BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.07.2022

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S(MD)Nos.40 and 41 of 2012

D.Chandrasekaran ... Appellant
(in both appeals)

vs.

1.D.Subramanian

2.D.Suresh @ Chinnachamy

3.D.Ravi @ Shanmugasundaram

4.D.Swaminathan ... Respondents
(in both appeals)

COMMON PRAYER: Appeal Suits filed under Section 96 of the Code of Civil Procedure, to allow the appeals and set aside the judgment and decree dated 31.03.2010 passed by the Additional District Judge (Fast Track Court No.2), Madurai in O.S.No.36 of 2006 and 137 of 2008 and decreed the suits as prayed for with costs throughout.

For Appellant : Mr.M.Rajaraman

For Respondents : Mr.H.Lakshmi Shankar
(in both appeals)

COMMON JUDGMENT

These appeals are arising out of the common judgment and decree dated 31.03.2010 passed by the trial Court. Hence, the appeals are heard together and disposed of by this common judgment.

2.The respondents in both the appeals as plaintiffs filed O.S.No.36 of 2006 against the appellant in both the appeals for directing the appellant to execute the release deed in favour of the respondents in respect of his 1/5th share in the suit property after receiving the remaining balance sale consideration amount of Rs.15,000/- (Rupees Fifteen Thousand only) within a date specified by this Court, failing which, the release deed may be executed by the process of the Court.

3. The appellant in both the appeals as plaintiff filed O.S.No.137 of 2008 against the respondents herein for partition and separate possession of 1/5th share in the suit property to the appellant, directing the respondents to deliver possession of 1/5th share, directing the defendants to pay the future mesne profits to the plaintiff from the date of plaint till handing over possession, granting permanent injunction restraining the respondents, their men and agents

from in any way alienating or encumbering the suit property till the partition is effected through process of law and for costs. The trial Court conducted a joint trial of both the suits and decreed the suit in O.S.No.36 of 2006 filed by the respondents and dismissed the suit in O.S.No.137 of 2008 filed by the appellant. Aggrieved by the common judgment and decree passed by the trial Court in both the suits, the defendant in O.S.No.36 of 2006/the plaintiff in O.S.No.137 of 2008 has filed these two appeals.

4. The appellant herein is the defendant in O.S.No.36 of 2006 and the plaintiff in O.S.No.137 of 2008. The respondents herein is the plaintiffs in O.S.No.36 of 2006 and the defendants in O.S.No.137 of 2008.

5. For the sake of convenience, the parties are referred to as per their rank in O.S.No.36 of 2006.

6. The case of the plaintiff in O.S.No.36 of 2006, who are the defendants in O.S.No.137 of 2008, in brief, is as follows:

(i) The plaintiffs and the defendant are brothers and the sons of one Late.Deivasigamani Battar through his second wife Saraswathi Ammal. The suit property originally was an ancestral property belonging to the family of plaintiffs and the defendant. In a partition dated 10.10.1993 entered into between the above said Deivasigamani Battar and his brother Chella Battar @ Pushpavanam Battar, a property measuring 87 feet east to west on north, 88 feet east to west on south and 12 ½ feet on west and south which includes the suit property, had fallen to the share of Deivasigamani Battar. Then, through a registered partition deed dated 09.11.1994, the suit property had fallen to the sons of the Deivasigamani Battar, who are the plaintiffs and defendant, through his second wife Saraswathi Ammal. After effecting partition dated 09.11.1994, it was decided that the defendant and the plaintiffs 1 and 2 would remain in the property by constructing a new two-storeyed house and the plaintiffs 3 and 4 would be settled other properties through purchase equivalent to their respective shares in the property in the Battamar Street and it was also agreed that all the five brothers should jointly raise bank loans for the purpose of construction and purchase of houses.

(ii) A loan application in the name of the defendant was made, because, he is the eldest in the family and the loan was sanctioned. Out of the loan amount of Rs.1,75,000/- (Rupees One Lakh and Seventy Five Thousand only), each of the five brothers received Rs.35,000/- (Rupees Thirty Five Thousand only) and undertook to discharge the same by equally contributing repayment installments. The construction work started in the later half of the year 1994 and it was fully completed in the beginning of 1996. The ground floor was constructed for the defendant and the first and second floors for the plaintiffs 1 and 2. In the year 1998, the defendant suddenly took a decision to go out and requested the plaintiffs to pay him cash worth of his share in the property in the East Battamar Street. Hence, it was decided that the fourth plaintiff would occupy the ground floor and new third floor would be raised for the third plaintiff. The money spent by the defendant to the tune of Rs.2,04,000/- (Rupees Two Lakhs and Four Thousand only) for construction was reimbursed by the fourth plaintiff on different occasions and as far as the value of vacant site, it was decided to fix at Rs.15 Lakhs and that the defendant agreed to receive Rs.3,00,000/- (Rupees Three Lakhs only) towards his share.

(iii) The plaintiffs 2 to 4 had already paid each of their due of Rs.75,000/- (Rupees Seventy Five Thousand only), the first plaintiff paid Rs.60,000/- (Rupees Sixty Thousand only) and the first plaintiff had to pay only Rs.15,000/- (Rupees Fifteen Thousand only). With regard to loan due to the Housing

Society ever since the defendant went out of the property in question, the plaintiffs have been discharging the dues. Especially, the fourth plaintiff, in addition to paying his 1/5th share of the loan installment, is also paying the defendant's due of 1/5th share of loan installment. The defendant left the property in the year 1998 and the plaintiffs are in occupation and enjoyment of the property by paying property tax and other dues. However, the plaintiffs received a legal notice dated 02.10.2005 from the defendant containing false and unsustainable claims and allotment of 1/5th share to him in the suit property, for which, the plaintiffs issued a reply dated 15.10.2005, wherein apart from setting out all the facts as stated above, urged the defendant to execute the release deed after receiving balance of Rs.15,000/- (Rupees Fifteen Thousand only) from the first plaintiff. But, instead of complying with the demand of plaintiffs, the defendant filed a suit in O.S.No.137 of 2008 for the relief of partition of 1/5th share in respect of suit property. Even after legal notice and institution of suit by the defendant, conciliatory efforts were made by well wishers for making the defendant to live up to his commitment and to execute release deed in respect of his share in favour of the plaintiffs, but it became useless. Hence, the present suit.

7. The case of the defendant in O.S.No.36 of 2006, who is the plaintiff in O.S.No.137 of 2008, in brief, is as follows:

(i) The existence of the partition deed dated 09.11.1994 is false. In respect of properties of Deivasigamani Battar, it also requires registered documents with regard to the immovable properties and there cannot be any exemption to law. The alleged money transactions and property transaction are all imaginary. After the death of Deivasigamani Battar, the plaintiffs and the defendant are jointly entitled to the property in equal share and the building was constructed by obtaining loan out of joint efforts of all the owners. The allegation that the value of building was quantified and it was agreed that the fourth plaintiff should reimburse the same, is false. There was no agreement and payment at any time. At the time of partition, the building was in a dilapidated condition. The plaintiffs and the defendant have been jointly entitled to the said property and are having $1/5^{th}$ share each. The property was demolished and new three-storeyed building was constructed by the contribution of the plaintiffs and the defendant and also by obtaining loans from Co-operative Society.

(ii) The property Tax Registry stands in the name of the defendant and the plaintiffs. The defendant is residing outside the house for convenience and he is deemed to be in constructive possession of the property by paying tax as one of the co-owners. The defendant has been requesting the plaintiffs for division of property into 5 share and the plaintiffs have been postponing to effect partition. Hence, the defendant issued lawyer notice dated 02.10.2005 to the plaintiffs demanding partition. The plaintiffs sent a false reply dated 15.10.2005. The plaintiffs never paid any amount to the defendant towards the share of the suit property. The plaintiffs have not taken any steps to effect partition. Hence, the defendant filed a suit in O.S.No.137 of 2008 before the First Additional Sub Court, Madurai, for partition. After filing of that suit, the plaintiffs created this false story of oral agreement and oral payment and has come forward with this vexatious suit. The averments made in the above suit may be read as part and parcel of the written statement. The defendant is not liable to execute any release deed in favour of the plaintiffs. On the other hand, the plaintiffs are liable to effect partition of the suit property into 5 shares and to allot one such share to the defendant. The plaintiffs have no cause of action for the suit. Hence, he prayed for the dismissal of the suit.

8. Based on the pleadings, the trial Court framed the following issues:-

O.S.No.36/2006:-

(i) Whether any agreement exist between plaintiffs and the defendant?

(ii) Whether the defendant is liable to execute any release deed in favour of the plaintiffs in respect of his 1/5th share?

(iii) To what relief, if any, plaintiffs are entitled to?

O.S.No.137/2008:-

(i) Whether the plaintiff has a share in the suit property?

(ii) Whether the plaintiff is entitled to partition as sought for by him?

(iii) Whether the plaintiff is entitled to permanent injunction as sought for by him?

(iv) Whether the plaintiff is entitled to future mesne profits as sought for by him?

(v) To what relief, the plaintiff is entitled to?

9.The suit for partition in O.S.No.137 of 2008 was filed by the defendant in O.S.No.36 of 2006. Like wise, the suit for specific performance in

O.S.No.36 of 2006 was filed by the defendants in O.S.No.137 of 2008. As the parties in these suits are one and the same and the suit property involved in these two suits is one and same, at the request of both the learned counsel and on filing of the memo for joint trial, both the suits were heard together and the common evidence was recorded in O.S.No.36 of 2006 and the issues framed in these two suits are clubbed and modified as under:

> *"1.Whether the plaintiffs prove that there is oral agreement entered into between them and the defendant, as per that oral agreement, the defendant received his entire share in the suit property by way of cash from these plaintiffs, except Rs.15,000/- from the first plaintiff's share and as such this defendant is liable to execute the release deed, releasing his 1/5th share in the suit property, after the receipt of Rs.15,000/- the balance amount of his share in the suit property from the first defendant?*
>
> *2.Whether the defendant proves that he is entitled to 1/5th share in the suit property and also entitled for the future mesne profits of his share?*
>
> *3.To what relief the parties are entitled into?"*

10. In order to substantiate the case, on the side of the respondents herein, in both the suits, three witnesses were examined as PWs 1 to 3 and six

documents were marked as Exs.A1 to A6. On the side of the appellant, the appellant Chandrasekaran was examined himself as DW1 and four documents were marked as Exs.B1 and B4.

11. On completion of trial and on hearing of arguments advanced on either side, the learned trial Judge considered the evidence available on record and dismissed the suit in O.S.No.137 of 2008 filed by the appellant for partition and also allowed the suit in O.S.No.36 of 2006 filed by the respondents for specific performance. Challenging the common judgment and decree, the defendant in O.S.No.36 of 2009/the plaintiff in O.S.No.137 of 2008 has filed these two appeals.

12. The learned counsel for the appellant would submit that the appellant and the respondents are brothers. The suit property originally belonged to their father - C.Deivasigamani Battar having been obtained by him under a partition arrangment dated 10.10.1993 executed between him and his brother. The said Deivasigamani Pattar had entered into a registered partition deed dated 09.11.1994, whereby the suit property was allotted to his five sons, namely, the appellant and the respondents herein. At the time of partition, the building was

in a dilapidated condition. The appellant and the respondents applied the loan for construction jointly and made the construction. However, the trial Court failed to consider the fact that they jointly constructed in the name of the appellant and the respondents and came to the conclusion that the appellant agreed to relinquish his right orally and therefore, he is not entitled for the partition. The respondents also filed the suit in O.S.No.36 of 2006 as if the appellant orally agreed to execute the release deed and therefore, they have filed the suit for specific performance directing the appellant to execute the release deed in favour of the respondents. There is no such agreement. The respondent conveniently pleaded that as if the appellant entered into the oral agreement agreed to execute the release deed in respect of his share in the suit property. Though the property was jointly obtained by partition and all the five brothers are entitled to $1/5^{th}$ share and the respondents have not produced any document to show that after constructing the building the appellant agreed to execute the release deed. Even the loan agreement would show that the appellant as elder male member of the family applied the loan for construction which clearly shows that the loan in the name of the the appellant for and on behalf of all the brothers. The respondents did not prove that the appellant has lost his right either by way of settlement deed or sale or relinquish deed. Therefore, in the absence of the same, the trial Court failed to appreciate the oral and documentary evidence let in by both the parties and dismissed the suit for partition and allowed the suit for specific performance. Except the evidence that the appellant received some money from the respondents, there is no evidence to show that the appellant agreed to execute a release deed in respect of his share in the suit property. Therefore, the judgment and decree passed by the trial Court is liable to be dismissed and both the appeals have to be allowed and in O.S.No.137 of 2008, preliminary decree has to be passed and O.S.No.36 of 2006 is liable to be dismissed.

13. The learned counsel for the respondents would submit that admittedly, the appellant and the respondents are brothers. The suit property was common properties of five brothers and subsequently, though they applied for loan for the construction, but during the construction, the appellant orally agreed to relinquish his right and he got money from the respondents. The appellant purchased the land and subsequently, constructed the house. Only the respondents are having right in the suit property. The appellant has lost his right and he also agreed to execute release deed and after getting the money, he failed to execute the release deed and therefore, the respondents have filed the

suit for specific performance to execute the release deed as agreed orally by the appellant. All of a sudden, the appellant filed the suit in O.S.No.137 of 2008 for partition. Since the appellant has no right and share in the suit property, he is not entitled to get any decree for partition. The trial Court appreciated the entire evidence that though the property stands in the name of the five brothers, since the appellant agreed to execute the release deed in favour of the four brothers and also get money and in order to substantiate the same, the documents have been filed to prove that the appellant received the money from them. Though he has not executed the release deed or he has not entered into any agreement in writing to release his share, but however the conduct of the appellant shows that he impliedly agreed to execute a release deed and subsequently, failed to do so. Therefore, they filed the suit for specific performance. The trial Court rightly appreciated the entire evidence and also considered the conduct of the appellant in receiving the money from them and agreeing to release the share. The trial Court rightly decreed the suit for specific performance and directed the appellant to execute a release deed in favour of the respondents as prayed for. Since he has already relinquished his share and agreed to execute the relinquishment deed, he is not entitled to any share. Therefore, the suit for partition filed by the appellant has been dismissed and there is no merit in the appeals and both the appeals are liable to be dismissed.

14. Admittedly, in this case, the appellant and the respondents are brothers. The suit property is an ancestral property of their father and he got the same under a registered partition deed, dated 09.11.1994. Their father died on 12.01.1995 and as per the oral family arrangements, the gold jewels have been taken by the sisters and the suit property has been taken by the brothers. All the five brothers have taken the land in the suit property and obtained the loan of Rs.1,75,000/- (Rupees One Lakh and Seventy Five Thousand only) in two installments in the Meenakshi Co-operative Building Society, Madurai, for construction of new building in the said suit property after demolishing the old dilapidated buildings and demolished the old building and also constructed the new building. Admittedly, the appellant and the respondents are entitled to 1/5th share.

15. The specific case of the appellant is that till the death of his father on 12.01.1995, all the brothers were living under one roof as joint family and therefore, they planned to demolish the old building and construct a new building and obtained the loan from the bank and started the construction.

Apart from the loan, all the brothers contributed funds for the construction and the appellant left the suit property for his own convenience and he did not receive any money from the respondents. He never relinquished his right in the suit property. All the taxes were paid in the name of the appellant. Since the respondents have not given his share, he filed the suit for partition and the appellant sent notice to the respondents for partition on 02.10.2005. Even before that the respondents filed the suit in O.S.No.36 of 2006 for specific performance as if the appellant relinquished his 1/5th share in the suit property and agreed to execute the release deed and also he received the consideration for the same which is false. Therefore, in order to defeat the claim of the appellant and also as a counter-blast to the notice, they have filed the suit for specific performance stating that he orally agreed to relinquish his share and received all the money and released his rights. Subsequently, he refused to execute the release deed. Therefore, they have filed the suit which is utter false.

16. The specific case of the respondents is that after obtaining the loan from Meenakshi Co-operative Building Society, Madurai, for construction of new building. Originally, they planned to construct two-storied building. The ground floor is meant for the appellant and the first and second floors are meant

for the first and second respondents. The respondents 3 and 4 should receive their shares and they should reside in the out side which was orally arranged. Subsequently, all of sudden, the appellant demanded money for his share and he wanted to get away from the suit property. Therefore, the fourth respondent agreed to occupy the ground floor and pay the entire share of the appellant by the fourth respondent. Thereafter, the third respondent constructed one more floor from the top of the second floor as third floor. Therefore, the appellant left the place after receiving the money and also the vacant land was valued at Rs.15,00,000/- (Rupees Fifteen Lakhs only) and his share was fixed as Rs.3 Lakhs, for which, all the respondents agreed to pay Rs.75,000/- (Rupees Seventy Five Thousand only) each. Accordingly, they have also paid. The appellant, subsequently, refused to execute the release deed as agreed by orally. All of a sudden, the appellant sent a notice and the respondents suitably replied. Thereafter, the respondents filed the suit for specific performance and the appellant filed the suit for partition. Therefore, the suit filed by the appellant for partition is not maintainable, since already he agreed to relinquish his right orally by way of an oral agreement.

17. As already stated, it is an admitted fact that the suit property was an ancestral property. The father of the appellant and the respondents got the property by way of a partition deed from his brother dated 10.10.1993. Therefore, the appellant and sisters are having shares in the property and though there is no pleading, during the evidence both of them have stated that there was a family arrangement and the sisters have taken the jewels and movable properties and the brothers have taken the suit property. Originally, it was the old building in a dilapidated condition. Therefore, as per the family arrangement, the brothers got the old building and they agreed to demolish the building and constructed the new building. Thereafter, the appellant applied the loan on behalf of all brothers and the appellant and the respondents agreed to repay the said loan equally. Apart from that, they have also spent some money for construction. Further, though the case of the respondents is that the appellant agreed to occupy the ground floor and respondents 1 and 2 have agreed to occupy the first and second floors and other two respondents have agreed to get their shares and leave the place, subsequently, the appellant, all of a sudden, reverted his stand and wanted to get out of from the house and asked to pay his share. There is no documentary evidence to prove the same.

18. Admittedly, there is no document to show that the appellant gave up his right and agreed to relinquish his right and share in the suit property. Though the appellant admitted that for convenience sake, he left the suit property for his own convenience and also the appellant has taken lease accommodation for Rs.2,25,000/- (Rupees Two Lakhs and Twenty Five Thousand only) and also there is no material to show that the said lease amount of Rs.2,25,000/- (Rupees Two Lakhs and Twenty Five Thousand only) was paid by the respondents and the appellant occupied the same. The respondents are in possession of the suit property. Further, all the brothers applied for loan commonly and constructed. Even the respondents admitted that for four years, the appellant repaid the installments for his share and subsequently, the fourth respondent paid it. Though the appellant admitted that fourth respondent paid the remaining dues of the appellant, no materials were produced to show that the appellant at any point of time relinquished his right and there is no document to show that the land value was fixed at Rs.15,00,000/- (Rupees Fifteen Lakhs only) and the appellant's share is Rs.3,00,000/- (Rupees Three Lakhs only) and all the respondents have paid Rs.3,00,000/- (Rupees Three Lakhs only) to the appellant. Therefore, there is no material to show that there was a partition or there was a relinquishment.

19. Once it is admitted that the property is an ancestral property, all the brothers derived the right and title jointly and unless it is partitioned or any of the sharers relinquished their right or sold or settled, their right will not be extinguished. Therefore, in this case, there is no material to show that at any point of time, the appellant relinquished his right, though the appellant admitted that for convenience sake, he left the place and is residing in a house for lease. The respondent pleaded that the appellant agreed to execute the relinquishment deed, it is for them to prove it. Though they have stated that all the sisters relinquished their rights orally, likewise the appellant also agreed to relinquish his share in the suit property. Whereas it is not the case of the appellant or respondents that the sisters relinquished their rights in the immovable property by way of oral agreement. It is their case that the suit property with old building came to his father by way of partition with his brother in the year of 1994. Till the death of their father, all the brothers are living as a joint family under the same roof. The three of the brothers did not get marry at the time. Subsequently, since the suit property was old house and very small, all the brothers and sisters cannot divide. Therefore, under the oral family arrangements, the sisters agreed to take away the jewel and movable properties and therefore, as per the family arrangements, sisters have taken the jewels

and other movable articles and the brothers have taken the suit property.

20. It is the settled proposition of law that family arrangement can be done orally and the oral family arrangements is acceptable and oral partition is also acceptable. In this case, by way of oral family arrangements sisters had taken movable and jewels and the brothers had taken the suit property. Therefore, the case of the appellant cannot be fit into the same footing, because after the oral arrangement, all the five brothers have taken the suit property with old building and they have decided to demolish the same and construct a new building and all of them applied for loan jointly and also they constructed the building jointly and also they repaid the loan equally. Therefore, under these circumstances, the appellant has clearly stated there is no oral arrangement and there is no oral agreement to relinquish his right and the respondents pleaded that there was an oral agreement to relinquish his share in the suit property. Then it is for the respondents to prove their case. The respondents have not filed any documents to establish the oral agreement. They have not established that the appellant relinquished his right or agreed to relinquish his right, though the respondents have stated that the appellant left the place and the fourth respondent occupied the said place and he repaid the loan.

21. In this case there is no document to show that the appellant paid any money to the respondents and the respondents paid any money to the appellant. The only admitted fact is that the fourth respondent paid a sum Rs.80,000/- (Rupees Eighty Thousand only) by way of cheque drawn on Punjab National Bank on 19.04.2000 and he paid the cheque for a sum of Rs.5000 by way of cheque on 03.04.1998. Except these two documents, there is no other evidence to show that they paid the money to the appellant. For which, the appellant has stated that the money was received by him to pay the engineer, who constructed the house. The case of the appellant was not accepted by the trial Court for the reason that the engineer was not examined. Even assuming that appellant had not proved that the amount of Rs.85,000/- (Rupees Eighty Five Thousand only) was received by the appellant not for the engineer and it was not proved by examining the engineer and the respondents can claim the said money from the appellant by way of recovery of money. There is no specific documentary evidence to prove that Rs.85,000/- (Rupees Eighty Five Thousand only) was paid by the fourth respondent to the appellant in order to discharge his share by way of oral agreement for relinquishment.

22. Therefore, in the absence of any documentary evidence that the appellant agreed to relinquish his right for which, he received entire money and in the absence of any documentary evidence either for agreement for relinquishment or amount fixing for the relinquishment of the right, the burden is heavily on the respondents to prove the same. Once the appellant and his brothers admitted that the suit property had been derived from the father through ancestral property, it is for the person who pleads that the share holders are not entitled to get any share and the person who pleads the same, has to prove it. In this case, the respondents have not proved the same in the manner known to law. The trial Court only from the oral evidence of the respondents and also the conduct of the appellant found that he agreed to relinquish his right. Therefore, the suit for specific performance to execute the release deed was decreed and the suit for partition was dismissed. As already discussed, the right of the appellant is admitted and the contribution of the loan is also admitted and repayment of the loan is also admitted. The appellant denied relinquishment by way of oral agreement and it is for the respondents to establish the same.

23. This Court as the first appellate Court is a fact finding Court has to reappreciate the entire evidence and come to the independent conclusion. On a perusal of the entire materials, pleadings, oral and documentary evidence, the respondents admitted the right of the appellant in the suit property and also admitted that all the five brothers applied loan for construction and admittedly, all five brothers cannot occupy in one building and the appellant left the building for convenience and is residing in a house for lease and tax was also paid by the appellant and there is no material evidence to show that the appellant either relinquished his right or agreed to relinquish his right. This Court also finds that the respondents have miserably failed to prove that the appellant has lost his right. Therefore, the judgment and decrees passed by the trial Court are liable to be set aside and the appeals are liable to be allowed.

24. In the result, the Appeal Suits are allowed and the Judgment and decree passed by the learned Additional District Judge (Fast Track Court No.2), Madurai, in O.S.Nos.36 of 2006 and 137 of 2008 are set aside. The appellant is entitled to 1/5 share in the suit property. If at all the appellant received any money from the respondents, the respondents can workout their remedy in the manner known law to recover the same from the appellant.

25.The suits are pending from the year 2006. In a recent judgment of the Hon'ble Supreme Court reported in **2022 Live Law (SC) 549, Kattukandi Edathil Krishnan and another vs. Kattukandi Edathil Valsan and others,** it has been held as follows:-

> *"33.We are of the view that once a preliminary decree is passed by the Trial Court, the court should proceed with the case for drawing up the final decree suo motu. After passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX Rule 18 of the CPC. The courts should not adjourn the matter sine die, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same suit, the court should allow the concerned party to file an appropriate application for drawing up the final decree. Needless to state that the suit comes to an end only when a final decree is drawn. Therefore, we direct the Trial Courts to list the matter for taking steps under Order XX Rule 18 of the CPC soon after passing of the preliminary decree for partition and separate possession of the property, suo motu and without requiring initiation of any separate proceedings.*
>
> *34. We direct the Registry of this Court to forward a copy of this judgment to the Registrar Generals of all the High Courts who in turn are directed to circulate the directions*

contained in paragraph '33' of this judgment to the concerned Trial Courts in their respective States."

26.As per the above latest decision of the Hon'ble Supreme Court, a party need not file a final decree application separately. The trial Court, if the parties have already not filed the final decree application is directed to initiate suo motu final decree proceedings and appoint an advocate commissioner and proceed with the same in accordance with law and the final decree has to be passed within three months from the date of receipt of a copy of this judgment from this Court. Registry is directed to send the original records to the trial Court concerned along with the judgment and decree made in these appeals within a period of fifteen days from the date of copy of this judgment made ready. No costs.

15.07.2022

Index : Yes / No
Internet : Yes
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To

The Additional District Judge (Fast Track Court No.2),
Madurai

P.VELMURUGAN, J.

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COMMON JUDGMENT MADE IN
A.S(MD)Nos.40 and 41 of 2012

DATED :15.07.2022