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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 01.04.2021

DELIVERED ON : 20.04.2021

C O R A M

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.NO.512 OF 2017

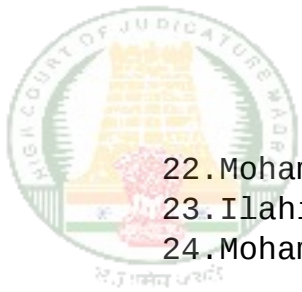
AND

CRP (NPD)NO.746 OF 2018

AND

CMP NOS.13126 OF 2020 AND 6486 OF 2020

- 1.K.M.Ramanathan
N.Gopalswamy (Died)
- 2.R.Rangaswamy
- 3.S.Sambandamurthy
- 4.P.Duraiaraj
- 5.G.Arjunan
- 6.P.Rajendran
R.Elangovan (Died)
A.Mohammed Haneefa (died)
- 7.N.Kandaswamy
- 8.P.Subramanian
- 9.M.Ayyaswamy
- 10.P.Muthuvel
Govindaraj (Died)
- 11.G.Mangaiyarkarasi
- 12.Amitha
- 13.Minor Nithila
rep by Court Guardian
Thiru.V.K.Hyderkhan
- 14.G.Dhanalakshmi
- 15.B.Shanmugavadivu
- 16.M.Padmavathi
- 17.G.Senthilkumar
- 18.E.Tamilarasi
- 19.K.Sivasankari
- 20.R.E.Saravanan
- 21.Noorjahan



22.Mohamed Nassar
23.Ilahinnissa
24.Mohamed Abdoul Khader

... Appellants

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Vs

1.Smt.Palaniammal
Rangaswami(Died)
Ranganayaki (Died)
2.Smt.Lakshmiammal
3.Smt.Palaniammal
4.R.Balasubramanian
5.Smt.R.Rajeswari
6.S.Arumugam
7.Smt.Subathra
8.Smt.Parvathi
9.S.Rajendran
10.Balakrishnan
11.Smt.Vijayalakshmi
12.M.Manokaran
13.M.Ramalingam
(R.12 and R.13 given up)
14.P.Subash
15.R.Banu Rajendran
16.M.Lalitha
17.R.Manikandan
18.Meenakshi
(Respondents 14 to 18 were impleaded as
respondents vide order dated 04.04.2019
made in CMP No.13198 of 2018 in SA No.
512/2017)

... Respondents

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 30.11.2016 in A.S.No.239 of 2003 on the file of I Additional District and Sessions Judge, Coimbatore, confirming the judgment and decree dated 22.03.2000 made in I.A.No.187 of 1999 in O.S.No.766 of 1981 on the file of Principal Subordinate Court, Coimbatore.



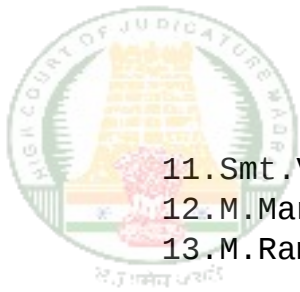
CRP (NPD) NO. 746 OF 2018

1. K.M. Ramanathan
- N. Gopalswamy (Died)
2. R. Rangaswamy
3. S. Sambandamurthy
4. P. Durairaj
5. G. Arjunan
6. P. Rajendran
7. N. Kandaswamy
8. P. Subramanian
9. M. Ayyaswamy
10. P. Muthuvel
11. G. Mangaiyarkarasi
12. Amitha
13. Minor Nithila
rep by Court Guardian
Thiru. V. K. Hyderkhan
14. G. Dhanalakshmi
15. B. Shanmugavadivu
16. M. Padmavathi
17. G. Senthilkumar
18. E. Tamilarasi
19. K. Sivasankari
20. R. E. Saravanan
21. Noorjahan
22. Mohamed Nassar
23. Ilahinnissa
24. Mohamed Abdoul Khader

... Petitioners

VS

1. Smt. Palaniammal
2. Smt. Lakshmiammal
3. Smt. Palaniammal
4. R. Balasubramanian
5. Smt. R. Rajeswari
6. S. Arumugam
7. Smt. Subathra
8. Smt. Parvathi
9. S. Rajendran
10. Balakrishnan



11.Smt.Vijayalakshmi
12.M.Manokaran
13.M.Ramalingam

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... Respondents

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code against the fair and decreetal order dated 30.11.2016 made in I.A.No.395 of 2016 in A.S.No.239 of 2003 on the file of I Additional District Judge, Coimbatore.

For Appellants 1 to 5,7 to 24 : Mr.K.Duraisami
in S.A.No.512/2017 and Senior Counsel for
P.1 to 5, 7 to 24 in CRP(NPD) M/s Muthumani Duraisami
No.746/2018

For A.6 in S.A.No.512/2017 : Mr.T.Sundaranathan
& P.6 in CRP(NPD)No.746/2018

For Respondents 2 to 5,7,8 and : M/s.Priya for
11 in both the cases Mr.R.Shanmugam

For 9th Respondent in both : Mr.S.Parthasarathy
the cases Senior Counsel for
M/s.Sarvabhauman
Associates

S.A.No.512/2017

For R.17 & R.18 : Ms.AL.Gandhimathi

R.1 : Died
R.6 & R.16 : No appearance
R.12 & R.13 : Given up }
Memo filed SR
R.14 & R.15 : Given up }
No.77072 dated
03.10.2018

R10 : Unclaimed



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CRP(NPD)No.746/2018

R.1	: Died
R.6	: Tapal not yet returned either served or not
R.10	: Left
R.12 & R.13	: No such address

COMMON JUDGMENT

Challenging the judgment and decree dated 30.11.2016 in A.S.No.239 of 2003 passed by the learned I Additional District and Sessions Judge, Coimbatore, confirming the judgment and decree dated 22.03.2000 in I.A.No.187 of 1999 in O.S.No.766 of 1981 passed by the Principal Subordinate Judge, Coimbatore, the defendants 4 to 23 /bonafide purchasers have filed the present Second Appeal.

2. Civil Revision Petition filed against the fair and decreetal order dated 30.11.2016 made in I.A.No.395 of 2016 in A.S.No.239 of 2003 on the file of I Additional District Judge, Coimbatore.

3. The brief facts of the case is as follows:-

Originally the suit schedule properties belonged to one Vaiyapuri Naicker, who died intestate. The wife of the said Vaiyapuri Naicker is Singariammal. The said Vaiyapuri Naicker and Singariammal had one Son and three daughters namely a. V. Rangaswami, b. Ranganayaki, c. Palaniammal and d. Lakshmiammal respectively. The mother and children are eligible for 1/5"share each in the suit properties.

4. After the demise of the said Vaiyapuri Naicker, his wife namely Singariammal and daughters namely Palaniammal and Lakshmiammal jointly settled their due shares in the suit properties to and in favour of son namely V. Rangaswami, through a Registered Release Deed dated 16.02.1972 in Document No 243 of 1972 on the file of SRO, Coimbatore. In lieu of the above said Release Deed dated 16.02.1972, the said V. Rangaswami paid a sum of Rs. 1000/- to each and settled 6 cents of land each to and in favour of the said Palaniammal and Lakshmiammal through a



Registered Settlement Deeds dated 21.02.1972 in Document Nos.283 and 284 of 1972. Further, after the execution of the above said Release Deeds dated 21.02.1972, on the request of the said Lakshmiammal, the said V. Rangaswami settled another 6 cents of land from his share that he got under Partition Deed dated 12.07.1972.

5. Under these circumstances, the Appellants namely K.M.Ramanathan, N.Gopalaswamy. R.Rangaswamy and S.Sambandamurthy jointly purchased 49.75 cents in S. Nos.411/1 and 412 from the said V. Rangaswami for valuable consideration through a Registered Sale Deed dated 24.10.1979 in Document No 2048 of 1979 on the file of SRO, Coimbatore Likewise, the Appellants namely P. Durairaj. G. Arjunan, P. Rajendran and R. Elangovan jointly purchased 54.5 cents in S. Nos.411/1 and 412 from the said V Rangaswami for valuable consideration through a Registered Sale Deed dated 02.11.1979 in Document No.3083 of 1979 on the file of SRO, Coimbatore. Likewise, the Appellants namely Mohammed Haneefa, N. Kandasamy. P. Subramanian, M. Ayyasamy, P. Muthuvel and Govindaraj jointly purchased 36 cents in S. No.411/1 from the said V. Rangaswami for valuable consideration through a Registered sale Deed dated 14.12.1979 in Document No.3732 of 1979 on the file of SRO, Coimbatore. Thereafter they partitioned their respective properties under three Partition Deeds in Document Nos. 2079 of 1980, dated 09.06. 1980, 2153 of 1980, dated 16.06 1980 and 2394 of 1981, dated 22.05.1981 respectively. From the date of purchase, the Appellants have been in continuous possession and enjoyment of the above properties for the past 42 years.

6. While this was so, subsequently the 1 Respondent herein namely Mrs.Palaniammal filed a suit in O.S. No.766 of 1981 for partition before the Principal Subordinate Court, Coimbatore. The Appellant herein vehemently contested the suit by oral and documentary evidence. By Judgment and Preliminary Decree dated 19.09.1984 in O.S. No.766 of 1981, the Learned Principal Subordinate Judge, Coimbatore was pleased to dismiss the suit for partition on the ground that the Plaintiff and the 2nd Respondent Lakshmiammal released their due shares through a Registered Release Deed by receiving not only monetary benefits but also getting 12 cents respectively through Settlement Deeds.



7. Challenging the Judgment and Preliminary Decree dated 19.09.1984, the said Palaniammal preferred an Appeal Suit in A.S. No.753 of 1984 before this Honourable Court. Without considering the fact that the purchase of the Appellants herein is not only bonafide but also is legally valid, the Appeal Suit was allowed by Judgment and Decree dated 04.12.1998 in A.S. No.753 of 1984 and decreed the suit for partition in O.S. No.766 of 1981. While allowing the Appeal Suit the legitimate purchase of the Appellants herein was not considered.

8. Challenging the reversing Judgment and Decree dated 04.12.1998 in A.S. No.753 of 1984, the said V. Rangaswami filed L.P.A. No.121 of 2000 before this Honourable Court. In the LPA., the brother and sisters had collusively entered into a Memorandum of Compromise and on the basis of the Memorandum of Compromise, they fraudulently obtained a Compromise Decree dated 17.03.2004 in LPA No. 121 of 2000 behind the back of the Appellants herein. Under these circumstances, the Appellants herein filed a Review Application Nos. 145 of 2007 and 172 of 2011 in L.P.A.No. 121 of 2000 . The Hon'ble Division Bench of this Court was pleased to allow the Review Application by restoring the LPA No. 121 of 2000 and set-aside the Compromise Decree.

9. On 10.12.2014 when the above LPA No.121 of 2000 was taken up for final hearing before the Hon'ble First Bench of this Court, the sole Appellant in LPA No.121/2000, namely the said V. Rangaswami technically withdrew the LPA No 121 of 2000. Challenging the Judgment and Decree of withdrawal dated 10.12.2014 in LPA, No. 121 of 2000, the Appellants herein filed Special Leave to Appeal (C) Nos. 6142-6143 of 2015 before the Hon'ble Supreme Court By Order dated 06.04.2015. The Hon'ble Supreme Court was pleased to grant leave to the Appellants herein that they are free to urge all legal contentions open to them in the Final Decree Proceedings.

10. In the meantime, pursuant to the Judgment and Preliminary Decree dated 04.12.1998 in A.S. No.753 of 1984, an Application for Final Decree in I.A.No.187 of 1999 was filed. By Judgment and Final Decree dated 22.03.2000 in I.A. No 187 of 1999 in O.S. No.766 of 1981, the Learned Principal Subordinate Judge, Coimbatore was pleased to decree the Final Decree Application accepting entire suggestions made by the Advocate



Commissioner. It would be apposite to extract the relevant portions of the Advocate Commissioner's Report which reads as follows:

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"7. --- Because of the hesitation and non divulging of information, I felt difficulty in identifying the Door Numbers of the Buildings and in checking them with the old Numbers or new Numbers as the case may be in each case. At a later stage, Respondents 4 to 8, 10, 12 to 15, 18, 20, 22 and 23 gave in their Memo of Instructions through their Counsel.

8. It was learnt by me that Sales were made by the First and the Second Respondents were disinterested in the in favour of third parties, but they Petitioner has leased portions in her custody arrangement the Commission proceedings. The were enjoying certain of the properties but no documents were produced to me.

13. --- I think that it is only fair that those of the sharers who (rightly having occupied some portions and having) made improvements in the portions occupied by them shall be given the same for otherwise, it will lead to dislocation and heartburn and the third parties who have purchased smaller extents and built thereon should also be let to enjoy their purchases. Hence this is the mode of partition suggested by me."

11. Challenging the Judgment and Final Decree dated 22.03.2000 in I.A. No 187 of 1999 in O.S. No.766 of 1981, the Appellants herein preferred A.S. No 239 of 2003 before the First Additional District and Sessions Judge, Coimbatore.

12. The Appellants herein were not able to produce all subsequent Documents such as the Judgment of the Hon'ble Supreme Court dated 06.04.2015 in Special Leave to Appeal (C) No.6142-6143 of 2015, Compromise Decree dated 17.03.2004 in LPA No.121 of 2000 obtained fraudulently behind the back of the Appellants herein, etc. in the Final Decree Application before the Trial



Court since the Final Decree Application in I.A. No.187 of 1999 was decreed prior to the L.P.A. Proceedings i.e. on 22.03.2000.

13. Under these circumstances, the Appellants herein had no other option except to file an Application under Order 41 Rule 27 r/w Section 151 C.P.C. in I.A. No.395 of 2016 in A.S. No.239 of 2003 before the First Additional District and Sessions Judge, Coimbatore to adduce Documents such as the Judgment of the Hon'ble Supreme Court dated 06.04.2015 in Special Leave to Appeal () No.6142-6143 of 2015, Compromise decree obtained fraudulently on 17.03.2004 in L.P.A No 121 behind the back of the Appellants herein, etc. Without considering any of the above factual and legal aspects, by Common Judgment and Decree dated 30.11.2016 First Additional District and Sessions Judge, Coimbatore was pleased to dismiss I.A No 395 of 2016 and the A.S No 239 of 2003. Challenging the concurrent Judgments and Decrees of the Courts below, the appellants herein have preferred the above Second Appeal.

14. When this appeal came up for hearing on 14.11.2019, this Court admitted the appeal on the following substantial questions of law:-

1. Whether the judgment of the First Appellate Court is vitiated since it is contrary to the Direction of the Hon'ble Supreme Court?

2. Whether the First Appellate Court is right in confirming the judgment and Final Decree of the trial Court without considering the application of the appellants to adduce subsequent evidence of documents such as the judgment of the Hon'ble Supreme Court dated 06.04.2015 in Special Leave to Appeal © No.6142-6143 of 2015, compromise Decree dated 17.03.2004 in L.P.A.No.121 of 2000 obtained fraudulently behind the back of the appellants herein, etc.,?

15. Mr.T.Sundaranathan, learned counsel appearing for the 6th appellant undertakes to adopt the submissions made by Mr.Muthumani Duraisamy, learned Senior Counsel appearing for the appellants 1 to 5 and 7 to 24 in S.A.No.512 of 2017.



16. Mr.Muthumani Duraisamy, learned Senior Counsel appearing for the appellants submitted that one Mr.V.Rangaswami was arrayed as first defendant, who passed away subsequently and his legal representatives were impleaded in the present appeal as respondents Nos.3 to 5. The deceased V.Rangaswami, hereinafter called as deceased 1st defendant.

17. The deceased first defendant, who was the owner of 4/5th share in the property, sold about 1.40 acres of land to and in favour of the appellants by virtue of a registered Sale Deeds dated 24.10.1979, 02.11.1979 and 14.12.1979. According to the appellants, these properties belong to the deceased first defendant, who had obtained these properties by virtue of his legal entitlement of 1/5th share and the remaining 3/5th share by virtue of Release Deed obtained from his mother and two sisters as narrated above in the facts of the case.

18. Under these circumstances, one of the sisters viz., Palaniammal has filed a partition suit in O.S.No.766 of 1981 before Principal Subordinate Court, Coimbatore. In the suit, some of the purchasers have filed written statement stating that they are the bonafide purchasers. The deceased first defendant also filed written statement, wherein, he has admitted about the sale of the property to the appellants and has also admitted the same in the additional written statement. The plaintiff, in paragraph No.9(a) of the plaint has stated as follows:-

"9(a) Subsequent to the filing of the suit, the plaintiff came to learn that the 1st defendant began to sell the properties to the defendants 4 to 23 by dividing the said properties into plots in order to harass the plaintiff and to create annoyance and with a view to defeat and defraud the valuable rights of the plaintiff. The proposed parties are the associates and henchmen of the 1st defendant. The documents if any are not valid and legal and not for any consideration. The said documents are not binding on the plaintiff and her rights. In order to arrive at a just decision of the case, they are impleaded as party defendants in the suit.



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19. For the said averments, the deceased first defendant filed an additional written statement, wherein, it is stated as follows:

“ The averments in para 9(a) are literally false. There was no sale subsequent to filing of this suit, to the defendants 4 to 23 by dividing the properties into plots. The sale was long before the suit. This has been clearly stated in para 4 of the written statement. ”

20. Further, learned Senior Counsel has referred to paragraph No.4 of the written statement, which reads as follows:-

“ The suit has been now laid in collusion with the 3rd defendant who laid a suit for the same relief now asked for by the plaintiff in O.S.No.436 of 75 making this plaintiff as 3rd defendant there, contending, that the properties were ancestral. The plaintiff did not contest but acquiesced the same. A sum of Rs.2,000/- is held deposited in the name of the plaintiff and this defendant's wife and the interest is monthly paid to this plaintiff. The 3rd defendant herein was also given by this defendant two plots of land and she has also sold the same. All these would show the release deed was a valid one and it was acted upon not only by all concerned and more particularly by this plaintiff and the 3rd defendant besides this defendant and others. A major portion of the property was already sold out to a number of persons before the institution of this suit. The suit is intended to intimate, coerce and threaten so that there can be extortion. One advocate Thiru.Iqbal Sheriff gave notice in June 1981 and it was duly replied in the first week of July 81. Subsequently, there was a police complaint for the relief prayed for here and they are of enquiries closed the petition saying that there were no merits. Now two days back the plaintiff with the help of anti-social and undesirable elements broke open by night House No.12 and have trespassed into the property and has also committed mischief and



theft and caused damage to the property and there is now police complaint pending at the moment.

21. Therefore, he submits that the sale of the properties to the extent of 1.40 acres of land had been confirmed by the deceased first defendant. There was no dispute with regard to the said sale by the deceased first defendant to the appellants. After considering all these aspects, the trial Court dismissed the suit in O.S.No.766 of 1981 on 19.09.1984. Aggrieved by the said judgment and decree passed in O.S.No.766 of 1981, the plaintiff in the suit filed an appeal in A.S.No.753 of 1984. The said appeal suit was allowed on 04.12.1998 by setting aside the judgment and decree passed by the trial Court, passed in preliminary decree proceedings.

22. While setting aside the judgment and decree passed by the trial Court, the appellate Court, without framing any issue, has made the following observation:-

“ 65. Even though the respondents 4 to 23 claim that they are bonafide purchasers of their respective portions of the suit property for valuable consideration they have neither chosen to examine themselves, nor produced any documentary evidence to that effect, and therefore, I am unable to believe their case.”

While making the above observation, the appellate Court did not frame any issue to answer whether the appellants herein are the bonafide purchasers or not. Challenging the judgment and decree passed in A.S.No.753 of 1984, the deceased first defendant has filed L.P.A.No.121 of 2000 before this Court. In LPA No.121 of 2000, the plaintiff, the defendants 1,2 and 3 have arrived at settlement. Therefore, they have filed a Memorandum of Compromise on 17.03.2004 and based on the Memorandum of Compromise, the LPA was allowed.

23. However, in the said Memorandum of Compromise, the purchasers have not been impleaded as parties, only one brother and three sisters are the parties. The bonafide purchasers have challenged the order by way of Review Application Nos.145 of 2007 and 172 of 2011. The Division Bench of this Court, after hearing the parties, by common Judgment dated 01.02.2013, set



aside the compromise decree dated 17.03.2004 and restored LPA No.121 of 2000 to file.

24. After restoring LAP No.121 of 2000 to file, the matter came up before the First Bench of this Court. When the matter came up for hearing, the appellant sought leave of the Court to withdraw the Letters Patent Appeal No.121 of 2000. However, the purchasers have filed CMP Nos.555 and 556 of 2013 and 474 and 507 of 2014 to transpose the bonafide purchasers as appellants, but, this Court refused to allow the above said applications for the following reasons recorded in the Judgment:-

“ A transposition may be permitted under Rule 1A of Order XXIII of Code of Civil Procedure having due regard to the question whether an applicant has a substantial question to be decided as against any of the other defendants. Further, it was held that the list in the original suit pertains to the execution of the release deed. The applicants before us were not even in the picture at that time, but subsequently purchased the property after the release deed, though prior to the institution of the suit based on the title derived by the appellant in pursuance of the release deed being executed. There is to that extent, thus, no lis between the parties seeking transposition and the original owners as they are not in a position to throw any light on the issue of genuineness of the release deed.”

Therefore, the Division Bench of this Court dismissed the application filed by the bonafide purchasers and permitted the appellant to withdraw the Letters Patent Appeal.

25. However, learned Senior Counsel contended that the First Bench of this Court by order 10.12.2014, in paragraph No.11, has preserved the right of the appellants as bonafide purchasers and First Bench observed that “ their plea that they are bonafide purchasers in any eventuality, is not prejudiced by the fact whether a preliminary decree is passed subsequently or not and it would be open to them to contend prior to the passing



of the final decree for partition. Interestingly, if we peruse the issues framed in the suit, no issue has been framed on the question whether they were bonafide purchasers or not".

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26. Against the judgment passed by the First Bench of this Court in LPA No.121 of 2000 dated 10.12.2014, a Special Leave Petition SLP(C) Nos.6142 and 6143 of 2015 was preferred before the Hon'ble Supreme Court, however, the same was dismissed as withdrawn on 06.04.2015. The Hon'ble Supreme Court observed as follows:

" These Special Leave petitions are accordingly dismissed as withdrawn.
The petitioners shall be free to urge all such contentions as may be legally open to them in the final decree proceedings."

By referring the judgment of the Hon'ble Supreme Court and the First Bench of this Court, learned Senior Counsel contended that the appellant's rights as bonafide purchaser has been preserved and the Division Bench of this Court categorically held that the appellant's plea that they are bonafide purchasers in any eventuality is not prejudiced by the fact whether a preliminary decree is passed subsequently or not and it would be open to them to contend prior to the passing of the final decree for partition.

27. Undoubtedly, this Judgment was passed on 10.12.2014, whereas, the trial Court passed final decree proceedings on 22.03.2000. Thus, there was no occasion for the appellants herein to agitate all their rights as bonafide purchasers in the final decree proceedings. The appellants herein have filed a suit in A.S.No.239 of 2003 before the First Additional District and Sessions Judge, Coimbatore and filed an application in I.A.No.395 of 2016 under Order 41 Rule 27 to receive certain documents as additional evidence in the appeal.

28. The first appellate Court, after hearing the parties, dismissed the appeal and confirmed the final decree passed in O.S.No.766 of 1981. The trial Court in the final decree proceedings has appointed an Advocate Commissioner for the purpose of division of the property. The Advocate Commissioner, without taking into consideration of all the facts, divided the



property and allotted "A" marked portion to Rangaswami while Rangaswami sold the portion marked as "C" to the appellants. If the portion marked as "C" was allotted to Rangaswami, instead of the portion marked as "A", the appellants interest would have been protected. If the Advocate Commissioner would have taken into consideration the memo of instruction given by the appellants/bonafide purchasers, he would have allotted the portion marked as "C" to the Rangaswami. The portion marked as "A" to Rangaswami and the portion marked as "C" was allotted to Palaniammal. The said Report was filed before the trial Court. The trial Court though observed that it is not necessary to accept the suggestions made by the Advocate Commissioner as it is, it has approved as it is without any modification. Challenging the final decree, an appeal has been preferred in A.S.No.239 of 2003.

29. The Court below while disposing of the appeal has not given any weightage to the Judgment passed by the Division Bench of this Court with regard to the preservation of the appellants right to agitate as bonafide purchasers and liberty granted to agitate before the final decree proceedings and the order passed by the Apex Court has not been taken into consideration. Hence, learned Senior Counsel submitted that there is an apparent error in the judgment and decree passed by the Court below and therefore, the same is liable to be dismissed, however, prayed for re-arrangement of share in order to protect the interest of purchasers.

30. Mr.S.Parthasarathy, learned Senior Counsel appearing for 1st and 9th respondents submitted that by virtue of preliminary decree, his party is entitled for 2/4th share in the suit schedule property. The appellants are the bonafide purchasers of the property and except few, none of the appellants have filed written statement in the preliminary decree proceedings and they have not taken any steps to prove that they are the bonafide purchasers in the preliminary decree proceedings. The trial Court accepted the contention and dismissed the suit. In the appeal in A.S.No.753 of 1984 filed by the plaintiff, the judgment and decree passed by the trial Court in O.S.No.766 of 1981 was set aside on 04.12.1998.

31. While setting aside the judgment and decree passed by the trial Court in the preliminary decree proceedings, this



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Court observed that "even though the respondents 4 to 23 claim that they are bonafide purchasers of their respective portions of the suit property for valuable consideration, they have neither chosen to examine themselves, nor produced any documentary evidence to that effect and therefore, the first appellate Court disbelieved the case of the respondents 4 to 23. The Advocate Commissioner has also taken into consideration the interest of the appellants in his report and the trial Court also in the Final Decree proceedings has accepted the report of the Advocate Commissioner as it is without any modification and allowed the shares allotted by the Advocate Commissioner and against the said judgment and decree, an appeal was filed in A.S.No.239 of 2003. In the said appeal also, the appellate court has categorically held that the contention of the appellant, as bonafide purchaser was negated. By considering the judgment passed by the First Bench of this Court in LPA No.121 of 2000, the First Bench has rightly refused to consider the plea that the bonafide purchaser. Therefore, the learned Senior Counsel submits that there is no error in the judgment and decree passed by the first appellate Court. However, he fairly submitted that even in the shares allotted to Rangaswami in the portions marked as "A" in Red colour, some of the portions of properties are unsold so far and these properties can be allotted to the appellants herein. If the same is done, all the issues will be sorted out in the present appeal.

32. Ms.Priya, learned counsel who appeared on behalf of Mr.R.Shanmugam, represents for the respondents 2 to 5, 7,8 and 11. She submits that the appellants are not the bonafide purchasers. They have not even filed any written statement except two of them. They have not come forward to examine any person in order to prove their case. Even the first appellate Court has observed in paragraph No.65 of the judgment that the appellants herein have not proved their case as bonafide purchasers since they have not adduced any evidence. Hence the first appellate court disbelieved the case of the bonafide purchasers.

33. Though the learned Senior counsel submitted that settlement arrived between brother and sisters, it will always hold good and a sanctity of the settlement has gone once, the LPA order was recalled. Referring the LPA Judgment and making the submission based on the settlement memo, will not have any



substance. Further, she submits that even the Division Bench of this Court, while granting liberty to withdraw LPA No.121 of 2000, it has refused to allow the appellants herein to transpose themselves as appellants. All these facts have been considered by the Court below in A.S.No.239 of 2003 and rendered well reasoned judgment on 30.11.2016. Further, she submits that on the final decree proceedings, an Advocate Commissioner was appointed and the appellants have filed memo of instructions and thereafter, no one appeared and proved their case. Therefore, the Advocate Commissioner has observed all these facts and filed a detailed report, allotting respective shares of the plaintiff and defendants 1,2 and 3, the trial Court has also accepted the said allotment of share made by Advocate Commissioner without any modification and passed the final decree proceedings. Even before the final decree proceedings, no one appeared on behalf of the appellant to contest the case. Hence the learned counsel submitted that the appellants have failed to establish their case as bonafide purchasers and the sale deed, alleged to have been executed by the deceased Rangaswami is doubtful. Hence there is no merit in the Second Appeal and the same is liable to be dismissed.

33(a) Ms.A.L.Gandhimathi, learned counsel appearing for the respondents 17 and 18 would submit that the respondents 17 and 18 are the lis pendent purchaser subsequent to the allotment of share in the final decree proceedings. These respondents have purchased from the property allotted to Lakshmiammal.

33(b) She has also reiterated the arguments of the learned Senior Counsel Mr.R.Parthasarathy stating that if the appellants are the bonafide purchaser the 1st respondent was already allotted the portion marked as "A" Coloured in "Red", the same property may be allotted to the extent of 1.40 acres. Subsequent to the passing of the final decree the allottees have sold their entitlement to the 3rd party, if anything allotted the interest of lis pendent purchaser would be affected. Therefore, the learned counsel submitted that the judgment and decree passed by the Trial Court as confirmed by the 1st Appellate Court may be confirmed and prayed for dismissed of the Second Appeal.

34. Heard both sides and perused the materials available on record.



35. Originally, the property belonged to one Vaiyapuri Naicker, who died intestate leaving behind his wife Singariammal, son viz V.Rangaswami and three daughters viz, Ranganayaki, Palaniammal and Lakshmiammal respectively. The mother and children are eligible for 1/5th share each in the suit property. After the demise of Vaiyapuri Naicker, his wife viz., Singariammal and daughters Palaniammal and Lakshmiammal jointly settled their due shares in the suit properties to and in favour of son viz., Rangaswami through a registered Release Deed dated 16.02.1972 in Document No.243 of 1972 on the file of Sub Registrar Office, Coimbatore. In lieu of the above Release Deed, the deceased first defendant paid a sum of Rs.1,000/- (Rupees one thousand only) each to his mother and two sisters and settled 6 cents of land each to and in favour of Palaniammal and Lakshmiammal through Registered Settlement Deeds dated 21.02.1972. The Rangaswami also settled another 6 cents of land from his share by virtue of registered Settlement Deed dated 07.09.1972 in Document No.1629 of 1972. There was a partition among Rangaswami and Ranganayaki, in which, Ranganayaki was allotted 1/5th share of the suit property through the Partition Deed dated 12.07.1972 and V. Rangaswami was allotted 4/5th share through the Partition Deed dated 12.07.1972 in Document No.1317 of 1972.

36. Subsequently, on 24.10.1979, 02.11.1979 and 14.12.1979, a portion of the suit schedule property to an extent of 1.40 acres was sold to the appellants by the deceased first defendant out of his 4/5th share allotted to him. Under these circumstances, one of the sisters Palaniammal filed a suit in O.S.No.766 of 1981 for partition before the Principal Subordinate Court, Coimbatore. In the suit, all the purchasers were impleaded as respondents 4 to 23. The plaintiff in paragraph No.9(a) of the plaint has specifically stated that the deceased first defendant began to sell the properties to the defendants 4 to 23 i.e., the appellants herein. For the said averment, the deceased first defendant filed a written statement dated 17.06.1982, wherein, he has admitted the fact that major portion of the property was sold to number of persons before the institution of the suit. Further, the deceased first defendant has filed an additional written statement on 23.03.1983 and in paragraph No.1, he has stated about selling of the property to the defendants 4 to 23 before filing of the suit. The defendants 6 and 13 have also filed written statement, in which, they have



pleaded that they are the bonafide purchasers of the property.

37. The first defendant was examined as D.W.1 and in his examination, he has admitted the fact that he has sold some of the properties to Ramanathan's kin in the year 1979. Therefore, in the written statement and the additional written statement as well as in the evidence of D.W.1 has categorically admitted the fact of the sale of the properties to the appellants/the defendants 4 to 23.

38. Taking into consideration of these aspects, the trial Court dismissed the suit in O.S.No.766 of 1981 on 19.09.1984. Against the judgment and decree, an appeal in A.S.No.753 of 1984 was filed. This Court by judgment dated 04.12.1998 was set aside the judgment and decree passed in O.S.No.766 of 1981 and passed a preliminary decree, thereby, dividing the properties into ¼ each to the plaintiff, the defendants 1, 2 and 3 respectively.

39. While passing the judgment and decree in A.S.No.753 of 1984, the appellate Court in paragraph No.65, observed that " Even though the respondents 4 to 23 claim that they are bonafide purchasers of their respective portions of the suit property for valuable consideration they have neither chosen to examine themselves, nor produced any documentary evidence to that effect, and therefore, I am unable to believe their case."

40. Against the judgment and decree passed in A.S.No.753 of 1984, the deceased first defendant has filed L.P.A.No.121 of 2000 and in the said LPA, a compromise was arrived among the brother and sisters and a compromise memo was filed and accordingly, a compromise decree was passed on 17.03.2004. In the compromise decree, it was agreed by all the parties that the Release Deed executed in the year 1972 by the Palaniammal and Lakshmiammal, mother of the deceased first defendant are valid.

41. Against the judgment passed in L.P.A.No.121 of 2000, the appellants herein have filed a Review Petition in R.A.Nos.145 of 2007 and 172 of 2011. The said Review Applications were allowed and the compromise decree was set aside and LPA No.121 of 2000 was restored.

42. After restoring LPA No.121 of 2000 to file, the matter came up before the First Bench of this Court. When the



matter came up for hearing, the appellant sought leave of the Court to withdraw LPA No.121 of 2000. However, the purchasers have filed CMP Nos.555 and 556 of 2013 and 474 and 507 of 2014 to transpose the bonafide purchasers as appellants. However, this Court refused to allow the above said applications for the following reasons as recorded by the Hon'ble Division Bench of this Court:-

A transposition may be permitted under Rule 1A of Order XXIII of Code of Civil Procedure having due regard to the question whether an applicant has a substantial question to be decided as against any of the other defendants. Further, it was held that the list in the original suit pertains to the execution of the release deed. The applicants before us were not even in the picture at that time, but subsequently purchased the property after the release deed, though prior to the institution of the suit based on the title derived by the appellant in pursuance of the release deed being executed. There is to that extent, thus, no lis between the parties seeking transposition and the original owners as they are not in a position to throw any light on the issue of genuineness of the release deed."

43. A perusal of the above order would clear that transposition was refused on the ground that the purchasers of the property in the year 1979 are not competent to speak about the Release Deed, said to have been executed, by Lakshmiammal, Palaniammal and the mother of the deceased first defendant in favour of the deceased first defendant in the year 1972. Therefore, it has refused to grant permission to transpose the purchasers as the appellants in LPA No.121 of 2000 and dismissed the same as withdrawn.

44. However, after taking into consideration the observation made in A.S.No.753 of 1984 dated 04.12.1998 with regard to the non-acceptance to believe the case of the appellants herein as bonafide purchasers and also taking into consideration of the defendants admission made in the written statement as well as in the additional written statement about the sale of the properties to the appellants/defendants 4 to 23



in the year 1979 and also the evidence of D.W.1, it has preserved the right of the appellants to agitate as bonafide purchasers prior to the passing of the final decree for partition. Further, it has held that the appellants plea of the bonafide purchasers in any eventuality, is not prejudiced by the fact whether a preliminary decree is passed subsequently or not. Therefore, by passing the preliminary decree, it will not affect the right of the appellants as bonafide purchasers. In the preliminary decree, the share of the plaintiff, the defendants 1,2 and 3 have been ascertained. As per the preliminary decree, the first defendant is entitled 1.76 acres of land. Each parties have been allotted 1.76 acres each.

45. Therefore, now it is open to the appellants to contend their plea of bonafide purchase prior to the passing of final decree for partition.

46. The Hon'ble Supreme Court has also granted liberty to urge all such contentions as they may legally open to them in the final decree proceedings. Thus, the appellants are entitled to raise all these points in the final decree proceedings.

47. Unfortunately, the Judgment of the Division Bench was passed on 10.12.2014 and the SLP (CC) Nos.6142 and 6143 of 2015 was passed on 06.04.2015. Final Decree was passed on 22.03.2000. Therefore, the appellants had no opportunity to bring into all these facts in the final decree proceedings before the trial Court.

48. Against the judgment and decree passed in final decree proceedings, the appellants herein have filed an appeal in A.S.No.239 of 2003. In the said Appeal they have filed an application in I.A.No.395 of 2016. The Court below refused to allow the application.

49. Before analysing the judgment in A.S.No.239 of 2003, it would be appropriate to analyse the Advocate Commissioner's Report as well as the final decree passed by the trial Court in I.A.No.187 of 1999 in O.S.No.766 of 1981. The relevant paragraphs of the Advocate Commissioner's Report are extracted hereunder:-

"7. Though there were initial hesitation and



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slight non-cooperation by the respondents,: note that either the counsel or their respective parties were present throughout my inspections. Because of the hesitation, and non-divulging of information, I felt difficulty in identifying the door numbers of the buildings and in checking them with the old numbers or new numbers as the case may be in each case. At a later stage, respondents 4 to 8, 10, 12 to 15, 18,20, 22 and 23 gave in their memo of instructions through their counsel (doc.3).

8. It was learnt by me that sales were made by the first and the second respondents in favour of third parties, but they were disinterested in the commission proceedings. The petitioner has leased portions in her custody to third parties. Each of the petitioner and respondents quoted that under an arrangement they were enjoying certain of the properties but no documents were produced to me. Persons occupying the buildings with door numbers 12,13,14 and 14A divulged no information in ascertaining the correct door numbers of the subject properties, which now either do not bear the old numbers found in the petition or are dilapidated or not found at all. Hence some information was collected from the Coimbatore City Municipal Corporation regarding the door numbers and assessment numbers with the names of the owners: even then, much progress was not possible in that direction.

9. As I have pointed out at the outset, the properties are vast in extent. Shops have been constructed by the first respondent and let out for rents. Considering the fact that he has been in possession of an extent, renting out his shops and that he has made improvements therein, the extent abutting the Marudamalai Road can be given to him. That is marked in the plan in red (Doc.4). On the far eastern side, he has sold about 78 cents too (which extent is not covered in the suit) and hence the appropriate extent is



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to be given to him(the bit marked as A1 in the plan and washed red).

10. The second respondent can be given the extent marked B in the plan and washed blue. It is very pertinent to note that she has allowed her daughter to build a house in that extent. A and B are well developed, with road by the municipal corporation.

11. The portion, marked C and washed green contains the sheds which are leased by the petitioner. Hence it can be allotted to her.

12. The portion, marked D and washed orange, can be allotted to the third respondent. Unlike the portions A and B, there is no road/access in C and D. As such, a road has to be carved for them, for the better enjoyment of these portions. Accordingly, a road is suggested for them, which is shown washed yellow in the plan.

13. It is submitted that I have deeply considered the material gathered by me; the information collected by me; and I think that it is only fair that those of the sharers who (rightly or wrongly having occupied some portions and having) made improvements in the portions occupied by them shall be given the same for otherwise, it will lead to dislocation and heartburn, and the third parties who have purchased smaller extents and built thereon should also be let to enjoy their purchases. Hence is the mode of partition suggested by me.

14.I declare that each of the portions is measuring 1.76 ac. The details thereof are given in the plan.

50. A perusal of the Advocate Commissioner's Report would show that the respondents 4 to 8, 10, 12 to 15, 18, 20,22 and 23 gave memo of instructions through their counsel. Therefore, it is clear that most of the respondents/appellants have given memo



of instructions to the Advocate Commissioner about the sale of the property by the deceased first defendant to them. The Advocate Commissioner has recorded only this Memo. However, he has not taken into consideration the interest of the bonafide purchasers. On the other hand, while allocation of the portions by dividing the entire suit schedule properties into four divisions and marked as "A", "B", "C" and "D", the Advocate Commissioner has taken note of the small portion of the building constructed and leased out in "A" portion by the first defendant. Therefore, he has allotted "A" portion, marked in "Red" colour to the deceased first defendant. Similarly, in "C" portion, marked in "Green" colour was allotted to Palaniammal since she put up two sheds in that portion. The remaining "B" and "D" portions were allotted to other sisters.

51. Now, the crux of the issue that arises for consideration is that each party is entitled for 1.76 acres of land and out of 1.76 acres, the deceased first defendant sold 1.40 acres of land in the year 1979 which is available in the portions marked as "C" coloured in "Green" before filing of the suit in O.S.No.766 of 1981. If the interest of the purchasers was taken into consideration by the Advocate Commissioner because 80% of the land was sold to third parties / appellants herein by the first defendant, in which case, in the "C" portion, marked in "Green" colour, the fair balance is in favour of the purchasers / appellants. If at all there was any construction by the deceased first defendant, the extent of construction has not been mentioned, even assuming, it cannot be more than his balance 36 cents centitlement, which is very negligible, compare to the extent of land sold, in which case, the Advocate Commissioner should have preserved the right of the purchasers instead of giving priority to protect the interest of the owner/1st defendant of the property with regard to the construction and leasing out a small extent in "A" portion of property, as marked in "Red" colour.

52. As far as the two sheds put up by Mrs.Palaniammal in "C" portion of property marked in "Green" colour is concerned, it is very meager compared to 1.40 acres, wherein. third party interest was created by the deceased first defendant. Therefore, in any angle, the interest of the bonafide purchasers to the extent of 1.40 acres would stood as priority than the interest of the plaintiff as well as the deceased first defendant. In



which case, the portion marked as "C", coloured in "Green" should have allotted to the deceased first defendant. Similarly, the portion marked as "A", coloured as "Red" should have allotted to Palaniammal. If the shares were allotted in this way, the interest of all the parties would have protected. But the Advocate Commissioner has failed to do so.

53. Though the Trial Court has observed that there is no necessity for the Court to accept the suggestions made by the Advocate Commissioner as it is, it has not applied its mind and has accepted the suggestions made by the Advocate Commissioner as it is and allotted the shares accordingly.

54. In appeal, all these facts have been brought to the knowledge of the Court. The Court below has not taken into consideration. On the other hand, it is given a different interpretations to the order passed by the Division Bench of this Court and the Hon'ble Supreme Court. It would be appropriate to extract the relevant portion of the judgment of the first appellate Court in A.S.No.239 of 2003, :-

" 8. The main contention of the appellants are that they are bonafide purchasers purchased some item of suit property for valuable consideration. They have contended that the trial Court has framed a issue that whether the sale deed executed by 2nd defendant in favour of appellants are valid and binding upon the plaintiff. The trial Court has held that since the release deed executed by the plaintiff is invalid and the first defendant is the absolute (end of the 8th page in the original) owner of the property and he can alienate the property as the absolute owner. Hence, the sale deed in favour of the appellants are held to be valid. As far for this connection is concerned the Hon'ble High Court in A.S.No.753/1984 as well as in L.P.A.No.121 of 2000 the Hon'ble High Court has dealt with the issue of bonafide purchaser. The Hon'ble High Court in A.S.No.753/1984 has held that the transaction made by 2nd defendant on a void transaction is not valid and held in negative that they are not bonafide purchaser. The



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appellants who are parties to the appeal have not contested the appeal as a bonafide purchaser. It is pertinent to mention here that the appellants have not filed any written statement before the trial Court to contend that they are bonafide purchaser. In this case, the letters patent appeal was dismissed based on the compromise entered between the first and 2nd respondents therein. That was challenged by the appellants in Review Application No.147/2007 and 172/2011. By the orders in the Review Application the L.P.A. was restored and posted for final hearing. While hearing the matter the appellant (1st defendant in the suit) has submitted that he wanted to withdraw the appeal unconditionally. At the time the present appellants have sought for transposing them as appellants, because their right would be prejudiced if the appeal is allowed to be withdrawn. The Hon'ble High Court has considered their submissions and claiming of right as such they are bonafide purchaser. The Hon'ble High Court has observed that the respondent who now sought for transposition have never filed their written statement except one. They are purchaser of property from the appellant. They had not filed any appeal against the decree of first appellate Court. From reading of the order of the first appellate Court impugned before us it appears that really no arguments were advanced on (end of the 9th page in the original) their behalf. The transposition can be considered only if any question or substantial question to be decided as against any of the other defendants. Further, it was held that there is no issue has been framed on the question whether the appellants herein are bonafide purchasers or not. From the orders of Hon'ble High Court in LPA No.121/2000 the Hon'ble High Court has refused to take and consider the plea of bonafide purchaser who have purchased the property based on the release deed which was held to be void. There is no challenge to the said finding by the appellant. Hence the findings of



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Hon'ble High Court in A.S.No.753/1984 became final. As per the orders of Hon'ble High Court, in A.S.No.753/1984 the issue whether the release deed is valid or not is ultimately decided that the release deed is void document and the 2nd respondent herein has no right under the release deed to execute any document. Unless, the findings of Hon'ble High Court in A.s.No.753/1984 is legally set aside, this Court has no jurisdiction to go into the validity of the release deed. The Division Bench of Hon'ble High Court in LAP No.121/2000 also refused to hear the contention with regard to bonafide purchaser. Further, on the documents submitted by the appellant that they have preferred an appeal before the Supreme Court in SLP No.CC No.(s) 6142-6143/2015 and they have produced the order copy of the Hon'ble Supreme Court dated 06.04.2015. The Hon'ble Supreme Court has dismissed the Special Leave Petition as withdrawn and observed that the petitioners shall be free to raise all such contentions as may be legally opened them in the final decree proceedings. The observation of Hon'ble Supreme Court in the above appeal is conditional one, because it has stated that "as may be legally opened to them" in the final decree proceedings. Already final decree has been passed in the year (end of the 10th page in the Original) 2000 itself and the possession of the property also delivered to the parties. Even assuming that the present appeal is continuation of final decree, as held earlier the first appellate Court .e., the Hon'ble High Court has observed that any transaction based on the void document is not valid. The said finding of Hon'ble High Court become final. Thus the appellant has no legal right to raise the same again in this appeal.

55. A perusal of the judgment in A.S.No.753 of 1984 would show that the appellant's plea that they are the bonafide purchasers has been negatived and subsequently in LPA No.121 of 2000, transposition applications also dismissed as they are not



relevant parties to agitate and it has refused to take and consider the plea of the bonafide purchasers who have purchased the property based on the release deed which was held to be void. There is no challenge to the said finding. The Court below held that the finding of this Court in A.S.No.753 of 1984 has become final, thereby, it has come to the conclusion that the appellants are not the bonafide purchasers and consequently they are not entitled for any relief and their interest need not be protected.

56. The observation made by the first appellate Court is totally on wrong footing. It is not that the First Bench of this Court in LPA No.121 of 2000 held that the appellants are not the bonafide purchasers, in fact, in paragraph No.11 of the Judgment dated 10.12.2014, it has preserved the right of the appellant to agitate as bonafide purchasers before the final decree proceedings. Further, it held that by passing a preliminary decree, it will not prejudice the right of the appellants as bonafide purchasers. Further, it has observed that no issue was framed with regard to the bonafide purchasers. Without framing any issue, while a challenge was made against the preliminary decree, the first appellate Court observed that the appellants have not proved their case as bonafide purchasers. First of all, to prove the appellants as bonafide purchasers, there must be an issue. Without any issue, one cannot expect to prove that they are the bonafide purchasers. However, the first appellate Court in A.S.No.753 of 1984 dated 04.12.1998 held that " even though the respondents 4 to 23 claim that they are bonafide purchasers of their respective portions of the suit property for valuable consideration they have neither chosen to examine themselves, nor produced any documentary evidence to that effect. Therefore, I am unable to believe their case."

57. This Judgment came to be passed without framing an issue to determine whether the appellants are bonafide purchasers or not. Taking into consideration of all these aspects, the Division Bench of this Court held that passing of preliminary decree will not prejudice the right of the appellants to agitate their plea as bonafide purchasers, before the final decree proceedings. Hence this Court is of the considered view that the right to agitate as bonafide purchasers has been preserved by the Division Bench of this Court and the



appellants can still agitate the same in the final decree proceedings. The appellants herein have rightly raised all the plea before the first appellate Court and the first appellate Court conveniently ignored to deal with this aspect of the order of this Court passed on 10.12.2014 in LPA No.121 of 2000, wherein this Court preserved the right of the appellants to agitate as bonafide purchasers before final decree proceedings. Thus, the 1st appellate Court has failed to consider and to give any finding on the specific aspect of the appellants plea of the bonafide purchasers.

58. The 1st defendant, Mr.V.Rangaswami admitted the fact that the sale of the property to the extent of 1.40 acres to the appellant, which is in the "C" portion marked as "Red" in the Commissioner's Report. Further, he has also admitted the said fact of sale of land to the extent of 1.40 acres to the defendants 4 to 23 in the written statement at Paragraph No.4 as follows:

" A major portion of the property was already sold out to a number of persons before the institution of this suit. The suit is intended to intimate, coerce and threaten so that there can be extortion."

Further, the 1st defendant also admitted at Paragraph No.9(a) in the additional written statement as follows:

" There was no sale subsequent to filing of this suit, to the defendants 4 to 23 by dividing the properties into plots. The sale was long before the suit. This has been clearly stated in para 4 of the written statement. "

In the deposition of D.W.3, V.Rangaswami, he has clearly stated that he has sold the property to the appellants i.e., Ramanathan's kin in 1979. All these admissions on the part of the 1st defendant would show that he had sold the property in the year 1979 to the extent of 1.40 acres to the appellants in the portions marked as "C" in "Green Colour" in the plan of Advocate Commissioner's Report. After all the present suit was filed to partition the suit property among the 1 brother and 3 sisters. A preliminary decree was passed by allotting 1/4th share each and thereby each person is entitled for 1.76 acres.



Obviously, the partition suit is not between the present appellants and original owners of the land and they have been impleaded as a formal party in the partition suit since they are the bonafide purchaser from one of the co-sharers viz., V.Rangaswami. The said V.Rangaswami sold the property in the year 1979 to the extent of 1.40 acres and now he is entitled as per the preliminary decree to the extent of 1.76 acres. He has not denied anywhere about the fact of sale of the property to the appellants. When such being the case, the issue of boafide purchaser is concerned, it has been admitted by the 1st defendant and as long as there was no denial with regard to the sale of the land to the appellant by the 1st defendant, the plea of appellants are bonafide purchaser cannot be disputed as this 1.40 acres of land is situated in the "C" portion, the Advocate Commissioner supposed to have allotted the said "C" portion to the 1st defendant instead of plaintiff Palaniammal and in such case, the grievance of the appellants would have been addressed.

59. This matter is pending from 1981, almost about forty years and for more than twenty years, it is pending for the reasons of non application of mind by the Advocate Commissioner as well as by the trial Court in the final decree proceedings and the first appellate Court in the appeal. As long as the deceased first defendant has accepted that he has sold to the extent of 1.40 acres to the appellants as he is entitled to 1.76 acres, and the appellants are in possession and obtained an order of house site Regularisation with Layout approval on 07.01.2008 from the Coimbatore corporation, which was brought into judicial notice of this Court through the typed set dated on 26.02.2021 filed by the appellants, bestowing my thoughtful consideration to these aspects, this Court is of the considered view that the portion marked as "C" , coloured in "Green" in the Advocate Commissioner's Plan (hereinafter referred as "Plan") should have been allotted to the deceased first defendant and the portion marked as "A" coloured in "Red" in the Plan should have been allotted to Palaniammal. This was not done by both the Courts below. For the purpose of rendering justice and to protect the interest of the appellants/bonafide purchasers, this Court is inclined to re-arrange the allotment of shares made by the trial Court in the final decree proceedings and subsequently, confirmed by the first appellate Court. The available material would clearly proved that the appellants are bonafide purchasers as discussed above, thus, the equity and



fair balance is in favour of the appellants. Accordingly, "A", "B", "C" and "D" portions identified in the Plan and allotted by the Advocate Commissioner shall stand re-arranged in the following manner:-

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59.1. In the Commissioner's Report, (Ex.C.2) the portion marked as "C", coloured in "Green" in the Plan would be allotted to the deceased first defendant "Rangaswami"; the portion marked as "A", coloured in "Red" in the Plan would be allotted to Mrs.Palaniammal, who is the plaintiff in the suit.

59.2. With regard to the allotment to the portion of "B" and "D" are concerned, the judgment and decree passed by the trial Court shall stand unaltered. While allotting the portion marked as "A", coloured in "Red" to Mrs.Palaniammal, this Court makes it clear that whatever portions constructed in that area by the deceased first defendant will go to Mrs.Palaniammal. As far as two sheds, constructed by Mrs.Palaniammal in the portion, marked as "C", coloured in "Green" it will go to the deceased first defendant.

60. Accordingly, the substantial questions of law are answered in favour of the appellants.

61. In the result, the judgment and decree passed in A.S.No.239 of 2003 dated 30.11.2016 on the file of I Additional District and Sessions Court, Coimbatore is set aside and the judgment and decree passed in I.A.No.187 of 1999 in O.S.No.766 of 1981 dated 22.03.2000 on the file of Principal Subordinate Court, Coimbatore is modified to the extent stated below:-

(i) The portion marked as "C" coloured in 'Green' in Ex.C2, Advocate Commissioner Report's Plan would be allotted to the 1st defendant, V.Rangaswami instead of the portion marked as "A" coloured in "Red" in the Plan as allotted by the Advocate Commissioner and subsequently confirmed by the Trial Court as well as the First Appellate Court.

(ii) The portion marked as "C" coloured in "Green" in Ex.C.2 Advocate Commissioner Report's Plan, would be allotted to Mrs.Palaniammal



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instead of portion marked as "A" coloured in "Red" in the Plan as allotted by the Advocate Commissioner and subsequently confirmed by the Trial Court as well as the First Appellate Court.

(iii) With regard to the allotment of portion of B and D are concerned, the judgment and decree passed by the Trial Court stands unaltered.

(iv) While allotting the portion "C" coloured in "Green" in the Plan to 1st defendant, V. Rangaswami, this Court makes it clear that what are all the portions constructed in that area by the plaintiff/Mrs.Palaniammal will go to Mr.V.Rangaswami.

(v) While allotting the portion marked as "A" coloured in "Red" in the Plan to Mrs.Palaniammal, this Court makes it clear that whatever the portions constructed in that area by the deceased first defendant will go to Mrs.Palaniammal.

62. Accordingly, the Second Appeal is allowed of to the extent indicated above.

63. In view of the judgment passed in S.A.No.512 of 2017 and in view of the fact that the first appellate Court took judicial notice and discussed about the Judgment of the Division Bench passed in LPA No.121/2000 dated 10.12.2014 and SLP Order dated 06.04.2015, nothing survives in C.R.P.(NPD) No.746 of 2018. Hence CRP (NPD)No.746 of 2018 stands dismissed. No costs. Consequently, CMP Nos.13126 of 2020 and 6486 of 2020 are closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

Sub Assistant Registrar

sr



To

1. The I Additional District and Sessions Judge,
Coimbatore.

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2. The Principal Subordinate Court,
Coimbatore.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras-104.

+4ccs to M/s.R.Shanmugam, Advocate, S.R.No.24144 and 24145
+2ccs to M/s.T.Sundaranathan, Advocate, S.R.No.24412 and 24411
+3ccs to M/s.Sarvabhauman Associates, Advocate, S.R.No.24737
+1cc to M/s.AL.Gandhimathi, Advocate, S.R.No.24215
+1cc to M/s.Muthumani Duraisami, Advocate, S.R.No.23958

S.A.No.512 of 2017 & CRP (NPD)No.746 of 2018

SSV(CO)
RLP(16/11/2021)