

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.09.2017

Pronounced on: 26.10.2017

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND**

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

**A.S.No.171 of 2016
and
C.M.P.No.2095 of 2016**

K.Selvarasi

.. Appellant/
Plaintiff

Vs.

1.K.Kaliappan

2.K.Selvaraj

3.Madhammal

4.Muthumani

5.Janagi

6.Chandra

7.Kanchana

8.Alamelu

9.Muthulakshmi

10.Chandrasekar

11.Shanthi

.. Respondents/
Defendants

(As per the order, dated 29.06.2016, the memo filed by the respondents stating that R3 died and that LR. of R3 are already on

record, was recorded).

PRAYER: This Appeal has been filed under Section 96 of the Code of Civil Procedure against the judgment and decree, dated 21.12.2015, made in O.S.No.58 of 2013, by the learned Principal District Judge, Dharmapuri.

For appellant : Mrs.Chithra Sampath,
Senior Counsel for
Mr.I.Abrar Md.Abdullah

For respondent : Mr.V.Lakshmi Narayanan
Nos.1, 4, 6, 8 to 10

For respondent : No appearance
Nos.5, 7 & 11

JUDGMENT

[Judgment of the Court was made by **R.SUBBIAH, J.**]

The unsuccessful plaintiff in the suit for declaration and permanent injunction has filed this appeal as against the judgment and decree, dated 21.12.2015, passed in O.S.No.58 of 2013 by the learned Principal District Judge, Dharmapuri.

2.The case of the appellant/plaintiff in brief is as follows:

(a) The plaintiff is the owner of the suit property. She purchased the suit property under a registered sale deed, dated 30.05.2013, for a valuable sale consideration of Rs.1.30 crores from its erstwhile owner I.S.Ashok Kumar. The vendor of the plaintiff viz., I.S.Ashok Kumar obtained

loan amount from the Indian Bank by creating equitable mortgage in respect of the suit property and subsequently, he cleared off the same. The vendor of the plaintiff viz., I.S.Ashok Kumar had purchased the suit property from one R.Durai under a registered sale deed, dated 19.11.1999. The said Durai had purchased the suit property from the defendants 1 and 2 and their brother by name K.Krishnan, who is the husband of 8th defendant and father of the defendants 9 to 11, under a registered sale deed dated 10.07.1995. The defendants 1 and 2 and their brother K.Krishnan had executed the sale deed for themselves and on behalf of their minor children. Having purchased the suit property, the said Durai had obtained separate patta for the suit property on 15.08.1996 in Patta No.432. After purchase, the subsequent purchaser viz., I.S.Ashok Kumar had also got the patta in his name. As such, the plaintiff has also got the patta changed in his name through the proceedings of the Special Tahsildhar, Dharmapuri Town Land Revenue Scheme, dated 18.07.2013. The defendants have no manner of right, title or interest over the suit property.

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(b) In order to grab the property or to extract money, the defendants colluding together started to give trouble to the plaintiff from the month of June 2013 onwards. While so, on 25.08.2013, the defendants made an attempt to trespass into the suit property denying the title of the

plaintiff. But the plaintiff prevented them from doing so with the help of her supporters. The defendants proclaimed that they divided their family properties along with the suit properties through a partition deed dated 12.02.2013 and hence, they would come again with more people to demolish the compound wall and take possession of the suit property. The alleged partition deed is a fabricated one. The said deed is not valid in respect of the suit property and not binding on the plaintiff and his vendors. Hence, the plaintiff has filed the suit for declaration of title and for permanent injunction and for declaration that the alleged partition deed, dated 12.02.2013, as null and void and not binding on the plaintiff in respect of the suit property.

3.0. Resisting the claim of the plaintiff, the second defendant has filed a written statement stating that it is false and incorrect to say that the plaintiff purchased the suit property under registered sale deed, dated 30.05.2013 from one I.S.Ashok Kumar. The suit property is the ancestral property of the defendants 1 and 2, their brother Krishnan, and the defendants 4 to 7. The 3rd defendant is the mother of the 2nd defendant and defendants 4 to 7. The brother of the 2nd defendant namely Krishnan died leaving behind his wife (8th defendant), two daughters (9th and 11th defendants) and one son (10th defendant). The grandfather of the 2nd defendant, Krishnan and the defendants 4 to 7 namely Kaveri Gounder

had executed a registered Will, dated 17.05.1951, in respect of the suit property and some other properties in favour of his sons Kuppusamy and Mecheri @ Chinnasamy. After the death of Kaveri Gounder, Kuppusamy and Mecheri @ Chinnasamy succeeded his estate and they had been jointly enjoying the suit property and some other properties. About 45 years ago, the said Kuppusamy and Mecheri @ Chinnasamy effected a partition. After the partition, the said Kuppusamy constituted a Hindu Joint family along with his sons namely Krishnan, Kaliyappan (1st defendant) and Selvaraj (2nd defendant) and his daughters viz., defendants 4 to 7. The said Kuppusamy died in the year 1978. Thereafter, one of his sons viz., Krishnan died in the year 1996. The defendants 8 to 11 who are the legal heirs of the deceased Krishnan succeeded the estate of deceased Krishnan and they continued the joint possession along with coparceners and successors viz., defendants 1 to 7.

3.1. After the death of Krishnan, one R.Durai had filed a suit in O.S.No.56 of 1998 for declaration and injunction regarding a portion of the suit property ie., 21-1/2 cents out of 4.42 acres in respect of Survey No.16/1 of Virupathipuram Village, claiming that first and second defendants and their brothers Krishnan along with their children had sold 21-1/2 cents to him by sale deed, dated 10.07.1995. During the pendency of the said Suit, the said Durai is alleged to have executed a sale deed

dated 19.11.1999 in favour of one I.S.Ashok Kumar. But, the suit in O.S.No.56 of 1998 was dismissed. Hence, the said Durai did not have any right to execute any deed to any of the parties. The sale deed, dated 19.11.1999, executed by the said Durai in favour of I.S.Ashok Kumar and the sale deed, dated 30.05.2013, executed by the said I.S.Ashok Kumar in favour of the plaintiff are void documents. Till now, the defendants have been in possession and enjoyment of the suit property. The defendants have partitioned the properties of Kuppusamy through the registered partition deed dated 12.02.2013. In that partition, the suit property was allotted to the share of the 2nd defendant.

3.2. Prior to the filing of the suit in O.S.No.56 of 1998 by the said Durai, the 10th defendant - Chandrasekar S/o.Krishnan had filed a suit in O.S.No.33 of 1998 on the file of the District Munsif, Dharmapuri, against the defendant Nos.1 and 2, who are his paternal uncles, as well as against the defendants 8, 9 and 11, who are his mother and sisters, and the said Durai, for declaration that he along with his mother and sisters entitled to one third share in the total extent of 4.42 acres. The said suit was decreed on 03.09.2004. The 8th defendant - wife of the said Krishnan also had filed a suit in O.S.No.109 of 2004 on the file of the Additional District Judge, Dharmapuri, for partition of the property in Survey No.69/1 against the 1st

and 2nd defendants and the said Durai. The said suit was also decreed and the same was not challenged by the said Durai or any other parties. Hence, the alleged sale deed, dated 10.07.1995, said to have been executed by the first and second defendants along with their brother Krishnan for themselves and on behalf of their legal heirs to the said Durai, is non-est in the eye of law. Further, the deceased Krishnan and his brothers viz., Defendants 1 and 2, did not execute the sale deed in favour of the plaintiff's vendor's vendor viz., Durai on 10.07.1995. The alleged sale deed of Durai dated 10.07.1995 and the alleged sale deed, dated 10.11.1999, said to have been executed by the said Durai in favour of one I.S. Ashok Kumar and the alleged sale deed, dated 30.05.2013, said to have been executed by I.S. Ashok Kumar in favour of the plaintiff are void documents and they are not acted at any point of time and did not create any right or title to the said I.S. Ashok Kumar. The plaintiff's sale deed is sham and nominal and never acted upon and never came into force. So, the plaintiff did not have any right to seek declaration in the suit property and the relief of permanent injunction against the defendants. Thus, they prayed for dismissal of the suit.

4. On the above averments, the trial Court had framed the following issues:

"(1) Whether the plaintiff is entitled to relief of

declaration?

(2) Whether the plaintiff's vendor had valid title to the suit property?

(3) Whether the plaintiff is entitled to relief of declaration that the partition deed dated 12.02.2013, Doc.No.542/13 as null and void?

(4) Whether the plaintiff's vendor - Durai had no title by virtue of decree in O.S.No.145 of 2004 on the file of the Additional District Judge, Dharmapuri?

(5) Whether the plaintiff is in possession of the suit property?

(6) Whether the plaintiff is entitled to relief of injunction?

(7) To what relief?"

5. In order to prove the case, on the side of the plaintiff, the plaintiff herself was examined as PW1; the vendor of the plaintiff viz., Ashok Kumar was examined as PW2; the vendor's vendor of the plaintiff viz., Durai was examined as PW3; the Village Administrative Officer was examined as PW4; and the Branch Manager of the Indian Bank, Dharmapuri was examined as PW5 and 17 documents were marked as Exs.A1 to A17. On the side of the defendants, the 10th defendant was examined as DW1 and 11 documents were marked as Exs.B1 to B11. On the side of the Court, Exs.X1 to X3 were marked.

6. The trial Court, after analysing the entire evidence, has dismissed the suit filed by the plaintiff holding that the suits filed for partition by the 10th defendant and the 8th defendant were decreed and the plaintiff's vendor's vendor by name Durai (PW3) has not taken any steps against the said judgments and also to restore the suit filed by him for declaration of his title and permanent injunction over the suit property. Therefore, the plaintiff's vendor's vendor - Durai (PW3) has no right over the suit property. Under such circumstances, the plaintiff, who is the subsequent purchaser, is not entitled for the relief. Aggrieved over the same, the present appeal has been filed by the plaintiff.

7. The learned counsel appearing for the appellant/plaintiff would submit that the suit property was the ancestral property of the defendant Nos.1 and 2 and their brother by name Krishnan. The defendant Nos.1 and 2 and their brother Krishnan had sold the the suit property measuring 21-1/2 cents out of 4.42 acres in Survey No.16/1, New Survey No.16/1A at Virupatchipuram Village in favour of the plaintiff's vendor's vendor viz., Durai and executed a registered sale deed, dated 10.07.1995, for themselves and on behalf of their minor children. The other legal heirs viz., their sisters - Defendant Nos.4 to 6 did not dispute the said sale of specific extent of property with boundaries to the plaintiff's vendor's vendor viz., Durai (PW3). While so, the son of the deceased Krishnan viz.,

Chandrasekar (10th defendant) had filed a suit in O.S.No.33 of 1998 seeking the relief of declaration of 1/3rd share in the property measuring about 4.42 acre in Survey No.69/1 and for permanent injunction against the defendant Nos.1 and 2 and others, in which the said Durai was impleaded as 5th defendant. Thereafter, the said Durai had filed a suit in O.S.No.56 of 1998 against the defendant Nos.1, 2 and 8 to 11 for declaration of his title over the suit property and for permanent injunction. The defendant Nos.8, 9 & 11, who are wife and daughters of the deceased Krishnan, had also filed a suit in O.S.No.109 of 2004 against the defendant Nos.1 and 2 and others, including the said Durai for partition of their 2-1/2 share in an extent of 1.12-1/4 acre in Survey No.69/1A and for permanent injunction against the 13th defendant in the said suit viz., Durai. While so, the suit filed by the defendant Nos.8, 9 and 11 was decreed in *ex parte* on 10.08.2004 and on the same day i.e., on 10.08.2004 the suit filed by the said Durai was dismissed for default. Subsequently, the suit filed by the 10th defendant was decreed in *ex parte* on 03.09.2004. As the defendants had filed the suits for partition adding the plaintiff's vendor's vendor viz. Durai and as they did not seek for any relief to set aside the sale in favour of Durai, the said Durai left the suit filed by him as dismissed for default. But, the defendants herein, instead of proceeding with the suit for partition, after the preliminary decree, had stealthily entered into a partition deed on 12.02.2013 and divided the suit properties among

themselves. However, in the said partition, the suit property was allotted to the share of the vendors of Durai. The second defendant has also admitted in his written statement that the suit property was allotted to his share in the said partition. When the Durai's vendors acquired title by means of partition deed, dated 12.02.2013 (Ex.A11), Durai's title becomes valid. When the title of Durai becomes valid, the title of the plaintiff, who is the subsequent purchaser, also becomes valid. Hence, by applying the doctrine of feeding the grant by estoppel, as per Section 43 of the Transfer of Property Act, it can be safely decided that the plaintiff has the absolute title over the suit property.

8. In support of his contention, the learned counsel for the appellant relied on the decision of the Hon'ble Supreme Court in **2003 (10) SCC 200 (Renu Devi Vs. Mahendra Singh and others)**, wherein the Hon'ble Supreme Court has held that if a grantor purported to grant an interest in land which he did not at the time possess but subsequently acquired, benefit of his subsequent acquisition would automatically go to the earlier grantee. He has also relied upon the decision In **2016 (4) SCC 147 (N.Venkateshappa Vs. Munemma and others)**, wherein the Hon'ble Supreme Court has held that the principles of feeding the grant by estoppel would ensure to the benefit of the alienee who would get good title to the land after regrant.

9. The learned counsel for the appellant would further submit that though there is no plea in the suit for feeding the grant by Estoppel, the question of feeding the grant by estoppel is a question of law and therefore, it can be argued at any stage. Thus, the learned counsel for the appellant prayed to set aside the judgment and decree passed by the trial Court in O.S.No.58 of 2013 and to decree the suit as prayed for.

10. Countering the above submissions made by the learned counsel appearing for the appellant, the learned counsel appearing for the respondents submitted that the vendor of the plaintiff viz., Ashok Kumar is a *lis pendens* purchaser. He had allegedly obtained a sale deed from Durai, while the suits in O.S.No.33 of 1998 and O.S.No.56 of 1998 were pending. In the suits filed by the 10th defendant and the defendants 8, 9 and 11, the said Durai was also a party. The suit filed by the said Durai for declaration of title and injunction was dismissed for default and the suit filed by the 8th and 10th defendants were decreed. Consequently, Durai did not get any right to transfer the suit property to Ashok Kumar. The plaintiff, having purchased the property from the said Ashok Kumar, that too after 9 years of the dismissal of the suit filed by Durai, has no independent right.

11. The learned counsel appearing for the respondents would further submit that the schedule of property in O.S.No.56 of 1998 (renumbered as O.S.No.145 of 2004) ie., the suit filed by Durai and the present suit are one and the same. As per Order 9 Rule 9 C.P.C., if a suit for declaration of title is filed and it is dismissed for default, another suit for the same relief cannot be filed without restoring the previous suit. In this case, the suit filed by Durai in O.S.No.56 of 1998 for declaration of his title over the suit property and for permanent injunction against the defendants was dismissed for default on 10.08.2004 and thereafter, it was not restored. Therefore, the plaintiff, who claims title under the said Durai, cannot maintain the present suit.

12. The learned counsel appearing for the respondents would next submit that the plaintiff never pleaded about the application of feeding the grant by estoppel either before the trial Court or in the grounds of appeal. Neither she pleaded about any "fraudulent or erroneous representation" anywhere in the plaint. Therefore, the plaintiff is precluded from raising it for the first time in the appeal, that too at the time of arguments. He would further submit that the essential requirement of Section 43 of the Transfer of Property Act has not been satisfied and therefore, the plaintiff is not entitled to raise this ground.

13. The learned counsel for the respondents would further point out that having the knowledge of the partition deed, dated 12.02.2013, entered between the defendants, the plaintiff has purchased the property from a person, who had no title. Therefore, the plaintiff has purchased only litigation and not the property. He would further submit that in order to invoke Section 43 of the Transfer of Property Act, the plaintiff has to prove that there existed a contract between the defendants and her. But, in this case, the contract of sale was not effected between the plaintiff and the defendants, but between the plaintiff and I.S.Ashok Kumar. The said Ashok Kumar was not made as a party in the suit. Durai (PW3), who is the vendor of the said Ashok Kumar and who said to have derived title from the defendant Nos.1 and 2 and their brother Krishnan, had also not been impleaded as a party in the suit. Therefore, the suit filed by the plaintiff is liable to be dismissed on the ground of non-joinder of necessary parties also. Thus, he prayed for dismissal of the appeal.

14. From the above submissions made on either side, the questions that arises for considerations are:

(a) Whether the plaintiff is entitled to the relief by applying the principle of feeding the grant by estoppel?

(b) Whether the suit is hit by Order IX Rule 9 of C.P.C.?

15. Before going into the points raised herein, this Court is of the view that it would be appropriate to refer to the facts culled out from the pleadings in short hereunder:

(a) The suit property and some other properties originally belonged to one Kaveri Gounder, who is the grandfather of the defendants 1 and 2. The said Kaveri Gounder had executed a Will, dated 17.05.1951, in favour of his sons by name Kuppusamy and Mecheri @ Chinnasamy. After enjoying the suit property and some other properties jointly for some time, they effected partition, in which the suit property was allotted to the share of the said Kuppusamy. After effecting partition, the said Kuppusamy constituted a Hindu Joint Family along with his sons viz., Krishnan, Kaliyappan (D1), Selvaraj (D2) and his daughters (D4 to D7). The said Kuppusamy died in the year 1978. The said Krishnan died in the year 1996. D8 to D11 are the legal heirs of the said Krishnan. While so, the claim of the plaintiff is that on 10.07.1995 D1 and D2 and the deceased Krishnan had sold 21-1/2 cents out of 4.42 acres in S.No.69/1 to the plaintiff's vendor viz., Durai for themselves and also on behalf of their minor children. But, in the written statement, the defendants specifically denied the execution of the sale deed, dated 10.07.1995, in favour of the said Durai.

(b) On 05.02.1998, the 10th defendant - Chandrasekar, who is the son of the deceased Krishnan had filed a suit in O.S.No.33 of 1998 for declaration of 1/3rd share in the property measuring about 4.42 acres in Survey No.69/1 and for permanent injunction against the defendants, in which the said Durai was impleaded as the 5th defendant. Thereafter, the said Durai had filed a suit in O.S.No.56 of 1998 (subsequently renumbered as O.S.No.145 of 2004) against the defendant Nos.1, 2 and 8 to 11 for declaration of his title over the suit property and for permanent injunction. During the pendency of these suits, the said Durai had sold the suit property in favour of I.S.Ashok Kumar, through a registered sale deed dated 19.11.1999. The defendant Nos.8, 9 & 11, who are the wife and daughters of the deceased Krishnan, had also filed a suit in O.S.No.109 of 2004 against the defendant Nos.1 and 2 and others, including the said Durai for partition of their 2-1/2 share in an extent of 1.12-1/4 acres in Survey No.69/1A and for permanent injunction against the 13th defendant in the said suit viz., Durai.

(c) While so, the suit filed by the defendant Nos.8, 9 and 11 were decreed in *ex parte* on 10.08.2004 and on the same day i.e., on 10.08.2004 the suit filed by the said Durai was dismissed for default and thereafter, it was not restored. Subsequently, the suit filed by the 10th defendant was also decreed in *ex parte* on 03.09.2004. Though the

preliminary decree was granted in O.S.No.109 of 2004, the defendants herein had entered into a partition among themselves, through a partition deed, dated 12.02.2013. However, in the said partition, the suit property was allotted to the share of the vendors of the said Durai. The second defendant also has specifically admitted in the plaint that the suit property was allotted to his share.

16. Now, it is the main submission of the learned counsel for the plaintiff that though the defendants had entered into partition among themselves, in the said partition, the suit property was allotted to the share of the vendors of the said Durai and therefore, the plaintiff, who is claiming title to the suit property through the said Durai, is entitled to the suit property by applying the principle of feeding the grant by estoppel.

17. Before analysing the factual aspect, this Court is of the view that it would be appropriate to extract Section 43 of the Transfer of Property Act hereunder:

"43.Transfer by unauthorised person who subsequently acquires interest in property transferred - Where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer

such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option."

18. From the reading of the above provision, it is clear that in order to get the benefit of the said provision, the conditions which must be satisfied are :

(a) There must be a fraudulent or erroneous representation made by the transferor to the transferee that he is authorised to transfer certain immovable property and in the purported exercise of authority, professed to transfer such property for consideration.

(b) The transfer shall be made only by an unauthorised person.

(c) The contract of transfer must subsist at the time when transferor acquires such interest in the property.

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19. It is also useful to refer to a decision of the Hon'ble Supreme Court in **Kartar Singh Vs. Harbans Kaur**, reported in **1994 SCC (4) 730**, wherein the Hon'ble Supreme Court has held in paragraph No.4 as follows:

"4. A reading clearly shows that for application of [Section 43](#) of the Act, two considerations must be satisfied. Firstly, that there is a fraudulent or erroneous representation made by the transferor to the transferee that he is authorised to transfer certain immovable property and in the purported exercise of authority, professed to transfer such property for consideration. Subsequently, when it is discovered that the transferor acquired an interest in the transferred property, at the option of the transferee, he is entitled to get the restitution of interest in property got by the transferor, provided the transferor acquires such interest in the property during which contract of transfer must subsist."

20. Now, coming to case on hand, admittedly, the plaintiff nowhere had stated that she had been misled by the fraudulent representation of her vendor. Even the plaintiff's vendor's vendor viz., Durai has not stated in the suit filed by him in O.S.No.56 of 1998 (subsequently renumbered as O.S.No.145 of 2004) that he has been misled by the fraudulent representation of his vendor. The rule of estoppel by deed by the transferor would apply only when the transferee has been misled. Therefore, Section 43 of the Transfer of Property Act is inapplicable and the plaintiff cannot get the benefit of the principle of feeding the grant by estoppel.

21. Admittedly, the defendants disputed the execution of the sale deed, dated 10.07.1995, in favour of the plaintiff's vendor's vendor viz., Durai. The suit filed by the said Durai for declaration of his title over the suit property and for permanent injunction was also dismissed for default. The said Durai has failed to restore the suit filed by him and to conduct the same. Though the said Durai was impleaded as a party in the suit filed by the 10th defendant and also in the suit filed by the defendant Nos.8, 9 & 11, he has failed to make his appearance in the said suits and the said suits were decreed in *ex parte*. Further, the said Durai did not take any steps to challenge both *ex parte* decrees, which were passed against him. Thus, the title of the plaintiff's vendor's vendor viz., Durai has not been settled. When Durai's right itself has been set at naught by the dismissal of his suit, the plaintiff, who is the subsequent purchaser and claiming right under the said Durai, could not get any right over the suit property. Further, the said Durai, during the pendency of the suit, without any right, has sold the suit property to the plaintiff's vendor viz., I.S.Ashok Kumar, who in turn sold the same to the plaintiff. As the plaintiff's vendor had purchased the suit property *pendente lite*, now the plaintiff cannot deprive the rights of the defendants.

22. More over, in the present suit, neither the plaintiff's vendor viz., I.S.Ashok Kumar nor the plaintiff's vendor's vendor viz., Durai were

impleaded as a party. But, they have been examined only as PW2 and PW3. PW3 - Durai has stated in his evidence that only after seeing that the suit property was allotted to the share of the 2nd defendant through the Will executed by Kuppusamy, who is the father of the defendant Nos.1, 2 and 4 to 7, he purchased the suit property under the registered sale deed, dated 10.07.1995 from the 2nd defendant. He has further stated in his evidence that at the time of purchase, the defendants were enjoying the suit property by obtaining their share through partition. But, PW3 has not produced any document to show that only after partition among the defendants, he had purchased the suit property. Though it is claimed by the plaintiff that the defendants 1 and 2 and their brother Krishnan had sold the suit property in favour of Durai (PW3) under Ex.A3, on the contrary, PW3 has stated that he purchased the suit property only from the 2nd defendant, that too after seeing that the suit property was allotted to the share of the 2nd defendant through the Will executed by Kuppusamy. As stated by PW3, if the partition had already been made among the defendants, then, there is no necessity for the 10th defendant and the defendant Nos.8, 9 and 11 to file separate suits for partition. Thus, even the evidence of PW3 did not support the case of the plaintiff.

23. Merely because, the 2nd defendant has stated that the suit property was allotted to his share in the written statement, the same

would not feed any right on the plaintiff through his vendor's vendor viz., Durai, when the defendants have specifically disputed the execution of the sale deed in favour of the said Durai. The plaintiff has also raised the ground of feeding the grant by estoppel only in the appeal, that too at the time of his arguments, which cannot be accepted. Thus, the first question is decided against the appellant/plaintiff.

Point No.2

24. So far as the second point for consideration is concerned, admittedly, the suit filed by the plaintiff's vendor's vendor viz., Durai for declaration of his title over the suit property and permanent injunction was dismissed for default in the year 2004 and the same was not restored till date. The schedule of property mentioned and the relief sought for in the suit filed by the said Durai and the present suit are one and the same. During the pendency of the suit filed by the said Durai, the plaintiff's vendor had purchased the suit property on 19.11.1999 and thereafter, the plaintiff had purchased the suit property on 30.05.2013.

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25.As per Order XI Rule 9 of C.P.C., a fresh suit cannot be maintained in respect of the same cause of action. Thus, the bar under Order IX Rule 9 C.P.C. depends on the cause of action relating to the suit. The cause of action is not defined in any statute. The material facts, which

are imperative for a plaintiff to plead and prove, constitute the cause of action. In other words, the cause of action is a bundle of facts. The plaintiff is expected to plead every fact and to substantiate the same to succeed in his suit.

26. According to the plaintiff, the cause for action for filing the present suit arises only when the defendants attempted to trespass into her property denying her title and claiming that they have partitioned their family properties along with the suit property by the registered partition deed dated 12.02.2013. According to the defendants, the suit filed by the plaintiff's vendor's vendor for declaration of his title and permanent injunction was dismissed for default 10.08.2004 and therefore, the present suit which has been filed for the very same property by the plaintiff cannot be maintained under Order XI Rule 9 C.P.C.

27. Admittedly, the plaintiff had purchased the suit property only on 30.05.2013. From the persual of Ex.A11, it could be seen that the plaintiff had applied for certified copy of the partition deed, dated 12.02.2013, entered among the defendants in Copy Application No.3746 and subsequently, received the same on 16.04.2013. Hence, the plaintiff had purchased the suit property knowing fully well about the partition

entered among the defendants in respect of the suit property and that she is purchasing the property from the person who has no title. Thus, it is clear that the plaintiff is not an innocent purchaser and knowingly she has purchased not the property but the litigation. When that be so, the cause of action pleaded by the plaintiff cannot be accepted. Thus, the second point is also answered against the appellant/plaintiff.

28. In view of the above discussions, we are of the view that the appellant/plaintiff is not entitled to the relief. The trial Court has also rightly non suited the plaintiff. This Court does not find any error or infirmity in the judgment and decree passed by the trial Court.

29. In the result, this appeal suit is liable to be dismissed and accordingly dismissed, confirming the judgment and decree passed by the Court below in O.S.No.58 of 2013. No costs. Consequently, connected miscellaneous petition is also dismissed.

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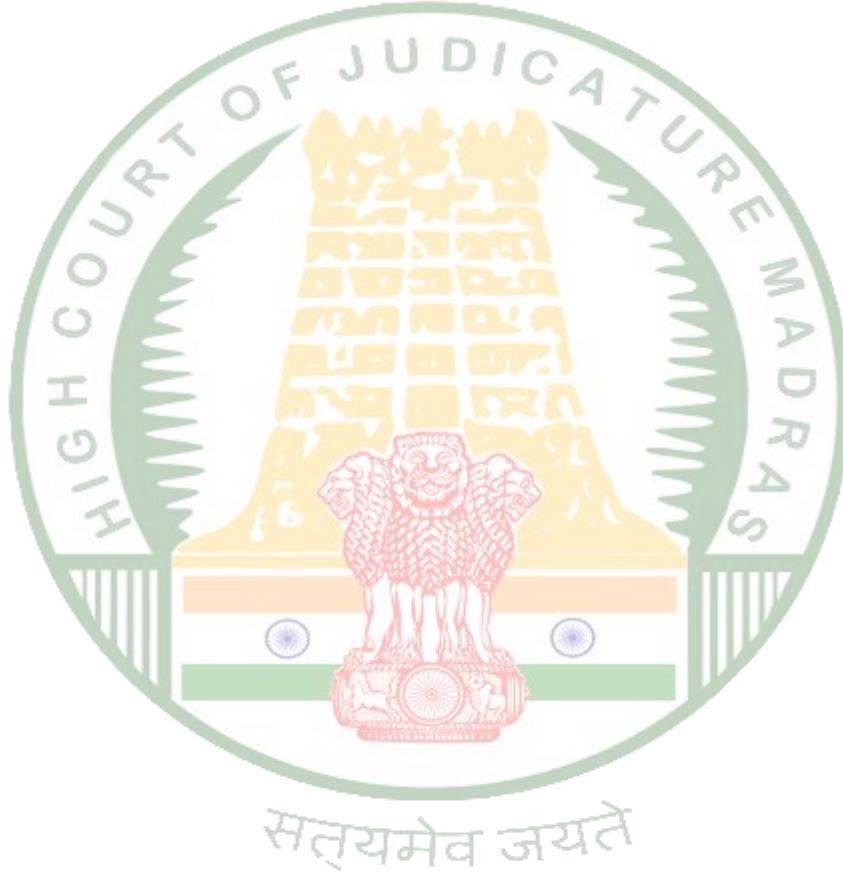
[R.P.S. J.,] [A.D.J.C., J,]
26.10.2017

Index : Yes / No
Internet : Yes / No
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To

1.The Principal District Judge,
Dharmapuri.

2.The Record Keeper,
V.R. Section,
High Court, Madras.

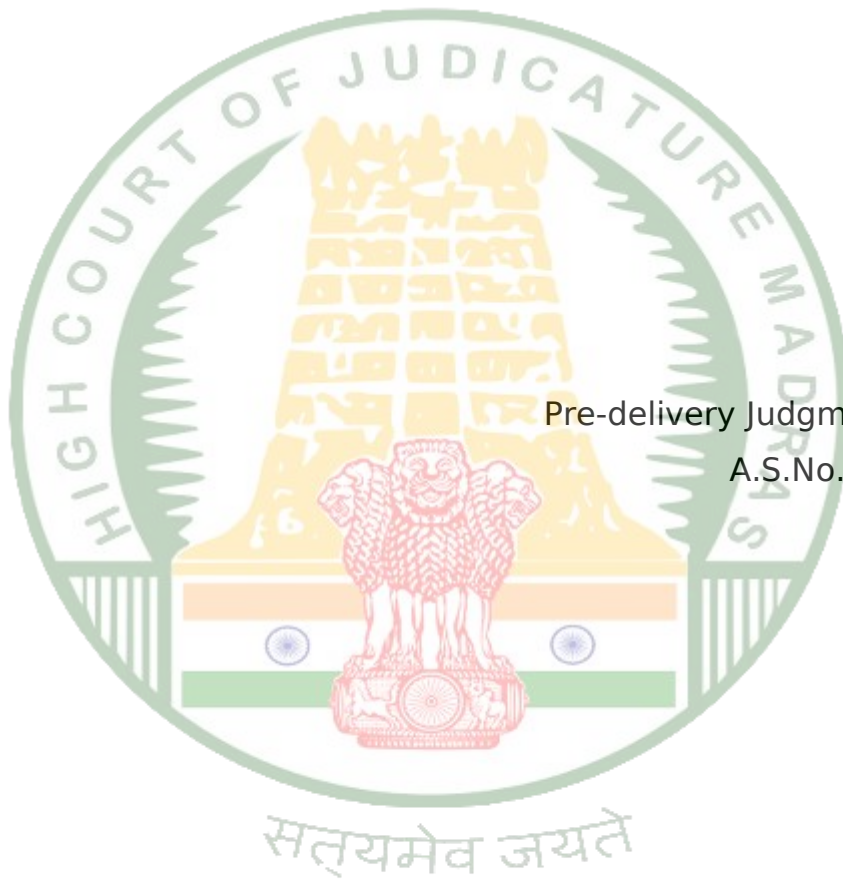


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**R.SUBBIAH, J.
AND**

A.D.JAGADISH CHANDIRA, J.

gcg



Pre-delivery Judgment made in
A.S.No.171 of 2016

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Dated: 26.10.2017