



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.06.2023

PRONOUNCED ON : 27.09.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

C.S.No.321 of 2012

V.K.Vijayaraghavan

...

Plaintiff

versus

1.Kunnoth Kunji Kannan Padmakshi @ Padma

2.Vellancherry Meera Kumaran

3.K.A.Abdul Majeed

...

Defendants

PRAYER: Civil Suit filed under Order VII Rule 1 of Code of Civil Procedure read with Order IV Rule 1 of Original Side Rules, praying for a judgment and decree against the first defendant:-

- (a) for partition by metes and bounds of the suit property and allotment of half share to the plaintiff and separate possession thereof;
- (b) for an appointment of an Advocate Commissioner to divide the property by metes and bounds;



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C.S.No.321 of 2017



- (c) to direct the first defendant to render true and proper accounts of rental collections made by her from the date of the plaint and pay the proportionate share to the plaintiff; and
- (d) for costs of the suit.

For Plaintiff : Mr.K.Bijai Sundar

For Defendant No.1 : Mr.Sharath Chander
for Mr.M.Mohideen Pitchai

For Defendant No.2 : Mr.N.Senthil Viswarooban

For Defendant No.3 : No Appearance

JUDGMENT

This Civil Suit has been filed for partition and separate possession.

2. Heard the learned counsels for the plaintiff and the defendants 1 and 2 and perused the materials available on record. Though the third defendant has been served and his name is printed in the cause list, there is no appearance on behalf of him.

The case of the plaintiff in brief:-

3. The plaintiff is the only son of his father late V.P.Kumaran born through his first wife late A.Shreemathi, who died on 08.01.1976. After the demise of the plaintiff's mother, his father married the first



defendant on 27.05.1976 at Singapore. His father and the first defendant had lived together at Singapore and subsequently they got married. A female child was born to them out of their marital wedlock. The said female child is shown as the second defendant in the suit.

3.1. Even before the marriage between the father of the plaintiff and the first defendant had jointly purchased the immovable properties and one such property is the suit property. The suit property was purchased by the first defendant and the father of the plaintiff through a registered sale deed dated 08.02.1971.

3.2. The father of the plaintiff had executed a registered settlement deed dated 08.02.2008 in respect of his undivided half share in the suit property in favour of the plaintiff and thus the plaintiff has become the owner of the undivided half share in the suit property. Subsequent to the execution of the settlement deed, the plaintiff approached the first defendant for partition in the suit property and for which the first defendant did not come forward to execute the same. Hence the plaintiff sent a legal notice on



06.05.2008 to the first defendant calling upon her to effect a partition of the suit property.

3.3. The first defendant sent a reply notice on 17.05.2008 by stating that the first defendant and the father of the plaintiff had mutually separated and they had entered into a deed of settlement dated 10.11.1994. In the said settlement, they agreed to be the joint tenants of the suit property and survivor of the joint tenants would leave the suit property to the second defendant.

3.4. In pursuant to the above settlement deed, they had also filed a suit for judicial separation by mutual consent before the High Court of the Republic of Singapore and it was recorded by the Court and thereafter, judicial separation was also granted by the High Court of the Republic of Singapore. The alleged settlement deed dated 10.11.1994 was not registered in accordance with Section 17 of the Indian Registration Act and it is not properly stamped and hence the alleged settlement deed is inadmissible in law.



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3.5. As per Section 13 of the Code of Civil Procedure and the principles laid down under the Private International law, a Foreign Court does not have any jurisdiction in respect of immovable property situated beyond its jurisdiction. Such judgments have been declared to be inconclusive and unenforceable in India and hence the same cannot be enforceable under the municipal law prevailing in India.

3.6. Even assuming that the settlement deed dated 10.11.1994 is valid in law, only the share of the survivor of the tenants will leave the property to the second defendant. In the instant case, his father had executed and registered a settlement deed dated 08.02.2008 in respect of his undivided half share of the suit property in favour of the plaintiff and thereafter, he died on 16.12.2009. Since the survivor being the first defendant, she alone can leave her share to the second defendant. Hence the father of the plaintiff who had predeceased the first defendant could not have relinquished his share in favour of the second defendant. The plaintiff stands as a joint owner with the first defendant and he is also in joint enjoyment of the same. The plaintiff has already deposited the title deeds in



his possession to the third defendant and created an equitable mortgage on 23.01.2012 in respect of his undivided share and that has been duly registered.

3.7. The defendants 2 and 3 have been impleaded only as formal parties, even though no relief has been claimed against them. The first defendant has let out a portion of the suit property for film shooting and collecting rents from the tenants and in which the plaintiff is also entitled to a proportionate share. The first defendant is also liable to render true and proper accounts for the same. Hence the plaintiff has filed the suit for partition and separate possession of half share in the suit property with mense profits and a direction to the first defendant to render true and proper accounts.

Written Statement of the defendants 1 and 2 in brief:-

4. It is true that the plaintiff was the son of V.P.Kumaran born through his first wife A.Shreemathi. The first defendant married the plaintiff's father on 27.05.1976 at Singapore after the demise of Shreemathi.



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The second defendant was born out of the wedlock between the first defendant and V.P.Kumaran. V.P.Kumaran was working as a Chartered Accountant in Singapore and also a Tutor in Stamford College, Singapore. The first defendant did her Cost Accountancy course in that College and was a student under V.P.Kumaran. Since both hailed from Kerala State, they got acquainted with each other.

4.1. After the completion of her course in Cost Accountancy, she got appointed in a Firm of Company Secretaries by name V.P.Management Consultants in Singapore. During such course, the first defendant and V.P.Kumaran had jointly purchased the suit land measuring 3 grounds 210 sq.ft. through a sale deed dated 08.02.1971. The marriage between the first defendant and V.P.Kumaran took place on 27.05.1976 at Singapore and during that time they were citizens of Singapore. During that time, V.P.Kumaran was 54 years old and the first defendant was 28 years. The first defendant constructed a house in 3 grounds of land out of her own funds during 1976 to 1979.



4.2. Due to the intimacy of V.P.Kumaran with another lady, friction developed in the marital relationship between the first defendant and V.P.Kumaran and they decided to separate permanently. They arrived at a full and final settlement in respect of the movable and immovable properties purchased either in their joint or separate names and in the name of the second defendant at Chennai, Singapore or London. A deed of settlement dated 10.11.1994 was executed by both in the presence of Advocates and Solicitors of the Supreme Court of Republic of Singapore.

4.3. As per the settlement, it is agreed between the first defendant and V.P.Kumaran that they will continue to hold the suit property as joint tenants; rates, taxes and all other outgoings in respect of the property shall be borne by the parties in equal shares; the survivor of the joint tenants will leave the property to their daughter, the second defendant herein. Thereafter, they filed a divorce petition and obtained an order of divorce by consent in terms of the settlement deed through the order of the High Court of the Republic of Singapore on 20.09.1995 and the decree became final by issuance of a Certificate by the Court on 24.05.1996.



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4.4. In fact, the first defendant alone was in physical possession of the suit property by paying taxes and maintaining it by appointing a Care Taker and making frequent visits to Chennai with the second defendant. She also obtained gas connection in her name on 20.12.1983 for her use in the house in the suit property. During the last days V.P.Kumaran was kept at the house of the plaintiff at Thrissur and he continued to take the medical treatment. The second defendant who was at Norway on information about the health condition of her father made several visits to India and met him.

4.5. The second defendant transferred a sum of Rs.1,00,000/- on 22.12.2009 from her account through the State Bank of India of the plaintiff for meeting the medical expenses of her father. During such visits, she found that her father was completely immobilized and unable to communicate with her. In these circumstances, the first defendant was shocked and surprised to receive a legal notice dated 06.05.2008 stating that V.P.Kumaran had executed a settlement deed in favour of the plaintiff on 08.02.2008. During the relevant point of time, the second defendant visited



V.P.Kumaran who was bedridden and was not able to communicate anything with others.

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4.6. The settlement deed has been created by the plaintiff with the help of his close friend P.Venugopalan by taking advantage of the poor health condition of V.P.Kumaran. The settlement deed is void and unenforceable and hence the plaintiff cannot claim any share in the suit property on the strength of void document. The settlement deed dated 10.11.1994 would bind the first defendant and all those, who make any claim through V.P.Kumaran. As per the terms and conditions of the settlement deed dated 10.11.1994, V.P.Kumaran and the first defendant are only interest holders in respect of the suit property.

4.7. Consequent to the death of late V.P.Kumaran on 16.12.2009, the first defendant became the sole life interest holder and after her demise, the whole property shall devolve upon the second defendant. Even for the sake of argument if it is presumed that the settlement deed dated 08.02.2008 is true, late V.P.Kumaran had a right to deal only with his life interest over



the suit property and he did not have any power to confer any absolute right over the half share in the suit property.

4.8. The plaintiff is not in joint possession of the suit property and it is the first defendant who is in exclusive and absolute possession over the same. The equitable mortgage dated 23.01.2012 alleged by the plaintiff is the collusive one between the plaintiff and the third defendant who is a resident of Thrissur and it is not valid and binding on the defendants 1 and 2. When the original sale deed and the parent documents of title are in possession of the first defendant, no valid equitable mortgage by deposit of title deeds can be created. There is no cause of action for the suit. The whole suit property is under the actual and physical possession of the first defendant and she has not let out any portion of the suit property to anybody. Therefore the plaintiff is not entitled to any share in income or he is not entitled for any rendition of account of rent as claimed by him. Hence, the suit has to be dismissed.

5. On the basis of the above pleadings, on 20.03.2018, this Court had framed the following issues:-



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“(i) Whether the alleged settlement deed dated 10.11.1994 entered between the first defendant and deceased V.P.Kumaran is valid in the eye of law ?

(ii) Whether the decree of judicial separation granted by the High Court of the Republic of Singapore in Divorce Petition No.1417 of 1995 would operate as transfer of interest in the immovable property in India without the same being formalized in accordance with the law in India ?

(iii) Whether the settlement deed dated 08.02.2008 is true and valid ?

(iv) Whether the plaintiff is entitled to ½ share in the suit property ?

(v) To what reliefs the plaintiff is entitled to ?”

6. During the course of the trial, on the side of the plaintiff, one witness has been examined as P.W.1 and Ex.P.1 to Ex.P.10 were marked and on the side of the defendants, one witness has been examined as D.W.1 and Ex.D.1 was marked.

Arguments of the plaintiff in brief:-

7. The learned counsel for the plaintiff submitted that plaintiff's father late V.P.Kumaran had jointly purchased the suit property along with



the first defendant and hence he had an undivided half share in the suit property by virtue of Ex.P.1 sale deed dated 08.02.1971 and he had put up a construction thereon. Thereafter, he had settled his undivided half share in the suit property in favour of the plaintiff under Ex.P.2.

7.1. It is false to state that the first defendant had contributed 50% of the sale consideration towards the said purchase. Because she was already 23 years at the time of purchase and she was not married. During her examination, she falsely stated that she did not even know the meaning of 'Smt' found in the sale deed before her name. She had further denied that she was only an audit clerk but not a cost accountant. When she was confronted with the marriage certificate, she was constrained to admit that her occupation was audit clerk only. She has not produced any document to show that she has contributed 50% towards the purchase.

7.2. Despite the first defendant claimed that she had constructed the building with her own funds, during her cross examination she has stated that she did not even know the plinth area of the building in the suit property and she was not aware of the cost of the construction. She had also



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falsely claimed that she was one of the Directors of V.P.Management and Consultants but in fact her marriage certificate only reveals that she was only an audit clerk.

7.3. By virtue of Ex.D.1 decree of the High Court of the Republic of Singapore it cannot be claimed by the first defendant that the plaintiff's father had divested his interest in the suit property. In fact, the said settlement mentioned in the decree was not acted upon by the plaintiff's father and the first defendant in respect of the suit property. If the first defendant had considered Ex.D.1 as valid, she ought to have sought a declaration or cancellation of the registered settlement deed Ex.P.2 on the ground that it is null and void within the period of limitation.

7.4. The Foreign Court decree cannot pre-empt, supersede or nullify or otherwise stymie the operation of Section 17 of the Registration Act and Section 35 of the Stamp Act read with Article 55B of the schedule thereto. The Corporation records in respect of the suit property would prove that the Singapore decree was not acted upon in respect of the suit property. The first defendant herself had admitted that V.P.Kumaran had title to continue



in his undivided half share in the suit property and only in view of the property tax, Patta continued to be in their joint names.

7.5. Ex.D.1, the decree of the Foreign Court has not been certified as per Section 86 of the Evidence Act read with Section 14 of the Civil Procedure Code and it has not been duly stamped and registered as per the Indian Registration Act and Indian Stamp Act and it has not been accompanied by the supplementary agreement dated 10.11.1994 also. Hence its validity before the Indian Court cannot be approved.

7.6. In the guise of a decree of the Foreign Court, the parties cannot escape from the mandatory provisions of the Transfer of Property Act, Registration Act and Stamp Act. If such an immunity is extended that would only help those who intend to evade stamp duty by adopting a short circuit method by opting through a Foreign judgment route. Reliance is placed on the judgment of the Hon'ble Supreme Court held in *Y.Narasimha Rao Vs. Y.Venkata Lakshmi* [1991 3 SCC 451] and also following the judgments in the same line:-

- i. *The Canara Bank Premises and Estate Section Circle Office Vs. G.Meerabai* (2019 (2) CTC 640)



- ii. *Amudha and others Vs. K.Jeyaraman and another* (2005-3-L.W.283]
- iii. *A.Pathrakali Vs. R.Senthilkumaran* (2010 (2) MLJ 248)
- iv. *Bipin Shantilal Panchal Vs. State of Gujarat and another* [(2001) 3 SCC 1]
- v. *Avinash Kumar Chauhan Vs. Vijay Krishna Mishra* [2009 (2) SCC 532]
- vi. *Alagammai and 4 others Vs. V.Rakkammal* [AIR 1992 Mad 136]
- vii. *Chinnammal Vs. Thangavel* dated 22.01.2013

7.7. Even if a penalty is imposed upon Ex.D.1 for want of a stamp duty by way of impounding, no legal effect can be given. So Ex.D.1 cannot take away the right of the father of the plaintiff's half share in the suit property. The settlement deed prevails upon and supersedes Ex.D.1 decree and all the claims made by the first defendant in pursuant to the same. Sections 34 and 35 of the Indian Registration Act create a legal presumption about the voluntary execution, admission of execution and all the essentials of valid contract as envisaged under Sections 10, 11 and 12 of the Indian Contract Act in respect of the document. Ex.P.7 and Ex.P.8 would prove that V.P.Kumaran was in a sound and disposing state of mind and he was also cordial with the plaintiff.



7.8. The first defendant had acquired the knowledge about the settlement deed thorough the reply notice Ex.P.4. As per the law in India, she cannot enforce the settlement covered by the decree of the High Court of the Republic of Singapore. In the absence of any suit to challenge the settlement deed, defendants 1 and 2 cannot harp upon the Singapore decree or level allegations of fraud to discredit or otherwise invalidate Ex.P.2.

7.9. In support of the above contention, the learned counsel for the plaintiff would rely on the judgment of the Hon'ble Supreme Court held in *Abdul Rahim & Others Vs. Sk.Abdul Zabbar & others dated 06.03.2009*; judgments of this Court held in *Elangovan Vs. Sulochana and others dated 27.03.2017* and *K.Chandran Vs. V.Geethalakshmi (2012 (3) MWN (Civil) 832)*; and Karnataka High Court held in *Shivanandappa Vs. Hanumanthappa and others dated 17.06.2022*.

7.10. This settlement agreement dated 10.11.1994 cannot be construed as a family arrangement as claimed by the defendants. The essential attributes and characteristics of a family arrangement is not found in Ex.D.1. In support of the above contention, the learned counsel for the plaintiff would rely on the judgments of this Court held in *A.C.Lakshmipathy*



and another Vs. *A.M.Chakrapani Reddiar and others (2001 (1) CTC 112)*; and

R.Deivanai Ammal & another Vs. G.Meenakshi Ammal and others dated 13.07.2004.

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7.11. Ex.D.1 does not create any right or title in favour of the second defendant or extinguish the right of the plaintiff's father in the suit property. Ex.D.1 did not consist of a record of an oral family arrangement that is said to have occurred earlier. Ex.D.1 has not complied the mandates of Section 49 read with Section 17 of the Indian Registration Act and hence the said document can not be claimed as a document of title. There cannot be any estoppel against law. The judgment which would decide the matrimonial proceedings between the parties will not affect the immovable properties in India if not stamped and registered.

7.12. The judgment of this Court held in *Panchapikesa Iyer Vs. K.N.Hussain Muhammad Rowther (AIR 1934 Mad. 145)*, Ex.D.1 is hit by Section 76 of the Indian Evidence Act and consequently hit by Section 86 of the Indian Evidence Act.

7.13. Hence in all probabilities, the plaintiff has proved that he is entitled to the preliminary decree for partition in respect of the half share in the suit property and also for the other reliefs prayed by him.



Arguments of the defendants 1 and 2 in brief:-

8. The learned counsel for the defendants 1 and 2 submitted that the terms of settlement dated 10.11.1994 (Ex.D1) was entered into between the couple reducing the terms of full and final settlement on various ancillary matters. In respect of the first item of the suit property, it was agreed between the couple that they would continue to hold the property as joint tenants by sharing the responsibility of paying rates and taxes equally and that the property has to be left to the daughter, the second defendant herein.

8.1. The family arrangements were made in respect of other properties including the property of V.P.Kumaran. Clause 10 of the said settlement, the couple had agreed to do all necessary things to give full effect to the terms and conditions of the agreement. Only on the basis of the said agreement, divorce by mutual consent was granted by the High Court of the Republic of Singapore.

8.2. V.P.Kumaran had suffered heart attack in 2007 and thereafter he was immobilised and speechless. During that time, the second defendant frequently visited him. The said fact was admitted by the plaintiff in his



cross examination. The plaintiff had filed a suit in O.S.No.421 of 2007 before the Principal District Court, Kancheepuram, challenging the settlement executed by V.P.Kumaran in favour of one Vimalal in respect of certain properties situated at Kancheepuram District. So the relationship between Kumaran and his son became sour and in fact the plaintiff had initiated criminal action against his own father. A compromise decree was passed in O.S.No.421 of 2007 on 07.02.2008. In the decree, Kumaran's address was shown to be in Singapore. The very next day on 08.02.2008, the plaintiff had illegally taken his father to the office of the Sub Registrar and obtained the settlement deed in his favour in respect of half share in the suit property. The witness to this deed is none other than one Vimalal and P.Venugopalan. The plaintiff admits that the address of V.P.Kumaran, given in Ex.P.2 is the address of Venugopalan and it was done so in order to set an impression that he was living in Chennai at that time. In fact, the aged Kumaran was living at Thrissur from January 2008 and hence he was completely under the control of the plaintiff.

8.3. Section 111 of the Evidence Act would state the party who claims to be in possession of active confidence has the burden to prove the



good faith transaction, if the good faith is challenged. The onus of the plaintiff was not properly discharged. The attesting witnesses Vimalal and Venugopalan were not examined by the plaintiff though he had stated that he is ready to examine them.

8.4. Ex.D.1 would show that there is no *inter vivos* transfer of property under the said deed. The arrangement expressly records that Kumaran and the first defendant continue to be the co-owners and the second defendant would be allotted with the property after their life time. *Exfacie*, the recitals would clearly indicate that the same is nothing but a family arrangement. Kumaran, the first defendant and the second defendant as husband, wife and child respectively had constituted a family. The approach to construe such family arrangements is set out in the judgment of the Hon'ble Supreme Court held in ***Kale and others Vs. Deputy Director of Consolidation & others [(1976) 3 SCC 119]***.

8.5. The agreement dated 10.11.1994 merely records what has already been agreed upon between the parties. The property would be vested upon the second defendant only at a future date and hence Ex.D.1 is invalid in respect of the suit property for want of registration under Section 17 of



the Registration Act. The Foreign decree is invalid since it purports to affect immovable property outside the jurisdiction of Singapore. It is unenforceable as the decree is hit by Section 13(1)(c) of the Code of Civil Procedure.

8.6. In *Hamlin Vs. Hamlin [1986 C.A. Fam Div 11]* the UK Court of Appeal normally invoke the rules of private international law. The Foreign Court will not have the jurisdiction over land situated in India and it would hold good only if the dispute is concerned with issues relating to determination of title or possession or recovery of damages for trespass. The proceedings before the Hon'ble Supreme Court between Kumaran and the first defendant were matrimonial proceedings and they do not fall within any of the aforesaid categories.

8.7. The UK Court of Appeal had explained the rule in private international law that a Foreign Court will have jurisdiction if the issue is in respect of a right relating to the benefit for a spouse or a child of the marriage. The same principle is adopted by the Division Bench of this Court in the case of *Minor Dorairaj Vs. Karupppiah Ambalam [(1982) 18 L.W. 323]*. The settlement agreement dated 10.11.1994 is a kind of a family arrangement



executed by the persons standing in a fiduciary relationship with the second defendant, which was solemnly affirmed and acted upon by Kumaran.

8.8. The principle of comity of Courts has been explained by the Hon'ble Supreme Court in *World Sport Group (Mauritius) Ltd. Vs. MSM Satellite (Singapore) Pte. Ltd.*, [(2014) 11 SCC 639]. *Panchapikesa Iyer Vs. K.N.Hussain Muhammad Rowther* (AIR 1934 Mad. 145] relates to a case where probate was granted in respect of the properties situated at Penang in the straits settlements. But the widow of the deceased obtained a consequential order in respect of the properties in India on the basis of the above probate. Hence the Court did not enforce the foreign decree, since the original probate order itself did not deal with the properties in India. So the above decision is not applicable to the facts of this case.

8.9. The judgment of the Hon'ble Supreme Court in *Y.Narasimha Rao Vs. Y.Venkata Lakshmi* reported in [1991 3 SCC 451] relied by the learned counsel for the plaintiff relates to a foreign decree which is inadmissible for want of certification under Section 86 of the Evidence Act. Section 86 of the Evidence Act would show that it deals with genuineness and accuracy of



certified copies. The plaintiff has not claimed that Ex.D.1 is not genuine or is inaccurate.

8.10. In 1899, the Privy Council settled the law that Section 86 was not exhaustive on the mode of proving a foreign judicial record. Reference can be made to the judgment of the Privy Council held in *Haranund Roy Chetlangia Vs. Ram Gopal Chetlangia* (1899 SCC Online PC 34).

8.11. The plaintiff's father and the first defendant were estopped from claiming any right over the suit property because they had made an elaborate arrangement involving the suit property, for the safety and financial security of the second defendant. It is a document embodying solemn obligations without which the divorce would not have been granted. Having taken the benefit of the settlement by obtaining a divorce, neither Kumaran nor those claiming through him can be permitted to act in contravention of the same. In support of his contention, the learned counsel for the first defendant relied on the following decisions about the principle of estoppel in the context of the family arrangement.

“(i) *Kale and others Vs. Deputy Director of Consolidation & others*
[(1976) 3 SCC 119]



(ii) *Gulam Abbas Vs. Haji Kayyum Ali [(1973) 1 SCC 1]*

(iii) *Elumalai @ Venkatesan Vs. M.Kamala [2023 SCC Online SC 84]*”

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8.12. The principles of estoppel applies to the settlement agreement executed by Kumaran cannot be recognised legally as conveying any title in favour of the plaintiff. Since the defendants 1 and 2 are not parties to the settlement agreement, they are entitled to ignore the same. The law has been laid down on this aspect by this Court in *Chellakannu Vs. Kolanji [2005 4 CTC 197]*.

Discussion:-

9. There are some fundamental facts which are not in dispute. The fact that the plaintiff is the son of late V.P.Kumaran through his first wife Shreemathi is not denied. The plaintiff does not deny the fact that the first defendant is the second wife of V.P.Kumaran and the second defendant is the daughter born to V.P.Kumaran through the first defendant. The parties do not have any disagreement on the fact that the suit property has been purchased in the names of V.P.Kumaran and the first defendant by virtue of a sale deed dated 08.02.1971.



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10. V.P.Kumaran was a Chartered Accountant and he was working in Singapore. It seems that the plaintiff along with his mother and other siblings were living at their native place in Kerala, while V.P.Kumaran was engaged in Singapore. The mother of the plaintiff died on 08.01.1976. The first defendant who came into contact with the plaintiff due to her studies in Cost Accountancy fell in love with V.P.Kumaran. Subsequent to the death of the plaintiff's mother Shreemathi, V.P.Kumaran married the first defendant on 27.05.1976.

11. The property which is the subject matter of the suit has been purchased in the names of both the first defendant and V.P.Kumaran in the year 1971 itself. From the evidence of D.W.1 it appears that V.P.Kumaran and the first defendant fell in love with each other during the year 1969 to 1970 itself. Despite the first defendant and the plaintiff married in the year 1976, the property has been purchased jointly in the names of V.P.Kumaran and the first defendant in the year 1971 itself. It appears from records that the second defendant was also born prior to the marriage, probably when V.P.Kumaran and the first defendant were in a relationship.



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12. Though the plaintiff did not deny the fact that the suit property has been purchased jointly in the names of his father V.P.Kumaran and the first defendant, it is claimed by him that the sale proceeds for the above sale transaction was entirely met by his father V.P.Kumaran. During the relevant point of time, the first defendant could not have any income to share the sale consideration. However it is claimed by the first defendant that her father paid 50% of the sale price and the remaining 50% was paid by V.P.Kumaran.

13. The first defendant could not produce any documentary evidence to show that her father had paid the 50% of the said promise. But the fact remains that during the life time of V.P.Kumaran, he did not claim that the entire sale consideration was paid by him and the first defendant was only a joint name lender for the sale deed. Even for the sake of argument, if it is assumed that the first defendant did not share 50% of the sale price, it is of no consequence because the plaintiff himself restricts his claim only in respect of half share in the suit property which was settled in his favour by his father V.P.Kumaran.



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14. Even the first defendant did not deny the fact that V.P.Kumaran had the title in respect of half share in the suit property. However she claims that in view of the subsequent settlement entered into between V.P.Kumaran and the first defendant at the time of dissolving their marriage, V.P.Kumaran had agreed to leave the suit property subsequent to his life time and the life time of the first defendant to the absolute enjoyment of the second defendant.

15. Before getting the order of divorce, the first defendant and V.P.Kumaran had entered into a deed of settlement on 10.11.1994 and a copy of the same is also attached with the order of the High Court of the Republic of Singapore and it has been marked as Ex.D.1.

16. Mr.K.Bijai Sundar, learned counsel for the plaintiff raised a technical point that only a xerox copy of the said order has been produced and it has not been certified as per Section 86 of the Evidence Act read with Section 14 of Civil Procedure Code (C.P.C.).

17. Section 14 of C.P.C. prescribes the mandatory presumption as to the foreign judgments only if a certified copy of the foreign judgment is



produced. For the sake of clarity, Section 14 of C.P.C. is extracted as below:-

“14. Presumption as to foreign judgments.- The Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.”

18. The validity of certification as contemplated under Section 86 of the Evidence Act would state that the presumption as to the certified copy of the judicial record of the Foreign Court can be presumed only if the said document has been certified by any representative of the Central Government that it is the certification of copies of judicial records of the said Country. Since Ex.D.1 did not contain any certification by the Central Government, it is claimed by Mr.K.Bijai Sundar, learned counsel for the plaintiff that Ex.D.1 itself is inadmissible in law.

19. On the contrary, Mr.Sharath Chander submitted that Ex.D.1 can be presumed inadmissible only if it is hit under Section 13 C.P.C. Section 13 C.P.C. would envisage that a foreign judgment shall not be conclusive if



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(i) the Court which pronounce the order has got no competent jurisdiction to decide the issue (ii) the order has not been given on merits of the case (iii) on the face of the proceedings it is found that an incorrect view of international law or refusal to recognise law of India in cases in which the law is applicable (iv) if the proceedings in which the judgment was obtained are opposed to natural justice or obtained by fraud or any breach of law in force in India.

20. Mr.K.Bijai Sundar, learned counsel for the plaintiff claimed that since the suit property is an immovable property, the Foreign Court does not have any jurisdiction to decide about its title and hence, Ex.D.1 judgment also hit under Section 13(1)(c) of C.P.C.

21. Mr.Sharath Chander submitted that the Courts have to rely on the rules of private international law and attention of the Court was drawn to the judgment of *Hamlin Vs. Hamlin* [1986 C.A. Fam Div 11] before the UK Court of Appeal. In the said case, it is held that if the determination of title or possession or recovery of damages is not involved in respect of immovable property before the Foreign Court, but the issue is only in respect of equity, Foreign Court will have jurisdiction. It is further



submitted that so far as the private international law is concerned, the position of law in England has to be followed because it is common law practice as similar as that of India. In *Hamlin Vs. Hamlin* [1986 C.A. Fam Div 11] the UK Court of Appeal has held as under:-

“Although the court's jurisdiction in the present case derives from statute, now section 37 of the Act of 1973, and not from the general principles of equity as such, there cannot in my view be any doubt that the exception must equally apply. What is in issue under the section, in effect, is an equity, the right to financial relief for the benefit of the petitioner and any child of the marriage, which the petitioner is seeking to uphold and the respondent to defeat, to use the word used in this provision. The jurisdiction conferred by the section is not to determine the title to, or the right to possession of, the foreign land in question, but rights and obligations in personam arising from the divorce proceedings.”

22. By citing the above judgment, Mr.Sharath Chander, learned counsel for the first defendant submitted that the dispute before the Foreign Court is not with regard to any claim over the immovable property but it was a family arrangement agreed between the parties by settling their larger



issues at the time of getting the order of the court for dissolving the marriage.

23. Mr.Sharath Chander submitted that Ex.D.1 has to be construed as a family arrangement and hence by applying the principle of comity between the Courts of different countries, the Singapore superior Court judgment has to be given due consideration.

24. Mr.K.Bijai Sundar, learned counsel for the plaintiff relied on the judgment of the Hon'ble Supreme Court in *Y.Narasimha Rao Vs. Y.Venkata Lakshmi [1991 3 SCC 451]* and claimed that it is not properly certified under Section 86 of the Evidence Act. In the above judgment, it is held as under:-

“5..... In the instant case photostat copies of the judicial record of the Court of St. Louis is certified for the Circuit Clerk by the Deputy Clerk who is a public officer having the custody of the document within the meaning of Section 76 of the Indian Evidence Act also in the manner required by the provisions of the said section. Hence the photostat copy per se is not inadmissible in evidence. It is inadmissible because it has not further been certified by the representative of our Central Government in the United States as required by Section 86 of the Act. Therefore the



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document is not admissible in evidence for want of the certificate under Section 86 of the Act and not because it is a photostat copy of the original as held by the High Court.”

25. Mr.Sharath Chander distinguished the above judgment on facts by claiming that the judicial record involved in *Y.Narasimha Rao's* case is a photostat copy. But in the case in hand, what is produced before this Court is a certified copy. Ex.D.1 does contain the water seal of the High Court of the Republic of Singapore. It is not claimed by the learned counsel for the plaintiff that the person who had certified Ex.D.1 is not the public officer who had the custody of the document. In *Y.Narasimha Rao Vs. Y.Venkata Lakshmi [1991 3 SCC 451]* the Hon'ble Supreme Court has observed as under:-

“24.The present photostat copies of the judicial record of the court of St. Louis is certified for the Circuit Clerk by the Deputy Clerk who is a public officer having the custody of the document within the meaning of Section 76 the Act and also in the manner required by the provisions of the said section. Hence the photostat copy per se is not inadmissible in evidence. It is inadmissible because it has not further been certified by the representative of our Central Government in the United States as required by Section 86 the Act. ”



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26. So the Foreign judicial record involved in the above case suffered inadmissibility due to the fact that it was not certified by the representative of the Indian Government in the United States in terms of sec.86 of the Evidence Act. And what was produced before the court was only a photo copy which lacked any authentication. In the case on hand also, there is no certification of endorsement seen to have made by the representative of Central Government of India at Singapore. Though the plaintiff had claimed about the inadmissibility of the document of Ex.D.1, the document has crossed the admission stage and it has been received in evidence. Even if the plaintiff was serious objection on the admissibility of that document, he did not have any dispute as to its genuineness.

27. In this regard, Section 82 of the Evidence Act also assumes relevance. Section 82 gives a special status to the documents of Court of Justice in England or Ireland. According to the said provision, the Courts in India have to presume the genuineness of the seal, stamp or signature of authentication of the said records and its judicial character even without calling for any proof of its seal or stamp or the signature authenticating it. A parallel provision is also seen to be present in English law also. Hence it is



claimed by the learned counsel for the defendants 1 and 2 that Ex.D.1 complies the requirement of the English law and hence it can be taken through the route of Section 82 of the Evidence Act.

28. For the sake of academic relevance the law on admissibility of the foreign judicial proceedings in the law of England as commented in *Phipson on Evidence [2020 South Asian Edition]* has been produced by Mr. Sarath Chander. And the relevant part is extracted as under:-

“41-87-All judgments, decrees, orders and other judicial proceedings of any Court of Justice in any foreign State or British colony, and all affidavits, pleadings, and other legal documents, filed or deposited in any such court, may be proved either by examined copies, or copies purporting to be sealed with the seal of the court to which the originals belong, or where there is no seal, to be signed by a judge of such court, who must certify that there is no seal. If these conditions exist, no proof is required of such seal, signature or certificate or of the official character of the judge.”

29. So it is claimed that the admissibility standard of Ex.D.1 can be appreciated on the basis of the eligibility criteria found in the English law.



But the said advantage can be given only if a mutual provisions is present in both countries as how it exists in both the Indian Law and the English law.

30. Ex.D.1, which is claimed to be a judicial record of the High Court of the Republic of Singapore struggles to gain admission thorough the doors of an Indian Court, as it did not have authentication of the Central Government representative placed in Singapore. However, Ex.D.1 is not a photo copy, but a certified copy granted by a rightful authority. So it can pass one half of the eligibility test under Section 86 of the Evidence Act and it fails in respect of the remaining half for want of authentication from the representative of the Central Government of India in Singapore.

31. However, I feel for the purpose of this case, the discussion has to be stretched a little beyond the point of admissibility of Ex.D.1. It is because of the fact that the plaintiff himself has admitted about the dissolution of marriage between V.P.Kumaran and the first defendant. Obviously such proceedings could not have happened except through some



judicial proceedings and the plaintiff did not deny the very proceedings involved in Ex.D.1.

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32. Though there is objection on admissibility, the said document seen to have been marked as an Exhibit. So I feel it is appropriate to appreciate its relevancy and the impact of the arrangement made between the first defendant and V.P.Kumaran before getting the decree of dissolution of marriage from the High Court of the Republic of Singapore.

33. Even though the dispute before the High Court of the Republic of Singapore was only a matrimonial issue between the first defendant and the deceased V.P.Kumaran, the terms of compromise is seen to be inclusive of the suit property and there appears some understanding between the couple in that regard. It appears from the deed of settlement dated 10.11.1994 that the couple had agreed for a certain way of arrangement in respect of many other properties owned by them jointly. In that course some provisions has been made for the second defendant who was a major and was 21 years old then.



34. So far as the suit property is concerned, it is agreed between the plaintiff's father V.P.Kumaran and the first defendant that they shall continue to hold the property as joint tenants by sharing the rates, taxes and all the outgoings in respect of the suit property equally between themselves. So the agreement as to joint tenants would only indicate that both the parties have got equal right in the suit property and there is no difference in their shares. The fundamental difference between joint tenancy and common tenancy is that the joint tenants have equal rights and so they will enjoy equal shares in the rent and other profits from the property. But among the common tenants, the share of the respective party would differ and hence they can not exercise equal rights. The joint tenancy would come to an end if one party chooses to create a third party interest in respect of his undivided half share or the parties partition the property between themselves.

35. The defendants claimed that as per the settlement it is agreed that the survivor of the joint tenants will leave the suit property in favour of



the second defendant. It is only on the basis of this clause, the defendants claims stake over half of the suit property belonged to V.P.Kumaran.

36. So it has to be seen whether the alleged settlement deed dated 10.11.1994 can deprive V.P.Kumaran to exercise any right of alienation in respect of his half share in the suit property. According to the learned counsels for the defendants 1 and 2, the terms of settlement in respect of the suit property should be construed as a family arrangement.

37. The argument of the learned counsel for the defendants is that the arrangement made in Ex.D.1 is only to record an understanding about the enjoyment of the property and hence its non-registration will not make it invalid. Meaning to say that Ex.D1 need not be construed as a document of conveyance in order to demand the mandate of registration under sec.17 of the Registration Act. Admittedly, the settlement deed dated 10.11.1994 does not confer any immediate right, but it speaks about certain arrangement. Reference was made on behalf of the defendants to the judgement of the Hon'ble Supreme Court held in *Kale and others Vs. Deputy*



Director of Consolidation & others [(1976) 3 SCC 119] The essential portion of the above judgement is extracted as under:

“38..... Assuming, however, that the said document was compulsorily registrable the courts have generally held that a family arrangement being binding on the parties to it would operate as an estoppel by preventing the parties after having taken advantage under the arrangement to resile from the same or try to revoke it. This principle has been established by several decisions of this Court as also of the Privy Council. In Kanhai Lal v. Brij Lal [AIR 1918 PC 70 : LR 45 IA 118, 124 : ILR 40 All 487] the Privy Council applied the principle of estoppel to the facts of the case and observed as follows:-

"Kanhai Lal was a party to that compromise. He was one of those whose claims to the family property, or to shares in it, induced Ram Dei, against her own interests and those of her daughter, Kirpa, and greatly to her own detriment, to alter her position by agreeing to the compromise, and under that compromise he obtained a substantial benefit, which he has hitherto enjoyed. In their Lordships' opinion he is



bound by it, and cannot now claim as a reversioner.”

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38. So what has been made clear from the above argument is that, the settlement deed dated 10.11.1994 does not confer any immediate right over the second defendant in respect of the suit property. If the settlement deed dated 10.11.1994 should be construed as a family arrangement of the family comprising the first defendant, second defendant and V.P.Kumaran, the second defendant also ought to have been a party. However, it is claimed that she is only a beneficiary. One essential point that cannot be ignored to be noticed in this regard is that the settlement deed dated 10.11.1994 did not reserve any terms that the understanding in respect of the suit property can not be revoked either by V.P.Kumaran or by the first defendant at any future point of time.

39. When the parties had agreed to continue as joint tenants in respect of the suit property, their respective undivided half share in the suit property cannot be denied. So the settlement deed dated 10.11.1994 will not extinguish the alienating right of V.P.Kumaran in respect of his half share. Neither of the defendant had taken any further steps to compel



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V.P.Kumaran to execute any deed of settlement in favour of the second defendant, subject to his life interest, in terms of the undertaking given through the earlier arrangement agreed during the divorce proceedings.

40. Just because the plaintiff and the first defendant had agreed to leave the suit property for the second defendant that will not take away the existing right of the parties who had acquired the property thorough joint purchase. A mere understanding to leave a property for someone's enjoyment on a future date cannot be considered as a conveyance or encumbrance created on the property. At the best it can only be construed as a desire or promise and it is upto the person concerned either to act according to his desire or honour his promise. Even when the desires of a person in respect of his property is set out in a Will, the maker of the Will always has a right to revoke the same during his life time.

41. If a promise is unilateral it can not be construed as a contract also. Though the terms as to the suit property as seen in the earlier terms of compromise appears to be a joint promise by both the first defendant and V.P Kumaran, in reality, it is only an individual promise made by each in



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respect of their respective undivided half share in the property. Even if it is construed as a mutual promise, the party aggrieved ought to have initiated legal action for enforcement within the period of limitation once he feels that the terms of the contract are violated.

42. As rightly pointed out by the learned counsel for the plaintiff there is no mutation of revenue records in favour of the second defendant during the life time of V.P.Kumaran. So neither by title nor by enjoyment, the second defendant had acquired any right in respect of the suit property. A promise to settle the property in favour of a son or daughter by itself cannot create a conveyance unless it undergoes the process of actual conveyance by way of execution of any deed or instrument, subject to the mandates of registration.

43. During his last days, V.P.Kumaran was living at his native place along with the plaintiff. It might be true that V.P.Kumaran was suffering from various health issues. The second defendant could have also visited him often during that phase. But there is no evidence to show that at the time when the settlement was executed in favour of the plaintiff,



V.P.Kumaran was not in a sound disposing state of mind to understand the implication of the Ex.P.2 settlement deed.

44. One of the circumstances which was canvassed by the defendants is that the settlement dated 08.02.2008 was one day subsequent to the judgment passed in the other suit filed by the plaintiff in O.S.No.421 of 2007 before the Principal District Court, Kancheepuram at Chengalpet against his father V.P.Kumaran and one Vimalal for declaring the settlement deeds dated 12.02.1997 and 12.02.2007 executed by V.P.Kumaran in favour of Vimalal as null and void.

45. One of the defendants by name Vimalal in the above suit is said to be a person with whom V.P.Kumaran had developed intimacy subsequent to his divorce with the first defendant. The above suit has ended in a compromise and a compromise decree has been passed in terms of memo of compromise. So the defendants had submitted that V.P.Kumaran was put under lot of pressure by the plaintiff. The first defendant is not a party to the proceedings in O.S.No.421 of 2007. Even the other defendant Vimalal also did not challenge the validity of the compromise. The Court had



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recorded that both parties were present before the court at the time of recording the joint terms of compromise. When V.P.Kumaran made his appearance before the Court on a previous day, it cannot be claimed by the defendants that V.P.Kumaran was immobilised and he was not in a state to understand what was happening around him on the next day when he executed Ex.P.2 settlement deed. Until his death V.P.Kumaran he did not choose to revoke the settlement deed.

46. The first defendant was aware of the settlement deed as early as in the month of May 2008 when she sent a reply notice after receiving the legal notice sent by the plaintiff on 06.05.2008. This suit has been filed by the plaintiff in the year 2012 which itself was 4 years after the receipt of the reply notice. Till then, the first defendant had not chosen to file any suit to declare the settlement deed as null and void. She had not chosen to raise the same through a counter claim after this suit was filed. The defendants can not take a stand that they preferred to ignore the settlement and it would not bind them. Because what was conveyed in favour of the plaintiff is not any title held by the defendants themselves, but the title held by the deceased



Kumaran. Hence the defendants cannot put forth an argument that the settlement deed Ex.P.2 is invalid.

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47. Admittedly, the suit property was jointly purchased in the names of V.P.Kumaran and the first defendant in the year 1971. The first defendant did not have any right in respect of the undivided half share of Kumaran and neither Kumaran had relinquished or released his undivided half share by executing any deed of conveyance in favour of the second defendant subsequent to Ex.D.1. The defendants did not question the genuineness of Ex.P.2 settlement deed but their only contention was that V.P.Kumaran was coerced to execute the settlement and the said fact is not proved.

48. Hence I find no difficulty to hold that there is no difficulty to hold that the plaintiff has acquired the half share in the suit property by virtue of Ex.P.2. Though it is claimed by the first defendant that the buildings in the suit property has been put up by her with her own earnings, no evidence has been produced to show the same.



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49. Even according to the statement of the first defendant V.P.Kumaran had agreed to enjoy the suit property as joint tenants, which only means that both of them had agreed to have equal undivided share in the suit property. Hence it cannot be claimed by the learned counsels for the defendants 1 and 2 that the structures in the suit property has been put up by the first defendant alone from and out of her own earnings.

50. In fact the first defendant has stated in her evidence that she did not know when the building approval was obtained and she had did not file any document with regard to the buildings erected in the suit property. With the materials on record, the plaintiff has proved that his father V.P.Kumaran has got an undivided half share in the suit property by virtue of the sale deed Ex.P.1 and he had conveyed his undivided half share in his favour by virtue of Ex.P.2. As a rightful owner for the half share in the suit property, the plaintiff has demanded partition in respect of his half share from the first defendant , who is the other joint owner. Since she did not come forward for partition, the plaintiff has filed this suit for partition. In view of the above discussions, I proceed to hold that the settlement deed dated 10.11.1994 entered into between the first defendant and the deceased V.P.Kumaran



would not take away V.P.Kumaran's right to deal with his half share in the suit property. **Thus, Issue No.I is answered.**

51. The judicial separation granted by the High Court of the Republic of Singapore cannot operate as a transfer of interest in respect of the suit property. **Thus, Issue No.II is answered.**

52. The plaintiff has proved that the settlement deed dated 08.02.2008 is true and valid. In view of the same, he is entitled to get his half share in the suit property. **Thus, Issue No.III is answered.**

53. Since the plaintiff has proved to be the owner of the half share in the suit property, he is entitled to claim past and future mense profits in respect of the suit property and the quantum of which shall be determined through a separate proceedings. **Thus, Issue Nos.IV & V is answered.**

In the result, the suit in C.S.No.321 of 2012 is decreed as prayed and a preliminary decree for partition in respect of the half share of the plaintiff in the suit property is passed in favour of the plaintiff with costs.

27.09.2023

Speaking order

Index : Yes

Neutral Citation : Yes

sri

**Witnesses examined on the side of plaintiff:-**

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P.W.1	V.K.Vijayaragavan
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List of documents marked on the side of plaintiff:-

Ex.P1	Certified copy of the Sale Deed dated 08.02.1971
Ex.P2	Certified copy of the Settlement Deed dated 08.02.2008 in favour of plaintiff
Ex.P3	Office copy of the legal notice dated 06.05.2008 from the plaintiff to the first defendant
Ex.P4	Original reply dated 17.05.2008 by the first defendant
Ex.P5	Computer generated death certificate of V.P.Kumaran dated 16.12.2009
Ex.P6	Certified copy of the Memorandum of Deposit of Title Deed dated 23.01.2012
Ex.P7	Certified copy of the judgment and decree in O.S.No.421 of 2007 of the District Judge, Chengalpet dated 07.02.2007
Ex.P8	Certified copy of the Sale Deed by V.P.Kumaran to Leela Devi (Malayalam) dated 17.10.2008
Ex.P9	True copy of the Sale Deed by V.P.Kumaran to Leela Devi (Translation in English) dated 17.10.2008
Ex.P10	Series of computer generated property tax receipts in respect of suit property (3 nos), marked during DW1cross

Witnesses examined on the side of defendants:-

D.W.1	Kunnoth Kunji Kannan Padmakshi @ Padma
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List of documents marked on the side of plaintiff:-

Ex.D1	(21 pages) are the certified copies of the petition dated 25.05.1995 for divorce filed by late V.P.Kumaran in A.No.1417/1995 with the deed of settlement dated 10.11.1994, order of the the High Court of Republic of Singapore dated 30.04.1996 approving the said deed of settlement with the consent of both sides and the certificate of the said court dated 24.05.1996 making the decree of divorce.
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27.09.2023

Copy to :

- 1.The Sub Assistant Registrar,
Original Side, High Court of Madras.
- 2.The Record Keeper,
Original Side Records Section,
High Court of Madras.



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C.S.No.321 of 2012



R.N.MANJULA, J.

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Pre-Delivery Judgment made in
C.S.No.321 of 2012

27.09.2023