

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	10.02.2020
Delivered on	17.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A. (MD)Nos.1088 to 1091 of 2006

and

M.P. (MD)Nos.1,1,1 and 1 of 2006

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S.A. (MD)No.1088 of 2006:

Muthuveeran : Appellant/1st Respondent/Plaintiff
Vs.

1.Rathinagiri (Died)

2.Marudhamuthu

3.Panneerselvam

4.Vetriselvan

: Respondents 1 & 4/Appellants/
Defendants 1 & 4

5.P.Venkatachalam

: 5th Respondent/2nd Respondent/
5th Defendant

6.Asaithambi

[R-6 impleaded as the Legal Representative
of the deceased first respondent, vide Court
order dated 25.09.2019, made in
C.M.P. (MD)No.5778 of 2016]

:6th Respondent

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, praying to set aside the decree and judgment made in A.S.No.24 of 2004, dated 29.03.2006 on the file of the First Additional Subordinate Judge, Tiruchirappalli, reversing the decree and judgment made in O.S.No.2285 of 1989, dated 22.10.2003 on the file of the Third Additional District Munsif Court, Tiruchirappalli.

S.A. (MD)No.1089 of 2006:

Muthuveeran : Appellant/2nd Respondent/2nd Defendant

Vs.

1.Rathinagiri (Died)

: 1st Respondent/Appellant/Plaintiff

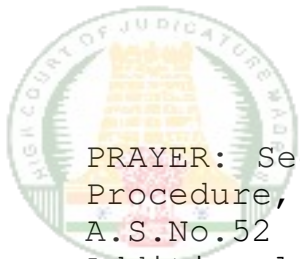
2.Chinnaian @ Duraisamy

: 2nd Respondent/1st Respondent/
1st Defendant

3.Asaithambi

[R-3 impleaded as the Legal Representative
of the deceased first respondent, vide Court
order dated 25.09.2019, made in
C.M.P. (MD)No.5779 of 2016]

:3rd Respondent



PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, praying to set aside the decree and judgment made in A.S.No.52 of 2004, dated 29.03.2006 on the file of the First Additional Subordinate Judge, Tiruchirappalli, reversing the decree and judgment made in O.S.No.2830 of 1996, dated 22.10.2003 on the file of the Third Additional District Munsif Court, Tiruchirappalli.

S.A. (MD)No.1090 of 2006:

Muthuveeran : Appellant/Appellant/Plaintiff

Vs.

- 1.Rathinagiri (Died)
- 2.Marudhamuthu
- 3.Panneerselvam
- 4.Vetriselvan
- 5.P.Venkatachalam

: Respondents 1 & 5/Respondents/
Defendants

- 6.Asaithambi

[R-6 impleaded as the Legal Representative
of the deceased first respondent, vide Court
order dated 25.09.2019, made in
C.M.P. (MD)No.5780 of 2016]

: 6th Respondent

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, praying to set aside the decree and judgment made in A.S.No.93 of 2004, dated 29.03.2006 on the file of the First Additional Subordinate Judge, Tiruchirappalli, reversing the decree and judgment made in O.S.No.2285 of 1989, dated 22.10.2003 on the file of the Third Additional District Munsif Court, Tiruchirappalli.

S.A. (MD)No.1091 of 2006:

Muthuveeran : Appellant/2nd Appellant/
2nd Defendant

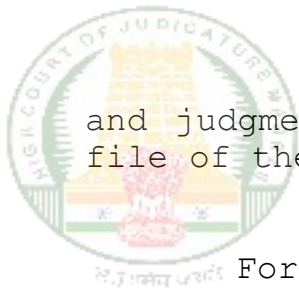
Vs.

- 1.Rathinagiri (Died) : 1st Respondent/Respondent/Plaintiff
- 2.Chinnaian @ Duraisamy : 2nd Respondent/1st Appellant/1st Defendant
- 3.Asaithambi

[R-3 impleaded as the Legal Representative
of the deceased first respondent, vide Court
order dated 25.09.2019, made in
C.M.P. (MD)No.5781 of 2016]

:3rd Respondent

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, praying to set aside the decree and judgment made in A.S.No.91 of 2004, dated 29.03.2006 on the file of the First Additional Subordinate Judge, Tiruchirappalli, confirming the decree



and judgment made in O.S.No.2830 of 1996, dated 22.10.2003 on the file of the Third Additional District Munsif Court, Tiruchirappalli.

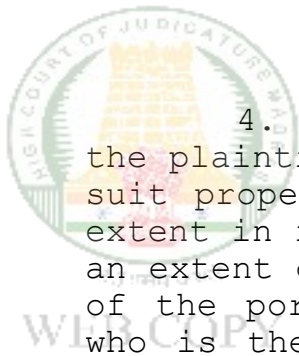
For Appellant : Mrs.Maria Roseline
in all cases
For Respondent No.1 : Died
in all cases
For Respondents 2&6 in : Mr.P.Jeyaprakash Narayanan
S.A.(MD)Nos.1088 and 1090/2006 and
For Respondent No.3 in
S.A.(MD)Nos.1089 and 1091/2006
For Respondents 3to5 in : No Appearance
S.A.(MD)Nos.1088 and 1090/2006 and
For Respondent No.2 in
S.A.(MD)Nos.1089 and 1091/2006

C O M M O N J U D G M E N T

The Second Appeals are filed as against the concurrent as well as the reversed finding of the first Appellate Court in a common judgment in respect of two suits filed by the respective plaintiff in O.S.Nos.2285 of 1989 and 2830 of 1996.

2. For the sake of convenience, the parties are referred to herein, as per their ranking before the Trial Court.

3. The suit in O.S.No.2285 of 1989 was filed by the plaintiff contending that the portion shown as 'ABCD' in the plaintiff plan is the joint family property of the plaintiff and the members of his family. In a registered partition deed dated 10.09.1980, 'A' schedule property was allotted to the plaintiff, namely 4^{1/2} cents. He is in continuous possession of the property. 'B' schedule property is immediately adjoining the 'A' schedule property. There are standing coconut trees in the 'B' schedule property. The plaintiff is in possession and enjoyment of the suit property. It is his contention that the defendants 1 and 2 are brothers and the defendants 3 and 4 are the sons of the second defendant. The first defendant is the owner of the property situate immediately west of the suit property. In fact, in the document of title of the first defendant, the plaintiff's 'A' schedule property is shown as the eastern boundary, dividing the 'A' schedule property belonging to the plaintiff and the property of the first defendant, there is a regular north to south fence. Thus, the plaintiff is in possession of the suit property. The defendants made an attempt to trespass into the suit property. Hence, the suit for injunction.

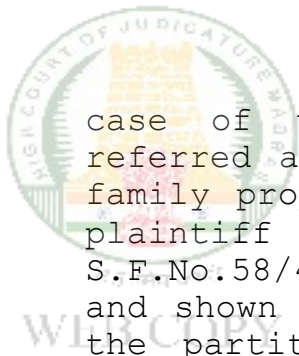


4. The first defendant filed a written statement stating that the plaintiff, on imaginary rights, tried to create a right over the suit property. The plaintiff has not disclosed the measurement and extent in respect of 'A' schedule property. The first defendant owns an extent of 6.3/4 in S.F.No.58/4 out of the total 9 cents. The rest of the portion, namely 2.1/4 belongs to his brother Maruthamuthu, who is the second defendant. The title of the first defendant is evidenced by two registered partition deeds dated 25.06.1967 and 13.09.1988. To demarcate and denote the boundary for the mortgaged 3 cents of the property, the first defendant erected a fence, which the plaintiff is now trying to show as if the dividing line between his imaginary property and the first defendant's property. It is contended that the plaintiff has no right in S.F.No.58/4 much less in the suit property. The plaintiff owns property only in S.F.No.58/5, which is east of the second defendant's property. The plaintiff has no right in the 'A' schedule property. In the property, namely 6.3/4 cents in S.F.No.58/4, there are two zinc sheds to a size of 11' x 13' feet and 17' x 13' which belongs to this defendant. This defendant leased out the zinc shed measuring 11' x 13' feet to one Perumal on 09.08.1980 and he was running a cycle shop and paying the rent. After termination of the lease with Perumal, his son Venkatachalam, the fifth defendant became a tenant and he is running a cycle shop. This defendant is enjoying the other zinc shed and 19 coconut trees also that exists in his lands cited *supra*. The plaintiff has no title or possession in respect of 'A' schedule property in S.F.No.58/4. 'B' schedule property is the river poramboke situated in S.F.No.57 and not in S.F.No.58/4. The plaintiff has once again narrated the description of 'B' schedule property in a misleading way. The plaintiff, who has no right in the 'B' schedule property, has come with imaginary pleadings. Hence, he prayed for dismissal of the suit.

5. Similarly, the second defendant also filed a similar statement stating that only the first and second defendants alone entitled to share in the suit property. The two zinc shed that existed fell within the share of the first defendant. The fence referred to in Paragraph 6 of the plaint is not the dividing boundary fence of the first defendant and the plaintiff as false set out. It was a fence put up by the first defendant to demarcate the area, namely 3 cents of land, which was mortgaged, out of 9 cents by the first defendant, to the third party. 'B' schedule property is a poramboke land.

6. The fifth defendant filed a written statement stating that his father Perumal became a tenant under the first defendant in respect of zinc shed in the year 1980 and after his death, he continues as a tenant. Hence, he prayed for dismissal of the suit.

7. The first defendant in O.S.No.2285 of 1989, as plaintiff, has filed a suit in O.S.No.555 of 1989, which was subsequently re-numbered as O.S.No.2830 of 1996, for permanent injunction. It is the



case of the plaintiff/first defendant that the suit property referred as 'ABFE' in the plan as item Nos.1 and 2 is the joint family property of the plaintiff and his brother Marudhamuthu. The plaintiff submits that the family *inter alia* owned 9 cents in S.F.No.58/4, out of which, $4\frac{1}{2}$ cents referred herein as item No.1 and shown as 'ABCD' was allotted to the share of the plaintiff in the partition that was made for specific purpose by registered partition deed dated 25.06.1967. The partition was effected when the plaintiff was pursuing his Engineering Course only to facilitate him to repay the debts contracted for his educational purpose and to raise funds whenever needed for his education expenses. The plaintiff has been enjoying the rest of the land and enjoying the usufructs from the 16 coconut trees that exist. In respect of the eastern half of $4\frac{1}{2}$ cents i.e. CDJK no division was made at that time and was retained and enjoyed as common by the plaintiff and his brother for nearly two decades. He was enjoying the usufructs from the coconut trees and the other zinc shed measuring 13' x 17' feet erected by his father long ago for quite a long time and ultimately, they divided the said $4\frac{1}{2}$ cents, namely CDJK by registered partition deed dated 13.09.1988, in which the western $2\frac{1}{4}$ cents, namely CDEF was allotted to the plaintiff containing three coconut trees and the other zinc shed also fell to his share. The eastern $2\frac{1}{2}$ cents, namely EFKJ was allotted to the share of his brother, Marudhamuthu. The third item of the suit property is a river poramboke, which is situated in S.F.No.57 and lies to the south of Item Nos.1 and 2 narrated as GFGH in plan. There are about 8 coconut trees which were planted by the plaintiff and he has been enjoying the coconut trees for several decades and 'B' memo has been issued. The defendants had conspired together and are scheming to grab the suit property belonging to the plaintiff. The defendants, in order to accomplish their illegal act, devised series of strategies exploiting the plaintiff's employment in an out station, highhandedly indulged in removal of the survey stones and stealthily plucked the coconuts. Hence, the suit for injunction.

8. In the written statement filed by the second defendant in the above suit, it is the contention that he has already filed a suit in O.S.No.2285 of 1989 and denied the entire contention. It is contended that the plaintiff and his brother are entitled to only $4\frac{1}{2}$ cents in S.F.No.58/4. The said extent is situated on the western side. The allegation that the plaintiff partitioned the remaining $4\frac{1}{2}$ cents was also denied. It is the contention that as per the partition deed of the year 1967, the property divided was only $4\frac{1}{2}$ cents. If really $4\frac{1}{2}$ cents were allotted to the plaintiff, there was no reason to allot another $2\frac{1}{4}$ cents to the plaintiff and similar extent to his brother. The defendants are paying kist to the suit property. Hence, he prayed for dismissal of the suit.

9. The Trial Court, based on the above pleadings, framed the following two issues in O.S.No.2285 of 1989:



"(i) Whether the plaintiff is entitled to permanent injunction as prayed for?

(ii) To what other reliefs, the plaintiff is entitled to?

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10. Similar issues were framed in another suit in O.S.No.2830 of 1996 by the Trial Court.

11. Both the suits were tried together and disposed of in a common judgment by the Trial Court by its judgment and decree dated 22.10.2003 in O.S.Nos.2285 of 1989 and 2830 of 1996.

12. The plaintiff in O.S.No.2285 of 1989 was examined as P.W.1, besides Exs.A.1 to A.15 were marked. The first defendant in O.S.No.2285 of 1989 was examined as D.W.1 and Exs.B.1 to B.14 were marked.

13. Based on the evidence and materials, the Trial Court has granted a decree of permanent injunction in favour of the plaintiff in O.S.No.2285 of 1989 in respect of 'A' schedule property alone. As far as 'B' schedule property is concerned, the suit has been dismissed. In O.S.No.2830 of 1996, injunction was granted in respect of item Nos.1 and 3 and the suit was dismissed in respect of item No.2. As against the same, both the plaintiff and the defendants filed four appeals before the first Appellate Court. The first Appellate Court in a common judgment decreed the suit in O.S.No.2830 of 1996 in entirety and dismissed the appeals arising out of O.S.No.2285 of 1989. Aggrieved over the same, the instant Second Appeals are filed.

14. While admitting the Second Appeals, the following substantial questions of law were framed:

"(i) Whether the admission made by D.W.1 about the recital with regard to the four boundaries recognising the title of the appellant in Ex.B.6 dated 25.06.1997 is true, will bind the respondents in the absence of any explanation showing that the admission is wrong?

(ii) Whether it is open for respondent to claim entire extent of 0.09 cents under Ex.B.9 dated 30.09.1988, when under the earlier partition deed dated 25.06.1967 marked as Ex.B.6 respondents are entitled to only 4.5 cents? and

(iii) Whether the decision of the first appellate Court is liable to be set aside as it had not considered the additional document filed by the appellant, that



too, when the application to receive the additional document in I.A.No.726 of 2005 was allowed?"

15. The learned counsel appearing for the appellant/plaintiff in O.S.No.2285 of 1989 submitted that 'A' schedule property in O.S.No.2285 of 1989 is the family property. The same was partitioned under Ex.A.2. 'B' schedule property is a poramboke property, which is situated on the south of 'A' schedule property. In S.F.No.58/4, total extent is 9 cents. Ex.B.6-dated 25.06.1967 relied upon by the defendants clearly shows that the defendants have partitioned the property and in the above partition deed, eastern boundary is shown as the plaintiff's property. Therefore, any subsequent partition deed between the first and second defendants under Ex.B.9 will not create any right, when the earlier partition deed of the year 1967 itself clearly shows that eastern side of the property is shown as the plaintiff's property. The first Appellate Court has wrongly appreciated the document. Further, it is the contention that the first Appellate Court has also taken note of the settlement register. Ex.B.1-settlement register is not in the name of the defendants alone and registered in the name of the first son of the original owner. This fact clearly shows that the property is the ancestral property. The plaintiff also being a sharer is in possession of the suit property. Merely on the basis of the settlement register, the first Appellate Court has disbelieved the version of the plaintiff. Hence, it is contended that Ex.B.6 itself is sufficient to show that the plaintiff has got title to the suit property. To substantiate the possession of the plaintiff, the plaintiff also relied upon the tax receipts, etc. Hence, he prayed for allowing the appeals.

16. Whereas, Mr.P.Jeyaprakash Narayanan, learned counsel appearing for the Respondents 2&6 in S.A.(MD)Nos.1088 and 1090/2006 and Respondent No.3 in S.A.(MD)Nos.1089 and 1091/2006 submitted that Ex.B.6 clearly shows that 9 cents belonged to the first and second defendants in S.F.No.58/4. Ex.B.6 came to be executed for the specific purpose of availing the educational loan and clearing the debts. The boundaries mentioned in the deed is not related to 4^{1/2} cents. Whereas, it is only for 9 cents. Further, it is his contention that even assuming that any such statement is found, such admission itself did not convey title to the plaintiff. Ex.B.1 settlement register has a probative value which stands in the name of the father of the first and second defendants. The other documents clearly established the defendants' possession over the property. The plaint is silent about the tenant in the property. Whereas, Ex.B.8 lease agreement executed by the tenant in favour of the first defendant clearly shows that only the defendants are in possession of the suit property. Exs.A.9 to A.15 so called tax receipts filed by the plaintiff to prove the possession are no way relate to the suit property and 'B' schedule property shown in the plaint schedule in the plaintiff's suit in O.S.No.2285 of 1989 is



also not situated in S.F.No.58/4. Hence, it is contended that the first Appellate Court has thoroughly analyzed the entire facts and dismissed the appeal filed by the plaintiff in O.S.No.2285 of 1989 and granted injunction in favour of the defendants. Hence, he prayed for dismissal of the Second Appeals.

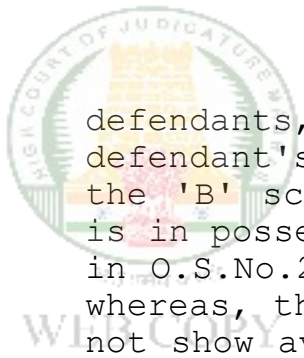
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17. I have perused the entire materials available on record.

18. Both the suits were filed in respect of S.F.No.58/4. The plaintiff in O.S.No.2285 of 1989 claims title and possession over 4^{1/2} cents shown as 'A' schedule property and 'B' schedule property said to be a river poramboke. According to the plaintiff, it is his ancestral property and there was a partition in the year 1980 under Ex.A.2.

19. It is the case of the plaintiff in O.S.No.2285 of 1989 that under Ex.B.6, eastern boundary is shown as the plaintiff's property in the year 1967 itself. Therefore, according to the plaintiff, the remaining 4^{1/2} cents were allotted in the partition during the year 1980 in a partition deed. Therefore, the plaintiff is entitled to the above property and he is in possession of the property as per Ex.A.2. Whereas, the defendants took a plea that the plaintiff is having the property only in S.F.No.58/5 not in S.F.No.58/4 and in S.F.No.58/4, the total 9 cents belonged to their family ancestrally. Merely because some error found in Ex.B.6, using the same, the plaintiff tried to create a right over the property. According to the defendants, Ex.B.1-settlement register filed on the side of the defendants clearly shows that the total extent of 9 cents in S.F.No.58/4 stands in the name of the defendants' family and S.F.No.58/5 an extent of 8 cents stands in the name of the plaintiff, the first defendant and one Minor Mookkan, rep. by his guardian Anandhammal. Of course, the settlement register cannot be a document of title. But, however, settlement register and revenue records have some probative value to prove the possession. No doubt, under Ex.B.6, one of the boundaries for 4^{1/2} cents allotted to the first defendant. Eastern side property is shown as the plaintiff's property in O.S.No.2285 of 1989. It is explained by the defendants that the partition deed was executed in favour of the first defendant for the purpose of his educational expenses by mortgaging the property allotted to him under Ex.B.6 and also in favour of the second defendant and one Ayinal Ammal. At that stage, merely because the boundaries were given, that itself will not convey any title to the plaintiff. Now, the suit itself is not for declaration of title and it is filed for alleged possession of respective parties.

20. In the plaint filed by the plaintiff in O.S.No.2285 of 1989, it is the case of the plaintiff that he is in possession of the property and there is a small building in the property and he has paid the tax. In the entire plaint, there is no whisper about the temporary zinc sheds available in the property, which are in enjoyment of the third party. However, on the side of the



defendants, Ex.B.8- lease deed was filed to show that the fifth defendant's father was a tenant in respect of cycle shed situated in the 'B' schedule property. D.W.1 also categorically stated that he is in possession of the property. In the plan filed by the plaintiff in O.S.No.2830 of 1996, the description has been clearly mentioned, whereas, the plan filed by the plaintiff in O.S.No.2285 of 1989 does not show availability of above sheds. Existence of sheds and tenant is totally suppressed in the plaint in O.S.No.2285 of 1989.

21. The evidence of P.W.1, when carefully seen, particularly, in the cross-examination, he has stated that he has rented out the cycle shed to one Perumal, namely the fifth defendant's father. Further, he has admitted that there was a police complaint in respect of the dispute between himself and Perumal. If really the plaintiff has let out the property to Perumal, there was no reason as to why a dispute arose between the tenant and the plaintiff. Having admitted in evidence that there is cycle shed let out to Perumal, the same fact has not been disclosed in the plaint. Under Ex.B.6, it is stated that the partition was effected only to meet out the educational expenses of one of the defendants and it is also stated in the above document, if any property is left out, the same shall be divided equally. Ex.B.9 again, the remaining $4\frac{1}{2}$ cents were divided between the first and second defendants by way of partition. Further, patta was issued in the name of the first defendant in respect of S.F.No.58/4 and patta pass book was also filed as a document. The revenue records were marked as Exs.B.4 and B.5. All relate only to S.F.No.58/4. Though it is the contention of the plaintiff in O.S.No.2285 of 1989 that he has been in possession and has been paying the house tax, it is to be noted that Exs.A.3 to A.7 receipts have been filed, in which, tax has been paid in respect of Door No.7 and 7-4I. Whereas, the plaintiff himself admitted that the building situated in the suit property bearing No.3/10, but, the tax has been paid only in respect of 7-4I and not for the building situated in the suit property. Whereas, Ex.B.8 and other revenue records clearly show that the first defendant in the above suit has paid the taxes, besides, he has also collected rent from one Perumal and lease deed was also filed to prove the said fact.

22. Similarly, as far as 'B' schedule property is concerned, the plaintiff himself admitted that 'B' schedule property is situated in S.F.No.58/7, whereas, in the plaint, survey number is shown as '58/4'. The first Appellate Court has considered the additional documents filed by the plaintiff and categorically recorded a finding that the poramboke area situated adjoining both the survey numbers and S.F.No.58/4 was enjoyed by the defendants and the poramboke S.F.No.58/7 was enjoyed by the plaintiff, which is adjacent to S.F.No.58/4. Therefore, merely because some boundaries have been given, that itself cannot be a ground to hold that the property belonged to the plaintiff's family. Ex.B.1-Settlement Register filed clearly indicates that the property in S.F.No.58/4 stands in the name of the father of the plaintiff in O.S.No.2830 of



1996 and S.F.No.58/5 an extent of 8 cents stands in the name of the plaintiff in O.S.No.2285 of 1989, the first defendant and one Minor Mookkan, rep. by his guardian Anandhammal. Further, possession is also not established by the plaintiff in O.S.No.2285 of 1989 in respect of the suit property. Whereas, the plaintiff in the other suit filed relevant revenue records pertaining to S.F.No.58/4, besides tax receipts and patta. Those revenue records certainly prove his possession. Therefore, merely on the basis of tax receipts paid in some other house, which is situated nearby to the suit property, the plaintiff in O.S.No.2285 of 1989 cannot prove his possession. Whereas in his plaint, he suppressed the existence of the tenant in the suit property, but the first defendant has proved the same by filing Ex.B.8 and the fifth defendant also admitted the said fact. All these facts clearly show that the plaintiff in O.S.No.2285 of 1989 has not established his possession over S.F.No.58/4. The plaintiff in O.S.No.2830 of 1996 has established the possession in respect of S.F.No.58/4 in the suit for bare injunction. Furthermore, Ex.B.1-settlement register indicates the names of the plaintiff as well as the first defendant in O.S.No.2285 of 1989. This fact indicates that originally the properties are the family properties. Therefore, merely because two of them relied upon a partition deed and the boundaries, that itself is not the determining factor to prove the title. The first Appellate Court has analysed these facts and thoroughly considered the entire documents and recorded the finding as to possession, which needs no interference at the hands of this Court. Accordingly, all the substantial questions of law are answered against the appellant.

23. In the result, the Second Appeals are dismissed. However, in view of the peculiar nature of the case, the parties are at liberty to file appropriate suit for declaration or partition and for recovery of possession, if so advised. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

SML

To

1.The First Additional Subordinate Judge,
Tiruchirappalli.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Third Additional District Munsif Court,
Tiruchirappalli,

copy to

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The Record Keeper, (2 copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.MARIA ROSELINE, Advocate (SR-6559[F] dated
17/02/2020)

Common Judgment made in
S.A. (MD)Nos.1088 to 1091 of 2006
17.02.2020

VB(02.06.2020) 11P 6C