

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.02.2017

PRONOUNCED ON : 24.11.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.S.No.400 of 2007

1. Miss. R.Kalpana,
D/o. C.K.D. Ramachandran

2. Miss. R. Kanchana
D/o. C.K.D. Ramachandran

... Plaintiffs

.Vs.

1.L. Ganesan S/o. K. N. Srinivasan

2. T. Jothi S/o. Thirunavukkarasu

3. Mrs. Rathana Devi. W/o. Manikkam

..Defendants

PRAYER : Civil suit filed praying for judgment and decree against the defendant as follows:-

(a) Directing the defendants to deliver vacant possession of the entire suit property situate at Old Door No.16, then Door No.32, and Present Door Nos.24,26 & 28, Venkatachalam Street, Purasawalkam, Chennai -7 measuring of an extent of 2520 Sq.ft., bearing Re-Survey No.1255 of Purasawalkam, Block No.22.

b) Directing the defendants to pay a sum of Rs.9,00,000/- towards damage for illegal use and occupation of the suit property from 01.12.2003 to 30.11.2006 @ Rs.25,000/- per month and further sum of Rs.25,000/- per month from the date of plaint till the date of delivery of vacant possession to the plaintiffs.

(c) To award cost of the suit

For Plaintiffs : Mr.G. Jayachandran
For Defendants : Mr. P.K. Sivasubramanian

J U D G M E N T

The civil suit is filed by the plaintiffs praying to direct the defendants to deliver vacant possession of the entire suit property situate at Old Door No.16, then Door No.32, and Present Door Nos.24,26 & 28, Venkatachalam Street, Purasawalkam, Chennai -7 measuring of an extent of 2520 Sq.ft., bearing Re-Survey No.1255 of Purasawalkam, Block No.22 and further to direct the defendants to pay a sum of Rs.9,00,000/- towards damage for illegal use and occupation of the suit property from 01.12.2003 to 30.11.2006 @ Rs.25,000/- per month and further sum of Rs.25,000/- per month from the date of plaint till the date of delivery of vacant possession to the plaintiffs.

2. The gist of the plaint filed by the plaintiffs is as follows:-

(a) The suit property situated at Old Door No.16, then Door No.32, and Present Door Nos.24,26 & 28, Venkatachalam Street, Purasawalkam, Chennai -7 measuring of an extent of 2520 Sq.ft., bearing Re-Survey No.1255 of Purasawalkam, Block No.22 was originally belonged to Mr.C.K. Dhuraisamy S/o. Karumbatha Mudaliar. The aforesaid suit property was purchased by C.K.Dhuraisamy, through Court auction conducted in C.S.No.558 of 1931 dated 19.12.1933. Mr. C.K.Dhuraisamy had executed a Will dated 19.08.1938 and thereby appointed the Official Trustee, as his sole executor. The will and the codicil directed the Official Trustee to take possession of the estate and administer the same subject to certain specific bequests as he named in favour of individuals and towards charity. The Official Trustee was directed to hold the income of the estate in trust for Ramachandran S/o. Thiruvengadasamy for life and divide the corpus of the trust estate equally among the children of Ramachandran thereafter.

(b)The Plaintiff states that the official trustee took proceedings for probating the Will, the probate was contested but ultimately, by order dated 29.11.1939 in T.O.S. No.4 of 1939 on the file of this Court, the Will was probated. However, Krishnaswami, the other brother of the testator Dhuraisamy filed a suit in C.S. No.3 of 1940 before this Court praying for declaration that the properties which was subject matter of testamentary disposition under Dhuraisamy's Will were joint family properties, that he had half a share in the said properties and the earlier partition deeds of 1922 were sham and nominal documents. The said Krishnaswami impleaded the Official trustee and the two children of Thiruvengadasamy namely, Karumbattha and Ramachandran as a party defendants in the above suit. The plaintiff's understand that the said suit was dismissed on 27.02.1942 and against which an appeal was filed in O.S.A. No.69 of 1942 and subsequently the said Krishnaswami abandoned his allegations of fraud and undue influence. Therefore, the Appellate Court remanded the suit for fresh trial. On remand, a memo of compromise dated 04.02.1943 was entered between the parties wherein all the parties and the Official Trustee have signed accepting the terms of Memo of Compromise. Subsequently, Mrs. Apoorpammal, the widow of

Tiruvengadaswamy and the guardian of minor defendants therein namely, Karumbatha and Ramachandran applied for and obtained leave of Court to enter the compromise on behalf of the minors in Application No.332 of 1943. In terms of the memo of Compromise, this Court passed a decree dated 05.02.1943. Under the terms of the compromise decree, Krishnaswami and his wife Logambal Ammal were given the suit property for their joint lives till their life time. Logambal Ammal and her minor daughter Nallatchi were also to be given jewels worth Rs.2,000/- by the Official Trustee.

(c) The Plaintiff further states that the said Krishnaswami died intestate on 19.07.1943, leaving behind his wife Logambal Ammal and daughter Nallatchi. Subsequent to death of Kirshnaswamy, his widow Logambal Ammal filed an application No.756 of 1953 before this Court, praying to set aside the compromise decree and claiming rights in the properties vested in the the Official Trustee under Dhuraisamy's Will. The said application, however, was dismissed by this Court on 10.09.1954 and an appeal against that order in O.S.A. No.98 of 1955 was also dismissed. Further, Ramachandran S/o. Tiruvengadasamy and a

legatee under the Will of Dhuraisamy, died intestate in the year 1967. He is survived by his Wife Gowri and two minor daughters who are now plaintiffs in this Civil suit. It is further stated that Nallatchi, the only child of Krishnaswami and Logambal Ammal, was born on 20.08.1942 and attained majority on 20.08.1960. The said Nallatchi filed suit in C.S. No.196 of 1972 on 14.08.1963 for declaration of entitlement for maintenance of various items of Movable and Immovable properties along with the Official Trustee. In the aforesaid suit, she impleaded the following parties as defendants; (1) The Official Trustee, Madras (2) Karumbatha (3) Gowri Ammal and her daughters, then minors (4) Kalpana and (5) Kanchana. The said suit was dismissed by Judgment and decree dated 28.07.1975 against which O.S.A. No.22 of 1976 filed by Nallatchi was also dismissed by Judgment and decree dated 15.12.1976. The plea of the Nallatchi is that the partition deeds and release deed entered into between her father Krishnaswami and his two brothers were sham and nominal documents. It was further stated in her plea that Dhuraisamy's Will, purporting to bequeath the entirety of the Joint Family properties and businesses, was invalid and the consent of her father was obtained by fraud in memo of compromise in C.S. No.3 of

1940 due to which the decree made on it was void and of no effect. After the demise of her father, her mother Logambal Ammal was not diligent in enforcing the rights to the properties and did not care for her. The aforesaid suit was opposed by the defendants therein and in the written statement filed by the Official Trustee, Madras has set out the facts relating to the earlier legal proceedings touching the suit properties wherein it was stated that after the death of Ramachandran, the only persons entitled to the estate of the Late Dhuraisamy were Ramachandran's two minor children, namely, Kalpana and Kanchana, who are plaintiffs herein according to the terms of Dhuraisamy's Will and the Compromise decree in C.S. No.3 of 1940 was valid and binding on Krishnaswami as well as all persons claiming under him. The other defendants therein excepting the mother of the said Nallatchi also filed written statements resisting the suit.

(d) It was further stated by the plaintiffs that on the above pleadings several issues were framed by this Court, but they were reduced to a single question on merits. That was whether the estate of Dhuraisamy Mudaliar was his individual property or whether it belonged to himself

and his two brothers as undivided members of a joint family. The other subsidiary question was whether the compromise decree in C.S. No.3 of 1940 was vitiated by fraud. The suit came up for trial before a Learned Single Judge of this Court and it was held that the partition between Dhuraisamy and his two brothers was valid and was acted upon by all the divided members. The learned Single Judge further observed that there was absolutely no material to hold that the partition deeds and release deeds between the three brothers were sham and nominal documents and repelled the contention of the said Nallatchi's counsel that the defendants therein had not let in any evidence to show that the partition was a sham and also rejected the contention that the plaint averments, without more, afforded proof of the sham and nominal nature of the instruments of the partition and dismissed the suit. Against which O.S.A.No.22 of 1976 was filed and the same was dismissed on 15.12.1976 upholding the partition and the compromise decree in C.S.No.3 of 1940. It was further stated that they have become absolute owners of the suit property and the same have been confirmed by the above referred legal proceedings. However, in terms of compromise decree dated 05.02.1943 passed in C.S.No.3 of 1940, the said

Krishnaswami and his wife Logambal Ammal were given permission for joint lives in the suit property till their life time and after the death of Krishnaswami, his wife and his daughter Nalltchi were continued in possession and enjoyment of the suit property as per compromise decree. The said Nallatchi got married to one K.N. Srinivasan as his 2nd wife and started living in the suit property itself under the guise of Logambal's right to live in the suit property and after the demise of Nallatchi, the said K.N. Srinivasan had brought his first wife and son L.Ganesan, the 1st defendant herein to the suit property and continued to live there in spite of protest by the plaintiffs herein. It has further stated that even though the said Nallatchi had lost all her case against the plaintiffs herein, the said Nallatchi's husband K.N.Srinivasan and his son through his first wife continued to live in the suit property besides the plaintiff's protest. K.N.Srinivasan also died during the year 2003 and now the first defendant is in illegal possession and enjoyment of the suit property even after the demise of Logambal Ammal on 24.12.1994. Even though the said Logambal Ammal had no authority or title to deal with the property, she sold and conveyed a portion of property measuring of an extent of 924 Sq.ft to and in favour of Mr.T.Jothi, S/o.V.N. Thirunavukkarasu, the

2nd defendant herein through a registered sale deed vide Document No.1885 of 1983 and subsequently sold another extent of 590 Sq.Ft to and in favour of Mrs.M.Rathna Devi, W/o. Manikkam, the 3rd defendant herein through a registered sale deed vide Document No.2096 of 1984. The Plaintiffs advised to state that the said sales are null and void in view of the above facts and the same is not binding on the plaintiffs since the plaintiffs are not parties to the aforesaid sale deeds. Therefore, they are not seeking the relief for declaration of the aforesaid sale deed as null and void.

3.The contentions in the written statement filed by the defendants are as follows:-

(a) The defendants filed the written statement jointly denying the allegations made in the plaint. It is stated that the suit property along with the other properties originally belonged to C.K. Dhuriasamy Mudaliar which were handed over to the Official Trustee who was managing the estate since C.K. Durasamy Mudaliar was not having any issues. In the mean time, one of his brother C.K. Krishnaswami Mudaliar filed a suit in C.S. No.3 of 1940 claiming half share in the properties

including the suit property of the deceased C.K.Dhurasamy Mudaliar. In view of the compromised decree passed in C.S.No.3 of 1940 after remand on 05.02.1943, in the presence of the plaintiff's father, the suit property was allotted to C.K.Krishnaswami Mudaliar and his wife C.K. Logambal Ammal providing life estate in their favour without power of alienation after their life time the said property shall vest absolutely in any son or sons born to them and in the absence of son the said property shall revert to the estate of Mr.C.K.Dhurasamy Mudaliar. Similar allotment of the property bearing Door No.6 & 7, Kandappa Achari Street, Purasawakam, Chennai, was made in favour of Karumbatha and 1st son of the deceased Thiruvengadasamy Mudaliar was provided life estate in the said property and after the life time of Karumbatha, the property was directed to be taken to his male children. While making such allotment of the suit property to C.K. Krishnaswami Mudaliar and his wife the property bearing Door No.6 & 7, Kandappa Achari Street, Purasawalkam, Chennai, allotted to Karumbatha Mudaliar. It was mentioned in clauses 2 & 4 of the said compromise decree that the properties shall revert back to the estate of C.K. Dhurasamy Mudaliar in the absence of the life estate holder having male children. Further it was

submitted that the plaintiffs are two daughters of Ramachandran who did not have any male children have filed the present suit. On the basis of the compromise decree dated 05.02.1943 in C.S. No.3 of 1940, the suit property was provided to C.K. Krishnaswami Mudaliar and his wife C.K. Logambal Ammal to enjoy a life interest. Since C.K. Krishnaswami Mudaliar died on 23.07.1943, his wife C.K. Logambal Ammal became entitled to the suit property and was in possession and enjoyment of the property from 23.07.1943 onwards in view of her pre-existing right to claim maintenance and on the date of coming into force of the Hindu Succession Act, 1956, C.K. Logambal Ammal was in possession and enjoyment of the suit property as such life interest holder and became entitled to the absolute rights on account of enlargement of her life interest under Section 14(i) of the Hindu Succession Act, 1956, and therefore from the date of the Act, coming into force, C.K. Logambal Ammal was in enjoyment of the property as absolute owner and therefore the revisionary right provided under the compromise decree did not take effect on account of the intervention of statutory right provided under Section 14(i) of Hindu Succession Act, 1956.

(b) It was further submitted that the Explanation to Section 14(1) of Hindu Succession Act, 1956 provides that the immovable property acquired by the female member in lieu of maintenance or in any other manner whatsoever before the commencement viz., before 17.06.1956, shall be held by the female member absolutely by reason of enlargement of her life interest. This provision under Section 14(1) contains an explicit declaration of law that a female holds all the properties in her possession whether acquired by her before or after the commencement of the Act, as absolute owner and not as limited owner.

(c) It was further submitted that the only beneficiary and the revisioner under the compromise decree in C.S. No.3 of 1940 dated 05.02.1943 also died in 1967 and C.K. Logambal Ammal as such absolute owner executed a first simple mortgage on 19.01.1979 in favour of P. Vembuli Chetty and sold a portion to the 2nd defendant on 21.10.1983 and another portion was sold to the 3rd defendant on 05.12.1984. The plaintiffs sent a notice on 15.07.1985 after the death of D. Ramachandran being the father of the plaintiffs and a reply dated

22.07.1985 was sent by the 2nd defendant stating that C.K. Logambal Ammal's limited right enlarged to an absolute right after 17.06.1956 when the Hindu Succession Act, came into force. There is no rejoinder to the reply dated 22.07.1985. C.K. Logambal Ammal executed a mortgage on 15.05.1986 in favour of Park Town Benefit Fund Ltd. and C.K. Logambal Ammal died on 24.12.1994 leaving behind her last Will and Testament dated 20.04.1992 duly probated, bequeathing the retained portion of the suit property in favour of the 1st defendant being her grandson. After the lapse of several years belatedly the above vexatious suit has been filed on 12.12.2006.

(d) It was further submitted that it was held in the proceedings taken by Nallatchi that the compromise decree in C.S.No.3 of 1940 is valid and apart from holding that the earlier partition and release deed were valid and finally the compromise decree in C.S.No.3 of 1940 was held to be valid and binding on the parties. It is equally false to state that in terms of compromise decree dated 05.2.1943 passed in Application No.334 of 1943, C.K. Krishnaswami and his Wife C.K.Logambal Ammal were given permission for their joint lives in the suit property. Further, in

order to overcome the statutory right of enlargement of the limited estate under Section 14(1) of the Hindu Succession, 1956, the plaintiffs have omitted to disclose that under compromise decree dated 05.02.1943, life interest was provided to C.K. Logambal Ammal which is in lieu of her right to claim maintenance in the estate and not otherwise. It was further stated that it cannot be said that Nallatchi, daughter of C.K. Logamal Ammal continued to be in possession and enjoyment of the property as per compromise decree and started to live in the suit property after her marriage to K.N. Srinivasan under the guise of C.K. Logambal's right to live in the suit property and it is mistakenly stated as right to live in the property though the compromise decree provided life interest to C.K. Logambal Ammal. After sale to the Defendants 2 & 3, the retained portion having been bequeathed to Mr.L. Ganesan/1st defendant herein he has been living in the retained portion in his own right and there was no protest from any quarters even from the plaintiffs.

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(e) It was further stated that the proceedings taken by Nallatchi has no impact in respect of the absolute right acquired by C.K. Logambal Ammal and it is false to state that the 1st defendant is in illegal

possession and enjoyment of the suit property even after the demise of C.K. Logambal Ammal 24.12.1994. During the life time of C.K. Logambal Ammal having sold an extent of 924 Sq. ft. and 590 Sq.ft to the defendants 2 & 3 respectively. Late D. Ramachandran, the father of the plaintiffs did not claim any right in respect of the suit property even during his life time till 1967 and now the plaintiffs are claiming rights as the children of Late D. Ramachandran, and not otherwise. Therefore, it is false to contend that the defendants are in illegal possession and enjoyment of the suit property from 24.12.1994 the date of death of C.K. Logambal Ammal who was permitted to live in the suit property till her life time.

(f) It was further submitted that in order to avoid accepting the statutory right under Section 14(1) of the Hindu Succession Act, 1956 and enlargement of her limited estate, the plaintiffs are claiming that C.K. Logambal was a permissible occupant till her life time even though the compromise decree in Application No.332 of 1943 dated 05.12.1943 specifically provided life interest in the suit property in favour of C.K. Logambal, and the said right have been acquired before the coming into

force of the Hindu Succession Act, the allegation to the contrary is untenable. The plaintiffs have not sought for any relief with regard to the validity of the Sale Deeds in favour of the defendants 2 & 3 on account of the alleged claim and revisionary right having lapsed due to the intervention of the statutory right under the Act.

(g) It was further submitted that the alleged right of the plaintiffs under the compromise decree in C.S. No.3 of 1940 dated 05.02.1943 is the basis for the suit claim and the said right are totally barred by limitation and in order to overcome the same, the aforesaid vexatious allegations have been made by way of this Suit. Even otherwise the possession of the Defendants in their own right is beyond the period of limitation and to the knowledge of the plaintiffs, the defendants have been enjoying the property in their own right as absolute owners and therefore the above suit for recovery of possession without seeking any declaration of title is not maintainable in law and the alleged claim of damages for illegal use and occupation from 01.12.2003 to 30.11.2006 at Rs.25,000/- per month and also future damages is equally vexatious and the defendants 2 & 3 are bona-fide purchasers of the portions of the suit

property for valuable consideration and have acquired absolute rights in the suit property and therefore, the above suit is highly vexatious and devoid of merits and deserves to be dismissed with exemplary costs.

4. Based on the pleadings and documents filed by both parties and submission made by both the Counsel the following issues have been framed by this Court on 10.04.2008 :-

i. Whether the suit schedule property belonged absolutely to C.K.Dhurasamy by virtue of his purchase under a Court auction or it belonged to the joint family?

ii. Whether after the advent of the Hindu Succession Act, 1956, the life estate conferred under the compromise decree in C.S.No.3 of 1940 upon C.K. Logambal Ammal enlarged under Section 14(1) of the Hindu Succession Act, in recognition of her pre-existing right to maintenance?

iii. Whether the sales effected by C.K.

Logambal Ammal are valid and binding?

iv. Whether the Plaintiffs are entitled to recovery of possession without seeking relief of declaration?

v. Whether the plaintiffs are entitled to claim damages for use and occupation?

vi. Whether defendants 2 and 3 are bona-fide purchasers for valuable consideration of the portion purchased by them?

(vii) Whether the suit is barred by limitation?
and

viii. Whether the plaintiffs are entitled to any relief?

5. After framing of issues, during trial, on the side of the plaintiffs, P.W.'s 1 and 2 were examined and marked Exs.P1 to P15. On the side of the defendants, DW1 was examined and marked Exs.D1 to D2.

6. Heard the rival submissions made on both sides and perused the materials available on record.

7. The case of the Plaintiffs is that the suit property was originally belonged to Mr.C.K.Dhuraishamy, S/o.Karumbatha Mudaliar. The said property was purchased by C.K.Dhuraishamy, through Court auction conducted in C.S.No.558 of 1931 dated 19.12.1933. Mr.C.K.Dhuraishamy during his life time had executed a Will dated 19.08.1938 and thereby appointed the Official Trustee, as his sole executor. The Will and the codicil directed the Official Trustee to take possession of the estate and administer the same subject to certain specific condition as he named in favour of individuals and towards charity. The Official Trustee was directed to hold the income of the estate in trust for Ramachandran, S/o.Thirvengadasamy for life and divide the corpus of the trust estate equally among the children of Ramachandran thereafter.

8.The official trustee took proceedings for probating the Will, the probate was contested but ultimately, by order dated 29.11.1939 in T.O.S. No.4 of 1939 on the file of this Court, the Will was probated. However, Krishnaswami, one of the brothers of the testator to C.K.Dhurasamy filed a suit in C.S. No.3 of 1940 before this Court praying for declaration that the properties which were subject matter of the testamentary disposition under C.K.Dhurasamy's Will, were joint family properties. Therefore, he is entitled half a share in the said property and the partition deeds of 1922 were sham and nominal. The said Krishnaswami impleaded the Official trustee and the two children of Thirvengadasamy namely, Karumbattha and Ramachandran as a party defendants in the said suit. The said suit was dismissed on 27.02.1942 and against which an appeal was filed in O.S.A. No.69 of 1942 and subsequently the said Krishnaswami abandoned his allegations of fraud and undue influence. Therefore, the Appellate Court remanded the suit for fresh trial. On remand, a memo of compromise dated 04.02.1943 was entered between the parties wherein all the parties and the Official Trustee have signed accepting the terms of Memo of Compromise. Subsequently, Mrs. Apoorpammal, the widow of Thiruvengadaswamy and the guardian of

the minor defendants therein namely, Karumbatha and Ramachandran applied for and obtained leave of Court to enter the compromise on behalf of the minors in Application No.332 of 1943. In terms of the memo of Compromise, this Court passed a decree dated 05.02.1943. Under the terms of the compromise decree, Krishnaswami and his wife Logambal Ammal were given the suit property for their joint lives till their life time. Logambal Ammal and her minor daughter Nallatchi were also to be given jewels worth Rs.2,000/- by the Official Trustee.

9.The said Krishnaswami died intestate on 19.07.1943, leaving behind his wife Logambal Ammal and daughter Nallatchi. Subsequent to the death of Krishnaswami, his widow Logambal Ammal filed an Application No.756 of 1953 before this Court, praying to set aside the compromise decree and claiming rights in the properties vested in the Official Trustee under Dhuraisamy's Will. The said application was dismissed by this Court on 10.09.1954 and an appeal against that order in O.S.A. No.98 of 1955 was also dismissed. Further, Ramachandran S/o. Tiruvenkatasamy and a legatee under the Will of Dhuraisamy, died intestate in the year 1967, leaving behind his wife Gowri and two minor

daughters who are the plaintiffs herein. Nallatchi is the only daughter of Krishnaswami and Logambal Ammal, was born on 20.08.1942 and attained majority on 20.08.1960. The said Nallatchi filed a suit in C.S. No.196 of 1972 for declaration in the said suit. She impleaded the following parties as defendants; (1) The Official Trustee, Madras (2) Karumbatha (3) Gowri Ammal and her daughters (4) Kalpana and (5) Kanchana. The said suit was dismissed by this Court on 28.07.1975 against which filed an appeal in O.S.A. No.22 of 1976 and the same was also dismissed on 15.12.1976. After the death of Ramachandran, the plaintiffs are entitled to the property. The Compromise decree in C.S. No.3 of 1940 was valid and binding on Krishnaswami as well as all persons claiming under him.

10.In terms of compromise decree dated 05.02.1943 passed in C.S.No.3 of 1940, the said Krishnaswami and his wife Logambal Ammal were given permission for joint lives in the suit property till their life time and after the death of Krishnaswami, his wife and his daughter Nallatchi were in possession and enjoyment of the suit property as per compromise decree. The said Nallatchi got married to one

K.N.Srinivasan as his second wife and started living in the suit property itself under the guise of Logambal's right to live in the suit property and after the demise of Nallatchi, the said Srinivasan had brought his first wife and son L.Ganesan, the 1st defendant herein to the suit property and continued to live there in spite of protest by the plaintiffs herein. Even though the said Nallatchi had lost all her case against the plaintiffs herein, the said Nallatchi's husband K.N.Srinivasan and his son through his first wife continued to live in the suit property besides the plaintiff's protest. K.N.Srinivasan also died in the year 2003 and now the first defendant is in illegal possession and enjoyment of portion of the suit property even after the demise of Logambal Ammal on 24.12.1994. The said Logambal Ammal had no authority or title to deal with the property, she sold and conveyed a portion of property measuring to an extent of 924 Sq.ft to and in favour of the 2nd defendant herein through a registered sale deed and subsequently sold another extent of 590 Sq.Ft to and in favour of the 3rd defendant herein through a registered sale deed. The said sales are null and void, in view of the above facts and the same are not binding on the plaintiffs since the plaintiffs are not parties to the aforesaid sale deeds. Therefore, they are not seeking the relief for

declaration in the aforesaid sale deeds as null and void.

11.The case of the defendants is that the suit property along with the other properties originally belonged to C.K.Dhurasamy Mudaliar during his life time he executed a Will, based on the said Will the properties were handed over to the Official Trustee who was managing the estate since C.K.Dhurasamy Mudaliar was not having any issues. In the mean time, one of his brother C.K.Krishnaswami Mudaliar filed a suit in C.S. No.3 of 1940, which was dismissed and against which, an appeal was preferred and it was remanded back to the Trial Court, in which, a compromise decree was passed and the suit property was allotted to C.K.Krishnaswami Mudaliar and his wife C.K.Logambal Ammal providing life estate in their favour. Similar allotment of the property bearing Door No.6 & 7, Kandappa Achari Street, Purasaiwakam, Chennai, was made in favour of Karumbatha. While making such allotment of the suit property to C.K.Krishnaswami Mudaliar and his wife the property bearing Door No.6 & 7, Kandappa Achari Street, Purasaiwalkam, Chennai, allotted to Karumbatha Mudaliar. The same was mentioned in clauses 2 & 4 of the said compromise decree that the

properties shall revert back to the estate of C.K.Dhurasamy Mudaliar in the absence of the life estate holder having male children. On the basis of the compromise decree dated 05.02.1943 in C.S. No.3 of 1940, the suit property was provided to C.K.Krishnaswami Mudaliar and his wife C.K.Logambal Ammal to enjoy a life interest. Since C.K.Krishnaswami Mudaliar died on 23.07.1943, his wife C.K.Logambal Ammal became entitled to the suit property and was in possession and enjoyment of the suit property from 23.07.1943 onwards in view of her pre-existing right to claim maintenance and on the date of coming into force of the Hindu Succession Act, 1956, C.K.Logambal Ammal was in possession and enjoyment of the suit property as such life interest holder and became entitled to the absolute rights on account of enlargement of her life interest under Section 14(1) of the Hindu Succession Act, 1956, and therefore from the date of the Act, coming into force, C.K.Logambal Ammal was in enjoyment of the property as absolute owner and therefore the revisionary right provided under the compromise decree did not take effect on account of the intervention of statutory right provided under Section 14(1) of Hindu Succession Act, 1956.

12. As such C.K.Logambal Ammal as absolute owner executed a simple mortgage on 19.01.1979 in favour of P.Vembuli Chetty and sold a portion to the 2nd defendant on 21.10.1983 and another portion to the 3rd defendant on 05.12.1984. She also mortgaged the remaining property on 15.05.1986 in favour of Park Town Benefit Fund Ltd. Further, C.K.Logambal Ammal executed a Will in favour of the 1st defendant in respect of the said remaining portion of the property and subsequently the said Logambal Ammal died on 24.12.1994 leaving behind her last Will and Testament dated 20.04.1992. The said Will got probated. The compromise decree in C.S.No.3 of 1940 which is valid and subsequent suits also confirmed the same. The said compromise decree is valid and since C.K.Krishnaswami and his Wife C.K.Logambal Ammal were given life interest in the suit property. After Hindu Succession Act, 1956 came into force as per Section 14(1) of Hindu Succession Act the right of limited estate enlarged into absolute right. Therefore the possession of the 1st defendant is legal and they enjoyed the property as absolute owner. The 1st defendant is in possession of the property in view of the Will executed by C.K.Logambal Ammal and after the death of the said Logambal Ammal, the 1st defendant has come into possession of the

property. The defendants 2 & 3 are purchaser of the property from the said Logambal Ammal, since Section 14(1) of the Hindu Succession Act given right to Logambal Ammal and she has got every right to sell the property.

13.In order to avoid accepting the statutory right under Section 14(1) of the Hindu Succession Act, 1956 and enlargement of her limited estate, the plaintiffs are claiming that C.K.Logambal Ammal was a permissible occupant till her life time even though the compromise decree dated 05.12.1943 in C.S.No.3 of 1940 specifically provided life interest in the suit property in favour of C.K. Logambal Ammal, and the said right have been acquired before coming into force of the Hindu Succession Act. The plaintiffs have not sought for any relief with regard to the validity of the Sale Deeds in favour of the defendants 2 & 3 on account of the alleged claim and revisionary right having lapsed due to the intervention of the statutory right under the Act. Therefore, the plaintiffs have no merits in their case and the suit is liable to be dismissed.

14.The learned counsel for the plaintiffs would submit that the suit properties and other properties were self acquired property of C.K.Dhurasamy and since C.K.Dhurasamy had no issues, he executed a Will and an Official Trustee was appointed to manage the estate of C.K.Dhurasamy and also given some of the benefit of the life estate to C.K.Thiruvengadasami Mudaliar, who is the brother of C.K.Dhurasamy Mudaliar. One of the brothers of C.K.Dhurasamy one C.K.Krishnaswami challenged the said Will and filed a suit in C.S.No.3 of 1940 and though the suit was dismissed, an appeal in O.S.A.No.69 of 1942 was filed and the matter was remanded. After remand, an application was filed in A.No.332 of 1943 in C.S.No.3 of 1940 for granting leave to guardian of minor defendants 2 & 3 to enter into compromise and in the compromise decree it is stated that the suit property was provided to C.K.Krishnaswami and his wife Logambal Ammal as life estate without power of alienation. Likewise Door No.6 & 7, Kandappa Achari Street, Purasawakam, Chennai were provided in the name of Karumbatha the first Son of Thiruvengadasami towards his life estate and the said properties shall vest to his male children absolutely and in the absence of any male children, the property shall

revert back to the estate of C.K.Dhurasamy Mudaliar since Krishnaswami and Logambal Ammal have only daughter Nallatchi and they had no male child. Krishnaswami Mudaliar died on 23.07.1943 without any male children leaving behind his wife Logambal Ammal and daughter Nallatchi. As per compromise decree, after the death of Krishnaswami Mudaliar, Logambal Ammal was in possession of the property and she died on 24.12.1994 and she had no male issues. After the death of Logambal Ammal, the property has to revert back to the estate of C.K.Dhurasamy Mudaliar as per compromise decree in C.S.No.3 of 1940. The 1st defendant's father was the husband of the Nallatchi, who was the daughter of Logambal Ammal and since Nallatchi also filed a suit challenging the compromise decree in C.S.No.3 of 1940 and the same was dismissed, hence the compromise decree was valid and final. Therefore, as per compromise decree, since, Krishnaswami and Logamabl Ammal had no male issues and therefore after the death of Krishnaswami and Logambal Ammal, the property has to go back to the estate of Dhurasamy Mudaliar and therefore after the death of Logambal Ammal the possession of the portion of the suit property by the 1st defendant, is illegal and Logambal Ammal had no right to sell the

property to the defendants 2 & 3 and therefore the sale in favour of the defendants 2 & 3 by Logambal Ammal are not valid. Therefore, the plaintiffs filed a suit for recovery of possession since the plaintiffs are not a party in the sale deeds executed by Logambal Ammal in favour of the defendants 2 & 3, they need not to file a suit for declaration. But they challenged sale deed and Will executed by Logambal Ammal in favour of the defendants and the plaintiffs are entitled to decree as prayed for in the suit and since the defendants are in possession all along, the plaintiffs claimed damages for use and occupation and also for future mesne profits. Therefore, the suit is to be decreed.

15.The learned counsel appearing for the defendants admitted that as per compromise decree the suit property was given to C.K.Krishnaswami and his wife Logambal Ammal for life estate and the said property shall vest absolutely in any son or sons born to them and in the absence of any son, the said property has to revert back to the estate of C.K.Dhurasamy Mudhaliar. He would further submit that as per compromise decree the life estate in the suit property was given to Krishnaswami and Logambal Ammal. The said Krishnaswami died on

23.07.1943 after that his wife Logambal Ammal continued to be in possession and enjoyment of the suit property from 23.07.1943 to 24.12.1994. In the meanwhile, the Hindu Succession Act came into force on 02.06.1956. As per Section 14(1) of the Hindu Succession Act, Logambal Ammal has become an absolute owner of the property, as such she also mortgaged the portion of the property on 19.01.1979 and also a portion of the property was sold to the 2nd defendant on 21.10.1983 and another portion of the property to the 3rd defendant on 05.12.1984 and the balance retained portion was bequeathed under Will dated 20.04.1992 to the 1st defendant and the plaintiffs sent a legal notice on 15.07.1985 and a suitable reply was sent by the 2nd defendant on 22.07.1985 and during the life time of Logambal Ammal even in the years 1982 to 1984 she executed a Will and also sold the property in favour of the defendants and even in the year 1985 the plaintiffs sent a notice and a suitable reply was also sent by the defendants denying their legal right in the suit property. However, the plaintiffs have not filed the suit immediately even Logambal Ammal died on 24.02.1994. After the death of Logambal Ammal, the plaintiffs filed a suit on 12.12.2006 as such, the suit filed by the plaintiffs is barred by limitation and the plaintiffs have no right or

title over the property and even otherwise without seeking relief of declaration, the suit, seeking relief of recovery of possession alone, is not maintainable. In support of his contention, the learned counsel for the defendants relied on the decision of the Hon'ble Supreme Court in "*Jupudy Pardhasarathy Vs. Pentapati Ramakrishna and Others*" reported in "*2016(2) Law Weekly Page: 517*", the entire series of case laws rendered by Supreme Court under Section 14(1) of Hindu Succession Act of 1956 commencing from AIR 1977 Supreme Court Page : 1944, V.Tulasamma & Others Versus Sesha Reddy (decd) & Others, were considered and it was held in Para 34 & 35 as follows:

"Though no specific word has been mentioned in Exhibit A-2 that in lieu of maintenance life interest has been created in favour of Veeraraghavamma, in our opinion in whatever form a limited interest is created in her favour who was having a pre-existing right of maintenance, the same has become an absolute right by the operation of Section 14(1) of the Hindu Succession Act.

After giving our anxious consideration to the matter and the judicial pronouncements of this Court in a series of decisions, we hold that the impugned judgment of the High Court is perfectly in accordance with law and needs no interference by this Court".

With the above submissions, the learned counsel sought for dismissal of

the suit.

Issue No.1 :

Admittedly the suit property and other properties were purchased by C.K.Dhurasamy through Court auction. Though the plaintiffs have stated these properties are self acquired properties of C.K.Dhurasamy and C.K.Dhurasamy died without any issues and during life time of C.K.Dhurasamy, executed a Will and an Official Trustee filed a suit, seeking probate of the Will in T.O.S.No. 4 of 1939 on the file of this Court and subsequently, the Will was probated. However, one of the brothers of C.K.Dhurasamy, namely, Krishnaswami filed a suit in C.S.No.3 of 1940 before this Court for declaration that the properties covered under the Will were joint family properties and he had a 1/2 share in the said property and earlier partition deed of 1922 was sham and nominal. Though the suit filed by Krishnaswami was dismissed, he preferred an appeal in O.S.A.No.69 of 1942. Subsequently the Appellate Court remanded the suit for fresh trial. On remand, a memo of compromise was entered between the parties wherein all the parties and the Official Trustee also signed in the Compromise and the plaintiffs

grandmother was also party to the compromise decree and the grandmother signed the compromise decree as the guardian of Karumbatha and Ramachandran. The said Ramachandran is none other than father of the present plaintiffs. Even subsequently, Logambal Ammal wife of Krishnaswami filed an application to set aside the compromise decree and her daughter Nallatchi also filed a suit and all the subsequent proceedings attacking the compromise decree, were dismissed and appeals also ended against them and finally the compromise decree in C.S.No.3 of 1940 was made absolute and as per pleadings, now the plaintiffs and defendants are claiming title through the compromise decree in C.S.No.3 of 1940. Since the Official Trustee also stated that he has not taken the possession of the suit property and therefore the suit property was in continuous possession and enjoyment of Krishnaswami and Logamabal Ammal till Logambal Ammal executed a Will in favour of the 1st defendant and sold the portions of the property in favour of the defendants 2 & 3. As already stated, both the plaintiffs and defendants are claiming title of the suit property through compromise decree dated 05.02.1943 and the Official Trustee is also a party to the compromise decree. Therefore, it is not necessary to answer the issue

that whether the suit properties are self acquired property of C.K.Dhurasamy or the joint family property. The issue is answered accordingly.

Issue No. 2 :

Since both the parties are claiming title over the suit property under compromise decree dated 05.02.1943, it is relevant to extract Clause 2 of the compromise decree, which reads as follows :

"2.That the said plaintiff and his wife Logambal Ammal shall have only a life estate in premises No.16, Venkatachallam Street, Purasawalkam, Madras and the said property shall vest absolutely in any son or sons born to them and in the absence of any son the said property shall revert to the estate of C.K.Dhurasamy Mudhaliar."

As per clause 2 of the compromise decree, the suit property was given to Krishnaswami and his wife Logambal Ammal as life estate without power of alienation and the condition imposed in the said Clause is that the said property shall vest absolutely in any son or sons born to them and in the absence of any son, the said property shall revert back to the estate of C.K.Dhurasamy Mudhaliar. Therefore the said clause shows that the life estate was given to Krishnaswami and Logambal Ammal in

case any male children born to them they will get absolute right or otherwise the property will go back to the estate of C.K.Dhurasamy. In other words, it can be said that it will go back to the administration of the Official Trustee. Admittedly, in this case though Krishnaswami and Logambal Ammal had no male issue as they got only female child namely Nallatchi. The said Krishnaswami died on 23.07.1943. After the death of Krishnaswami, his wife Logambal Ammal was in possession and enjoyment of the suit property as per the compromise decree. When she was in possession of the suit property, the Hindu Succession Act, 1956 came into force on 02.06.1956. As per Section 14(1) of the Hindu Succession Act, a female Hindu who is in possession of the property and owns limited estate, which acquired before or after the commencement of the Act, becomes full owner.

Section 14(1) of the Hindu Succession Act, provides absolute rights to the limited owner of the revisionary right is abrogated and when a widow was in possession of the suit property, on the death of her husband, the limited owner right gets enlarged to absolute ownership by virtue of Section 14(1) of the Hindu Succession Act. Hence after coming into force of Section 14(1) of the Hindu Succession Act, the suit by the

revisionary would not be maintainable in respect of the property which was in possession of a hindu widow on the date of the Act. The question of possession has therefore to be gone into by taking evidence and whether the revisionary suit is not maintainable. Admittedly, in this case C.K.Logambal Ammal obtained life interest in the suit property under the compromise decree and was in possession of the property and the hindu widow having acquired the property by the compromise decree only and alleged estate in the property was confirmed and she is entitled to absolute right over the property on account of her pre-existing rights in the property for her maintenance. While the plaintiff has admitted during the cross examination from the date of the compromise decree, Krishnaswami and Logambal Ammal were in possession of the suit property and even after the death of Krishnaswami, his wife Logamabal Ammal was in possession of the property and even P.W.2 Official Trustee has also given the evidence that he had not taken the possession of suit property and the suit property was remained in possession of Krishnaswami and after his death, it continued in possession of Logambal Ammal. Therefore, from the evidence of P.W.1 & P.W.2 and the Written Statement filed by the defendants and both oral and

documentary evidence available on record, it is clear that as on the date of Hindu Succession Act, 1956 which came into force, the suit property was in the possession of C.K.Logambal Ammal. She got a limited right through the compromise decree in C.S.No.3 of 1940 and she was in possession of the property on the date 02.06.1956 when Hindu Succession Act, came into force. As per Section 14(1) of the Hindu Succession Act, restricted the estate in the property was conferred and she is entitled to absolute rights over the suit property on account of her pre-existing right in the suit property. Therefore the limited estate was enlarged into absolute right. After the Hindu Succession Act came into force, Logambal Ammal was the absolute owner of the property and she has got every right to create any encumbrance over the suit property or alienates/dispose the same as her own will. Therefore, this Issue no.2 is answered accordingly.

Issue No.3 :

As already stated Logambal Ammal got a limited estate towards the suit property through the compromise decree in C.S.No.3 of 1940 dated 05.02.1943. As per Section 14(1) of the Hindu Succession Act,

1956 limited estate was enlarged into absolute right and therefore after 1956 Act, Logambal Ammal has got every right to sell the property to the third party. Therefore, the sales made by the Logambal Ammal in favour of the defendants 2 & 3 are valid and the plaintiffs are not entitled to recover the property from the defendants.

Issue No. 4 :

As already stated that both the plaintiffs and defendants are claiming title over the suit property through the compromise decree. As per the compromise decree though life interest was given to Krishnaswami and Logambal Ammal. Therefore, in this case even though Krishnaswami and Logambal Ammal had no male issue after the death of Krishnaswami when the property was in the possession of Logambal Ammal, the Hindu Succession Act, 1956 came into effect, therefore, Section 14(1) of the Hindu Succession Act, 1956 given absolute right to Logambal Ammal. The pleadings and evidence clearly shows that on the date of Hindu Succession Act came into force Logambal Ammal was in possession of the property, therefore, her pre-existing right was established and the limited right was enlarged into absolute right.

Therefore, once Logambal Ammal has got absolute right of the suit property in view of the Hindu Succession Act, 1956 came into force, she has got every right to sell the property. As per the evidence, after Hindu Succession Act came into force Logambal Ammal was in possession of the property and thereafter she also mortgaged the portion of the property to the third parties and the portion of the property was also bequeathed by Logambal Ammal in favour of the 1st defendant under a Will and the portion of the properties were sold to the defendants 2 & 3. Therefore, the plaintiffs have no right in the suit property once they admitted the compromise decree and in view of the Hindu Succession Act, Logambal Ammal got absolute right in the suit property and she also sold the property and now the properties in the hands of the defendants. The plaintiffs without filing a suit for declaration and without impleading Official Trustee, only for a relief of recovery of possession, is not maintainable.

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Issue No. 5 :

Issue Nos.1 to 4 have been held in favour of the defendants. Since the right of Logambal Ammal was recognized by virtue of the Hindu

Succession Act and she was entitled to alienate the property and she also sold the portions of the property to the defendants 2 & 3 and executed a Will in respect of remaining portion of the suit property in favour of the first defendant and now the defendants are in possession of the property. The possession of the defendants is legal and the plaintiffs are not entitled to claim any damages for use and occupation.

Issue No. 6 :

As already stated Logambal Ammal has got every right to sell the suit property and as such she also sold the portions of the property to the 2nd defendant to an extent of 924 Sq.ft. and 590 Sq.ft. to the 3rd defendant respectively. Even the recital of the sale deed dated 21.10.1983 in favour of the 2nd defendant under Ex.P13 and the 3rd defendant dated 05.12.1984 under Ex.P14 clearly shows that Logambal Ammal has got absolute right in view of the Hindu Succession Act and also paid valuable consideration to Logambal Ammal and therefore the defendants 2 & 3 are bona-fide purchasers for valuable consideration without notice. The plaintiffs also admitted the sale made by Logambal Ammal in favour of the defendants 2 & 3 and they have stated in the plaint that since the

plaintiffs are not parties in the said sale deeds they need not challenge the sale deeds and therefore filed suit for recovery of possession and damages for the use and occupation from the defendants. It is clearly proved that the defendants 2 & 3 are in possession of the said property from the date of their purchase. Therefore in these circumstances this Court finds that the defendants 2 & 3 are bona fide purchasers for valuable consideration.

Issue No.7 :

As already stated that both parties are claiming title from the compromise decree in C.S.No.3 of 1940 dated 05.02.1943. According to the plaintiffs since Krishnaswami and Logambal Ammal were given only life interest as per the compromise decree and if they do not have male child, the property has to revert back to the estate of C.K.Dhurasamy that means to the administration of the Official Trustee. Since Krishnaswami and Logambal Ammal had no male issue but only got a female child and therefore Logambal Ammal has no right to create encumbrance or sell the property. Therefore, it is contended that the Will in favour of the 1st defendant, the sale deeds in favour of the defendants

2 & 3 by Logambal Ammal are not valid. According to the defendants though as per the compromise decree, Logambal Ammal got life interest subsequently, after the Hindu Succession Act, 1956 came into force her life interest was enlarged into absolute right and after 1956 Act she was having every right to enjoy the property and create encumbrance or sell the property. Logambal Ammal died on 24.12.1994 during her life time, she executed sale deeds in favour of the defendants 2 & 3 and also Will in favour of the 1st defendant. Even during the year 1982 to 1984, she sold. The plaintiff also sent a legal notice on 15.07.1985 and the 2nd defendant also sent a suitable reply on 22.07.1985. After 10 years, Logambal Ammal died on 24.12.1994, leaving behind her Will and also after selling the property, remaining portion was mortgaged to Park Town Benefit Fund Limited and subsequently she executed a Will dated 20.04.1992 in favour of the first defendant and she died on 24.12.1994. The plaintiffs have not filed suit immediately from the date of the knowledge of the execution of the sale deeds in favour of the defendants 2 & 3. The 2nd defendant sent a reply on 22.07.1985 itself. Logambal Ammal died in the year 1994, even after the death of Logambal Ammal, the plaintiffs have not filed a suit immediately but they filed this suit on

12.12.2006. The plaintiffs had knowledge of both the sale deeds in favour of the defendants 2 & 3 even in the year of 1985 itself. Subsequently, the Will in favour of the 1st defendant even otherwise Logambal Ammal died in the year 1994 ie., on 24.12.1994, the suit should have been filed within a 12 years from the date of sale deeds in favour of the defendants 2 & 3 or from the notice dated 15.07.1985 issued by the plaintiffs to the defendants. Therefore, the suit is barred by limitation against the defendants 2 & 3.

Issue No. 8 :

As per Section 14(1) of Hindu Succession Act, Logambal Ammal was the absolute owner of the suit property and during her life time, she sold the portions of the suit property to the defendants 2 & 3 and also executed a Will with reference to the remaining portion of the suit property in favour of the first defendant and now defendants are in possession of the property. Even assuming that Section 14(1) of Hindu Succession Act is not applicable to this case and Section 14(2) only applicable suit should have been filed within 12 years from the date of sale or issuing notice to the defendants but the suit has been filed beyond

the period of limitation. Hence, the suit is barred by limitation. Therefore, the plaintiffs are not entitled to any of the relief as claimed in the suit.

16.In the result, the suit is dismissed. However, considering the facts and circumstances of the case, the respective parties are directed to bear their own costs.

24.11.2020

Index : Yes/No

Internet : Yes/No

mtl

List of Witness examined on the side of the plaintiffs

R. Kalpana - PW1

P. Sivaprakasam - PW2

List of documents marked on the side of the plaintiffs

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	P1	Judgment in C.S. No.558/1931	19.12.1933
2.	P2	Will Copy	27.08.1938
3.	P3	Judgment in C.S.	05.02.1943

		No.3/1940	
4.	P4	Judgment in C.S. No.756/1953	10.09.1954
5.	P5	Judgment in C.S. No.196/1972	28.07.1975
6.	P6	Judgment in C.S. No.22/1976	15.12.1976
7.	P7	Death Ceremony Card	24.12.1994
8.	P8	Death Certificate Original	21.02.2005
9.	P9	Memo	19.04.2010
10.	P10	Certified copy of the letter	20.06.1989
11.	P11	Certified copy of the letter	25.09.1989
12.	P12	Certified copy of the letter	25.09.1989
13.	P13	Sale deed in power of 2nd defendant	21.10.1983
14.	P14	Sale deed in power of 3rd defendant	05.12.1984
15.	P15	Probated Will of C.K. Logambal	17.12.2005

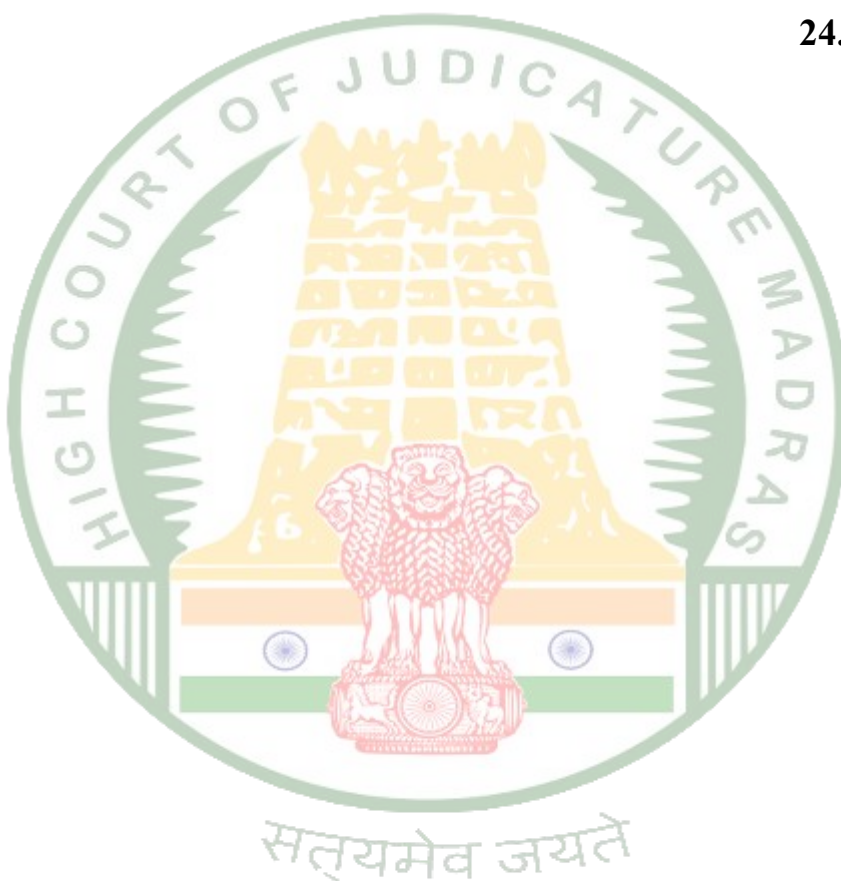
List of Witness examined on the side of the defendants

T. Jothi - DW1

List of documents marked on the side of the defendant

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	D1	Sale Deed	31.05.2004
2.	D2	Sale Deed	31.03.2004

24.11.2020



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P. VELMURUGAN, J.



Pre Delivery Judgment in

CS.No.400 of 2007

WEB COPY 24.11.2020