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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

S.A.Nos.97 & 101 of 2012

and

M.P.Nos.1, 1 of 2012

(Through Video Conferencing)

S.Kothandan ... Appellant/Appellant/Plaintiff
in S.A.No.97 of 2012

S.Mohanan ...Appellant/Respondent/Defendant
in S.A.No.101 of 2012

Vs.

S.Mohanan ... Respondent/Respondent/Defendant
in S.A.No.97 of 2012

S.Kothandan ... Respondent/Appellant/Plaintiff
in S.A.No.101 of 2012

Prayer in S.A.No.97 of 2012:

Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 30.06.2011 made in A.S.No.26 of 2010 on the file of the Subordinate Court, Poonamallee confirming the Judgment and Decree dated 21.01.20 10 in O.S.No.72 of 2007 on the file of the Additional District Munsif Court, Poonamallee.

Prayer in S.A.No.101 of 2012:

Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 30.06.2011 made in A.S.No.25 of 2010 on the file of the Subordinate Court, Poonamallee reversing the Judgment and Decree dated 21.01.2010 in O.S.No.10 of 2007 on the file of the Additional District Munsif Court, Poonamallee.



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For Appellants : Mr.V.Raghavachari
in S.A.No.97 of 2012

: Mr.R.Kannan
in S.A.No.101 of 2012

For Respondents : Mr.R.Kannan
in S.A.No.97 of 2012

: Mr.V.Raghavachari
in S.A.No.101 of 2012

COMMON JUDGMENT

The appellant in S.A.No.97 of 2012 is the respondent in S.A.No.101 of 2012. He was the plaintiff in O.S.No.72 of 2007 and O.S.No.10 of 2007. The respondent in S.A.No.97 of 2012 is the appellant in S.A.No.101 of 2012. He was the defendant in O.S.No.72 of 2007 and O.S.No.10 of 2007. Both the suits were filed by the appellant/respondent in S.A.No.97 of 2012/S.A.No.101 of 2012.

2. The plaintiff is the elder brother while defendant is the younger brother. They are the sons of late Somasundara Reddiar. For the sake of clarity, the ranks of the parties before the trial Court in O.S.No.10 of 2007 and O.S No.72 of 2007 shall be referred.

3. Both the litigation stem from the perceived rights of the plaintiff in Ex.A4 partition deed dated 25.04.2003. Ex.A4 partition deed dated 25.04.2003 signed and executed between the plaintiff, the defendant and their father late Somasundara Reddiar during his life time.

4. Vide Ex.A4 dated 25.04.2003 several properties including agricultural lands were allotted inter-se between them as detailed below:-

SomasundaraReddiar (father)		Kothandan(plaintiff)		Mohanar (defendant)	
S.No	Extent	S.No	Extent	S.No	Extent
209/4	81 cents	30/3	69 cents	17/4B	38 cents**
		201/6	93 cents	57/1	31 cents



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		79	7114.5 sq.ft*	66/1	28 cents
				66/4	25 cents
				66/5	11 cents
				67/1	107cents
				67/3	32cents

Subject matter of this Appeal:

* O.S.No.10 of 2007 / A.S.No.25 of 2010 / S.A.No.101 of 2012

**O.S.No.72 of 2007 / A.S.No.26 of 2010 / S.A.No.97 of 2012

5. The above partition was preceded by a partition between the father of the plaintiff and the defendant late Somasundara Reddiar with his younger brother Induram Reddiar vide Ex A1 partition deed dated 28.05.1971. As per Ex.A1 partition deed dated 28.05.1971 the land in Survey No.79 in Vilianjiambakkam Village measuring about 14229 sq ft. was equally divided between their father and uncle together with an equal share in the house. Both the suits were filed by the plaintiff for a permanent injunction and cost. The suit schedule of the properties in the respective suits are as under:-

Suit Schedule Property in O.S.No.72 of 2007/A.S.No.26 of 2010/S.A.No.97 of 2012	Suit Schedule Property in O.S.No.10 of 2007/A.S.No.25 of 2010/S.A.No.101 of 2012
Suit property to an extent of 38 cents situated in Survey No.17/4B in Vilianjiambakkam Village.	Suit property to an extent of 7114.5 sq ft situated in Survey No.79 in Vilianjiambakkam Village.

6. The defence of the defendant was that the suit schedule property measuring an extent of 7114.5 sq.ft in Survey.No.79 in Vilianjiambakkam Village together with the house was purchased by the defendant from their uncle Induram Reddiar in the name of defendant's wife vide Ex.B4 dated 01.11.1995 and the plaintiff cannot restrain the defendant from selling Suit property to an extent of 38 cents situated in Survey No.17/4B in Vilianjiambakkam Village in view of partition deed in Ex.A4 dated 25.04.2003 partition deed.



7. The Trial Court had framed the following issues in the respective suits:-

O.S.No.10 of 2007	O.S.No.72 of 2007
Whether the plaintiff is entitled to the injunction sought for?	Whether the suit for injunction sought for by the plaintiff is maintainable without such partition?
To what other relief?	Whether the plaintiff is entitled to the permanent injunction sought for?
	To what other relief?

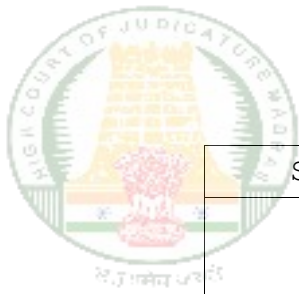
8. These suits were dismissed by the Trial Court on 21.01.2010 by its common Judgment and separate Decrees. Further appeals filed by the plaintiff in A.S.No.25 of 2010 and in A.S.No.26 of 2010 against respective Judgment and Decree dated 21.01.2010 in O.S.No.10 of 2007 and in O.S.No. 72 of 2007 of the Trial Court.

9. The Appellate Court vide impugned Judgement and Decree allowed A.S.No.25 of 2010 and dismissed A.S.No.26 of 2010. Thus, both the defendant and the plaintiff have filed these appeals.

10. Though these appeals were listed for admission on 28.02.2012, they were not admitted.

11. No substantial questions of law were framed in 2012 for being answered these appeals at the time of final hearing. Instead, these appeals are now listed for final hearing after notice of admission was ordered in 2012 as was the practice of this court.

12. The respective appellants have raised the following questions as substantial question of law for being answered in these appeals:-



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S.A.No.97 of 2012	S.A.No.101 of 2012
	Whether the learned Judge substantially erred in law in decreeing the suit for permanent injunction in respect of the suit property inspite of the finding that it originally was allotted to the share of Induram under Exhibit A1 and was later purchased by Buvaneswari under a registered sale deed without she being a party to the suit?
	Whether the learned Judge substantially erred in law in misreading the documentary evidence holding that under Ex.A1 Induram was allotted 7020 sq.ft and that Somasundaram was allotted 7209 sq.ft?
	Whether the learned Judge of the Lower Appellate Court erred in placing burden of proving ownership of the northern portion of the suit house belonged to appellant inspite of the admission made by the plaintiff in the pleadings including the description of property in the plaint."

13. I shall first deal with S.A.No.97 of 2012 and thereafter with S.A No.101 of 2012.

14. This appeal has been filed by the plaintiff (in O.S.No.72 of 2007) against the Judgment and decree dated 30.06.2011 passed by the Appellate Court in A.S.No.26 of 2010.

15. O.S.No.72 of 2007 was filed by the plaintiff (appellant herein) for a permanent injunction to restrain the defendant from selling or alienating the suit schedule property measuring an extent of 38 cents in S.No.17/4B at Vilinjambakkam village.

16. O.S.No.72 of 2007 was filed on the ground that partition in Ex.A4-Partition Deed dated 25.04.2003 had resulted



in unfair allotment of lesser extent of land by 19 cents to the plaintiff and therefore the defendant should be restrained from alienating the suit schedule property.

17. After examining the evidence on record and the deposition of witnesses, the Trial Court dismissed the suit filed by the plaintiff with the following observations:-

"The plaintiff has admitted that 5814 sq.ft and the 1300 sq.ft properties stands in the name of the defendant's wife. And this suit 38 cent in S.No.17/4B was partitioned and enjoyed by the defendant.

The plaintiff pleads that the partition was acted upon, possession was handed over, enjoyed, and most of the properties were also alienated. The defendant condemns the attitude of the plaintiff challenging the partition deed dated 25.04.2003 in the year 2007. Since the grand children have share in the grandfather's property and O.S.229/2006 was filed by the defendant minor children seeking share in the late Somasundara Reddiar properties allotted through Ex.A-4. The contention of the defendant that the partition is not fair and justifiable is sustainable through their relief. The aggrieved plaintiff is inclined to prefer a suit to challenge the partition deed. The plaintiff has no locus-standi to seek such relief against the defendant in this suit. The plaintiff himself has admitted through Ex.A-4 the suit property was allotted to the share of the defendant. Ex.A-4 also reveals the same. Once a joint family property was partitioned it becomes the absolute property of the co-sharer. Others can not restrain the enjoyment of absolute property. Under the circumstances the suit is not maintainable. The plaintiff relief is not justifiable in the eye of law."

18. By the impugned Judgment and decree, the Appellate Court had dismissed A.S.No.26 of 2010 filed by the plaintiff against the Judgment and decree passed by the Trial Court in O.S.No.72 of 2007.



19. The Appellate Court has affirmed the above views by holding that the plaintiff (appellant herein) had not challenged the partition in Ex.A4-Partition Deed dated 25.4.2003 between their father late Somasundara Reddiar, Appellant (plaintiff) and the respondent (defendant).

20. The Appellate Court has noted that the plaintiff (appellant herein) had admitted to the partition in Ex.A4 dated 25.04.2003 and claimed a share over and above the share allotted therefore there any relief cannot granted to the plaintiff (appellant herein).

21. There is no dispute that the suit schedule property was allotted to the plaintiff and the defendant (respondent herein) vide Ex.A4-Partition Deed dated 25.04.2003 and their father Late Somasundara Reddiar during his life time. Several properties came to be allotted interse between the parties as noted above.

22. The appellant who was the plaintiff before the Trial Court has not established that the partition in Ex.A4-Partition Deed dated 25.04.2003 was not executed by the appellant, respondent and their father Late Somasundara Reddiar.

23. There is a specific bar under Chapter VI of the Indian Evidence Act, 1872 to let in oral evidence contrary to the content of written document. Sections 91 & 92 of the Indian Evidence Act, 1872 specifically deals with the same.

24. As per Section 92 of the Indian Evidence Act, 1872, when the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms.

25. Proviso to Section 92 of the Indian Evidence Act, 1872, reads as under:-

"Proviso (1) - Any fact may be proved which would invalidate anydocument, or which would entitle any person to any decree or order relating thereto, such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, [want of



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failure] of consideration, or mistake in fact or law.

Proviso (2) - The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3) - The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4) - The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5) - Any usage or custom by which indicates not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved:

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract

Proviso (6) - Any fact may be proved which shows in what manner the language of a document is related to existing facts."

26. From a reading of the above, it is evident that none of the instances mentioned were not attracted in the facts and circumstances of the case.

27. Thus, the case of the plaintiff (appellant herein) for permanent injunction, to restrain the defendant (respondent herein) from interfering with the suit schedule property in any



manner cannot be countenanced based on the averments in the plaint and the deposition of the witnesses before the Trial Court. Thus, the Judgment and Decree of the appellate Court upholding the Judgment and Decree of the Court cannot be faulted.

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28. Therefore, no substantial questions of law arises for consideration in this appeal and in any event as substantial questions of law that may be raised by the plaintiff (appellant herein) in this appeal are to be answered against the appellant/plaintiff. Therefore, S.A.No.97 of 2012 is liable to be dismissed.

29. S.A.No.101 of 2012 has been filed by the defendant in O.S.No.10 of 2007. As mentioned above the suit was filed for a permanent injunction to restrain the defendant (appellant herein) from interfering with the peaceful possession and enjoyment of the suit schedule property (Survey No.79 and extent of 7114.5 sq.ft) and to restrain the defendant from entering into the suit schedule property owned by the plaintiff.

30. The alleged cause of action for the above suit was an alleged attempt of the defendant (appellant herein) to disturb the peaceful possession over the suit schedule property by putting up construction over the suit schedule property.

31. Before the Trial Court, the case of the plaintiff (respondent herein) was that the suit schedule property originally comprised of a total extent of 14229 sq.ft in S.No.79 at Vilinjambakkam village, which was partitioned between their father late Somasundara Reddiar and their paternal uncle Mr. Indhuras Reddiar vide Ex.A1 dated 28.5.1971.

32. The plaintiff (respondent herein) submitted that their father late Somasundara Reddiar later purchased vacant land for an extent of 5814 sq.ft in S.No.79 in the name of defendant's (appellant's herein) wife (Bhuvaneswari) as a family property. It was the case of the plaintiff that though the said property was purchased in the name of the defendant's wife, it was nevertheless a joint family property.

33. It was further case of the plaintiff (respondent herein) that only an extent of 1300.5 sq.ft of land was given to the defendant by their father late Somasundara Reddiar.

34. The case of the plaintiff that an extent of 7114.5 sq.ft consisted of a land measuring an extent of 1300 sq.ft with



a tiled house which was allotted to the defendant and a land measuring an extent of 5814 sq.ft though purchased in the name of defendant's wife Bhuvaneshwari was allotted to the plaintiff in terms of Ex.A4 partition deed dated 25.4.2003.

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35. In his written statement the defendant (appellant herein) has further stated that an extent of 7114.5 sq.ft was the absolute property of the defendant along with his wife and it cannot be equated with the property allotted to the plaintiff vide Ex.A4 Partition Deed dated 25.04.2003.

36. Before the Trial Court the plaintiff examined himself as PW1 and the defendant examined himself as DW1. The plaintiff marked an Ex.A1 to Ex.A11 and the defendant marked an Ex.B1 to Ex.B15 also Court document was marked as Ex.C1 and C2.

37. The Trial Court after considering the evidences on record, dismissed the O.S.No.10 of 2007 filed by the plaintiff.

38. The Trial Court accepted that the contention of the defendant (appellant herein) that their uncle Induram Reddiar's property measuring an extent of 7114.5 sq.ft along with the house site was purchased by the defendant along with his wife was satisfactorily proved. The Trial Court also held that the plaintiff had not proved that the plaintiff was entitled and enjoying an extent of 7114.5 sq.ft land in S.No.79 at Vilingambakkam village.

39. The Trial Court also observed that there was variance in the measurement in the subsequent partition in Ex.A4 dated 25.4.2003 between plaintiff, defendant and their father late Somasundara Reddiar and that the extents of the plots were held not identical in Exhibits Ex.A1 partition deed dated 28.5.1971 and Ex.A4 partition deed dated 25.4.2003 based on the commissioner's report. It held that the plaintiff failed to satisfy the extents of land allotted to their father late Somasundara Reddiar and the same was partitioned and devolved upon the plaintiff and defendant.

40. Further appeal was filed by the plaintiff in A.S No.25 of 2010. The Appellate Court reversed the Judgment and Decree in O.S No. 10 of 2007 dated 21.1.2010. The appellate Court observed that on perusal of Ex.A1 partition deed dated 28.5.1971, it cannot be construed that late Somasundara Reddiar got an extent of 7114.5 sq.ft in S.No.79 at Vilingambakkam village since the extent was not specifically mentioned in Ex.A1



partition deed dated 28.05.1971.

41. The Appellate Court further observed that vide Ex.A1 dated 28.5.1971 total extent of property in S.No.79 at Vilinjiambakkam village was only 14229 sq.ft, and pursuant to partition between Somasundara Reddiar and his brother Mr.Induram Reddiar and later it was allotted half share on which he built a house on the northern side $67 \times 18 = 1206$ sq.ft and also land on the northern side of house property measuring $153 \times 84 = 5814$ sq.ft, thus totaling an extent of land to Induram Reddiar $1206 + 5814 = 7020$ sq.ft. The remaining extent $14229 - 7020 = 7209$ sq.ft. was allotted to the plaintiff and the defendant's father late Somasundara Reddiar.

42. The Appellate Court further observed that Mr.Induram Reddiar executed Ex.B4/A3 sale deed dated 01.11.1995 in favour of defendant's wife in respect of land measuring only 5814 sq.ft and on the same day Mr.Induram Reddiar also executed another sale deed in favour of defendant's wife house measuring 1206 sq.ft. though the copy of the sale deed was not produced before the court.

43. The Appellate Court concluded that the land was purchased in the name of defendant's wife Bhuvaneswari measuring an extent 7114.5 sq.ft ($5814 + 1206 = 7020$ sq.ft) from Mr.Induram Reddiar, and that Mr.Induram Reddiar could not have conveyed more land than what was allotted to later under Ex.A1 partition deed dated 28.5.1971 between their father and uncle.

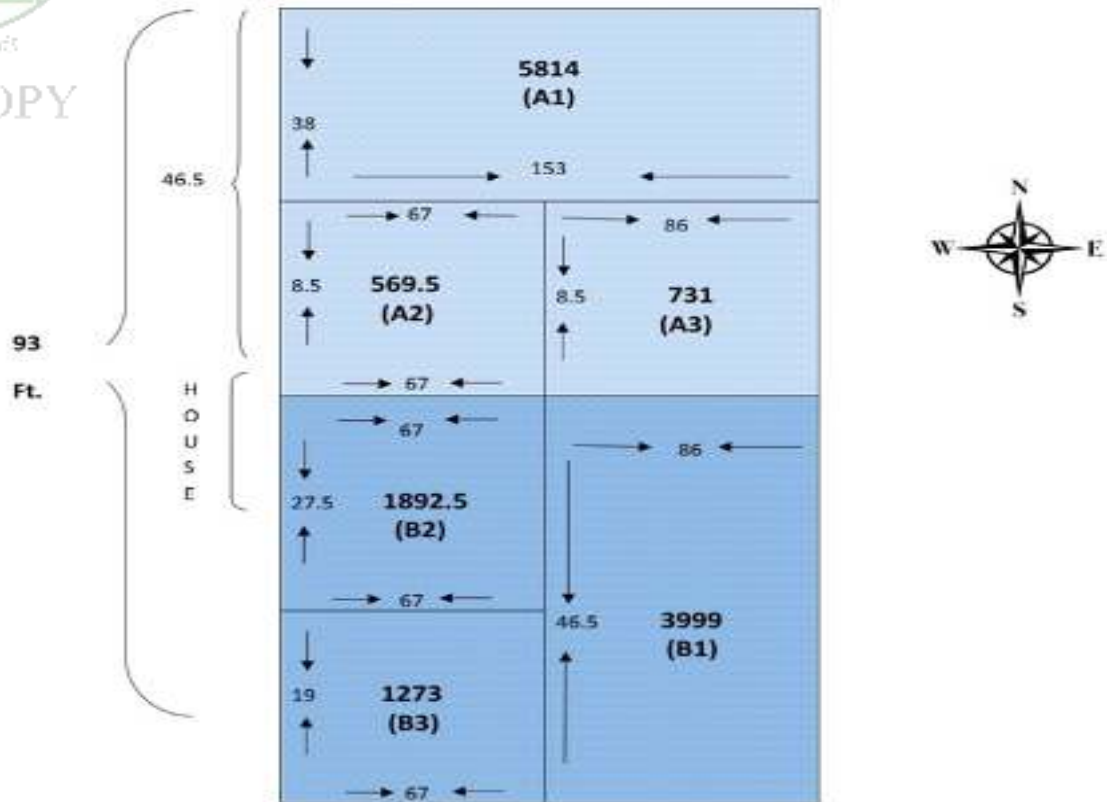
44. The Appellate Court further observed that title of the plaintiff was proved by Ex.A4 partition deed dated 25.4.2003 and once a partition was effected, the properties allotted to the parties are their individual properties. It further held that the plaintiff was in occupation of suit property was not in dispute as per Ex.A7- Town Survey Field Register. The Appellate Court thus allowed A.S No.25 of 2010. Aggrieved by the same, the defendant has filed this appeal. A reading of the Judgment and Decree of Trial Court and the Appellate Court, the location of the property and division has been made different.

45. The land that identified by the Trial Court graphically represent as follows:-

46.



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A1 + A2 + A3 = 7114.5 Sq.ft. allotted to Induram and sold to defendant
A1 ----- Land ; A2 ----- House ; and A3 ----- Land.

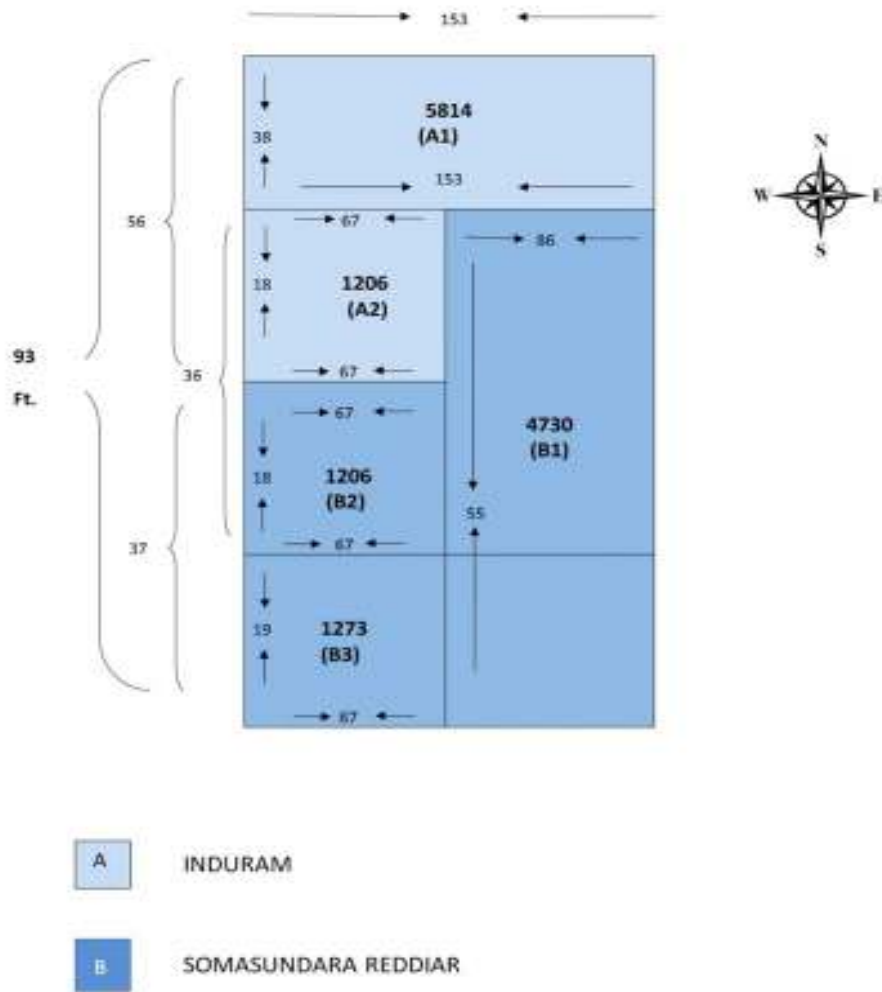


B1 + B2 + B3 = 7114.5 Sq.ft. allotted to Somasundara Reddiar
B1 ----- Land ; B2 ----- House ; and B3 ----- Land.

46. The land that identified by the Appellate Court graphically represent as follows:-



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47. On perusing the records, what is evident is that the property in S.No.79 was divided equally between the plaintiff's and defendant's father and paternal uncle vide deed Ex.A1 dated 28.05.1971.

48. The total extent of land in S.No.79 at Vilianjiambakkam Village, Avadi Taluk measured an extent of 14229 sq.ft which was divided between the plaintiff's and defendant's father late Somasundara Reddiar and his brother Induram Reddiar equally vide Ex.A1 dated 28.05.1971. Thus, each of them could have been entitled to 7114.5 sq.ft out of 14229 sq.ft in S.No.79 in Vilianjiambakkam Village.

49. The southern portion of the land was allotted to the plaintiff's and defendant's father while the northern portion of the land was allotted to their uncle Induram Reddiar.



50. The property which was allotted to the plaintiff and defendant's uncle Induram Reddiar was on the northern side of land in S.No.79 at Vilianjiambakkam Village. It was later purchased in the name of Bhuvaneshwari wife of defendant (appellant herein) vide Ex.A3/B4 dated 01.11.1995.

51. The defendants purchased the northern portion from their uncle Induram Reddiar in the year 1995 vide Ex.A3/B4 dated 01.11.1995 which was allotted to later vide partition deed Ex.A1 dated 28.05.1971. The purchase precedes Partition in 2003 vide Ex. A4 dated 25.04.2003.

52. The plaintiff was allotted the southern portion of the property vide Ex.A4 partition deed dated 25.04.2003 which was earlier allotted to plaintiff and defendants father vide deed Ex.A1 dated 28.05.1971.

53. Precedes that the land purchased by the defendant partition in Ex.A4 dated 25.04.2003. Ex.A4 dated 25.04.2003 was executed much after the land was purchased in the name of defendant's wife Bhuvaneshwari in Ex.A3/B4 dated 01.11.1995. If it was a joint family property, Ex.B4 Partition Deed dated 25.04.2003, would have certainly reflected it as a joint family property and partitioned in 2003.

54. The defence of the defendant (appellant herein) that an extent of 5814 sq.ft in S.No.79, was purchased in the name of defendant's wife Bhuvaneshwari vide Ex.A3/B4 dated 01.11.1995, and that an extent of 1206 sq.ft was separately purchased again by the defendant again in his wife name Bhuvaneshwari and that the defendant was in possession of the suit schedule property is therefore to be accepted. If it was otherwise as was claimed by the plaintiff, same would have been subject matter of partition in Ex.A4 partition deed dated 25.04.2003.

55. Thus the land that was allotted to the father of the plaintiff and defendant late Somasundara Reddiar vide Ex.A1 dated 28.05.1971 was the land allotted to the plaintiff vide Ex.A4-partition deed dated 25.04.2003 and the land that was allotted to Induram Reddiar was purchased vide Ex.A3/B4 dated 01.11.1995 by the defendant. The plaintiff cannot claim right over it.

56. The defendant also cannot claim right over the land allotted to the plaintiff vide Ex.A4 dated 25.04.2003. The parties cannot claim oral rights over each other's property.



Though the appellate court had allowed the appeal, there is no substantial question of law that has arisen to be answered. Therefore, Second Appeal No.101 of 2012 is also liable to be dismissed.

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57. The extent arrived by the Appellate Court based on the above graphic diagram appears to be improbable based on the evidence on record. Therefore, the extent arrived by Appellate Court for the plaintiff for a large extent of 7209 sq.ft and for the defendant 7020 sq.ft lesser extent of 7020 sq. Ft for the defendant cannot be accepted in the light of the documents. The land was divided equally. However, the fact remains that the land that was allotted to plaintiff vide Ex.A4 dated 25.04.2003 and the land purchased by the defendant vide Ex.A3/B4 dated 01.11.1995 can neither be increased nor decreased.

58. In the result both the appeals are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

arb

To:

1.The Subordinate Judge,
Poonamallee.

2.The Additional District Munsif,
Poonamallee.

+2cc to Mr.V.Raghavachari, Advocate SR.No.34808, 34809

+2cc to Mr.R.Kannan, Advocate SR.No.34855, 34856

S.A.Nos.97 & 101 of 2012

and

M.P.Nos.1, 1 of 2012

GPL(CO)

CB(06/12/2021)