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A.S.Nos.140 and 141 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 14.10.2022

Judgment Pronounced on : **20.10.2022**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.No.140 of 2011 & M.P.Nos.2 and 3 of 2012 & CMP.No.12810 of 2022
and

A.S.No.141 of 2011 & M.P.No.1 of 2012

Padmavathy Ammal (Died)

1. Gajalakshmi
2. Govinda Achari
3. Gowri
4. Mohan
5. Nandakumar

.. Appellants
(in A.S.No.140 of 2011)

Padmavathy Ammal (Died)

1. Gajalakshmi
2. Govinda Achari
3. Mohan
4. Nandakumar

.. Appellants
(in A.S.No.141 of 2011)

Versus

1. Kamatchi Ammal
2. N.Dilli

.. Respondents
(in both Appeals)



A.S.Nos.140 and 141 of 2011

Prayer in A.S.No.140 of 2011 : Appeal Suit filed under Order 41 R 1 and 2 read with Section 96 of the Code of Civil Procedure, against the judgment and decree of the Court of the learned Additional District and Sessions Judge, Fast Track Court No.III, Chennai - 600 001, dated 31.03.2008 made in O.S.No.5290 of 1997.

Prayer in A.S.No.141 of 2011 : Appeal Suit filed under Order 41 R 1 and 2 read with Section 96 of the Code of Civil Procedure, against the judgment and decree of the Court of the learned Additional District and Sessions Judge, Fast Track Court No.III, Chennai - 600 001, dated 31.03.2008 made in O.S.No.2547 of 1997.

For Appellants : Mr.M.Venkatakrishnan
(in both Appeals) for Mr.M.Kempuraj

For Respondents : R1 - died
(in both Appeals)
: Mr.V.Manoharan, for R2

COMMON JUDGMENT

A. The Appeal Suits :

These Appeal Suits arise out of the common judgment and decree, dated 31.03.2008 passed by the Additional District and Sessions Judge, Fast Track Court - III, Chennai, in O.S.No.5290 of 1997 and O.S.No.2547 of 1997. The appellants herein had filed O.S.No.2547 of 1947 for a permanent injunction restraining the respondents herein from interfering with their



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peaceful possession and enjoyment of the suit schedule properties. The respondents herein had filed O.S.No.5290 of 1997 for partition of the suit schedule properties and separate possession of 3/8 shares to the appellants. Since both the said suits arise out of the same cause of action, they were taken up for joint trial and were disposed off by the above said common judgment. Aggrieved by the same, these Appeal Suits are laid before this Court.

B. The Rival Claims & The Issue:

2. The dispute in these suits lie on a narrow compass. The suit properties are claimed to be that of one *Natesa Achari*. The claim of the appellants herein is that the said *Natesa Achari* was married to the first plaintiff/deceased first appellant *Padmavathy Ammal* and the other appellants, being their children are alone entitled to the suit properties. The claim of the respondents is that, the said *Natesa Achari*, before marrying the said *Padmavathy Ammal* in the year 1954, he had married the first respondent namely *Kamatchi Ammal*, in the year 1937, and the second respondent, *Dilli* and yet another deceased son were born through the wedlock and therefore the said properties have to be divided among all the

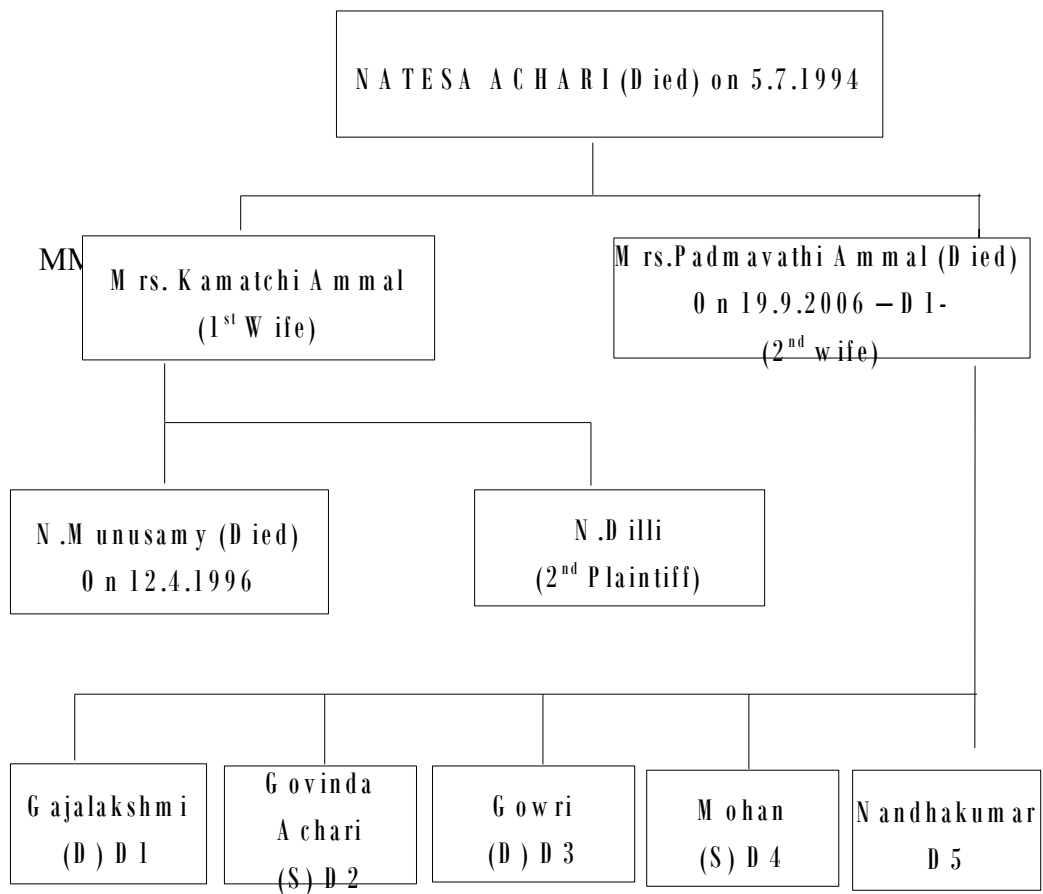


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legal heirs. The following is the genealogy which is projected/disputed by the parties:-

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GENEALOGY





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3. If the Court holds that the said *Natesa Achari* was first married to *Kamatchi Ammal* and thereafter married to *Padmavathy Ammal* and he died on 05.07.1994, leaving behind his wife *Kamatchi Ammal*, his two sons through *Kamatchi Ammal* namely *Munusamy* and *Dilli*, and his five children through the second wife *Padmavathy Ammal* as his legal heirs, then his properties will have to be divided as 1/8th each and the plaintiffs in O.S.No.5290 of 1997 will be entitled to 3/8 shares and the defendants, namely the five children, born through *Padmavathy Ammal*, will be entitled to 5/8 shares. On the contrary, if this Court decides that the claim of *Kamatchi Ammal* and *Dilli*, namely the plaintiffs in O.S.No.5290 of 1997, as not proved, then the suit properties will belong to *Padmavathy Ammal* and her five children, and the suit for permanent injunction in O.S.No.2547 of 1997 has to be decreed. This apart, there is yet another issue which is raised in respect of one item of the suit properties which would be dealt with in the later part of the judgment.

C. The Pleadings :



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4. It is necessary to advert to the specific pleadings of the parties in respect to the issue on hand. The specific case of the appellants is that *Natesa Achari* was married only to *Padmavathy Ammal* and begot five children. The suit properties are his self-acquired properties. As such *Padmavathy Ammal* and her five children alone are entitled for the suit properties. The respondents are totally strangers. The fact that *Natesa Achari* has married *Kamatchi Ammal* is totally and categorically denied. The fact that through *Kamatchi Ammal*, *Dilli* and another son were born and for some time, even *Dilli* and his brother also lived along with *Natesa Achari* along with his wife *Padmavathy Ammal* and the children born to her are all completely and categorically denied. According to the appellants, the respondents are totally strangers. They did not know who they are.

5. Per contra, the specific case of the respondents is that the late *Natesa Achari* got married to *Kamatchi Ammal* and they were living together initially for some time, during which period, two sons were born. Thereafter, some difference of opinion cropped up between *Natesa Achari* and *Kamatchi Ammal*. *Kamatchi Ammal* went to her mother's house in Saidapet, Chennai. During the separation, *Natesa Achari* got married to



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Padmavathy Ammal. As a matter of fact, *Kamatchi Ammal* had filed for maintenance and maintenance was ordered by Court ordering *Natesa Achari* to pay a sum of Rs.55/- per month which was being paid by late *Natesa Achari*. The second respondent *Dilli*, had in the midst of the conflicting marriage, also lived with his father *Natesa Achari* along with the other family. After the death of *Natesa Achari*, when they approached the appellants for partition of the suit properties, they denied their share and therefore, they issued a legal notice, dated 01.03.1997 to which a reply notice was issued on 31.03.1997 totally denying the relationship itself and after issuing rejoinder notice on 03.04.1997, the suit was filed. The respective written statements in contra suits also reflected the same and identical stand.

D. The Issues :

6. On the said pleadings, the Trial Court framed the following issues:-

1. *Whether the plaintiff's in O.S.No.5290/97 were legal heirs of deceased Natesa Achari/1st plaintiff namely Kamatchi Ammal, wife and 2nd plaintiff namely Dilli son of the deceased Natesa Achari?*

2. *Whether the plaintiffs are entitled for partition of 3/8th share in the suit properties?*



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3. *Whether the plaintiffs are entitled to claim mesne profits?*

4. *Whether the plaintiffs in O.S.No.2547/97 are entitled to the relief of permanent injunction as against the defendants in respect of suit property?*

5. *To what relief the plaintiffs are entitled in this suit?*

E. The Evidence :

7. On the said issues, on behalf of the appellants, the third appellant *Govinda Achari* and the fifth appellant *Nandakumar*, were examined as D.Ws.1 and 2 and **Exs.B-1** to **B-11** were marked on their behalf. On behalf of the respondents, the second respondent was examined as P.W.1; the first respondent was examined as P.W.2; one *Angamuthu*, the nephew of *Natesa Achari*, was examined as P.W.3; one *Selvarajan* was examined as P.W.4 and **Exs.A-1** to **A-25** were marked on behalf of the respondents.

F. The Findings of the Trial Court :

8. The Trial Court, thereafter, proceeded to consider the case of the parties and by the judgment under appeal, found that the oral testimony of *Kamatchi Ammal*, *Dilli* and the close relative *Angamuthu*, P.W.3 and one



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Selvarajan, all point out towards the relationship, as claimed by the respondents. The Trial Court further considered the documentary evidence, namely the husband's name of *Kamatchi Ammal* and father's name of *Munusamy* and *Dilli* as *Natesan* which is produced as **Ex.A-6**, a conduct certificate issued in favour of the second respondent in **Ex.A-8** by a Councilor of the Corporation and another certificate issued by a political party member towards the identity of the second respondent in **Ex.A-9** which were all of the years 1967, 1978 and 1979 and a typed letter given by the deceased *Natesa Achari* himself in **Ex.A-10** which clearly depicts the relationship between all the parties to the suit which were issued as a consent letter of the father for obtaining visa which was of the year 1980 and the other records such as the school record of the second respondent, *Dilli*, which was produced as **Ex.A-17**. On the strength of these documentary as well as oral evidence, found that when there is enough material evidence on record for such continued cohabitation. For the marriage had happened in the year 1937, no direct documentary proof can be insisted upon at this belated point of time and therefore, believed the case of the respondents. Further, the Trial Court also took note of the fact that even though the said *Padmavathy Ammal* was alive as on date of the trial,



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she did not grace the witness box. For the said reasons, the Trial Court ordered partition of the suit properties while rejecting the prayer of the permanent injunction claimed by the appellants. While ordering partition, the Trial Court found that one item of the suit schedule property was the independent property of one of the appellants and therefore, excluded the same from partition.

G. The Submissions :

9. Heard *Mr.M.Venkatakrishnan*, learned Counsel appearing for the appellants in both the appeals and *Mr.V.Manoharan*, learned Counsel appearing for the second respondent in both the appeals.

10. *Mr.M.Venkatakrishnan*, learned Counsel for the appellants took this Court in detail through the pleadings and the evidence on record. His categorical submission is that the finding of the Trial Court that *Natesa Achari* had also married to *Kamatchi Ammal* tells on the very character of *Natesa Achari*. He would submit that he lived up to the year 1994 and till then, no suit or claim was brought by the respondents. He would submit that inspite of making a claim that there was a decree for maintenance, no



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piece of paper was produced and not even the proof proceedings were furnished. By pointing out the discrepancy in the oral evidence and documents produced by the respondents, he would submit that the age mentioned in the voters list, ration card and the age of the parties and the date of marriage cannot at all go together, and there are lot of discrepancies in the case of the respondents so as to believe the case of the respondents. He would further contend that it is the case of the respondents that they have got a property allotted by the Slum Clearance Board in the name of the first respondent *Kamatchi Ammal*. That is the best and clinching evidence which would have been produced by them as there would have been claim about marriage with *Natesa Achari* etc., in the said document or otherwise. When the said document is not produced by them inspite of specific cross-examination, the Court has to draw an adverse inference.

11. It is his categorical case that though the name of *Natesan* or *Natesa Achari* finds place in some of the documents produced by the respondents, there is no proof that the said *Natesan* or *Natesa Achari* is the same person as the father of the appellants. Therefore, he would submit that, it was the bounden duty of the appellants to have established beyond



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doubt that the said *Natesan* or *Natesa Achari* is one and the same person.

He would submit that the cross-examination of P.W.3, the relative and P.W.4, the other witness, would reveal that they did not know any particulars whatsoever. Therefore, their evidence have to be rejected in total. He would submit that the birth extract was obtained after the death of the *Natesa Achari*. He would submit that even the school record extract is obtained only after the death of the *Natesa Achari*. He would submit that as far as the letter of recommendation alleged to have been given by *Natesa Achari* in **Ex.A-10** is concerned, it may be seen that the same is a typed one without containing a specific date, and the manner in which it is written, raises doubt as to its veracity. Even in the cross-examination, the appellants have denied the veracity of the signature. Therefore, **Ex.A-10** is also to be rejected. Thus, he would pray that when the respondents have not proved their case and when they have not raised their finger all along for a period of more than 40 years, the appellants were even shocked by such a claim of their parties and therefore, he would submit that this is an unscrupulous claim by third parties and would pray that the Appeal Suits be allowed.



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12. Per contra, *Mr.V.Manoharan*, learned Counsel appearing on behalf of the respondents would submit that the marriage had taken place in the year 1937. The first respondent *Kamatchi Ammal*, got into the box. She has clearly stated that the marriage had taken place in the mother's house of *Natesa Achari* at *Thirunindravur* and at that point of time, no invitation was printed. She did not have the copies of the maintenance order in view of long efflux of time. He would submit that, apart from the oral evidence of the first respondent, the second respondent also examined himself as P.W.1 and the nephew of the deceased *Natesa Achari* himself was examined as P.W.3 and yet another person was examined as P.W.4, who have also clearly deposed about the relationship. He would further submit that there was no cause for claiming for partition during the life time of *Natesa Achari* and only after his death, shares were claimed. He would submit that the voters list, school records were all old records which clearly depicted the name of the father of *Natesan* or *Natesa Achari* and therefore, cannot be doubted. On the other hand, if the Court holds that there was no marriage at all between *Kamatchi Ammal* and *Natesa Achari*, that would only castigate the respondents herein. Therefore, he would submit that when the Trial Court had considered the overwhelming documentary and oral evidence



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produced on behalf of the respondents, the same does not require any interference.

H. The Discussion & Findings :

13. I have considered the rival submissions made on behalf of either side and perused the material records of the case. In this case, the dispute is regarding the very the relationship. Marriage and birth of children is claimed by one party and denied by the other. In a high context society like ours, either it can be true or it is how the defendants react enraged by the receipt of notice for partition. Finding one way or the other, would cause serious prejudice to the very status and social standing of parties, leave alone property rights. Therefore, in a case like this, the rules of evidence cannot just go by the pendulum of onus and shifting of the burden. Both parties have to do their best to prove their case and these matters cannot be decided by default. Court has to take additional care and consider the cumulative effect of the evidence on record.

14. It is in this connection, on a cumulative reading of the evidence and pleadings on record, this Court could see the anxious effort on the part



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of the respondents to muster every evidence they had in support of their case. Both the respondents including *Kamatchi Ammal* and *Dilli* examined themselves as witnesses. Apart from examining themselves, the nephew of the deceased *Natesa Achari* and yet another witness who knew about the relationships were examined on their behalf. Apart from the oral evidence, **Ex.A-6**, voters list Enumeration Card, **Ex.A-13**, extract of the voters list of the year 1984, the Family Ration Card issued for the years 1983 to 1988 in **Ex.A-15**, the school records of the second respondent about his enrollment in the school as early as in the year 1954, all clearly show *Natesan* or *Natesa Achari* as the husband of the first respondent and the father of the second respondent. Above all, **Ex.A-10** is the typed letter which is said to be a letter of consent for the second appellant, *Dilli*, to go abroad. The said typed letter clearly captures the facts of the case as projected by the respondents including factum of the second marriage with *Padmavathy Ammal* etc. The learned Counsel for the appellants seriously disputed the said **Ex.A-10**. But, when the said **Ex.A-10** contains the signature of the deceased *Natesa Achari*, the cross-examination of P.W.1 in this regard reads as follows:-

" ...வா.சா.ஆ.10 தட்டச்சு செய்யப்பட்டு
அதில் எனது தந்தை



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கையெழுத்திட்டிருக்கிறார். வா.சா.ஆ.10லே
தேதி குறிப்பிடப்படவில்லை. 1980-ஆம்
வருடம் எழுதப்பட்டுள்ளது. 1980லே நடேச
ஆச்சாரி நல்ல நிலையிலே எழுதப்
படிக்கவும் நிலையில் இருந்தார். ..."

Thus, it can be seen that the appellants did not dispute the signature of *Natesa Achari* in **Ex.A-10**, when the said document was marked or in the cross-examination of P.W.1 or the other witnesses. There is no explanation from them as to how the signature of *Natesa Achari* got into the hands of the respondents who are strangers according to them.

15. This apart, the oral evidence of D.W.2, even though riddled with contradictions in terms of age etc., if read on the whole, is very much believable. She has categorically stated that the marriage between herself and *Natesa Achari* took place in Thirunindravur. As a matter of fact, **Ex.B-1**, marriage invitation for the marriage of the said *Natesa Achari* with *Padmavathy Ammal* mentions *Natesa Achari* as son of *Krishnappa Achari* of Thiruvallur and in the end column while it is shown that the father of *Padmavathy Ammal* as the person inviting on the bride's side, in the bride groom's side *Natesa Achari* himself is mentioned as the person inviting, without mentioning any other elder person/relative name, which is a strong factor pointing out towards a second marriage.



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16. The respondents have done their best to muster all the oral and documentary evidence at their command and placed it before the Court, all of which demonstrate their relationship with *Natesa Achari*. On the other hand, the appellants' case is of total denial and even though the learned Counsel for the appellants sought to *enmasse* distinguish the documentary evidence stating that it may be true that the name of the husband of the first respondent is also *Natesan* or *Natesa Achari* or the name of the father may also be *Natesan* or *Natesa Achari*, it could have been some other *Natesan* or *Natesa Achari*. Then, if it is the case of the appellants that *Natesan* or *Natesa Achari*, mentioned in all the documentary evidence, is a different person, then they have not moved even a little finger either to specifically plead the same or to produce even an iota of evidence whatsoever. Even in the oral evidence, the witnesses, namely D.W.1 and D.W.2 did not specifically state that *Natesa Achari*, mentioned in the respondents' side documents, is some other person. Similarly, when the **Ex.A-10** was sought to be marked through P.W.1 by the start of the trial, neither there was an objection as to the veracity of the signature at the time of marking nor the signature was disputed to the propounder of the document so that atleast he



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could be called upon to prove the signature in *Ex.A-10*. Except for denial in his cross-examination at the fag end of the trial, the appellants neither disputed the signature nor took any steps to disprove the same. If really the *Natesa Achari*, mentioned in the documents filed by the respondents, is a different person, then, the appellants herein would have been able to point out or produce atleast any piece of document or produce any witness to prove their case, which could not be done. Therefore, in the case of taking extreme defence of denial of relationship, the party who does so, has the categorical onus to prove the same and cannot rest his case by making a denial alone. In any event, the respondents have proved their case by way of overwhelming documentary and oral evidence and therefore, I am of the view that the Trial Court has rightly accepted the case of the respondents and found that the genealogy, as extracted supra, to be true and correct and therefore, I hold that *Natesa Achari* was first married to *Kamatchi Ammal* and through her, got two sons and was thereafter married to *Padmavathy Ammal* and through her, begot five children and therefore, the said *Kamatchi Ammal*, two sons through her, and the five children through *Padmavathy Ammal* are the legal heirs to succeed and as such, all of them will have 1/8 share in his properties.



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17. As per the amended plaint, there are four items of the suit properties. In respect of the item No.4 of the suit schedule properties, the claim of the respondents is dismissed and it was held to be the property of the second appellant, namely *Gajalakshmi* and held to be not available for partition as the respondents 1 and 2 have failed to prove that the said property belonged to *Natesa Achari*. There is no dispute in respect of the item Nos.1 and 2 of the suit schedule properties that they belong to *Natesa Achari*.

18. As far as the item No.3 of the suit schedule property is concerned, before this Court, C.M.P.No.12810 of 2022 is filed for production of additional documents. The additional document which is sought to be produced or the lease deed, dated 20.12.1985, in which, Sri Kariamanickam Perumal Devasthanam is the lessor and the third appellant in A.S.No.140 of 2011, *Gowri*, wife of *Seethapathi* is shown as the lessee. After obtaining lease of the property, it is pleaded that the third appellant, *Gowri*, had put up the superstructure and the corporation property tax card remains in her name. The application states that, even though the said stand is clearly



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taken in the written statement itself and the certified copy being handed over to the learned Counsel by oversight, the said certified copy of the lease deed and the corporation receipt were not marked. Only because of such bonafide reason, the same could not be marked at the time of the trial and the belated production at the appeal stage was neither willful nor wanton and it will not in any manner alter the case of the parties. In this regard, the written statement filed by the third appellant as the fourth defendant in O.S.No.5290 of 1997 in paragraph No.8, clearly sets out that the lease deed was executed by the temple in favour of the third appellant *Gowri*, and at the time of execution of lease deed, the land was a vacant land and the third appellant and her husband, after obtaining loan from third parties, thereafter constructed the building and all the records in respect of the item No.3 of the schedule mentioned property stands in the name of the third appellant. In that view of the matter, firstly, it may be seen that no reply statement was filed by the respondents to the said written statement. Secondly, the said fact was not specifically denied by them in their evidence. Thirdly, the lease is a registered document and the additional document which is sought to be produced is relevant to the issue and genuine reasons have been mentioned in the application. No counter affidavit has been filed to the said



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application. The Trial Court had also considered the identical facts in respect of the item No.4 of the schedule property, against which, there is no cross appeal preferred by the respondents. Taking into account all the above facts cumulatively, when the deceased *Natesa Achari* himself is one of the witness to the lease deed, this Court is of the view that item no.3 of the suit property cannot be said to be the property owned or leased held by *Natesa Achari* and as such, will not also be available for partition. For the above findings, C.M.P.No.12810 of 2022 is allowed and the two documents filed along with the said application are taken on record as the appellants' side exhibits and are taken on file and marked as ***Exs.B-12*** and ***B-13***. For the above reasons, the appeals deserve to be partly allowed in respect of item No.3 of the suit schedule property while confirming the judgment in respect of the item Nos.1 and 2 of the suit schedule property.

I. Answers to the Issues :

19. In view of my above findings, I answered the issue No.1 in affirmation that *Kamatchi Ammal* and *Dilli* are the wife and son of the deceased *Natesa Achari*. I answered the issue No.2 that the respondents will be entitled for partition and 3/8 share in item Nos.1 and 2 of the suit



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schedule properties alone. I answered the issue No.3 that the respondents will be entitled to claim mesne profits as per their claim in the suit in respect of item Nos.1 and 2 of the suit schedule properties. I answer the issue No.4 against the appellants that they are not entitled to permanent injunction against the respondents herein and the issue No.5 is answered accordingly.

J. The Decree :

20. In the result :

(a) A.S.No.141 of 2011 is dismissed. The suit filed by the appellants/plaintiffs in O.S.No.2547 of 1997 on the file of the learned Additional District and Sessions Judge, Fast Track Court - III, Chennai shall stand dismissed;

(b) A.S.No.140 of 2011 is partly allowed. The suit filed by the respondents in the Appeal Suits/plaintiffs in O.S.No.5290 of 1997 shall stand decreed as follows:-

(i) The plaintiffs in O.S.No.5290 of 1997 are entitled to 3/8 share in the item Nos.1 and 2 of the schedule properties;



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(ii) The said plaintiffs are entitled for the relief of mesne profits for a sum of Rs.11,000/-, for which, claim has been restricted and the Court Fees has been paid in respect of past mesne profits;

(iii) The plaintiffs shall be entitled for permanent injunction restraining the defendants, their men, agents or servants from in any manner alienating or encumbering item Nos.1 and 2 of the suit schedule properties until such time of effecting partition and separate possession of 3/8 shares being handed over to the plaintiffs;

(iv) So far as the claim of the respondents in respect of the share in item Nos.3 and 4 of schedule properties stands dismissed;

(v) List the suit before the Trial Court on 22.11.2022 for continuation of Final Decree proceedings and the parties shall appear before the Trial Court without any further notice on the



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said date. In view of the judgment of the Hon'ble Supreme Court of India ***Kattukandi Edathil Krishnan Vs. Kattukandi Edathil Valsan***¹, the Trial Court shall proceed further with the final decree proceedings suo moto without waiting for the parties to filed a seperate application for final decree.

(c) The respondents shall be entitled to costs in both the appeal suits.

(d) Consequently, connected miscellaneous petitions are closed.

20.10.2022

Index : yes
Speaking order
grs

To

The Additional District and Sessions Judge,
Fast Track Court No.III,
Chennai - 600 001.

¹ 2022 SCC OnLine SC 737



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D.BHARATHA CHAKRAVARTHY, J.,

grs

Pre-Delivery Judgment in

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and
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