

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.03.2015

Delivered on : 26.06.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

S.A.No.916 of 2006

and

M.P.No.3 of 2006

PappammalAppellant (1st Defendant)

-Vs-

Muthuraman (died)

Muthulakshmi

w/o.Muthuraman

(Cause Title amended as per
order of this Hon'ble Court
dated 21.07.2006 made in
M.P.No.1 of 2006)

...Respondent (Plaintiff)

Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree of the Additional District Judge (Fast Track Court), Kallakurichi dated 28.02.2003 made in A.S.No.13 of 2002 confirming the judgment and decree of the II Additional District Munsif, Kallakurichi dated 29.01.1998 made in O.S.No.908 of 1990.

For Appellant : Mr.S.Sounthar
for Mr.A.Arun Babu

For Respondent : Mr.S.Mukunth
for M/s.Sarvabhauman Associates

JUDGMENT

The first defendant in the original suit is the appellant in the second appeal. The suit in O.S.No.908/1990 on the file of the II Additional District Munsif, Kallakurichi came to be filed by the respondent Muthuraman represented by his next

friend and mother Muthulakshmi while he was a minor, for a declaration of his title over the suit property, for a permanent injunction restraining Pappammal and Ammasi Reddy, the defendants therein, from interfering with his peaceful possession and enjoyment of the suit property and for cost.

2. The said prayers were made based on the plaint averments that the suit properties originally belonged to the forefathers of the respondent/plaintiff and in a registered Partition Deed dated 10.05.1983 effected between his father Muthusamy (father of the plaintiff) and his brothers Rangasamy and Arunachala Reddiar, the suit property came to be allotted to the said Muthusamy, father of the respondent/plaintiff; that by virtue of a registered Settlement Deed executed by the said Muthusamy on 05.09.1983, the respondent/plaintiff became entitled to the suit property; that the defendants, who had got no right or title over the suit property, were trying to grab the same out of enmity denying the title of the plaintiff and that thereby they forced the respondent/plaintiff to approach the court with the suit.

3. The suit was resisted by the defendants based on the written statement of Pappammal, the first defendant, which was adopted by Ammasi Reddy, the second defendant. It was contended therein that the Partition Deed dated 10.05.1983 and the Settlement Deed dated 05.09.1983 were created for the purpose of seeking claim of title to the suit property; that in a partition that was effected on 05.03.1967 2.69 acres comprised in S.No.293/2 fell to the share of Muthu Reddiar, the husband of the first defendant, that the said Muthu Reddiar deserted his wife, namely the first defendant and her children, pursuant to which, the first defendant filed a suit in O.S.No.283/1973 and obtained a decree for the maintenance of herself and her children; that in the said property measuring 2.69 acres, half share belonged to minor Periyasamy, son of the first defendant as coparcener and that the remaining half share, which belonged to Muthu Reddiar was purchased by her on 17.03.1976 in the court auction held in execution of the decree for maintenance obtained by her. It was also contended that, only in order to defeat the claim of the first defendant made in her maintenance suit, the documents relied on by the plaintiff came to be created. Based on the above said pleadings, the defendants had prayed for the dismissal of the suit.

4. Necessary issues were framed and a trial was conducted and in the trial, two witnesses were examined as PWs.1 and 2

and five documents were marked as Exs.A1 to A5 on the side of the plaintiff. Two witnesses were examined as DWs.1 and 2 and six documents were marked as Exs.B1 to B6 on the side of the defendants.

5.The learned trial judge, after considering the pleadings and evidence, decreed the suit as prayed for and granted a decree for the reliefs of declaration and permanent injunction in favour of the plaintiff by a judgment and decree dated 29.01.1998. The said decree of the trial court was challenged by Pappammal(the first defendant) in A.S.No.13/2002 on the file of the Additional District Judge (FTC), Kallakurichi. The learned lower appellate judge concurred with the findings of the trial court, dismissed the appeal with cost and confirmed the decree of the trial court by judgment and decree dated 28.02.2003. As against the said decree of the lower appellate court, the first defendant has come forward with the present second appeal on various grounds set out in the memorandum of grounds of second appeal.

6.The second appeal was admitted on 21.09.2006 formulating the following to be the Substantial questions of law involved in the second appeal:

"1. Whether the courts below are right in law granting a decree for declaration of title when the property is not identified by giving several boundaries and the claim is based on undivided share?

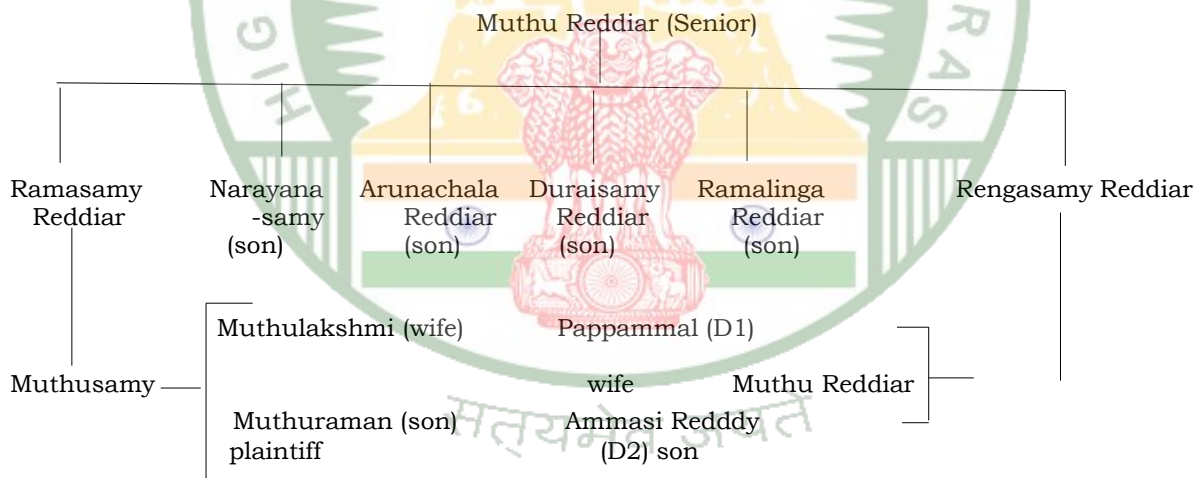
2. Whether the courts below have properly appreciated the material evidence in the above case marked as Ex.B3, which is Partition Deed of the year 1967, in which the entire extent in S.No.293/2 was allotted to Muthu Reddiar who is the first defendant's husband?."

7.The arguments advanced by Mr.S.Sounthar, learned counsel appearing for Mr.A.Arun Babu, counsel on record for the appellant and by Mr.S.Mukunth, learned counsel appearing for M/s.Sarvabhauman Associates, counsel on record for the respondent were heard. The judgments of the courts below and the other materials available on record were also perused.

8.The original suit O.S.No.908 of 1990 was filed by Muthuraman represented by his mother Muthulakshmi as he was a

minor at that point of time. After the disposal of the suit he attained majority and in the appeal before the lower appellate court filed by Pappammal, he was shown as a major and the sole respondent in the appeal. The second appeal came to be filed showing Muthuraman (dead) and showing his mother Muthulakshmi as the respondent in her capacity as legal representative of Muthuraman. The said cause title came to be accepted by this court by order dated 21.07.2006 made in M.P.No.1 of 2006. In view of the fact that all the parties to the suit are not parties in the second appeal and even the original plaintiff is no more and his LR has been shown as respondent in the second appeal, for the sake of convenience, the parties are referred to in accordance with their rank in the original suit and in appropriate places their ranks in the second appeal shall also be given.

9. Before dealing with the rival contentions, it shall be useful to state the relationship of parties. Both the plaintiff and the first defendant claim from the common ancestor, one Muthu Reddiar. The relationship will be better illustrated by the following genealogical tree.



From the same, it shall be quite obvious that both the plaintiff and the first defendant are close relatives belonging to two branches of Muthu Reddiar (senior).

10. According to the case of the appellant/first defendant when a partition was effected in the year 1967 itself, the

entire extent of 2.69 acres comprised in S.No.293/2 was allotted to the share of Rangasamy Reddiar, the father-in-law of the first defendant in the family partition. Thereafter in a partition that took place between Rangasamy Reddiar with his son Muthu Reddiar under a registered Partition Deed of the year 1967 bearing Document No.673/67, the entire extent of 2.69 acres comprised in S.No.293/2 came to be allotted to Muthu Reddiar. Since the said property was allotted as a share to Muthu Reddiar in the partition with his father, it became the coparcenary property of Muthu Reddiar and his son Ammasi Reddiar and each one of them became entitle to half share equivalent to 1 Acre 34½ cents. The appellant/first defendant filed a suit in O.S.No.283/1973 for maintenance for herself and her daughters, obtained a decree creating a charge over the half share of her husband in the above said land and in the execution of the decree, she purchased her husband's share.

11.The registered Partition Deed dated 05.03.1967, by which a partition was effected between Rangasamy Reddiar and his son Muthu Reddiar (husband of the appellant/first defendant) bearing Document No.673/1967 has been produced as Ex.B3. Properties described in 'A' schedule in the said partition deed came to be allotted to Rangasamy Reddiar and 'B' schedule properties came to be allotted to Muthu Reddiar (husband of the appellant/first defendant). The properties allotted to Muthu Reddiar were: 1) dry land in S.No.293/2 measuring 2.69 Acres; 2) dry land in S.No.306/2 measuring 1.90 Acres; 3) right in well in S.No.293/3; and 4) thatched house in S.No.383/1A bearing Door No.2/108. It is quite obvious from Ex.B3-registered partition deed that as early as on 05.03.1967 there was a partition of the family properties of Rangasamy Reddiar and his son Muthu Reddiar (husband of the appellant/first defendant) and in the said partition, the entire extent, namely 2.69 acres comprised in S.No.293/2 came to be allotted to Muthu Reddiar. It is also not in dispute that the said Muthu Reddiar is the husband of the appellant/first defendant and they have a son by name Periyasamy. Hence as coparceners Muthu Reddiar and his son Periyasamy became entitled to equal shares in the 2.69 Acres comprised in S.No.293/2. The same was the reason why while filing a suit in O.S.No.283/1973 for maintenance for herself and her daughter, the appellant/first defendant chose to seek a charge over the share of her husband alone. From Ex.B4, certified copy of the suit register extract relating to O.S.No.283/1973, it is seen Muthu Reddiar was directed to pay maintenance to Pappammal and her minor daughters Muthulakshmi and Dhanalakshmi respectively at the rate of Rs.100/- per month till her life time for Pappammal and Rs.25/- per month and Rs.25/- per month

respectively to Muthulakshmi and Dhanalakshmi till they would get married, as maintenance. A charge over the share of Muthu Reddiar had also been created. It is also obvious from Ex.B4 that the charged property was brought for sale in execution of the decree on 29.09.1975 and the sale was confirmed on 13.10.1975. Since the property sold in execution of the maintenance decree was an undivided share, symbolical delivery was effected on 17.03.1976 and the same was recorded by the Executing court. A certified copy of the delivery receipt dated 29.03.1976 has been produced as Ex.B6. From Ex.B6, it is obvious that out of 2.69 Acres comprised in S.No.293/2, undivided extent of 1 Acre 34½ cents was delivered symbolically. Ex.B2 series are the Kist Receipts in the name of Rangasamy Reddiar upto 1965. The same will probablise the case of the appellant/first defendant that the family properties of Rangasamy Reddiar and his brothers were divided prior to 1967. Under Ex.B3, Rangasamy Reddiar and his son Muthu Reddiar effected a partition in which the entire extent of 2.69 Acres comprised in S.No.293/2 came to be allotted to Muthu Reddiar. From Exs.B5 and B6 it will be obvious that the undivided half share of Muthu Reddiar was brought for sale in the court auction and the same was purchased by the appellant/first defendant.

12.While so, the plaintiff chose to rely on Ex.A1-partition deed dated 10.05.1983 to substantiate his contention that 36 cents out of Acres 2.69 comprised in S.No.293/2 was allotted to Muthusamy, the father of the plaintiff. It is obvious that Rangasamy Reddiar, Ramasamy Reddiar, Narayanasamy Reddiar, Arunachala Reddiar, Duraisamy Reddiar and Ramalinga Reddiar, all sons of Muthu Reddiar (senior), alone were the parties to the said partition. Properties described in 'A' schedule in the said document were sought to be allotted to Rangasamy Reddiar. One of the properties allotted to him is stated to be 36 cents out of 2.69 Acres comprised in S.No.293/2. Similarly in the 'B' schedule allotted to Muthusamy Reddiar, 36 cents out of 2.69 acres comprised in S.No.293/2 is stated to be one of the properties. No share was allotted to Arunachala Reddiar in the said survey number. When already a partition had been effected among the sons of Muth Reddiar (senior) and Rangasamy Reddiar had been allotted the entire extent of S.No.293/2 and whereas, the entire extent of 2.69 acres comprised in S.No.293/2 came to be allotted to the share of Muthu Reddiar (husband of the appellant/first defendant) under the registered partition dated 05.03.1967 marked as Ex.B3 there was nothing remaining in the said survey number to be partitioned among the sons of Ramasamy Reddiar. In fact there is no document to show that either Ramasamy Reddair was

allotted 39 cents in S.No.293/2 or he paid kist for the same.

13. On the other hand, Ex.A2-Patta Pass Book, Ex.A3-mortgage deed created in favour of the Kallakurichi Land Development Bank and Ex.A4-Settlement Deed executed by Muthusamy came to be produced. It shall be obvious from a comparison of Exs.A1 and A4 that Ex.A4-Settlement Deed came to be executed within four months from the date of execution of Ex.A1-partition deed. There is nothing to show when Ex.A2-Patta Passbook was issued. The date under the signature of the person who signed for the Tahsildar is not made clear. It is also not signed by the Tahsildar and who signed it on behalf of Tahsildar is not clear. Both the courts below relying on Ex.A3 mortgage deed dated 18.07.1968 seem to have arrived at a conclusion that partition as claimed by the appellant/first defendant could not have been effected under Ex.B3-partition deed dated 05.03.1967. However, it is pertinent to note that in the partition that allegedly took place under Ex.A1 on 10.05.1983, the entire extent of 2.69 acres was not shown as the property belonging to Ramasamy Reddiar and his sons. In fact under the said document only an extent of 36 cents and another extent of three cents comprised in the said survey number came to be allotted as share. There is nothing in the said document to show what happened to the remaining extent, namely 2.30 Acres. It is also pertinent to note that in the share allotted to Muthusamy Reddiar, namely 36 cents in S.No.293/2, the land of Muthu Reddiar (husband of the appellant/first defendant) is shown as the Northern boundary. The same will make it clear that among the sons of Muthu Reddiar (senior), an earlier partition should have taken place. That is the reason why except 36 + 3 cents, the balance extent in S.No.293/2 has not been accounted for in Ex.A1-partition deed. There is no evidence on the side of the plaintiff as to when did such a partition take place and how the properties were divided between the two branches of Muthu Reddiar (senior).

14. PW1, the mother of the plaintiff pleaded absence of knowledge regarding the prior partition in the family of her father-in-law, namely Ramasamy Reddiar. It is also her admission that Rangasamy Reddiar, the younger brother of her father-in-law, had a son by name Muthu Reddiar and that the said Muthu Reddiar is the husband of the appellant/first defendant. One Venkat Reddy was examined as PW2. He was examined to show that the suit property was enjoyed by the plaintiff through a lessee. But his evidence is not helpful to prove the case of the plaintiff. He was examined on 20.01.1998.

His evidence is to the effect that about seven or eight years prior to his examination plaintiff and one Ammasi Reddiar entered into a lease arrangement and he signed it as a witness. But the said lease deed has not been produced, perhaps due to the inadmissibility of the same for want of Registration. PW2, who was examined to prove that the suit property is in possession and enjoyment of the plaintiff, has not supported the case of the plaintiff. During cross examination he made a clear admission that he knew that the appellant/first defendant filed a suit for maintenance against her husband and the same was decreed and that in execution of the said decree, the appellant/first defendant purchased the property of her husband and took possession through court. Besides the fact that PW2 has made such an admission he was not in a position to assert that the property allegedly leased out by the plaintiff was the suit property. He was also not able to state the quantum of lease and at the same time, he furnished the extent of the property wrongly as roughly about 2.00 Acres. The plaintiff claims only 36 cents. If at all he had leased out the property seven to eight years prior to the examination of PW2, it would be only 36 cents and not more than that, because Ex.A1 came into existence much earlier.

15. On the other hand, DW1 (first defendant) made a clear assertion in her evidence that the suit property had been allotted to his father-in-law's share in a partition between her father-in-law and his brothers. She has also produced the Kist Receipts (Ex.B2 series). It is her further evidence that subsequently in a partition between her father-in-law and her husband, the property comprised in S.No.293/2 came to the share of her husband. A certified copy of the said registered partition deed dated 05.03.1967 has been produced as Ex.B3. It is obvious from Ex.B3 that the entire extent of 2.69 Acres comprised in S.No.293/2 came to be allotted to the share of Muthu Reddiar, the husband of the appellant/first defendant under Ex.B3. In addition, when PW1 was not in a position to furnish the names of the brothers of Ramasamy Reddiar and Rangasamy Reddiar, DW1 has clearly furnished the particulars, which have not been proved to be incorrect. It is also her evidence that among the sons of Muthu Reddiar (senior) an oral partition took place. But being a person inducted into the family by marriage, she fairly conceded that she did not have personal knowledge about the oral partition. However, she made a clear assertion that she was personally aware of the partition that took place between her father-in-law and her husband under the original of Ex.B3. She has also proved by clear oral and documentary evidence that the share of her husband in 2.69 Acres allotted to him under the original of

Ex.B3, of which son Periyasamy was also a coparcener, was purchased by her in execution of the maintenance decree obtained by her against her husband for the payment of maintenance of the appellant (first defendant) and her daughters.

16. One Marimuthu Mooppar, who deposed as DW2, supported the case of the appellant/first defendant that a partition took place between Muthu Reddiar and his father; that the appellant/first defendant purchased the share of her husband Muthu Reddiar in execution of the maintenance decree obtained by her and that thereafter the suit property was in possession and enjoyment of the appellant/first defendant. A proper scrutiny and consideration of oral and documentary evidence will make it clear that the appellant/first defendant, by adducing reliable evidence, proved that a partition had taken place long back; that in the said partition the entire extent of 2.69 Acres comprised in S.No.293/2 had been allotted to Rangasamy Reddiar, the father-in-law of the appellant/first defendant and that a subsequent partition took place between Rangasamy Reddiar (father-in-law of the appellant/first defendant) and his son Muthu Reddiar (husband of appellant/first defendant) under the original of Ex.B3 dated 05.03.1967 in which the entire extent of 2.69 Acres in S.No.293/2 was allotted to the share of Muthu Reddiar, the husband of the appellant/first defendant. It is also obvious that the said property allotted to Muthu Reddiar in the said partition being an ancestral property, his son or each one of his sons would have got a share equal to that of Muthu Reddiar as coparcener/coparceners in the said property. The appellant/first defendant has established that she had a son by name Periyasamy and the same has not been disproved by the others. Accordingly, out of 2.69 Acres comprised in S.No.293/2, Muthu Reddiar was entitled to half share and his son Periyasamy was entitled to half share. In 1973 itself, the appellant/first defendant filed a suit for maintenance against her husband, got a charge over his half share in the property comprised in S.No.293/2 and in execution of the decree, she purchased the same as evidenced by Ex.B4-Suit Register extract. The mere fact that a mortgage deed came to be executed on 18.07.1968 under Ex.A3 by Nallammal, the paternal grandmother of the plaintiff to the Cooperative Land Development Bank for obtaining a loan showing 2.69 Acres comprised in S.No.293/2 as one of the properties mortgaged, will not be enough to show that the partition which took place earlier among the sons of Muthu Reddiar (senior) and followed by the partition that took place in 1967 under the original of Ex.B3 could not be true or that the original of Ex.B3 should have been created for defeating

the claims of others.

17.It is pertinent to note that neither the plaintiff nor his father nor any one belonging to the branch of Ramasamy Reddiar, son of Muth Reddiar (senior) did raise any objection for the charge created in respect of the share of Muthu Reddiar in S.No.293/2 and none of them challenged the sale also. Nearly after a lapse of seven years, Ex.A1 was brought into existence. None of the members of the branch of Rangasamy Reddiar was made a party to the original of Ex.A3-mortgage deed. If at all there was no partition, the members of the other branches of Muth Reddiar (senior) would have been made co-executants of the mortgage deed or else at least the mortgage deed would have recited that the said property was the undivided property and the mortgagors did have only a particular extent of undivided share in it. But it has not been stated so in Ex.A3. The recitals have been couched in such a way that the entire extent of 2.69 Acres comprised in S.No.293/2 belonged to the mortgagors under Ex.A3. If it was so, how Muthu Reddiar, the husband of the appellant/first defendant would have become entitled to 2.30 Acres, which is shown as the Northern boundary of the share allotted to the plaintiff's father under Ex.A1-partition deed dated 10.05.1983. The only answer will be that Ex.A1 came to be executed solely for the purpose of defeating the rights of the appellant/first defendant, who had purchased the half share of her husband in 2.69 Acres comprised in S.No.293/2 in the court auction sale. The mere fact that the sale was made in respect of the undivided half share and symbolical possession of the undivided half share was given has made the plaintiff to make an attempt to trouble the water and fish out of it.

18.The fact remains that the entire 2.69 Acres comprised in S.No.293/2 having allotted to the share of the husband of the appellant/first defendant under the original of Ex.B3-partition deed dated 05.03.1967, he and his son Periyasamy became entitled to equal shares as coparceners and the undivided half share of Muthu Reddiar measuring 1 Acre 34-1/2 cents came to be purchased by the appellant through court auction in execution of the maintenance decree. The other half being the share of her own son, there was no objection for her induction into possession and thus the entire extent was brought in the possession of the appellant/first defendant for herself and on behalf of her son Periyasamy. Under the said circumstances alone, the appellant's husband side people chose to create Ex.A1-Partition Deed and Ex.A4-Settlement Deed with an intention to defeat the rights of the appellant and her son

Periyasamy. Both the courts below, without properly appreciating the above said aspects, allowed them to be carried away by the fact that there was a registered mortgage deed under the original of Ex.A3 dated 18.07.1968 to arrive at a perverse finding to the effect that the partition alleged and the purchase made in the court sale did not include the suit property, namely 36 cents out of 2.69 acres. Both the courts below also have been carried away by the fact that the sale certificate as evidenced by the possession receipt shows that the sale was only in respect of an undivided half share of 2.69 Acres comprised in S.No.293/2, to arrive at a conclusion that there could not have been any partition among the sons of Muthu Reddiar (senior). Such an erroneous approach has resulted in the above said perverse finding. The courts below failed to attach the due evidenciary value to Ex.B3-partition deed, the contents of which have been corroborated by the evidence of DW1 and also by Exs.B5 and B6. The second substantial question of law is answered accordingly in favour of the appellant/first defendant and against the respondent/plaintiff.

19.The first substantial question of law has been formulated on the assumption that the suit property regarding which declaration and injunction have been sought for has not been described with boundaries. Of course it is described to be 36 cents of land out of 2.69 Acres of land comprised in S.No.293/2 in Eduthavoinatham village, Kallakurichi Taluk. No separate sub division has been given for the said 36 cents of land. The same has led to an assumption on the part of the appellant to contend that the suit property has not been described with specific boundaries. But the boundaries of the said 36 cents of land have been provided in the description of property found in the plaint.

20.The suit property is described as 0.36 Acre out of 2.69 Acres of dry land comprised in R.S.No.293/2 in Eduthavoinatham village, Kallakurichi Taluk, bounded on the North by lands comprised in S.No.306/2, on the South by Muthu Reddiar's land, West by S.No.293/3 and East by wari. The above said boundaries are not the boundaries for the 36 cents claimed by the plaintiff. On the other hand, it seems the said boundaries have been given for the entire extent of 2.69 acres comprised in R.S.No.293/2. For better understanding, the description of property provided in the plaint schedule is extracted hereunder:

SCHEDULE OF PROPERTY

In Kallakurichi Taluk, in Eduthavoinatham
Village:- Punja R.S.293/2 0.36 Cents out of 2.69
Acres. Kist Re.0-40 P.

Boundaries:- North of the lands in Survey No.306/2;
South of Muthu Reddiar's lands;
West of the lands in Survey No.293/3; and
East of Wari.

21. Therefore, this court comes to the conclusion that the question framed as the first substantial question of law does not arise for consideration in this second appeal. It was formulated on a factual misconception. Hence the first substantial question of law is answered accordingly.

22. In view of the answer given to the second substantial question of law, the second appeal shall succeed with the result that the decree in the suit O.S.No.908 of 1990 as confirmed by the lower appellate court by its decree dated 28.02.2003 made in A.S.No.13 of 2002 is bound to be set aside and the original suit is bound to be dismissed with cost.

23. In the result, the second appeal is allowed. The decree of the lower appellate court dated 28.02.2003 and the decree of the trial court dated 29.01.1998 are set aside. O.S.No.908 of 1990 on the file of the II Additional District Munsif, Kallakurichi shall stand dismissed with cost. The appellant shall be entitled to cost throughout.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

asr

To

1. The Additional District Judge
(Fast Track Court),
Kallakurichi

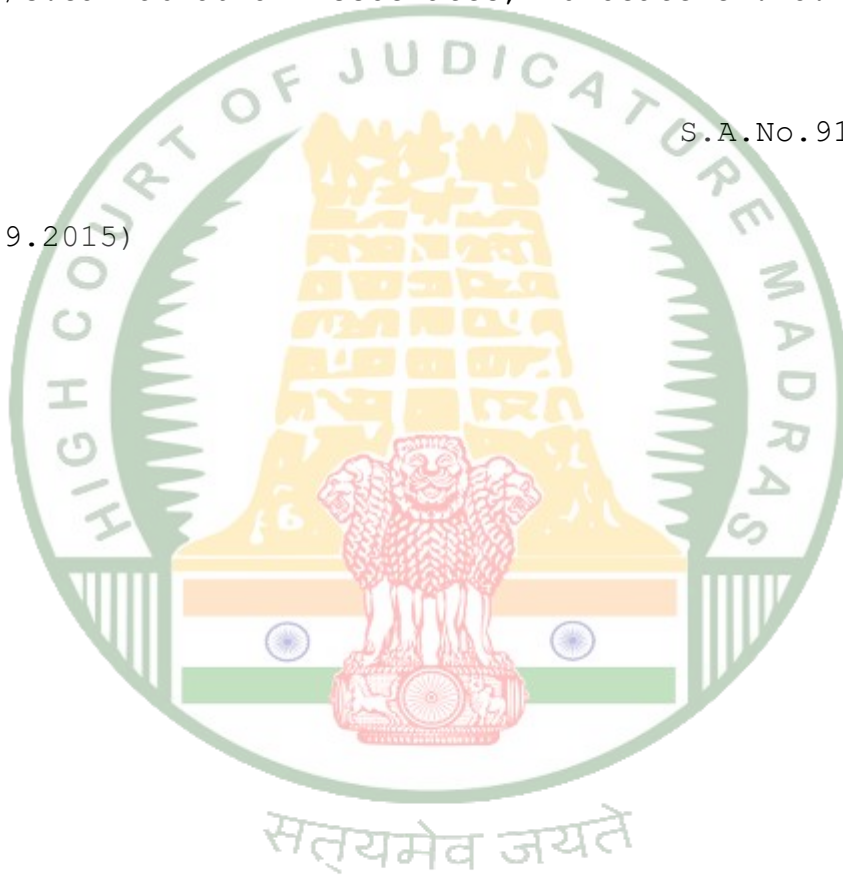
2.The II Additional District Munsif,
Kallakurichi.

3.The Section Officer,
V.R.Section,
High Court,
Madras.

1 CC to M/s.Sarvabhauman Associates, Advocate SR.No. 31960

S.A.No.916 of 2006

CNR (CO)
PSI (22.09.2015)



WEB COPY