

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.11.2016

PRONOUNCED ON : 22.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

A.S.No.64 of 2007

Shamshed Begum

... Plaintiff / Appellant

-vs-

1.Sadiq Basha

2.Mansur Ahmed

3.Dilshad Begum

4.Sabirunnissa Bi

5.Boopathi

6.Pushparaj

... Defendants /

Respondents

PRAYER: Appeal suit filed under Section 96 of the Civil Procedure Code, 1908, as against the judgment and decree O.S.No.9 of 2005, on the file of Additional District Judge, Dharmapuri, dated 10.03.2006.

For Appellant : Mr.V.Raghavachari

For Respondents : Mr.I.Abrar Md.Abdullah for R1 to R4

J U D G M E N T

The unsuccessful plaintiff, in O.S.No.9 of 2005, on the file of the learned Additional District Judge, Dharmapuri, is the appellant herein.

2. For the sake of convenience, the parties are referred to as per the ranking before the Trial Court.

3. The plaintiff filed a suit, in O.S.No.9 of 2005, before the learned Additional District Judge, Dharmapuri, for partition and separate possession and also for permanent injunction against the defendants 1 to 4 restraining them from in any way alienating the suit properties.

4. After contest, the suit was dismissed by the Trial Court, vide Judgment and Decree, dated 10.03.2006 and hence this appeal.

5. The brief averments of the plaint are as follows:

The lands, vacant site, houses more fully described in the Schedule of Property was acquired by Hashim Saheb, son of Gaiyub of Pennagaram, who possessed and enjoyed the same till

he died on 12.06.2004. The suit properties, according to the Muslim Law, are in specific shares. The plaintiff and the third defendant are daughters, the defendants 1 and 2 are sons and the fourth defendant is the widow of Hashim Saheb. The plaintiff and the defendants 1 to 4 are in joint possession and enjoyment of the suit property as co-owners. The plaintiff is entitled to $7/48^{\text{th}}$ share and the defendants 1 and 2 are entitled to $14/28^{\text{th}}$ share each and the third defendant is entitled to $7/48^{\text{th}}$ share while the fourth defendant is entitled to $6/28^{\text{th}}$ share in the suit properties. The plaintiff's father had never created any gift settlement in respect of the suit properties in favour of the defendants 2 and 4 at any time. The alleged gift was not accepted and also it is invalid. Hence, the plaintiff filed a suit for partition to divide the suit properties into 48 equal shares, to allot 7 such shares and to handover the same to her and for permanent injunction restraining the defendants 1 to 4 from alienating the suit properties to third parties and for other reliefs.

6. The brief averments of the written statement filed by the first

defendant and adopted by the defendants 2 and 4 are as follows:

The 2nd item of A-Schedule property bearing Nos.1 and 2 was originally belonged to one Abbas and he executed a Gift Deed, on 06.01.1990, in favour of the first defendant. Moreover, the land in Survey No.1153/1 was never belonged to Hashim Bai and he sold the property in Survey No.1140 to one Pushparaj 30 years ago. The second defendant sold away the 2nd item in B-Schedule property in Survey No.121/1 to the fifth defendant. Hashim Bai executed the gift settlement in respect of most of the suit properties to the defendants 1 and 2 and the gift deed also taken by them. The plaintiff and the defendants 3 and 4 are not entitled to claim partition.

7. The defendants 3, 5 and 6 were called absent and set *ex parte* before the Trial Court.

8. Based on the above pleadings, the Trial Court formulated as many as seven issues for consideration. They are:

- i. Whether the plaintiff is entitled to 7/48 share in the suit properties?

- ii. Whether the Gift Deed executed by Hashim Saheb in favour of the defendants 1 and 2, as per the Gift Deeds, dated 15.07.1996 and 09.07.1996, is true, valid and binding the parties?
- iii. Whether the first defendant is the owner of the property as per the Gift Deed, dated 06.01.1990, executed by Abbas with regard to 2nd item of the property.
- iv. Whether the suit is bad for non-joinder of necessary party?
- v. Whether the defendants are not entitled to claim partition in B and C Items of properties as alleged in Paragraph Nos.5 and 6 of the written statement?
- vi. To what relief?
- vii. Whether the Court fee paid was correct?

9. The plaintiff, in order to substantiate her case, let in evidence through her husband as P.W.1 and also examined P.W.2 and P.W.3 and marked Exs.A1 to A4. On the side of the defendants', the first defendant

examined himself as D.W.1 and examined the husband of the third defendant as D.W.2 and the attestors of the documents were examined as D.W.3 to D.W.5 and marked Exs.B1 to B14.

10. The plaintiff proceeded on the basis that the suit properties belong to Hashim Saheb and he died intestate on 12.06.2004 and she and the third defendant are daughters, defendants 1 and 2 are sons and the fourth defendant is the widow of the said Hashim Saheb and therefore, she claimed partition to the extent of 7/48th share in the suit properties and further stated that there was no settlement or gift in favour of the defendants 1 and 2 as alleged and prayed for the relief of partition.

11. Per contra, resisting the claim of partition made by the plaintiff, the first defendant filed a written statement along with defendants 2 and 4, alleging that the plaintiff is not entitled to the relief of partition and the suit properties do not belong to the said Hashim Saheb and in respect of other properties, there is a Gift Deed in favour of the defendants 1 and 2 as detailed in the written statement and hence, prayed for dismissal of the suit.

12. As stated supra, both the parties were let in both oral and documentary evidence and after hearing both sides, the Trial Court came to the conclusion that Item No.2 of A-Schedule property did not belong to Hashim Saheb, but it belonged to Abbas / father of the fourth defendant and hence it was not available for partition and the Item No.1 of A-Schedule property has already been sold by the said Hashim Saheb during his lifetime and the other properties were settled in favour of the defendants 1 and 2 and the Hiba (Gift) given by the father to his sons / defendants 1 and 2 and therefore, the Trial Court negated the relief of partition as claimed by the plaintiff and dismissed the suit, by Judgment and Decree, dated 10.03.2006.

13. Aggrieved by the Judgment and Decree, dated 10.03.2006, made in O.S.No.9 of 2005, by the learned Additional District Judge, Dharmapuri, the unsuccessful plaintiff has preferred this appeal.

14. In the memorandum of grounds of appeal, the appellant has raised the following grounds:-

- i. The learned Trial Judge ought to have seen that the defendants 1 and 2 were minors at the time of execution

of the alleged Gift Deed and Late.Hashim Saheb had not appointed any legal guardian as prescribed in Section 360 of the Mahomedan Law.

- ii. The learned Trial Judge ought to have seen that Section 359 of the Mahomedan Law clearly forbears the mother from acting as a legal guardian for minors' property and hence to conclude contrary to the provision is unjust.
- iii. The learned Trial Judge ought to have seen the decisions reported in **1995-3-SCC 694** and **1933 Ragoon 155.**

15. The learned counsel appearing for the appellant would contend that at the time of execution of the Gift Deeds, the second defendant was minor and his mother had represented on his behalf and hence the same was not valid under Mahomedan Law, that are effectuated by appointing the mother of the minor as guardian. Under Mahomedan Law, women could not enjoy the right of guardianship and they have no rights to act as guardian.

16. The learned counsel appearing for the respondents 1 to 4 made

submissions in support of the Judgment of the Trial Court.

17. Heard both sides. Perused the records.

18. The following points arise for consideration in this appeal.

- i. Whether the alleged Gift Deeds, viz. Exs.B1 to B3, executed in favour of the second defendant by his father are true and valid under the Mahomedan Law?
- ii. Whether Item Nos.1 and 2 of A-Schedule property are available for partition?
- iii. Whether B and C-Schedule properties are available for partition?
- iv. Whether the Judgment and Decree of the Trial Court is sustainable in law?
- v. To what other relief?

19. The undisputed facts are as follows:

The plaintiff and the third defendant are daughters, defendants 1 and 2 are sons and the fourth defendant is the

widow of the said Hashim Saheb. Except Item No.2 of A-Schedule property, all other properties belong to the said Hashim Saheb, having purchased the same from and out of his personal earning as a Teacher. He died on 12.06.2004 and hence, one of his daughter, namely, Shamshad Begam / plaintiff filed the suit for partition claiming 7/84th share in the Schedule-A, B and C mentioned property. Though the plaint proceeds on the basis that including Item No.2 of A-Schedule mentioned property belongs to the said Hashim Saheb, during cross-examination of P.W.1 Abdul Kuddus / husband of the plaintiff has categorically admitted that a piece of item was originally belonged to Abbas / father of the fourth defendant and under Ex.B6, Settlement Deed, dated 06.01.1990, the same was settled in favour of the first defendant.

20. The learned counsel appearing for the respondents 1 to 4 would contend that other than Item No.2 in A-Schedule property, all other properties are self-acquired properties of the said Hashim Saheb and by various Settlement Deeds viz., Exs.B1 to B3, a part of Schedule mentioned properties were settled by father in favour of the second defendant and the remaining

part of the property were settled by the father in favour of the first defendant Sadique Basha under Exs.B6 to B9. Thereafter, Patta was transferred in their respective names under Ex.B10. Ex.B11 is the Patta Extract and Ex.B12 is the Kist receipts. Ex.B13 is the ground rent paid by the defendants 1 and 2 and therefore, no property is available for partition and the findings of the Trial Court is proper.

21. Per contra, the learned counsel appearing for the appellant would contend that in respect of the settlement in favour of the first defendant is concerned, it was made while he was major and therefore he is not challenging the same. He would further submit that Exs.B1 to B3 are Deeds of Hiba executed in favour of the second defendant by his father while he was minor, wherein his mother was appointed as a Guardian and therefore, those Deeds of Hiba are not valid in law and those properties are available for partition and hence, the plaintiff is entitled for share as claimed in the plaint in respect of the properties covered under these deeds.

22. This Court has given its anxious consideration to the contentions raised by the learned rival counsels.

23. The plaintiff in order to substantiate her claim let in evidence through her husband Abdul Kuthus as P.W.1, while the first defendant was examined himself as D.W.1 and also examined Nasir / husband of the third defendant as D.W.2, besides they also examined Abdul Rahman, Abdul Ajeesh and Rashith Sha as D.W.3, D.W.4 and D.W.5 respectively. They are attestors of the Settlement Deeds (Deeds of Hiba). On a combined reading of both oral and documentary evidence with that of the admission in the cross-examination of P.W.1, the Trial Court has come to the conclusion that the Deeds of Hiba executed in favour of the first defendant under Exs.B6 to B9 are true and valid and proper execution has been made and also held that the possession has been handed over to the donee / first defendant and based upon the admission made by the P.W.1, in his cross-examination, coupled with the oral evidence of independent witnesses, namely, D.Ws.3 to 5 / attestors of the Deeds of Hiba, the Trial Court has rightly come to the conclusion that the Deeds of Hiba executed by Hashim Saheb are true and valid, it do not call for any interference by this Court and the findings of the Trial Court are hereby confirmed.

24. Now, the scope of the appeal is narrowed down to the properties covered under Exs.B1 to B3, namely, Deeds of Hiba executed by father in

favour of the second defendant, who was minor at the time of its execution.

25. As stated supra, in the above said Deeds of Hiba, mother of the second defendant has been nominated and represented as guardian of the minor / second defendant. Regarding execution and registration of the documents covered above, the defendants have examined the attestors / D.W.3 to D.W.5. They have categorically deposed about the due execution and registration of the Deeds of Hiba in favour of the defendants 1 and 2. On perusal of their evidence nothing is elicited in the cross-examination to disprove their evidence. Furthermore, it was duly accepted by the mother of the minor son and thereafter, separate Patta has been issued in favour of the defendants 1 and 2 as could be seen from Exs.B10 and B11 and they are also paying necessary ground rent and under Kist receipts as could be seen from Exs.B12 and B13. Based upon the oral evidence of D.Ws.3 to 5 and coupled with the documentary evidence, namely, Exs.B1 to B3, the Trial Court has come to the conclusion that the defendants have successfully demonstrated the proper execution and due registration of the Deeds of Hiba and possession has also been handed over to the donee and acted upon.

26. The learned counsel appearing for the appellant drawn the attention

of this Court to the decisions reported in **1995-3-SCC 694** and **1933 Ragoon 155**, wherein the Hon'ble Supreme Court has held that mother cannot be appointed as guardian of minor when father is alive. These cases fall under Section 156 of the Principles of Mahomedan Law, wherein the donor is other than the father by the legal guardian.

27. The learned counsel appearing for the appellant has vehemently contended that mother of the minor cannot be appointed as a guardian to accept the gift on his behalf during the lifetime of the minor's father and in support of his contentions, the learned counsel has placed reliance upon the following decisions:

- i. ***Mahboob Sahab v. Syed Ismail***, reported in **(1995) 3 SCC 693**; and
- ii. ***Gulamhussain Kutubuddin Maner v. Abdulrashed Abdulrajak Maner***, reported in **(2000) 8 SCC 507**.

28. The learned counsel appearing for the respondents 1 to 4 would contend that under the given set of facts, the gift by the father to his minor son accepted on his behalf by the mother is valid and made submissions in support of the Judgment of the Trial Court.

29. Thus, the scope of this appeal is now narrowed down to the validity of the Gift Deeds marked as Exs.B1 to B3 by the father to his minor son by appointing his mother as a guardian is valid or not? In short, the question that has to be decided is stated as follows:

“Is a gift by father to his minor son and accepted on his behalf by his mother valid or not?”

30. A gift (Hiba) is the conferring of a right of property in something specific without an exchange (ewaz). The word Hiba literally means the donation of a thing from which the donee may derive a benefit. The transfer must be immediate and complete (tamlik-ul-'ain) for the most essential ingredient of Hiba is the declaration "I have given". Since Muhammadan Law views the law of gifts as a part of the law of contract there must be a tender (ijab) and an acceptance (qabul) and delivery of possession (qabza). There is, however, no consideration and this fact coupled with the necessity to transfer possession immediately distinguishes gifts from sales.

31. Mahammadan Law makes a distinction between guardian of the person, guardian of the property and guardian for the purpose of marriage

(Wilayat-ul-Nikah) in the case of minor females. Guardians of the property are father and grandfather but they include also executors (Wasi) of these two and even executors of the executors.

32. The rules on the subject may first be recapitulated. It is only actual or constructive possession that completes the gift and registration does not cure the defect nor is a bare declaration in the deed that possession was given to a minor of any avail without the intervention of the guardian of the property unless the minor has reached the years of discretion. If the property is with the donor he must depart from it and the donee must enter upon possession. The strict view was that the donor must not leave behind even a straw belonging to him to show his ownership and possession. Exceptions to these strict rules which are well recognized are gifts by the wife to the husband and by the father to his minor child.

33. Section 149 of the *Principles of Mahomedan Law by Sir Dinshaw Fardunji Mulla (20th Edition)* provide three essentials of a gift, which is extracted hereunder:

“149. The three essentials of a gift *It is essential to the*

validity of a gift that there should be (1) a declaration of gift by the donor, (2) an acceptance of the gift, express or implied, by or on behalf of the donee, and (3) delivery of possession of the subject of the gift by the donor to the donee as mentioned in Section 150. If these conditions are complied with, the gift is complete.”

34. Section 155 of the **Principles of Mahomedan Law** reads as follows:

“155. Gift to a minor by father or other guardian No transfer of possession is required in the case of a gift by a father to his minor child or by a guardian to his ward. All that is necessary is to establish a bonafide intention to give.”

35. Section 156 of the **Principles of Mahomedan Law** reads as follows:

“156. Gift to a minor by a person other than his father or guardian A gift to a minor or to a lunatic by a person other than his father or guardian may be completed by delivery of possession to the father or guardian. A gift will also be complete when a minor, who has attained discretion, himself takes possession.”

36. On a close comparison of Sections 155 and 156 of the Principles of Mahomedan Law, as extracted above, it is clear that both these two Sections

are distinguished and distinguishable subject is “who is donor”. In other words, when a gift is made by a father or other guardian, as stated in the Principles of Mahomedan Law, Section 155 will come into play and when the donor is other than the father or guardian, Section 156 will come into play.

37. At this juncture, it would be beneficial to have the assistance of Sections 348 and 359 of the Principles of Mahomedan Law, which are extracted hereunder:

“348. Age of majority *In this Chapter, “minor” means a person who has not completed the age of eighteen years.”*

“359. Legal guardians of property *The following persons are entitled in the order mentioned below to be guardians of the property of a minor:-*

- (1) the father;*
- (2) the executor appointed by the father's will;*
- (3) the father's father;*
- (4) the executor appointed by the will of the father's father.”*

38. These four guardians mentioned in Section 359 are legal guardians. The only relations who are legal guardians of the property of a minor are (1) the father, and (2) the father's father. No other relation is entitled to the guardianship of the property of a minor as of right, not even the mother,

brother or uncle. But, the father or the paternal grandfather of the minor may appoint the mother, brother, uncle, or any other person as his executor or executrix, in which case they become legal guardians and have all the powers of a legal guardian as defined in Sections 362 and 366.

39. As highlighted in Section 359 of the Principles of Mahomedan Law, the phrase used “in the order mentioned below” gives a clear indication that in respect of legal guardians of property of a minor, the degree of relationship has given an order of preference and the first such goes to father, thereafter executor appointed by the father's will, thereafter father's father and thereafter executor appointed by the will of the father's father. In other words, father is the first among the degree of relationship to be given preferential for the legal guardianship of minor's property.

40. Trevelyan in his book "The Law relating to Minors" says,

"A minor can accept a gift, but his acceptance is voidable. Under Mahomedan law, there can be no valid gift without an actual change of possession; but, in the case of a gift to a minor, possession by the guardian, or by a trustee on behalf of the minor, or by a person acting as such, is sufficient When

the guardian is himself the donor no formal delivery or change of possession is necessary, provided that it appears that there is on his part a real and bona fide intention to make a gift to the minor." Thus it would appear that there is no legal impediment preventing a person other than a legal guardian, for example, a trustee or a person acting as such trustee, from accepting a gift on behalf of a minor and taking possession. Such an acceptance will not make the gift invalid."

41. In the instant case, the father had executed a gift deed in favour of his minor son and wherein the mother has acted as his guardian and accepted the gift. The other documentary evidences filed by the defendants go to show that the gift deed was duly registered and after the gift deed, the mutation of name has also been effected and taken possession and the essential ingredients for the validity of the gift have been complied with.

42. As extracted above, under Mahomedan law, gift is a donation conferring right of property without exchange. The gift is in the nature of

contract where there must be a tender of property, acceptance of the property by the donee and delivery of possession of the property. It is only when these three ingredients are satisfied a gift is completed. The object behind the compliance with the three ingredients is that there may not be any future dispute in respect with the property that is gifted to the donee. In the present case it is not disputed that the father of the minor was alive at the time of execution of the gift. The question that arises is whether, during the lifetime of the father, the mother can be appointed as guardian of her minor son and accept the gift on his behalf.

43. At the risk of repetition however for the sake of clarity of legal position, let us have quick glance of relevant provisions that are relevant to decide the issue involved in the instant case.

44. With regard to handing over of possession, under Section 147 of the Principles of Mahomedan Law by Mulla, 19th Ed., Edited by the Chief Justice M.Hidayatullah, visages that writing is not essential to the validity of a gift either of movable or of immovable property. Section 148 requires that it is essential to the validity of a gift that the donor should divest himself completely of all ownership and dominion over the subject of the gift. Under s.

149, three essentials to the validity of the gift should be, (i) a declaration of gift by the donor, (ii) acceptance of the gift, express or implied, by or on behalf of the donee, and (iii) delivery of possession of the subject of the gift by the donor to the donee as mentioned in Section 150. If these conditions are complied with, the gift is complete. Section 150 specifically mentions that for a valid gift there should be delivery of possession of the subject of the gift and taking of possession of the gift by the donee, actually or constructively.

45. Section 348 defines "minor" to mean "a person who has not completed the age of eighteen years". Section 349 provides that "all application for the appointment of a guardian of the person or property or both of a minor are to be made under the Guardians and Wards Act, 1890". Section 359 enumerates the persons entitled, in the order mentioned therein, to be guardian of the property of a minor, namely, (1) the father; (2) the executor appointed by the father's will; (3) the paternal grand father, and (4) the executor appointed by the will of the paternal grand father.

46. As discussed supra, the gift that falls under Section 155 of the Principles of Mahomedan Law is clear and distinguishable in respect of the gift that falls under Section 156 of the Principles of Mahomedan Law viz.,

namely, if the donor is father, Section 155 of the Principles of Mahomedan Law will come into play. While the donor is other than the father or the legal heirs as mentioned in Section 359, Section 156 of the Principles of Mahomedan Law will come into play. Thus, the above two Sections viz., 155 and 156 are clearly distinguishable based upon who is the donor and consequently, the third element that is necessary for making a gift as valid viz., delivery of possession there will be an exemption as defined in Section 149 of the Principles of Mahomedan Law.

47. In the instant case, it is the father, who had gifted the suit properties to his two sons, while the elder son was a major, the younger son was a minor and in the gift deed his mother was represented by the younger son, who was the minor at the time of execution of gift. On a conjoint reading of oral evidence of D.Ws.3 to 5, who are attestors of the document and D.W.2 son-in-law of the donor, would show the intention of the donor is clear and *bona fide* and the other criteria of valid gift as defined under Section 149 are being duly complied with. The similar finding arrived at by the Trial Court is well-founded.

48. In this appeal, the learned counsel for the appellant contended that mother cannot be appointed or acted as a guardian during the lifetime of the father. It is to be stated that with regard to the guardianship of the property of the minors, Section 359 of the Principles of Mahomedan Law comes into play. The law describes only the father or father's father can act as a guardian. It is further stated that a preferential clause has also been included and that the order of preference has also been mentioned, in which father takes first place as against the other three categories as extracted above. Here, when the father himself, who is the first preferential clause of the legal guardian, is the donor, then in such circumstances, Sections 359, 149 and 155 all to be read together.

49. A conjoint reading of Sections 155 with that of Section 359 goes to show that while the general rule is that a donor must divest himself of all the control of the property which is the subject matter of the gift. Delivery of possession has, therefore, got to be a concomitant of the gift. But, when a father gifts property to his child, the position is peculiar. While it is true that law does not find anything wrong for the father to gift his property to his child, the difficulty arises from a twofold position. Firstly, a minor may not be

physically able to be in possession of the property except through his guardian and, secondly the father is himself the guardian of the property of his minor child. Delivery of possession by a Mahomedan father to his minor child is, for all practical purposes, delivery by right hand to the left hand. This is evidently the reason why the strict requirement of delivery of possession is not strictly insisted upon in the case of a bona fide gift by the father to his minor child. In a sense the requirement continues, but it is fulfilled in a somewhat different manner. Upto the date of the gift, the father is in possession of the relevant property on his own behalf and on and from the date of the gift he is in possession of the same, but only on behalf of the minor. Therefore, in view of the above provisions of law and the decision cited *supra*, in the instant case, delivery of possession by father to minor is for all practicable purposes, delivery by right hand to left hand.

50. The law intends to make a gift valid and legal as far as possible so as to give full justice to the desire of the donor. Where there was no other guardian of the property or person of the minor and the mother was the only other person who could look after the interest of the minor, acceptance of the gift by the mother was not illegal or invalid. In such cases, the benefit to the minor and the completion of the gift for his benefit was, the sole

consideration.

51. The decisions referred to by the learned counsel appearing for the appellant are relating to gift by the person other than the father or a legal guardian, which falls under Sections 156 and not under 155 of the Principles of Mahomedan Law. In case of gift, which falls under Section 155 and on a combined reading of Sections 155 and 359 of the Principles of Mahomedan Law, this Court is of the considered view that when a father, who has been given the first preference to act as a guardian, himself has become the donor in respect of the property to his minor son. In such cases, where an exemption given under Section 155, the mother can accept on behalf of the minor son. In this view of the matter, the findings of the Trial Court are valid, since no other point is urged in respect of the validity of the document and this Court is of the considered view that the gift in question is valid and the second respondent, who was minor at the time of gift, is the absolute owner of the property gifted under Exs.B1 to B3 and same is not available for partition. The findings of the Trial Court, for the different reason, as extracted supra, are hereby confirmed.

52. I am fortified with the similar view expressed by the Karnataka High Court (on different reasonings) in ***K.Abdul Hameed v. Sabira Begum***, reported in ***AIR 2006 Karnataka 289*** and by this Court in ***Aiyeshagani v. Abu Hanifa and others***, reported in ***2002 (2) TLNJ 91***.

53. For the reasons stated in the foregoing paragraphs, the findings of the Trial Court that there is no other property available for partition left behind by the deceased father and the plaintiff is not entitled to the relief of partition is liable to be confirmed. The appeal is devoid of merits and it is liable to be dismissed.

54. In view of the discussions in the foregoing paragraphs, all the points (i) to (v) are held against the appellant / plaintiff and answered in favour of the respondents / defendants and the appeal is devoid of merits.

55. In the result, the appeal is dismissed and the Judgment and Decree, dated dated 10.03.2006, made in O.S.No.9 of 2005, on the file of the Additional District Court, Dharmapuri, are hereby confirmed. No costs.

.....**12.2016**

Index : Yes / No

Internet : Yes / No

krk

To:

The Additional District Judge,
Dharmapuri.

RMT.TEEKAA RAMAN, J.

krk

JUDGMENT IN
A.S.No.64 of 2007

22.12.2016