of 2021

been disturbing the Plaintiff Nos.2 and 3's possession and enjoyment of the portion of the Suit Property where they reside, which is meagre when compared to the portion Plaintiff Nos.2 and 3 are entitled to. Further, Ex-A.12 – Police Complaint, Ex-A.17 – Complaint to Adayar SRO and Ex-A.18 – Complaint to Police Commissioner, *etc.*, would establish that the defendants 1 to 3 attempted to alienate the Suit Property. Hence, the plaintiffs are entitled to the relief of permanent injunction restraining the defendants 1 to 3 from alienating the Suit Property and from disturbing the plaintiffs' peaceful possession and enjoyment of their share in the Suit Property. The Trial Court and the First Appellate Court has rightly appreciated the evidence available on record and rightly granted permanent injunction. Therefore, this Court does not find any need to interfere with the same.

CONCLUSION:

36. Resultantly, the Second Appeal stands dismissed. The Judgment and Decree of the Trial Court as well as the First Appellate Court are hereby confirmed. Keeping in mind the facts and circumstances of the case, there shall be no order as to costs. Connected Civil



S.A.No.1127 of 2021

Miscellaneous petition is closed.

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19 / 11 / 2024

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
TK

Note to Registry: Registry is directed to either call for the Original Plaint in O.S.No.3505 of 2016 on the file of the Trial Court and duly carry out the amendments made in the Plaint vide this Court's Order dated February 12, 2024, passed in CMP No.151 of 2024 in S.A.No.1127 of 2021, or send a copy of the said Order to the Trial Court so as to enable the Trial Court to carry out the amendments duly in the Original Plaint as well as in the Suit Register.



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S.A.No.1127 of 2021

R. SAKTHIVEL, J.

TK

To

- 1.The V Additional Judge
V Additional City Civil Court
Chennai.
- 2.The XIII Assistant Judge
City Civil Court
Chennai.

PRE-DELIVERY JUDGMENT MADE IN
S.A.NO.1127 OF 2021

19 / 11 / 2024