

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.07.2017

PRONOUNCED ON : 28.08.2017

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.S.No.718 of 2012

1. Mrs.V.Shanthakumari
2. Mrs.G.Logasundari
3. Mrs.L.Parameshwari

Plaintiffs

Vs.

1. Mr.G.Sambandan
2. Mr.G.Ganjendramurthy
3. Mr.G.Thirunavukkarasu
4. Mrs.G.Jayaprabha
5. Mr.B.Venkatesh

Defendants

Prayer :- This Civil Suit has been filed under Order IV Rule 1 of O.S.Rules read with Order VII Rule 1 of C.P.C praying for judgement and decree as follows:-

- i. declaring the impugned Partition Deed dated 05.01.2006 created by the defendants 1 to 3 herein and registered as Document No.47 of 2006 before the Sub-registrar, Anna Nagar, Chennai and the Consequential Sale Deed dated 11.04.2008 executed by third defendant in favour of defendants 4 & 5 and registered as Document No.1392 of 2008 on the file of Sub Registrar, Anna Nagar, Chennai in respect of the suit property, as sham and nominal and not binding on the plaintiffs, as aforesaid Partition Deed was obtained by misrepresentation and undue influence upon the plaintiffs;
- ii. for partition and separate possession of the Schedule mentioned properties into 6 equal shares by metes and bounds with reference to value, and allot 1/6th share therein to each of the plaintiffs herein;
- iii. to appoint an Advocate Commissioner to divide the suit properties pursuant to the preliminary decree, and put the plaintiffs in possession of their respective shares;
- iv. directing the defendants to pay the costs of this suit.

For Plaintiffs : Mr.V.Ramana Reddy

Defendants : Mr.S.Raghavan, DD1 to 5

JUDGMENT

This Civil Suit has been filed, seeking declaration that the impugned Partition Deed, dated 05.01.2006 created by the defendants 1 to 3 herein and registered as Document No.47 of 2006 in the office of the Sub Registrar, Anna Nagar, Chennai and the consequential Sale Deed dated 11.04.2008 executed by the third defendant in favour of the defendants 4 and 5 registered as Document No.1392 of 2008 on the file of the Sub Registrar, Anna Nagar, Chennai in respect of the suit property are sham and nominal and are not binding on the plaintiffs and for consequential relief of partition of the schedule mentioned properties into six equal shares by metes and bounds with reference to value, and allot 1/6th share therein to each of the plaintiffs herein and to appoint an Advocate Commissioner to divide the suit properties, pursuant to the preliminary decree and put the plaintiffs in possession of their respective shares and for costs.

2. The plaintiffs, viz., V.Shanthakumari, G.Logasundari and L.Parameshwari, and the first, second and third defendants viz., G.Sambandan, G.Gajendramurthy, G.Thirunavukkarasu, are sisters and brothers. They are daughters and sons of late M.Govindarajan. Late M.Govindarajan, had acquired several properties particularly (i) house land, bearing Plot No.3605 in 'M' Block, Anna Nagar East, Chennai - 600 102. and (ii) Agricultural land in Survey No.83/1 to an extent of 0.56.50 hectares in Kondapuram Village, Arokonnam Taluk, Vellore District. These two properties are subject matter of the present suit. It had been stated in the plaint that during his life time, he had equal affection towards his

children. It had been further stated that their mother, viz., Krishnaveni, died in the year 1989. Mr.Govindarajan, died intestate on 07.08.1991. It had been stated that the plaintiffs used to visit plaintiff, Item '1' of schedule, viz., Land and Building property at Plot No.3605, M-Block, Arignar Anna Nagar East, Chennai, even after death of their parents and they totally trusted the first, second and third defendants, who were their brothers.

3. The first, second and third defendants stated that they wanted partition of the property and for that purpose, they suggested that the first item of suit property mentioned above were mortgaged to raise funds to pay the due share of the plaintiffs at market rate. Thereafter, plaintiffs were asked to sign in documents and they were made to sign the documents in an hurried manner. The documents were prepared by the first, second and third defendants. The plaintiffs, as stated above, trusted the first, second and third defendants. However, from August 2011, the first, second and third defendants changed their attitude. Thereafter, in the second week of September 2011, it was brought to the knowledge of the plaintiffs that the first, second and third defendants had actually prepared a partition deed in respect of first item of suit property, viz., land and building at Arignar Anna Nagar and got the same registered as Document No.47 of 2006 on 05.01.2006 in the office of the Sub-Registrar, Anna Nagar, Chennai.

4. By the said Deed of Partition, first, second and third defendants alone got the entire property for themselves. The other property, viz., land at Kondapuarm Village, Arakkonam was not partitioned. The plaintiffs did not have any knowledge of the partition deed. Subsequently, the second defendant conveyed his share to his daughter and son-in-law, who are fourth and fifth

defendants. Consequently, the plaintiffs through an advocate, sent a notice to the first, second and third defendants on 10.10.2011 and a reply notice was issued by the defendants on 30.11.2011. It has been stated that the documents namely, the partition deed, in which consideration of Rs.5,00,000/- is shown, is totally sham and not binding on the plaintiffs. Consequently, the suit had been filed seeking to set aside the partition deed and also the sale deed and for consequential relief of partition and separate possession.

5. The second defendant filed a written statement, seeking partition and separate possession in respect of the second item in the suit property, viz., vacant land at Kondapuram Village, Arakkonam Taluk. The first and third defendants adopted the written statement filed on behalf of the second defendant. The second defendant in his written statement stated that the plaintiffs had signed in the registered partition deed, dated 05.01.2006 with full knowledge of the document. It had been stated that the husbands of the second and third plaintiffs, viz., Mr.Ramamurthy and Dr.D.Loganathan had signed as witnesses in the partition deed before the registration authority. It had been further stated that the husbands of the first and third defendants, plaintiffs, viz., P.M.Venkateswaran and Dr.D.Loganathan identified their signatures before the registration authority. It had been stated that the plaintiffs had executed the partition deed with full knowledge. It had been further stated that the plaintiffs were given a sum of Rs.5,00,000/- towards their share of the property. It had been further stated that the father M.Govindarajan, was running a small tailoring shop, at Ayanavaram. Thereafter, the first, second and third defendants joined their father's tailor shop business and helped in developing the same. It had been stated that a new

partnership firm was formed in the name of United Textiles. All the three defendants helped their father. Thereafter, the second defendant started a Small Scale Industry under the name of "Bootis Broches" at Ambattur and took contracts and also started to stitch clothes on clothing contract also. It had been stated the property at Ambattur was constructed out of the income from the business of the father of the first, second and third defendants. The first floor was constructed in the year 1978 and the second floor was constructed in the year 1992. All the three defendants contributed to the purchase and construction of the Item - 1 of the suit property. It had been stated that the partition deed had been entered into after disclosing details. It had been further stated that the plaintiffs have not challenged the partition deed from 2006 till institution of the suit in the year 2012. It had been stated that the relief with respect of the first item of the suit property has to be negatived. With respect to the II item of the suit property, it had been stated since it is an ancestral property and since the plaintiffs were married before 25.03.1989, in view of the Tamilnadu Amendment to the Hindu Succession Act, the plaintiffs are not entitled to any relief and consequently, the suit has to be dismissed.

6. On the basis of the rival pleadings, this Court had framed the following issues:-

1. Whether the registered Partition Deed dated 05.01.2006 is sham and nominal and not binding on the plaintiffs?
2. Whether the registered Sale Deed dated 11.04.2008 executed by the third defendant in favour of the defendants 4 and 5 is sham and nominal and not binding on the plaintiffs?
3. Whether the suit is maintainable?
4. Whether the registered Partition Deed dated 05.01.2006 was obtained by mis-representation and undue influence

as alleged by the plaintiffs?

5. Whether the suit is barred by limitation as regards claim No.1 of the plaint schedule?
6. Whether the suit is not properly valued?
7. Whether proper court fee has not been paid on the plaint?
8. Whether the plaintiffs are entitled to relief of partition and separate possession as regards claim 2 of the plaint schedule?
9. Whether the defendants 1 to 3 are entitled to relief of partition and separate possession as regards Item No.2 of plaint schedule?
10. To what relief the plaintiffs are entitled to?

7. During the trial, the second plaintiff, viz., G.Logasundari was examined as PW-1. The first plaintiff, viz., V.Shanthakumari was examined as PW-2. The second defendant, viz., G.Gajendramurthy, was examined as DW-1. The plaintiffs marked Exs.P1 to P9. Ex.D1 was also marked during the cross examination of PW-1. Exs D2 to D8 were marked on the side of the defendants.

8. The documents marked on the side of the plaintiffs included the death certificates of Krishna Veniammal and M. Govindarajan as Ex. P.1 and P.2, Certified Copy of Partition Deed dated 05.01.2006 as Ex. P.3, Encumbrance Certificates of the Schedule mentioned properties as Exs. P.4 to P.6, Exchange of Advocate notices as Exs. P.7 and P.8 and Certified Copy of Sale Deed dated 11.04.2008 as Ex.P.9. During the cross examination of PW.1, Ex. D., an affidavit signed by the plaintiffs, dated 04.01.2006 was marked. Exs. D.2 to D.8 are documents relating to the tailoring business carried on by the defendants and their father, and also cancellation of mortgage deed and housing loan documents.

9. This court heard the arguments advanced by Mr.V.Ramana Reddy, the learned counsel for the plaintiffs and Mr.S.Raghavan, the learned counsel for the defendants.

10. Mr.V.Ramana Reddy, the learned counsel for the Petitioner took the court through the pleadings and evidence. He claimed that M.Govindarajan, during his lifetime had equal affection towards the plaintiffs and the first, second and third defendants. He claimed that the plaintiffs used to visit the Schedule A property even after the death of the father. He further claimed that the first, second and third defendants had misrepresented to the plaintiffs, claiming that to effect partition, mortgage has to be created and the plaintiffs signed Ex.P.3 only under the impression that it was a mortgage deed. The learned counsel further pointed out that the other property in Schedule B was not included in Ex.P.3. He further claimed that the plaintiffs came to know about the deception only in October 2011 when they came to know about the sale deed, Ex. P.9, executed by the third defendant in favour of the fourth and fifth defendants. The learned counsel was emphatic in his assertion that Ex.P.3 and P.9 were not binding on the plaintiffs and claimed that they are entitled for partition and separate possession as claimed. The learned counsel further stated that the suit is not barred by limitation, and that the suit had been properly valued and proper court fees paid.

11. Mr.S. Raghavan, the learned counsel for the defendants, on the other hand, claimed that the suit was barred by limitation, that the court fees paid was improper and that the plaintiffs are not entitled to any share in the A schedule property and that only the third plaintiff is entitled to an undivided one fourth share, along with the defendants in the B schedule property. The learned counsel pointed

out that the husbands of the second and third plaintiffs had signed as witnesses to Ex.P.3 and the husbands of the first and third plaintiffs had identified the executants before the Sub-Registrar office and that under Ex.D1, which was signed by all the three plaintiffs, each one of them were paid Rs. 5 lakhs as consideration. The learned counsel therefore stated that the plaint is wholly vexatious. With respect to B schedule property, learned counsel stated that since the first and second plaintiffs were married before 25.03.1989, they were not entitled to any share, in view of the restriction placed by the Tamil Nadu Amendment to the Hindu Succession Act. The learned counsel therefore stated that only the third plaintiff and the defendants had an equal one fourth share in the B schedule property. The learned counsel stated that the suit has to be accordingly dismissed with respect to the A schedule and partly decreed with respect to the B schedule.

12. I have carefully considered the rival arguments and also the pleadings and oral and documentary evidence adduced by the parties.

13. **Issue Nos. 1 & 4 :** These issues revolve on the partition deed Ex.P.3. Issue No. 1 is whether it is sham and nominal and not binding on the plaintiffs and Issue No. 4 is whether it had been obtained by misrepresentation and undue influence.

14. Ex.P.3 is the partition deed. It is registered. Even before examining the same, Ex. D.1, marked during the cross examination of P.W.1, will have to be discussed. It is the case of the defendants that the plaintiffs were paid a consideration of Rs.5 lakhs each on 04.01.2006 and on the next day, Ex.P.3 was executed. Ex. D.1 was marked during the cross examination of D.W.1, G.Logasundari. She is the second defendant in the suit. Ex.D.1 is an affidavit

signed by the three plaintiffs on a Rs.20/- non judicial stamp paper and on the continuing second sheet. It has been attested by an advocate notary. It is dated 04.01.2006. The stamp paper had been purchased in the name of the three plaintiffs on the same day. The three clauses in the affidavit are as follows :-

1. that as per the Family Arrangement entered into between us and our brothers
2. that each of us have received a sum of Rs.5,00,000/- from our brothers ...as consideration ...
3. that henceforth we have no right or claim or interest in the property ...”

15. The evidentiary value of the document is limited to the extent that it can be used as a document to evidence payment of Rs.5,00,000/- to each of the three plaintiffs. During the cross examination, P.W.1, the second plaintiff admitted “The signature found in sworn affidavit dated 04.01.2006 is mine and it is marked as Ex. D1. The first plaintiff and third plaintiff have also signed in Ex. D1.”

16. D.W.1, the second defendant’s cross examination commenced with questions on Ex. D.1 as follows:-

Q: When Ex.D1 was prepared and what circumstances it was executed?

“A: At the time of partition in our family, money was paid to three sisters Rs.5 lakhs each. For relinquishing their right over the family property. Ex.D1 was executed on 04.01.2006.

After the execution of Ex.D1, very next day Ex.P3 was executed. It is correct to state that except notary public no other witness signed in Ex.D1. As per Ex.D1 we, three brother have paid Rs.5 lakhs each to my sisters. On very next day at the time of partition deed execution we, three brothers have paid sisters each Rs.10,000/-. Each brother paid each sister. None of the amount mentioned either in Ex.D1 or Ex.P3 paid by way of cheques or Demand draft.”

17. It must be kept in mind that the above was during cross examination of

DW.1. Moreover in the written statement, the second defendant had stated "At that juncture, the defendants decided to offer Rs. 5 lakhs to each one of the plaintiffs in consideration of their relinquishing their respective rights in the item no.1 of the plaint schedule of property. Accordingly an affidavit was duly prepared and signed by all the three plaintiffs on 4th January 2006 accepting the receipt of Rs. 5 lakhs each." The plaintiffs have opted not to file any reply to this assertion in the written statement. It has to be taken as an admission of fact. I hold that payment of Rs. 5 lakhs had been proved.

18. P.W1 admitted to her signature and identified the signatures of other plaintiffs in Ex.D1 and D.W1 had reaffirmed during cross examination that Rs.5 lakhs was paid to each of the plaintiffs. The next day, on 05.01.2006, Ex.P3, the partition deed was registered.

19. During cross examination of P.W1, the second plaintiff, when questioned about Ex.P3 stated : "We, the plaintiffs signed Ex.P3 without reading the contents. In Ex.P3 at page No.17, my husband has signed as a second witness. In page 17 of Ex.P3, third plaintiff's husband has signed as a second witness. In page 17 of Ex.P3, third plaintiff's husband has signed as first witness. In Ex.P3 in the last page, the third plaintiff's husband had identified before the Sub-Registrar. Similarly, in the last page of Ex.P3, first plaintiff's husband has signed as a second witness. My husband and third plaintiff's husband are conversant with English language. At the time of registration of Ex.P3 our respective husbands came with us at the Sub-Registrar office."

20. I hold that the statements that the plaintiffs were not aware of the contents of Ex.P3 or that they were signed by misrepresentation and by using

undue influence are false to the knowledge of the plaintiffs. The plaintiffs have not chosen to examine their husbands to confirm that they had also signed as witnesses without knowledge of the nature and contents of Ex.P3.

21. In the written statement of the second defendant, it had been stated as follows :

“The Partition Deed was witnessed by the husbands of the plaintiffs. While the husbands of the plaintiffs 2 and 3 by names M. Ramamoorthy and Dr. D. Loganathan respectively signed as witnesses at the foot of the Partition Deed; before the registering authority, Dr. D. Loganathan the husband of the 3rd plaintiff and P.M. Venkateswaran, the husband of the 1st plaintiff appeared and identified the executants. The husbands of the plaintiffs read the document in full and then instructed their respective wives to sign the deed. The plaintiffs themselves, along with their respective husbands, came to the office of the Sub-registrar and signed the document.”

22. Again, there is absence of any reply statement. I hold that the plaintiffs have not come to court with honest intentions in so far as the Schedule A property is concerned.

23. Under Order VI Rule 4 CPC, it has been stated as follows:-

“Particulars to be given where necessary :- In all cases in which the party pleading relied on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.”

24. In the instant case, what has been pleaded has been proved to have been false. The pleadings are unbelievable and have been proved to be unbelievable by the evidence of the plaintiffs themselves and by suppression of the fact that their husbands had signed as witnesses to the document and identification witnesses in sub registrar office.

25. In view of the overwhelming oral admissions and the fact that the

husbands of the plaintiffs had also participated in the execution of the partition deed, Ex.P3, which was supported by consideration as evidenced by Ex.D1, I hold that the partition deed was executed with full knowledge and consent of the plaintiffs, and the assertions to the contrary in the plaint are false and rejected by the court. I hold that Ex.P3 had been executed validly and in accordance with law. Accordingly, Issue nos. 1 and 4 are answered against the plaintiffs. This naturally means that the plaintiffs are not entitled to any share in the A Schedule property.

26. **Issue No. 2 :** This issue deals with the Sale Deed executed by the third defendant in favour of the fourth and fifth defendants. Once the partition deed, Ex. P3 has been held to have been validly executed, the sale deed executed by the third defendant has to be upheld. The third defendant had exercised his right, title and interest to execute the sale deed, and I hold that the sale deed is binding on the plaintiffs, and I find no reason to impugn the same.

27. In the written statement of the second defendant, it had been specifically stated that “Consequent on the purchase of the property, the defendants 4 and 5 have effected the necessary mutation in the revenue records of the Corporation of Chennai. The defendants 4 and 5 are in possession and enjoyment of the portion purchased by them in their own right.” This positive statement has evoked no reply statement from the plaintiffs. I hold that issue no. 2 is also answered against the plaintiffs. The sale deed, Ex.P.9 is binding on them.

28. **Issue No. 8 and 9 :** This issue revolves around Schedule B property. The said property is punja dry land measuring 1 acre and 40 cents in S. No. 83/1, Kondapuram Village, Kaveripakkam Sub-registrar office, Arakkonam, Sub District, Vellore District. This is ancestral property. The learned counsel for the

defendants claimed that since the first and second plaintiffs were married before 25.03.1989, in view of the Tamil Nadu Amendment to the Succession Act, they are not entitled to any share. I disagree. The Hindu Succession Act, 1956 has been amended in 2005 and the Central amendment will take preference to the State amendment.

29. Section 6 is as follows:-

“Sec. 6 : Devolution of interest in coparcenary property :- (1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcenor shall :

- (a) by birth become a coparcenor in her own right in the same manner as the son;
- (b) have the same rights in the coparcenary property as she would have had if she had been a son;
- (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son’

And any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener.”

30. It is thus clear that the embargo placed by the Tamil Nadu amending act had been removed, and it is no longer res integra that the Central amendment would take preference to a State amendment. I therefore hold that the plaintiffs and the first, second and third defendants shall each be entitled to an undivided one sixth share in the Schedule B property. The issue nos. 8 and 9 are answered accordingly. The plaintiffs and the defendants are entitled to apply for final decree for partition and separate possession of individual one sixth share in the B Schedule property.

31. **Issue Nos. 3 and 5 :** These issues relate to maintainability of the

<http://www.judis.gov.in> and whether the suit is barred by the law of limitation. This issue arises from

the fact that Ex. P.3 is dated 05.01.2006 and the suit had been instituted on 14.09.2012. The suit prayer includes the relief that Ex.P.3 partition deed is not binding on the plaintiffs. They claim that they had knowledge of the same only in October 2011. It is seen that the suit is with respect to two items of suit property. I have already held that the plaintiffs are entitled to the relief of partition and separate possession with respect to B Schedule property. Consequently, even if the claim with respect to partition of A Schedule property is held to be barred by limitation, the plaintiffs cannot be non-suited, since their claim for partition and separate possession of B Schedule property has been up held. Moreover, limitation is a mixed issue of law and facts. It had been held as a fact, that the plaintiffs had knowledge of Ex. P3, partition deed. I hold that the relief of partition with respect to A schedule property is barred. Their claim that they came to know about the document only in October 2011 is rejected. The additional reason why the plaintiffs had been held to be disentitled from claiming partition and separate possession of A Schedule property is because they had executed an earlier partition deed with full knowledge and consent and after receiving consideration. Consequently, I hold that the suit is maintainable and is not barred by limitation with respect to the relief claimed in B schedule property, but barred under Article 59 of the Limitation Act, 1963, with respect to the relief claimed in A Schedule Property. The issues are answered accordingly.

32. **Issue Nos. 6 and 7 :** These two issues relate to payment of court fees. The plaintiffs had valued the suit at Rs.2,07,50,000/- and had paid court fees of Rs.3,000/- u/s 37(2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. It is the contention of the learned counsel for the defendants that court fees

should have been paid under Section 37 (1), which requires payment at market value.

33. Again, since relief had been claimed with respect to two items of suit properties, the plaint had proceeded on the fact that the plaintiffs had an existing right over the properties. I have held that the plaintiffs are entitled to one sixth share each in B schedule property. Their claim for partition and separate possession of A Schedule property had been rejected. They had actually executed partition deed and had still sought partition from court. They had not come to court with clean hands. They had suppressed material and vital facts. I hold that the plaintiffs have to pay court fees under Section 37(1) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, in so far as the relief in respect of Schedule A property is concerned. The payment of court fees under Section 37(2) in so far as relief claimed for Schedule B property is concerned is correct. The issues are answered accordingly.

34. **Issue No. 10 :** In the result, I hold that both the plaintiffs and the first, second and third defendants are entitled to apply for final decree for partition and separate possession of individual one sixth share in the B schedule property. The defendants had also paid court fees enabling them to apply for final decree. Accordingly a preliminary decree is passed holding that each one of the plaintiffs and the first, second and third defendants are individually entitled to an undivided one sixth share in B Schedule property. They may apply for appointment of an advocate commission for such purpose. The suit is dismissed in so far as the

C.V.KARTHIKEYAN, J.

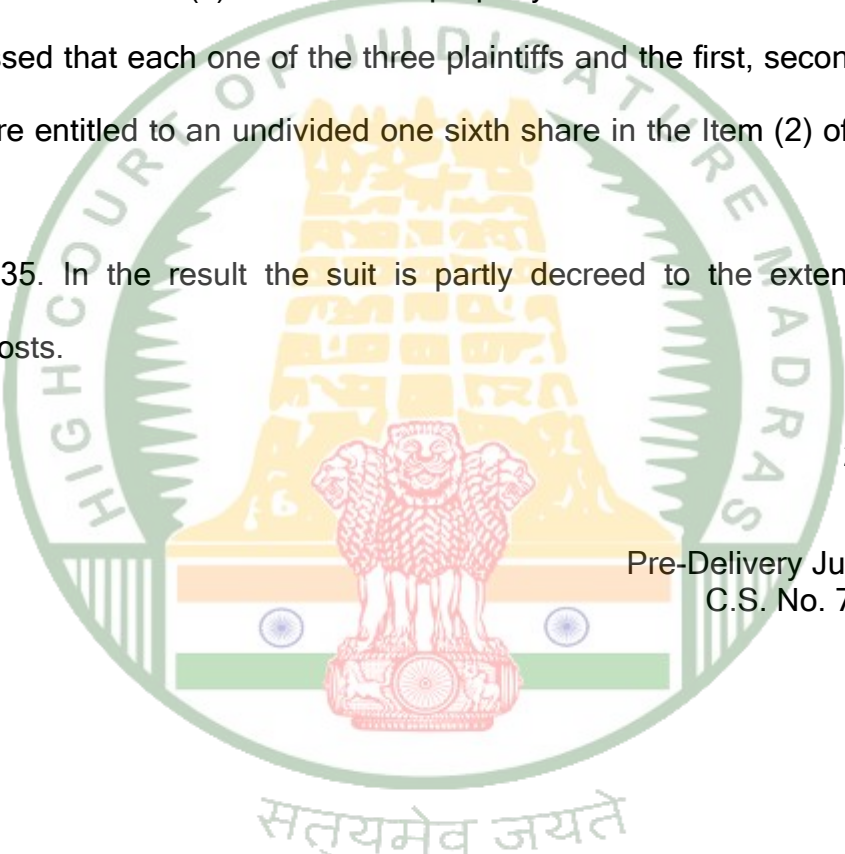
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relief of partition for Item (1) of Schedule property is concerned. A preliminary decree is passed that each one of the three plaintiffs and the first, second and third defendants are entitled to an undivided one sixth share in the Item (2) of Schedule property.

35. In the result the suit is partly decreed to the extent indicated above. No costs.

28.08.2017

Pre-Delivery Judgement in
C.S. No. 718 of 2012



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