

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 25.07.2018****CORAM****THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN****C.S.No.880 of 2013**

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- The seal of the High Court of Judicature at Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. Below the gopuram is a horizontal band with the Indian national flag's saffron, white, and green stripes, and the Ashoka Chakra in the center. The words 'HIGH COURT OF JUDICATURE MADRAS' are written in a circle around the central image. At the bottom, the motto 'सत्यमेव जयते' (Satyameva Jayate) is inscribed in Devanagari script.
1. Lilly Sharon Grace,
D/o. Mr.John Nagendiran
 2. Beulah,
D/o. Mr. John Nagendiran
 3. Rollet Hapshiba Grace,
D/o. Mr.John Nagendiran
- ... Plaintiffs

- Vs.**
1. Mr.K.Chandrasekaran
S/o. Mr.Kaliappan
 2. Mrs.E.Malarselvi
W/o. Mr.Ekambaram
 3. Mr.T.E.Sathishkumar
D/o. Mr.Ekambaram
 4. T.E.Archana,
D/o.Ekambaram
 5. John Nagendiran,
S/o. Arunachalam Nadar

6. Buvanehwari @ Esther Buvaneshwari, .. Defendants

PRAYER: Plaintiff filed under Order IV Rule 1 of O.S.Rules and Order VII Rule 1 of C.P.C. r/w. Section 34 of Specific Relief Act praying to pass a judgment and decree against the defendants:

a) directing the 1st defendant to vacate and hand over the possession of the suit property ;

b) to declare the Release Deed dated 18.02.1993, in Document No.313/1993, SRO, Royapuram as null and void, unenforceable and not binding on the plaintiffs;

c) to declare the sale deed dated 16.05.2013 in Document No.1360/2013 on the file of SRO, Royapuram as null and void , in enforceable and not binding on the plaintiffs;

d) to pass a preliminary decree thereby partitioning the suit property by metes and bounds by appointing an Advocate Commissioner

e) to pass a final decree thereby allotting 3/5th shares to the plaintiffs 1 to 3 in the suit property ; by appointing an Advocate Commissioner

f) to permanent injunction restraining the 1st defendant or his men, agents, servants or any body from alienating or encumbering the suit property either by sale, mortgage, power deed or in any other manner

g) and cost of the suit.

For Plaintiffs

: Mr.B.Manimaran

J U D G M E N T

The suit has been filed by the plaintiffs for a direction to hand over the vacant possession, declaration, preliminary decree, final decree and permanent injunction and for costs.

2. The averments in the plaint reads as follows :-

The suit property originally owned by the plaintiffs great grand father, late Mr. P.S.Velayudha Nadar, and he has purchased the suit property by way of registered sale deed dated 31.03.1969. Thereafter, the said Velayudha Nadar executed a registered settlement deed, dated 16.04.1970, in favour of his grand daughters, namely, defendants 2 and 6 stating that they have right only to share the mesne profits equally, but they have not been given any right to alienate or encumber the suit property. However, in the settlement deed, it is clearly stated that the children born to defendants 2 to 6 are alone entitled to alienate the suit property. Hence, the plaintiffs and defendants 3 and 4, who are the great grand daughters and sons they are only have absolute and lawful title and ownership of the suit property.

2.i) Now, only the plaintiff came to know about the settlement deed dated 16.04.1970, thereafter they obtained the encumbrance certificate and found that the defendants 2 to 4 have sold the property in favour of the first defendant as if they have acquired the title by way of settlement deed. It is further stated that as per the settlement deed, the plaintiffs and the defendants 3 and 4 alone liable to alienate the property, but the defendants 2 to 4 obtained a release deed from the defendants 5 and 6 and sold the property. Hence, the Sale deed is not legally valid and deserves to be declared as null and void. Hence, the present suit has been filed.

3. Though summons have been served on all the defendants, none of the defendants filed their written statement, Consequently, the defendants were set exparte on 27.06.2018.

4. In order to substantiate their claim, the second plaintiff was examined as P.W.1 and the plaintiffs have filed seven documents, which were marked as Ex.P.1 to Ex.P.7, viz, the settlement deed executed by late Velautha Nadar was marked as Ex.P.1, the Release deed executed by the Defendants 5 and 6 in favour of defendants 2 to 4 was marked as Ex.P.2., Sale deed executed by Defendants 2 to 4 in favour of first defendant was

marked as Ex.P.3, Encumbrance certificate was marked as Ex.P.4, legal notice issued by the plaintiffs was marked as Ex.A.5, Reply notice sent by the defendants 1, 2 to 4 was marked as Ex.P.6, Rejoinder notice by the plaintiffs was marked as Ex.P.7.

5. On perusal of the pleadings, evidence and documents available on record, I am of the opinion that the plaintiffs have proved their claim and they are entitled for the reliefs as sought for.

6. Resultantly, the suit is decreed as prayed for in respect of the prayers made in the plaint in clause b,c and f with costs. Accordingly, preliminary decree is passed.

25.07.2018

mrp

List of the witnesses examined on the side of the plaintiff:

PW1 - Mrs. Beulah

List of Exhibits marked on the side of the plaintiff:

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description</i>
1	Ex.P1	The certified copy of the settlement deed, dated 16.04.1970

Sl. No.	Exhibits	Description
2	Ex.P2	The certified copy of the release deed, dated 18.02.1993
3	Ex.P3	The certified copy of the sale deed, dated 16.05.2013
4	Ex.P4	Encumbrance Certificate, dated 29.07.2013
5	Ex.P5	Legal notice issued by the plaintiffs, dated 19.08.2013
6	Ex.P6	Reply notice dated 28.08.2013
7	Ex.P7	Rejoinder by plaintiffs dated 02.09.2013

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Index : Yes/ No

Internet : Yes/ No

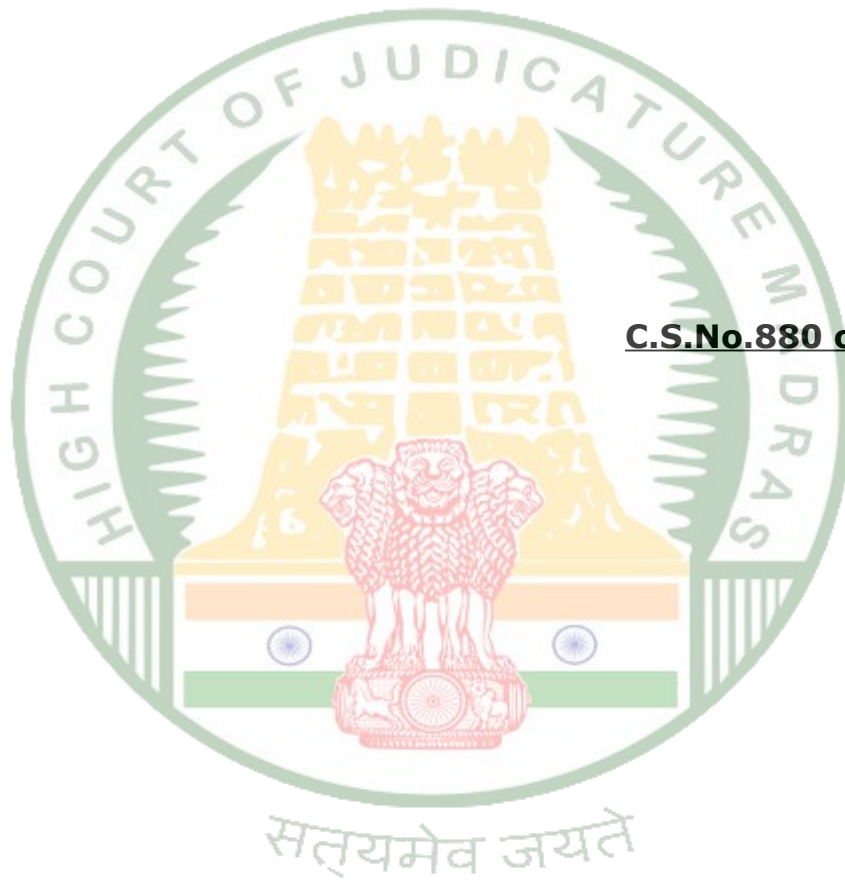
Speaking Order/ Non-speaking Order

सत्यमेव जयते

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V.BHARATHIDASAN, J.

mrp



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