

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.07.2018

Delivered on : 10.10.2018

CORUM

**THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE C.SARAVANAN**

**A.S.Nos.77 & 78 of 2011
and**

**M.P.No.1 of 2011 and C.M.P.No.12021 of 2018 in
A.S.No.77 of 2011**

A.S.No.77 of 2011

Ilavarasi Ramanathan

... Appellant

Vs.

Mehamala

... Respondent

A.S.No.78 of 2011

1.Sushmita
2.Iswarya
3.Ramprasad

सत्यमेव जयते... Appellants

Vs.

1.Ramanathan
2.Ilavarasi Ramanathan
3.Mehamala
4.P.Seshagiri Rao

... Respondents

(appellants were declared as major
by order dated 10.07.2018 in C.M.P.11363-11365/2018)

Appeals have been filed under Section 96 of the Civil Procedure Code against the common judgment and decree dated 13.12.2010 in O.S.No.181 of 2010 and O.S.No.48 of 2008, respectively, passed by the learned Additional District Court (Fast Track Court No.2), Cuddalore.

Appearance

Mrs.Hema Sampath, Senior Counsel for M/s.R.Meenal
(For appellants in both the appeals)

Mr.M.Santhanaraman for M/s.M.R.Sivakumar for R3 & R3 in
A.S.No.78/2011 and sole respondent in A.S.No.77 of 2011

No appearance for R1 & R2 in A.S.No.78 of 2011

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COMMON JUDGMENT

(R.SUBBIAH, J.,)

In the present appeals, challenge is made to the common judgement and decree dated 13.12.2010 passed in O.S.No.48/2008 and O.S.No.181/2010, wherein and whereby the learned Additional District Judge (FTC-II), Cuddalore has dismissed the suit in O.S.No.48/2008 filed by the appellants in A.S.No.78/2011 for partition and separate possession of 3/4 in the suit property and decreed the suit in O.S.No.181/2010 filed by the respondent in A.S.No.77 of 2011 (3rd respondent in A.S.No.78 of 2011), for declaration declaring her exclusive title over the suit property and for permanent injunction.

2.The appellant Ilavarasi Ramanathan in A.S.No.77 of 2011 is the defendant in O.S.No.181 of 2010 and the respondent Megamala is the plaintiff in the said suit. The appellants in A.S.No.78 of 2011 are the three children of Ilavarasi Ramanathan, who is the appellant in A.S.No.77 of 2011. The said three children filed the suit in O.S.No.48 of 2008 against their parents, the plaintiff in O.S.No.181 of 2010 viz., Mehamala and one Seshagiri Rao (power agent of their mother).

3.Since the parties to the appeals and the issues involved in the appeals are inter-related, these appeals are disposed of by way of this common judgment.

(A.S.No.77 of 2011 - OS.No.94 of 2007 -O.S.No.181 of 2010)

4-1.Originally, the respondent in A.S.No.77 of 2011 viz., Mehamala had filed the suit before the Subordinate Judge at Panruti in O.S.No.94 of 2007, which was subsequently transferred to the file of Additional District Judge (FTC-II), Cuddalore, and renumbered as O.S.No.181 of 2010. It is the case of the plaintiff Mahamala that the suit properties, measuring to a total extent of 7.71 acres, in different survey numbers situated in Marungur Village, Kadampuliyur Sub-Registration District, belonged to the defendant Elavarasi Ramanathan by virtue of the Gift Deeds, dated 21.07.1997, 28.07.1997 & 28.07.1997 executed by her husband Ramanathan. The said three gift deeds were properly attested and valid documents and they were accepted and acted upon. The defendant Elavarasi Ramanathan was in possession of the suit properties gifted to her as its absolute owner. She executed a registered general Power of Attorney deed in favour of one P.Seshagiri Roa (who is the husband of the plaintiff Mahamala and arrayed as 4th respondent in A.S.No.78/2011) on 30.06.2003 in respect of the suit properties and the said Power of attorney is still in force. Subsequently, the said Power Agent Seshagiri Rao has sold the 1st item of the suit properties to his wife viz., the plaintiff-Mehamala on 10.01.2003 for a valid sale consideration of Rs.2,95,000/- and the said sale deed is true and fully supported by consideration. Again on 28.03.2007, the power agent Seshagiri

Rao has sold the remaining portions of the suit property viz., items 2 & 3 of the suit properties to his wife viz., the plaintiff Mehamala, for a valid sale consideration of Rs.72,000/- and this sale deed is also fully supported by valid consideration. Pursuant to the above said sale deeds, the plaintiff Mehamala has become absolute owner of the suit properties and is in possession and enjoyment of the same. The patta for the suit properties has also been changed into the name of the plaintiff and she has been paying the tax due to the Government. While so, during the 1st week of November, 2007 when the plaintiff Mehamala tried to fence her properties, the defendant Elavarasi Ramanathan, from whom the property was purchased through her power agent, prevented the plaintiff from fencing the suit properties claiming that the defendant is still having right over the suit properties. Having sold the properties to the plaintiff, the defendant did not have any right or title over the suit property. Hence, the plaintiff Mehamala filed the suit in O.S.No.94 of 2007 before the Subordinate Court at Panruti, for the following reliefs:-

1)to declare the exclusive title of the plaintiff for the suit properties;

2)to pass an order of permanent injunction restraining the defendant, her men or agents from interfering with plaintiff's lawful possession of the suit properties in any manner whatsoever;

3)to direct the defendant to pay the cost of the suit.

4-2.The said suit was resisted by the defendant Elavarasi Ramanathan

by filing a written statement contending that the suit properties were allotted to the share of the defendant's husband Ramanathan in a partition which

took place in the year 1986 among the said Ramanathan and his brothers. The brothers divided the joint family properties by means of a registered partition deed and in the said partition, the suit schedule properties were allotted to the said Ramanathan. They are coparcenary properties of the said Ramanathan and his children. No division had taken place among Ramanathan and his children. Under such circumstances, the said Ramanathan has no legal right to gift the properties to the defendant (his wife Illavarasi Ramanathan). The alleged three gift deeds executed by the said Ramanathan are *void ab initio* and they will not confer any title on the defendant Elavarasi Ramanathan. The defendant has no right or title in the properties gifted to her. She is not competent to execute any power of attorney in respect of the property over which she has no right. That apart, the power agent deeds do not enable the agent to sell away the properties. The Power Agent has no right to execute a blanket sale deed. The Power agent deeds were given to her agent only to form layout. In fact, no lay-out was formed by the Power Agent. On the other hand, the defendant's husband Ramanathan had planted Cashew plants in the suit properties, thousand in number. The plaintiff Mehamala at no point of time was in possession of the properties. It is further stated by the defendant that one Koteeswara Rao, who is the father of the Power Agent Seshagiri Rao, was a N.L.C. Transport Contractor. The lorries of the defendant's husband Ramanathan were running for hire for the said Koteeswara Rao's transport business. There were transactions between the defendant's husband and the said Koteeswara Rao. At one stage, it was found that the defendant's husband owed money to the said Koteeswara Rao. Then, it was thought that the properties could be converted into house-sites and sold out and with

the sale proceeds, the money owed to the said Koteeswara Rao could be settled. Only under such circumstances, the Power of Attorney Deeds were executed in favour of the said Seshagiri Rao, son of the said Koteeswara Rao. But, the said Power Agent Sesharigir Rao fraudulently executed the sale deeds in favour of his wife Mehamala (plaintiff). According to the defendant Elavarasi Ramanathan, the sale deeds executed by the Power Agent Seshagiri Rao are not valid. Thus, the defendant sought for dismissal of the suit.

(A.S.No.78/2011 - O.S.No.48/2008)

5-1. While the said suit filed by the plaintiff Mehamala was pending, the three minor children of the defendant Elavarasi Ramanathan and Ramanantha (respondents 2 & 1 respectively in A.S.No.78/2011), have filed a separate suit through their maternal grandfather, in O.S.No.48 of 2008 on the file of the Principal District Judge at Cuddalore, against their parents, the plaintiff Mehamala and Power Agent Seshagiri Rao. It is the case of the three children that their father Ramanathan had four brothers, one of them elder to him and others younger to him. They constituted a Hindu Undivided family. The family of five brothers had large extent of ancestral properties. The family was joint and in enjoyment of the properties jointly. While so, the brothers decided to divide the properties and in pursuance of the same, there was a partition in the year 1986 among Ramanathan, his mother and his brothers. The partition is evidenced by registered partition deed dated 13.10.1986. Under the said partition, the suit properties were allotted to the share of the said Ramanathan and he has been in possession and enjoyment of the same. The properties are ancestral properties and by birth, the three

children (appellants in A.S.No.78/2011) have become entitled to an undivided share in the suit properties. The three children are coparceners along with the 1st defendant viz., their father Ramanathan. There has been no division between the three children and their father Ramanathan. The properties continue to be joint family properties. The three children are living in Cuddalore and studying there. They are under the care and custody of their maternal grandfather. The three children came to know that their father Ramanathan under three documents styled as gift settlement deeds, dated 21.07.1997, 28.07.1997 & 28.07.1997, settled the suit properties in favour of their mother Elavarasi Ramanathan. The gift deeds were executed by the 1st defendant in respect of coparcenary properties, which belong to the coparcenary consisting of the plaintiffs (three children) and their father Ramanathan. Their father Ramanathan, who is one of the coparceners, has absolutely no right to gift away the properties. The gift deeds are totally void *ab initio*. But, armed with the settlement deeds, which are invalid, the 2nd defendant (their mother Elavarasi Ramanathan) has chosen to execute Power of Attorney in favour of the said Seshagiri Rao (husband of the plaintiff in O.S.No.181/2010 viz., Mehamala), empowering him to form a layout in the properties. But, the said Seshagiri Rao, exceeding the limited power granted to him, sold the properties to his wife Mehamala. According to the three minor children, their mother Elavarasi Ramanathan does not derive any title to the properties under the gifts, which were executed in her favour, as they are totally void. So, the power of attorney executed by Elavarasi Ramanathan in faovur of the Seshagiri Rao is equally invalid as the said Elavarasi Ramanathan has no right to the properties. Consequently, the sale deed executed by the said Seshagiri Rao

to the plaintiff Mehamala will not confer any title on the plaintiff Mehamala. It is the joint family, which continues to be in possession of the suit properties even now. The conduct of the 1st defendant Ramanathan in settling the coparcenary properties in favour of the 2nd defendant Elavarasi Ramanathan is most improper. The 1st defendant has caused serious hurdle to the plaintiffs (three children) valuable right to the properties. So, the plaintiffs (three children) do not want the joint family status to continue. As the father and mother of the plaintiffs have acted against the interest of the plaintiffs, their maternal grandfather has chosen to protect the interest of the minors by filing the suit for partition. Thus, the three children filed the suit through their maternal grandfather, in O.S.No.48 of 2008 seeking for preliminary decree for partition of the properties and for separate possession of their 3/4th share in the suit properties.

5-2.The said suit O.S.No.48 of 2008 filed by the three minor children was resisted by the Power Agent Seshagiri Rao (4th defendant in that suit/4th respondent in A.S.No.78/2011) by filing a written statement, contending that it is true that the 1st defendant Ramanathan, his brothers and their mother divided the properties by means of registered partition deed dated 13.10.1986 and the suit properties were allotted to the share of the 1st defendant Ramanathan, under 'C' schedule to the partition deed. But, the allegations made by the plaintiffs (children) that the properties are ancestral properties in the hands of the 1st defendant and that the plaintiffs (children) have become entitled to an undivided share in the suit properties and that it is an unobstructed heritage and that the plaintiffs are coparceners and that the properties continued to be joint, are all false and specifically denied by

the 4rd defendant. The 1st defendant Ramanathan had executed settlement deeds dated 21.07.1997, 28.07.1997 & 28.07.1997 in favour of his wife (2nd defendant Elavarasi Ramanathan). It is denied by the 4th defendant Seshagiri Rao that the properties covered under the settlement deeds were all coparcenary properties and that the 1st defendant had no right to gift away the properties and that the gift deeds are totally void *abinitio*. It is further stated by the 4th defendant Seshagiri Rao that the 1st defendant Ramanathan was indebted to several persons and he wanted to discharge the debts and wanted money for starting transport business. So, the 1st defendant Ramanathan negotiated for sale with the 4th defendant Seshagiri Rao and a sale agreement was entered into between the 2nd defendant Ilavarasi Ramanathan and the 4th defendant's father Koteeswara Rao on 24.07.2002. The agreement was reduced into writing, whereby the 2nd defendant (Elavarasi Ramanathan) agreed to sell the property for Rs.21,22,250/-. On the date of agreement, the 4th defendant's father Koteeswara Rao paid a sum Rs.10 lakhs to the 2nd defendant (Elavarasi Ramanathan) and the balance amount of Rs.11,20,250/- was agreed to be paid within a period of 10 months. The 2nd defendant Illavarasi Ramanthan received the advance amount of Rs.10 lakhs and executed the document. The 1st defendant Ramanathan signed the sale agreement as one of the attestors. Subsequently, the 2nd defendant Illavarasai Ramanathan received a sum of Rs.1,50,000/- on 26.12.2002 and the balance sum of Rs.9,67,250/- on 06.01.2003 and executed a General Power of Attorney deed constituting the 4thd defendant Seshagiri Rao as her lawful agent. The 2nd defendant Illavarasi Ramanathan executed the sale agreement dated 24.07.2002 in respect of 7.71 acres. After execution of the sale agreement, the property

was measured with the help of the Village Administrative Officer, Marungur and it was found that the available extent in the survey numbers mentioned in the agreement was only 7.02 acres. So, another agreement of sale was executed by the 2nd defendant on 06.01.2003 in respect of 7.02 acres. But, the 1st defendant's brother Kamalanathan obstructed the 4th defendant from entering into the land saying that the 2nd defendant had executed a General Power of Attorney deed dated 28.01.2003 in his favour. In order to give quietus, the 4th defendant paid a sum Rs.3 lakhs to the 2nd defendant and she has given a receipt on 30.06.2003. On the same day, the power of attorney deed dated 28.01.2003 executed in favour of Kamalanathan was cancelled by registered cancellation deed. The 4th defendant has paid totally a sum of Rs.24,20,250/-. Acknowledging the entire sale consideration, the 2nd defendant has delivered possession of the properties to the 4th defendant and it has been specifically mentioned that the power deed executed by her is irrevocable. It is a power of attorney coupled with interest and it can not be cancelled unilaterally. The 4th defendant has sold the suit properties in his capacity as the power agent of the 2nd defendant in favour of his wife Mehamala by sale deeds dated 10.01.2003 and 28.03.2007, for valid consideration. The 3rd defendant Mehamala as a purchaser is in possession and enjoyment of 7.71 acres. Patta has also been changed in her name and the 3rd defendant is paying land taxes to the Government. Therefore, the plaintiffs (children) are bound by the sale transactions as the joint family has been benefited out of the transaction. The suit itself has been filed at the instigation of the 1st defendant to get unlawful enrichment. The suit properties have gone out of the family and the plaintiffs (Children) cannot say that they are in joint possession of the suit

properties. Without setting aside the settlement deeds and the sale deeds dated 10.01.2003 and 28.03.2007, the suit is not maintainable. The suit filed by the grandfather Devar Padayachi, as a next friend of minor plaintiffs, is not maintainable and he had knowledge about the payment made by the 4th defendant on 30.06.2003 and the power of attorney deed dated 06.01.2003 executed by the 2nd defendant in favour of the 4th defendant. Thus, the 4th defendant sought for dismissal of the suit.

6. On the above pleadings, the Trial Court has framed the following issues:-

In O.S.No.181/2010 (originally O.S.No.94/2007)

1) Whether the plaintiff is entitled to the relief of declaration and permanent injunction as prayed for in the suit?

2) to what other relief the plaintiff is entitled to?

In O.S.No.48/2008 सत्यमेव जयते

1) Whether the suit properties are joint family properties?

2) Whether the 1st defendant is having right to gift the suit properties to the 2nd defendant? Whether the said gift deeds are valid? whether the said gift deeds would bind on the plaintiffs (minor children)?

3) Whether the plaintiffs (minor children) are entitled to the relief of partition and separate possession?

4) To what other relief the plaintiffs are entitled to?

7. Before the Trial Court, a joint trial was conducted and the evidence was recorded in O.S.No.48/2006 filed by the three children. The defendants 1 & 2 viz., the parents of the children remained exparte. In order to prove their case, on the side of the plaintiffs/children, their guardian-grandfather was examined as P.W.1 and two documents were marked as Ex.P.1 & Ex.P.2. On the side of the defendants, the 4th defendant viz., Power Agent Seshagiri Rao was examined as R.W.1 and twenty eight documents were marked as Ex.R.1 to Ex.R.28.

8. The Trial Court, after analysing the entire evidence both oral and documentary adduced on either side, has decreed the suit in O.S.No.181 of 2010 (O.S.No.94/2007) filed by the 3rd defendant Mehamala and consequently, dismissed the suit in O.S.No.48 of 2008 filed by the minor children (appellants in A.S.No.78/2011). Aggrieved over the same, the mother - Elavarasi Ramanathan has filed the appeal in A.S.No.77 of 2011 and the three children have filed the appeal in A.S.No.78/2011 before this Court, as stated supra.

9-1. Pending these appeals, the plaintiff Mehamala has filed a petition in C.M.P.No.12021 of 2018 in A.S.No.77 of 2011, seeking to permit her to produce three cancellation of settlement deeds all dated 31.05.2011 registered as Doc.Nos.1358, 1359 & 1360 of 2011 and a Settlement Deed dated 13.06.2011, Doc.No.1456 of 2011, of the file of the Sub-Registrar, Kadambuliur as Additional evidence in the above A.S.No.77 of 2011, and to mark the same as additional documents. In the affidavit filed in support of the said CMP, it has been stated by the plaintiff Mehamala that after the

disposal of the suits, the 1st defendant Ramanathan (husband of the appellant in A.S.No.77 of 2011) has executed three deeds of cancellation of settlement, dated 31.05.2011 registered as Doc.No.1358, 1359 & 1360 of 2011 on the file of the Sub-Registrar, Kadambuliur and thereafter, he has executed a Settlement Deed dated 13.06.2011, Doc.No.1456 of 2011, of the file of the Sub-Registrar, Kadambuliur, thereby he settled the subject property in favour of his daughters, who are the plaintiffs 1 & 2 in O.S.No.48/2008 and the appellants 1 & 2 in A.S.No.78/2011. Thus, it is evident that the intention behind the execution of the deeds as stated above is purely to nullify the effect of the judgment and decree passed by the Trial Court. Though the above said cancellation of settlement deeds and settlement deed were executed subsequent to the date of judgment passed by the trial Court, the production of the said documents in these appeals is important for substantial cause, which is inevitable for deciding the issues involved in the above appeals. Thus, she sought for permission to produce those documents as additional evidence.

9-2. In the said CMP, no counter has been filed by the respondent/appellants in A.S.No.77/2011.

10. Since all the parties to these two cases are covered in the suit in O.S.No.48 of 2008 filed by the three children, for the sake of convenience and for better understanding, hereinafter the parties are referred to as per ranks in O.S.No.48 of 2008, as the three children as plaintiffs, their parents as defendants 1 & 2, the decree holder Mehamala as 3rd defendant and her husband/power agent Seshagiri Rao as 4th defendant.

11.The learned senior counsel appearing for the appellants would submit that in fact, the suit schedule properties and other properties were given to the 1st defendant's father Komarasami in the partition which took place on 05.08.1972 and in the said partition deed (Ex.A.2), it was recited that the properties are ancestral and enjoyed jointly. After his demise, the 1st defendant, his mother and his brothers constituted a joint family and they were in possession of the properties. On 13.10.1986, under Ex.A.1-Partition deeds, the joint family properties were partitioned among the 1st defendant, his mother and brothers and in the said partition deed (Ex.A.1), the suit schedule properties were allotted to the 1st defendant Ramanathan. As such, by birth, his children (plaintiffs in O.S.No.48/2008/Appellants in A.S.No.78/2011) trace their right from their grandfather Komarasami, in respect of the properties which are ancestral in nature. Hence, the children/plaintiffs and the defendants 1 constitute a joint family property and therefore, the children/plaintiff each have 1/4th share in the suit properties. When each having an undivided 1/4th share, the father/D1 had no right to execute the settlement deeds for the entire property in favour of his wife (2nd defendant) and the said settlements will not bind the children.

12.In support of his contention, the learned senior counsel for the appellants relied upon the decision reported in **AIR 1967 SC 569 (Ammathayi @ Perumakkal and another Vs. Kumaresan @ Balakrishnan and others)**. In the said case, the husband executed a gift

<http://www.judis.nic.in> of immovable joint family property in favour of his second wife. His minor son claimed half share in the property by filing a suit. In para 8 of the said

judgment, the Hon'ble Supreme Court held that so far as movable ancestral property is concerned, a gift out of affection may be made to a wife, to a daughter and even to a son, provided the gift is within reasonable limits. A gift for the whole or almost the whole of the ancestral immovable property cannot be upheld as a gift through affection. A hindu father or any other managing member has power to make a gift of ancestral immovable property within reasonable limits for 'pious purposes'. Para 8 in the said decision reads as follows:-

"8.Hindu law on the question of gifts of ancestral property is well-settled. So far as movable ancestral property is concerned, a gift out of affection may be made to a wife, to a daughter and even to a son, provided the gift is within reasonable limits. A gift for example of the whole or almost the whole of the ancestral movable property cannot be upheld as a gift through affection. (see *Mulla's Hindu Law*, 13th Edn. p. 252, para 225). But so far as immovable ancestral property is concerned, the power of gift is much more circumscribed than in the case of movable ancestral property. A Hindu father or any other managing member has power to make a gift of ancestral immovable property within reasonable limits for 'pious purposes': (see *Mulla's Hindu Law*, 13th Edn. para 226, P.252). Now what is generally understood by 'pious purposes' is gift for charitable and/or religious purposes. But this Court has extended the meaning of 'pious purposes' to cases where a Hindu father makes a gift within reasonable limits of immovable ancestral property to his daughter in fulfilment of an antenuptial promise made on the occasion of the settlement of the terms of her marriage, and the same can also be done by the mother in case the father is dead: (see *Kamala Devi Vs. Bachu Lal Gupta* -1957 SCR 452).

Thus, by relying upon the above said decision, the learned senior counsel for the appellants submitted that the dictum laid down in the above said decision would apply to the present facts of the case. In the instant case, the gift deeds executed by the father (D1 Ramanathan) in favour of his wife (D2-Elavarasi Ramanathan) out of his love and affection for her, in respect of the ancestral property is not legally sustainable.

13. Further, the learned senior counsel for the appellants has also relied upon another decision reported in **(1987) 3 SCC 294 [Thamma Venkata Subbamma Vs. Thamma Rattamma and others]**, wherein it has been held that a gift by a coparcener's undivided interest in the coparcenary property either to a stranger or to his relation without the consent of the other coparcenary is void. The relevant portion in the said decision reads as follows:-

"7. The parties are admittedly governed by the Mitakshara School of Hindu Law. The essence of a coparcenary under the Mitakshara School of Hindu Law is community of interest and unity of possession. A member of joint Hindu family has no definite share in the coparcenary property, but he has an undivided interest in the property which is liable to be enlarged by deaths and diminished by births in the family. An interest in the coparcenary property accrues to a son from the date of his birth. His interest will be equal to that of his father. ...

15. The rigour of this rule against alienation by gift has been to some extent relaxed by the Hindu Succession Act, 1956. Section 30 of the Act permits the disposition by way of will of a male Hindu in a

Mitakshara coparcenary property. The most significant fact which may be noticed in this connection is that while the legislature was aware of the strict rule against alienation by way of gift, it only relaxed the rule in favour of disposition by a will the interest of a male Hindu in a Mitakshara coparcenary property. The legislature did not, therefore, deliberately prove for any gift by a coparcener of his undivided interest in the coparcenary property either to a stranger or to another coparcener. Therefore, the personal law of the Hindus, governed by Mitakshara School of Hindu Law, is that a coparcener can dispose of his undivided interest in the coparcenary property by a will, but he cannot make a gift of such interest.

...

17. It is, however, a settled law that a coparcener can make a gift of his undivided interest in the coparcenary property to another coparcener or to a stranger with the prior consent of all other coparceners. Such a gift would be quite legal and valid."

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The learned senior counsel for the appellants would submit that from a reading of the above decision, it is seen that the Hon'ble Supreme Court, after taking notice of the change brought by the Hindu Succession Act, held that a gift cannot be made without the consent of the other sharers, but the coparcener could execute a Will with respect to his share in the property. In the present case, since the settlement deeds were executed by the 1st defendant in favour of the 2nd defendant without the prior consent of the other coparceners viz, the plaintiffs/children, the said settlement deeds are void and consequently, the sale deed executed in favour of the 3rd defendant

by the power agent of the 2nd defendant viz., 4th defendant is also void.

14.The learned senior counsel for the appellants/children would further rely upon a decision delivered by a Division Bench of this Court reported in **AIR 1957 Mad 330 [Palvanna Nadar Vs. Annamalai Ammal]**, wherein it has been reiterated that a gift to a relation is not for pious purposes and that the special powers of a father do not extend beyond purposes warranted by special texts.

15.The learned senior counsel for the appellants has also relied upon the decision reported in **(2013) 9 SCC 419 [Rohit Chauhan Vs. Surinder Singh & others]** and submitted that the said judgment explains the terms 'coparcenary' and 'join family property' and clearly stipulates that after the birth of a son, the father could alienate the property only as karta for legal necessity. The relevant portion in the said judgment is extracted hereunder:-

"11.We have bestowed our consideration to the rival submission and we find substance in the submission of Mr. Rao. In our opinion coparcenary property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor. Coparcenary is a narrower body than the Joint Hindu family and before commencement of Hindu Succession (Amendment) Act, 2005, only male members of the family used to acquire by birth an interest in the coparcenary property. A coparcener has no definite share in the coparcenary property but he has an undivided interest in it and one has to bear in mind that it

enlarges by deaths and diminishes by births in the family. It is not static. We are further of the opinion that so long, on partition an ancestral property remains in the hand of a single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property but if a son is subsequently born, the alienation made before the birth cannot be questioned. But, the moment a son is born, the property becomes a coparcenary property and the son would acquire interest in that and become a coparcener.

....

14. A person, who for the time being is the sole surviving coparcener as in the present case Gulab Singh was, before the birth of the plaintiff, was entitled to dispose of the coparcenary property as if it were his separate property. Gulab Singh, till the birth of plaintiff Rohit Chauhan, was competent to sell, mortgage and deal with the property as his property in the manner he liked. Had he done so before the birth of plaintiff, Rohit Chauhan, he was not competent to object to the alienation made by his father before he was born or begotten. But, in the present case, it is an admitted position that the property which defendant No. 2 got on partition was an ancestral property and till the birth of the plaintiff he was sole surviving coparcener but the moment plaintiff was born, he got a share in the father's property and became a coparcener. As observed earlier, in view of the settled legal position, the property in the hands of defendant No. 2 allotted to him in partition was a separate property till the birth of the plaintiff and, therefore, after his birth

defendant No. 2 could have alienated the property only as Karta for legal necessity. It is nobody's case that defendant No. 2 executed the sale deeds and release deed as Karta for any legal necessity. Hence, the sale deeds and the release deed executed by Gulab Singh to the extent of entire coparcenary property are illegal, null and void. However, in respect of the property which would have fallen in the share of Gulab Singh at the time of execution of sale-deeds and release deed, the parties can work out their remedies in appropriate proceeding."

So far as the present case is concerned, the 1st defendant Ramanathan did not sell the property for any legal necessity. He executed a gift deed in favour of his wife out of his love and affection for her. Even assuming without admitting that there was pressing legal necessity for the family, the 1st defendant Ramanathan himself did not sell the properties but only gifted them away to his wife. Hence, in any view of the matter, the settlement deeds, Ex.B.1, 2 & 3 are invalid and void and the donee (2nd defendant Ilavarasi Ramanathan) did not get title for the properties and as such she did not have any power to alienate the property.

16.As a next fold of submission, the learned senior counsel for the appellants/children submitted that the fact that the properties are ancestral property, has been admitted by the purchaser Mehamala and her husband Seshagiri Rao, the power of attorney agent. The Power Agent Seshagiri Rao in his deposition as D.W.1 admitted to having seen the partition deed-Ex.A.1, in which there is a clear recital to the effect that the properties were

ancestral properties. This fact was also mentioned even in Ex.B.1-Settlement Deed, which was executed by the 1st defendant Ramanathan in favour of his wife Elavarasi (2nd defendant), based on which the title deed the 3rd defendant Mehamala purchased the properties. So, it has to be concluded that the parties walked into the transaction with their eyes open and with the specific intention of depriving the minors of their share in the valuable properties. The various documents executed by the parties to the suits themselves reveal that the sales are not *bona fide*. The consideration mentioned in the various sale agreements and the sale price shown in the sale deeds have no nexus. The reason for execution of so many power of attorney documents as well as agreements is not explained by the power agent viz., 4th defendant Seshagiri. Further, if really the amount stated in the documents had been paid to the 1st defendant Ramanathan, the defendants 3 & 4 would have definitely explained as to why the sale deeds show such low prices. Thus, the learned senior counsel for the appellants submitted that it has to be concluded that the transactions smack of *mala fides* and are not sustainable.

17. With regard to the production of additional document by way of C.M.P.No.12021 of 2018 in A.S.No.77 of 2011, it is submitted by the learned senior counsel for the appellants that subsequent to the disposal of the suits, the 1st defendant Ramanathan had executed documents cancelling three settlement deeds Ex.B.1 to 3 and had executed the fresh settlement deeds giving the properties to his children and those documents have no bearing on

18. Thus, the learned senior counsel for the appellants sought for setting aside the impugned judgment and decree passed by the trial Court.

19. Countering the submissions made by the learned counsel for the appellants, it is submitted by the learned counsel for the respondents 3 & 4/D3 & D4 that the suit properties were allotted to the 1st defendant Ramanathan (father of the plaintiffs-children), by way of a partition deed dated 13.10.1986. At the time of partition dated 13.10.1986, the plaintiffs-children were not born, therefore the suit properties were absolutely acquired by the 1st defendant Ramanathan. Hence, the suit properties have to be treated as absolute properties of the 1st defendant Ramanathan. The devolution of interest in respect of immovable property, which is ancestral in nature is governed by the 'customary principles of Hindus'. Section 8 of the Hindu Succession Act, 1956 deals with the property of a Male Hindu dying intestate which affirms the same as his absolute property irrespective of whether the same is ancestral property or self-acquired property. However, there has been judicial pronouncements for and against this proposition. Thus, the question remains finally unsettled. In this regard, the learned counsel for the respondents 3 & 4 relied upon the following decisions:-

i) AIR 1979 MADRAS 1 (The Additional Commissioner of Income-Tax, Madras-1 Vz. P.L. Karuppan Chettiar);

ii) (2008) 3 SCC 87 (Bhanwar Singh Vs. Puran and others);

iii) 2011-3 LW 317 (B. Nalina & another Vs. Arumugam & others)

20.The learned counsel for the respondents 3 & 4/D3 & D4 has invited the attention of this Court to the written statement filed by the 2nd defendant Elavarasi Ramanathan, in the suit in O.S.No.181/2010, wherein it has been stated that the subject property was sold to repay the debts of father of the children. Therefore, the settlement deeds executed by the 1st defendant in favour of his wife (2nd defendant) is binding on their children and on that ground also, the plaintiffs/children are not entitled to the suit properties. To fortify his contention, the learned counsel for the respondents 3 & 4 relied upon the decision reported in **1976 (2) MLJ 134 (Santanavenugopalakrishnan and others Vs. K.V.Venugopal and others)** and submitted that the existence of antecedent debt, if proved as a necessity for selling the ancestral property by karta, then such sale is binding on the minor children.

21.Further, the learned counsel for the respondents 3 & 4/D3 & D4 submitted that considering the nature of the acquisition of the suit properties by the 1st defendant, it is clear that they are absolute properties of the 1st defendant Ramanathan. Therefore, the gift deeds executed by the 1st defendant in favour of the 2nd defendant under Ex.B.1 to 3, are all valid and consequently, the Power of Attorney Deed executed by the 2nd defendant in favour of the 4th defendant Seshagiri Rao and the sale deeds executed by the 4th defendant in favour of his wife 3rd defendant Mehamala, based on the said Power of Attorney Deed, are all also valid documents. By considering all these aspects, the trial Court has rightly dismissed the suit filed by the plaintiffs/children and decreed the suit filed by the 3rd defendant.

22. With regard to the Miscellaneous Petition to produce additional documents filed by the 3rd respondent-Mahamala, it is submitted by the learned counsel for the respondents 3 & 4/D3 & D4 that after the disposal of the suit, the 1st defendant Ramanathan has revoked the settlement deeds executed in favour of the 2nd defendant and subsequently, he executed settlement deed in favour of his children settling the suit properties in their favour. This fact would reveal the intention of the defendants 1 & 2 to deprive the 3rd defendant-Mahamala of her rights over the suit properties accrued on her. Hence, those documents are essential for deciding the issues involved in these appeals. Thus, the learned counsel appearing for the 3rd respondent sought for permission to mark those documents.

23. We heard the submissions made on either side and carefully perused the materials available on record.

24. In view of the above submissions made on either side, the following points arose for consideration in these appeals:-

1) Whether the suit properties are ancestral properties or absolute properties of the 1st defendant Ramanathan?

2) If the suit properties are held to be ancestral properties, whether the 1st defendant Ramanathan has any right to settle the same in favour of his wife?

3) Whether the 2nd defendant Elavarasi Ramanathan has any right to sell the properties, which were settled in her, through her Power of Attorney-4th defendant?

4) Whether the plaintiffs/children have any right

over the suit properties?

5) Whether the sale made by the 2nd defendant (mother) would bind on the children even if the properties are ancestral properties, when it is the case of the 2nd defendant that since her husband owed money they decided to sell the properties?

6) Whether the documents filed along with CMP can be received as additional documents?

25. Since all the above points are inter-connected, We deal with the same together.

26. Originally, on 05.08.1972 there was a partition between the 1st respondent's father Ranganathan and his brothers. In the said partition dated 05.08.1972, the suit properties and other properties were given to him and in the said partition deed it was recited that the properties are ancestral in nature. Subsequently, on 13.10.1986, there was again a partition between the 1st respondent Ramanathan, his four brothers and his mother, in which the suit properties were allotted to the 1st respondent Ramanathan. On the date of partition i.e., on 13.10.1986 the plaintiffs/children were not born. The evidence on record would show that they were born on 27.01.1995, 08.05.1996 and 21.05.1997 respectively.

27. According to the learned senior counsel for the appellants that the properties are ancestral properties in the hands of the 1st respondent Ramanathan and these three children have right through their birth. In

order to fortify her contention, the learned senior counsel for the appellants has also relied upon the decision reported in **(2013) 9 SCC 419 [Rohit Chauhan Vs. Surinder Singh & others]** and submitted that the said judgment explains the terms 'coparcenary' and 'joint family property' and it clearly stipulates that after the birth of a son, the father could alienate the property only as karta for legal necessity. Thus, it is the submission of the learned counsel for the appellants that in the instant case, the father Ramanathan did not sell the property for any necessity and he executed a gift deed in favour of his wife out of his love and affection for her. Hence, the said settlement deeds Ex.B.1 to 3 are void.

28. But, this Court is of the opinion that, as has been contended by the learned counsel appearing for the respondents 3 & 4/defendants 3 & 4, the devolution of interest in respect of immovable property, which is ancestral in nature, is governed by the 'customary principles of Hindus'. Section 8 of the Hindu Succession Act, 1956, deals with the property of a Male Hindu dying intestate which affirms the same as his absolute property irrespective of whether the same is ancestral property or self-acquired property. The learned counsel for the respondents 3 & 4/D3 & D4 would submit that the un-codified principles of customary Hindu religion make the property allotted to the sharer as his individual property. In this regard, a reference counsel be placed in the decision which was delivered by one of us in the year 2011, reported in **2011-3 LW 317 (B.Nalina & another Vs. Arumugam & others)**, wherein it has been held as follows:-

coparcenary property, the share of each of the coparceners will be clear and ascertainable and once the share of a coparcener is determined, it ceases to be a coparcenary property. In the instant case, the properties were partitioned between the grandfather and the father of the plaintiffs. Once there was a split in the coparcenary, the coparcenary ceases to be existing thereafter and the coparcenary will not continue because there cannot be two joint families in claiming the right over the ancestral properties. When once the properties became the separate properties of Muthukumarasamy Chettiar, only his class-I heirs will be entitled to the said properties and the plaintiffs, who are not coming under the class-I legal heirs, in my considered opinion, are not entitled to claim any share in the 'A' schedule properties."

In the decision reported in **(2008) 3 SCC 87 (Bhanwar Singh Vs. Puran and others)** it has been held by the Hon'ble Supreme Court as follows:-

"10.The fact that the property at one point of time was a joint family property stands admitted.

11.The only question arises for consideration is as to whether the appellant had acquired any interest therein by his birth in the year 1977; Bhima having died in 1972.

12.The Act brought about a sea change in the matter of inheritance and succession amongst Hindus. Section 4 of the Act contains a non-obstante provision in terms whereof any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of the Act, ceased to have effect with respect to any matter for which provision is made therein save as otherwise expressly provided.

13.Section 6 of the Act, as it stood at the relevant

time, provided for devolution of interest in the coparcenary property. Section 8 lays down the general rules of succession that the property of a male dying intestate devolve according to the provisions of the Chapter as specified in clause (1) of the Schedule. In the Schedule appended to the Act, natural sons and daughters are placed in Class-I heirs but a grandson, so long as father is alive, has not been included. Section 19 of the Act provides that in the event of succession by two or more heirs, they will take the property per capita and not per stirpes, as also tenants-in-common and not as joint tenants.

14. Indisputably, Bhima left behind Sant Ram and three daughters. In terms of Section 8 of the Act, therefore, the properties of Bhima devolved upon Sant Ram and his three sisters. Each had 1/4th share in the property. Apart from the legal position, factually the same was also reflected in the record of rights. A partition had taken place amongst the heirs of Bhima.

15. Although the learned First Appellate Court proceeded to consider the effect of Section 6 of the Act, in our opinion, the same was not applicable in the facts and circumstances of the case. In any event, it had rightly been held that even in such a case, having regard to Section 8 as also Section 19 of the Act, the properties ceased to be joint family property and all the heirs and legal representatives of Bhima would succeed to his interest as tenants in common and not as joint tenants. In a case of this nature, the joint coparcenary did not continue.

16. Interpretation of Section 8 of the Hindu Succession Act came up for consideration before this Court in *Commissioner of Wealth Tax, Kanpur & Ors. v. Chander Sen & Ors.* [(1986) 3 SCR 254]. *Mukherjee, J. (as the learned Chief Justice then was)* upon considering the changes effected by the Hindu Succession Act as also the implication

thereof and upon taking into consideration the decisions of Calcutta High Court, Madhya Pradesh High Court, Andhra Pradesh High Court as also Madras High Court on the one hand and the Gujarat High Court on the other, opined :

"22. In view of the preamble to the Act, i.e., that to modify where necessary and to codify the law, in our opinion it is not possible when Schedule indicates heirs in class I and only includes son and does not include son's son but does include son of a predeceased son, to say that when son inherits the property in the situation contemplated by Section 8 he takes it as karta of his own undivided family. The Gujarat High Court's view noted above, if accepted, would mean that though the son of a predeceased son and not the son of a son who is intended to be excluded under Section 8 to inherit, the latter would by applying the old Hindu law get a right by birth of the said property contrary to the scheme outlined in Section 8. Furthermore as noted by the Andhra Pradesh High Court that the Act makes it clear by Section 4 that one should look to the Act in case of doubt and not to the pre-existing Hindu law. It would be difficult to hold today the property which devolved on a Hindu under Section 8 of the Hindu Succession would be HUF in his hand vis-a-vis his own son; that would amount to creating two classes among the heirs mentioned in class I, the male heirs in whose hands it will be joint Hindu family property and vis-a-vis son and female heirs with respect to whom no such concept could be applied or contemplated. It may be mentioned that heirs in class I of Schedule under Section 8 of the Act included widow, mother, daughter of predeceased son etc.

23. Before we conclude we may state that we have noted the observations of Mulla's *commentary on Hindu Law, 15th Edn.*, dealing with Section 6 of the Hindu Succession Act at pp.924-26 as well as Mayne's on *Hindu Law, 12th Ed., Pp.918-19.*

24. The express words of Section 8 of The Hindu Succession Act, 1956 cannot be ignored and must prevail. The preamble to the Act reiterates that the Act is, inter alia, to 'amend' the law, with that background the express language which excludes son's son but

included son of a predeceased son cannot be ignored."

From the dictum laid down in the above said decisions, it is clear that once the partition is effected in the coparcenary property, the share of each of the coparceners will be clear and ascertainable and once the share of a coparcener is determined, it ceased to be a coparcenary property. Considering the present facts of the case, in the light of the above said decisions, it has to be construed that pursuant to the partition effected in the year 1986 (Ex.A.1), the property allotted to the share of the 1st respondent Ramanathan is his absolute property and not ancestral property.

29.Secondly, it is the contention of the learned senior counsel for the appellants that the 1st respondent Ramanathan has no right to execute the settlement deed in favour of his wife (2nd defendant Illavarasi Ramanathan) and therefore, the sale deed executed to the 3rd defendant Mehamala through the power agent of the 2nd defendant viz., 4th defendant is also not valid document in the eye of law.

30.But, We are of the opinion that even assuming for a moment that the suit properties are ancestral properties, it is the case of the 2nd defendant Illavarasai Ramanathan in her written statement filed in the suit in O.S.No.181 of 2010 (O.S.No.94/2007), that the suit properties were sold to repay the debts of the father of the children. Further, though it is contended by the learned counsel for the appellants that the children have right in the suit properties, the sale deed executed by the mother on the basis of the settlement deed executed by their father is binding on the children and they

are not entitled to claim any right over the property, which was sold to clear the debts of the father.

31.Further, it is seen that before the trial Court, the children and the mother were represented by two different advocates. But, in this appeal before this Court, they are represented by one and the same counsel. Though the children filed the suit against their parents (defendants 1 & 2), the parents remained *exparte* in the connected appeal in A.S.No.78 of 2011 filed against the dismissal of the partition suit O.S.No.48 of 2008 filed by the children. From the above facts, it is clear that the suit in O.S.No.48 of 2008 filed by the children is frivolous suit filed at the instance of their parents. The parents of the children, who are parties behind the vexatious litigation, never chose to challenge the sale deed executed by them in favour of the 3rd defendant Mehamala on the ground that the sale is sham and nominal or the consideration paid thereunder is too low. In this regard, a reference could be placed in the decision reported in **1996 (2) MLJ 134 (Santanavenugopalakrishnan and others Vs. K.V.Venugopal and othes)**, wherein a Division Bench of this Court has held as follows:-

"In passing, we have to reiterate that this is one of those usual litigations filed by the minor children in the joint family-attacking the alienations made by the father either during their minority or immediately thereafter but, certainly, with the encouragement and active support of the parents. Without the first and the second defendants having a hand in the litigation, the plaintiffs would not have dared or could not have been encouraged to file the same. The mother of some of the plaintiffs was

representing some of the minors. What prevented her from going, into the box and speak against her husband remains unexplained. The appeal is dismissed. As the litigation, in our view, ought to have been sponsored by the parents and the minor plaintiffs ought not to be blamed for it, there will no order as to costs in this appeal. The appellants, however, will pay the Court-fee payable to the Government."

From the above decision, it is clear that the existence of antecedent debt, if proved as a necessity for selling the ancestral property by karta, then such sale is binding on the minor children. The vexatious litigation filed by father through his minor children challenging his own sale as 'suthradhari' of litigation by abusing the due process of law has to be deprecated. In the instant case, the father (1st defendant) has dealt with the subject property by settling the same in favour of his wife (2nd defendant) and thereafter, he made his wife to sell the property in favour of 3rd defendant Mehamala and thereafter, filed a suit for partition through his minor children by making their maternal grandfather as guardian, and deliberately remained exparte before the trial Court and also before this Court while contesting the other suit simultaneously. These facts would clearly show that the suit filed by the children at the instance of their parents is nothing but purely abuse of due process of law.

32.It is further submitted by the learned counsel for the respondents 3

& 4 /D3 & D4 that after the dismissal of the suit for partition and after filing the present appeals, the 1st defendant/father has revoked the settlement

deed (Ex.B.1) and subsequently, executed another settlement deed dated 13.06.2011 settling the suit properties in favour of the children. As state supra, the 3rd defendant Mehamala has also filed C.M.P.No.12021 of 2018 under Order XLI Rule 27 of CPC, praying to permit her to produce the certified copies of the cancellation deeds 31.05.2011 and settlement deed 13.06.2011 executed by the 1st defendant, as additional documents, since they are substantial to decide the issues involved in these appeals.

33.Though no counter was filed to the said petition filed under Order XLI Rule 27 of CPC, it is submitted by the learned senior counsel for the appellants that the said documents came into existence after the disposal of the suits and they have no bearing on the legal issue involved in the present appeals.

34.But, We are not inclined to accept the submission made by the learned senior counsel for the appellants that the said documents have no bearing to the present appeals, because subsequent cancellation of settlement deeds and execution of fresh settlement deed in favour of the children would clearly show that the property is being treated as absolute property of the father even after dismissal of the suit filed by the children for partition. The father is the man behind this frivolous litigation and he continues to have hold on the subject properties and his wife and children. In this regard, it would be appropriate to place reference in the following decisions. Additional documents can be received in the appeal as they have

has been held as follows_

"If additional evidence is found to have important bearing on main issue, or found to be necessary to remove any lacuna in evidence and for clearing any doubt for pronouncing judgment and required in interest of justice, it may be allowed."

The dictum laid down in the above said decision is squarely applicable to the present facts of the fact. The documents sought to be marked by the 3rd defendant would show the conduct of the defendants 1 & 2 and plaintiffs, to deprive the 3rd defendant of her valuable right accrued on her over the suit properties.

35. Therefore, the petition to produce additional documents viz., C.M.P.No.12021 of 2018 is allowed and the cancellation of settlement deeds dated 31.05.2011, registered as Doc.Nos.1358, 1359 & 1360 of 2011 and the Settlement Deed dated 13.06.2011 registered as Doc.No.1456 of 2011 on the file of the Sub-Registrar, Kadambuliur, are hereby received as additional documents and they are marked as Ex.C.1 to C4 respectively.

36. For the foregoing reasons, it is held that pursuant to the partition effected in the year 1972, the property allotted to the share of the 1st respondent Ramanathan is his absolute property and not ancestral property. Consequently, the Sale Deeds dated 10.01.2003 and 28.03.2007 (Ex.B.8 & Ex.B.16) executed by the 2nd defendant through her Power Agent viz ., the 4th defendant, in favour of the 3rd defendant Mehamala (plaintiff in O.S.No.181 of 2010) are valid documents in the eye of law. Hence, this Court does not find any infirmity in the judgment and decree passed by the trial Court.

In the result, both the appeals fail and the same are dismissed.

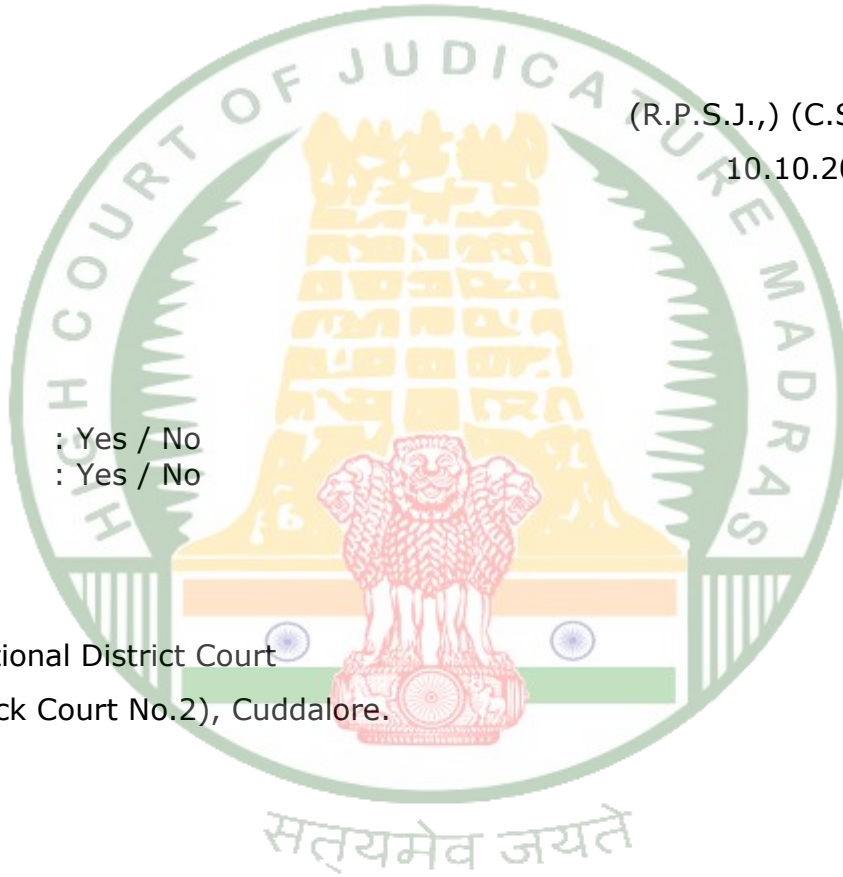
M.P.No.1 of 2011 is closed. C.M.P.No.12021 of 2018 is allowed. No costs.

(R.P.S.J.,) (C.S.N.J.,)

10.10.2018

Internet : Yes / No
Index : Yes / No
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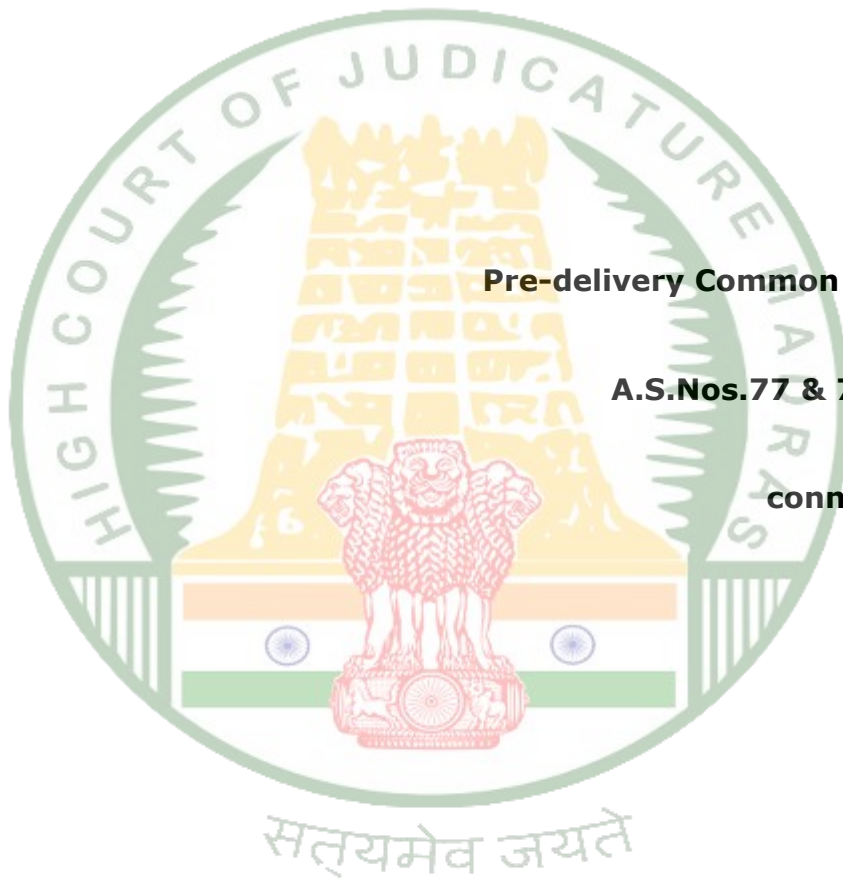
To,
The Additional District Court
(Fast Track Court No.2), Cuddalore.



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**R.SUBBIAH, J.,
and
C.SARAVANAN, J.,**

(ssv)



**Pre-delivery Common Judgment
in**

A.S.Nos.77 & 78 of 2011

**and
connected MPs**

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