



A.S.Nos.943 of 2019 & 126 of 2023
and S.A.No.37 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 25.03.2024	Pronounced on 01.07.2024
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CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

A.S.Nos.943 of 2019 & 126 of 2023

and

S.A.No.37 of 2018

and

C.M.P.Nos.647 of 2018, 27155 of 2019 & 5074 of 2023

A.S.No.943 of 2019

O.P.Sivakumar
S/o.Late O.D.Premraj
Jalan Parayangan No.88, Mediterrania 1
Sentul City, Bogor 16810
Indonesia

... Appellant

Vs.

O.P.Bhaanumathee
D/o.Late O.D.Premraj
W/o.Murugadoss
No.15-B, Nahar Kiran Flats
Jeevanandam Street, Lakshmipuram
Tiruvanmiyur, Chennai 600 041

... Respondent

PRAYER: This Appeal is filed under Section 96 of CPC, against the preliminary Decree and Judgment dated 17.09.2019 passed in



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O.S.No.6042 of 2015, on the file of the XVI Additional Judge, City Civil
Court, Chennai.

For Appellant : Mrs.Chitra Sampath
Senior Counsel
for Mr.N.Premkumar

For Respondent : Mr.B.K.Sreenivasan

A.S.No.126 of 2023

O.P.Bhaanumathee
D/o.(Late) O.D.Premraj
W/o.Murugadoss
(*was previously residing at*)
No.15-B, Nahar Kiran Flats
Jeevanandam Street, Lakshmipuram
Tiruvanmiyur, Chennai 600 041
(*and is presently residing at*)
Flat No.4-D, Nahar Jaishree, Plot No.IX,
Sannathi Street, Sadagopan Nagar,
Jalladianpet, Pallikaranai
Chennai 600 100

... Appellant

Vs.

O.P.Sivakumar
S/o.(Late) O.D.Premraj
JL.Parayanjan, NO.88, Medi I, Sontui City
Bogor, Indonesia

... Respondent

PRAYER: This Appeal is filed under Section 96 of CPC, against the
Judgment and Decree dated 17.09.2019 passed by the XVI Additional
Judge, City Civil Court, Chennai, in O.S.No.6042 of 2015.



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For Appellant : Mr.B.K.Sreenivasan

For Respondent : Mrs.Chitra Sampath
Senior Counsel
for Mr.N.Premkumar

S.A.No.37 of 2018

O.P.Banumathi
D/o.(Late) O.D.Premraj
W/o.Murugadoss
Old No.1, New No.1, 22nd Street
Third Main Road, Indira Nagar
Adyar, Chennai 600020
(*presently residing at*)
No.15-B, Nahar Kiran Flats
Jeevanandam Street, Lakshmipuram
Tiruvanmiyur, Chennai 600 041

... Appellant

Vs.

O.P.Sivakumar
S/o.(Late) O.D.Premraj
“Amman Arul”, No.234, 39th Street
8th Sector, K.K.Nagar West,
Chennai 78
(*presently residing at*)
JL.Parayanjan, No.88, Medi I,
Sonuti City, Bogor, Indonesia.

... Respondent

PRAYER: This Appeal is filed under Section 100 of CPC, against the Judgment and Decree dated 20.09.2017 passed by the learned XIX Additional Judge, City Civil Court, Chennai in A.S.No.227 of 2016, allowing the Appeal and setting aside the Judgment and Decree dated



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17.08.2015 passed by the learned VI Assistant Judge, City Civil Court,
Chennai in O.S.No.3445 of 2013.

For Appellant : Mr.B.K.Sreenivasan

For Respondent : Mrs.Chitra Sampath
Senior Counsel
for Mr.N.Premkumar

COMMON JUDGMENT

A.S.No.943 of 2019 and A.S.No.126 of 2023 have been filed
against the Decree and Judgment dated 17.09.2019 passed in
O.S.No.6042 of 2015, on the file of the XVI Additional Judge, City Civil
Court, Chennai, by the Defendant & Plaintiff respectively.

2.S.A.No.37 of 2018 has been filed against the Judgment and
Decree dated 20.09.2017 passed by the learned XIX Additional Judge,
City Civil Court, Chennai in A.S.No.227 of 2016.

3.C.M.P.No.647 of 2018 has been filed to grant interim stay of
operation of the Judgment and Decree dated 20.09.2017 passed in
A.S.No.227 of 2016, on the file of the XIX Additional City Civil Court,



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Chennai, pending disposal of the Second Appeal.

4.C.M.P.No.27155 of 2019 has been filed to stay all further proceedings pursuant to the preliminary Decree dated 17.09.2019 passed in O.S.No.6042 of 2015, on the file of the XVI Additional City Civil Court, Chennai, pending disposal of A.S.No.943 of 2019

5.C.M.P.No.5074 of 2023 has been filed to grant an order of Ad. interim injunction restraining the Respondent and his agents, from alienating or encumbering or in any manner dealing with the Suit property, namely the property consisting of land measuring 3,760 sq. ft. and the building thereon at Plot No.234, 39th Street, 8th Sector, K.K.Nagar, Chennai 600078, comprised in Survey No.262/2B and 262/3 (part), Kodambakkam Pudur Part II, Mambalam-Guindy Taluk, Chennai, more fully described in the schedule, pending disposal of A.S.No.126 of 2023.

6.The Appellant and Respondent in all the cases are Brother (O.P.Sivakumar) and Sister (O.P.Bhaanumathee). This is the fourth



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round of litigation between the parties.

7(a).In respect of A.S.No.943 of 2019, the Respondent/Plaintiff filed Suit for partition claiming $\frac{1}{2}$ share in the suit property. The Respondent/Plaintiff filed a Suit for partition for separate possession of the suit property and for rendition of the accounts.

7(b).The suit property is located in survey No.262/2B and 262/3(part) Kodambakkam Pudur part II, Mambalam Guindy Taluk, Chennai consisting of land measuring 3760 sq. ft., and the building thereon at Plot No.234, 39th Street, 8th Sector, K.K.Nagar, Chennai. There is no dispute with regard to the identity of the property.

7(c).One O.D.Premraj was working in Tamil Nadu Electricity Board. His wife was one Chellam. She was working as teacher in a Corporation School at Chennai. The suit property was originally belonged to Tamil Nadu Housing Board. O.D.Premraj was allotted the land measuring 3760 sq. ft, through an allotment order Lr.No.GI.2/249/70. The certified copy of allotment order was marked as



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Ex.A1. Subsequently on 24.12.1971 a lease cum sale agreement was entered into between Tamil Nadu Housing Board and O.D.Premraj in respect of the said land. The certified copy of lease cum sale agreement dated 24.12.1971 has been marked as Ex.A2. The said O.D.Premraj had paid the full tentative cost of Rs.10,497/- for plot No.234. Therefore the Tamil Nadu Housing Board had issued a certificate to that effect in favour of O.D.Premraj. The certified copy of the certificate was marked as Ex.A3. In Ex.A3 certificate itself the Tamil Nadu Housing Board has stated that the possession of the plot was handed over to O.D.Premraj on 07.02.1972 and title will be transferred to him on completion of five years from the date of allotment or completion of building on the plot whichever is later.

7(d).Upon getting the certificate, O.D.Premraj applied for planning permit for construction of house. The planning permit issued by the Corporation of Madras was marked as Ex.A4. After constructing the house, O.D.Premraj was living in the house along with his wife and two children namely the Plaintiff and Defendant.



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7(e).The said O.D.Premraj died intestate on 18.08.1984 leaving his wife Chellam, Plaintiff and Defendant as his legal heirs. In the meanwhile, Tamil Nadu Housing Board executed a sale deed dated 24.09.1985 in respect of the suit lands in favour of Chellam, the wife of O.D.Premraj. It is alleged that the Plaintiff and Defendant were minors at the time of sale deed. Subsequently, the Plaintiff's mother had executed a settlement deed in respect of entire suit property in favour of Defendant. The Plaintiff was stood as attesor in the said settlement deed. The certified copy of settlement deed dated 8.2.2007 has been marked as Ex.A6. Subsequently, the Defendant got revenue records in his favour. The property tax receipt, EB connection, patta, sanctioned plan for construction building were marked as Ex.B8, Ex.B.9, Ex.B.10, Ex.B.17, ExB.18, Ex.B.19 and Ex.B.20.

8.For the sake of convenience the parties are referred to as Mother (Chellam), Father (O.D.Premraj), Brother (O.P.Sivakumar) and Sister (O.P.Bhaanumathee).

9.The first round of litigation:



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The Mother (Chellam) along with his Son [Brother (O.P.Sivakumar)] filed a Suit before the original side of the High Court seeking declaration of settlement deed executed by her on 08.02.2007 as sham and nominal and also for declaration that the suit property belong to her, subsequently Mother (Chellam) withdrew C.S.No.483 of 2017 as could be seen from Ex.B1.

10.The second round of litigation:

The Brother (O.P.Sivakumar) and Mother (Chellam) filed O.S.No.4829 of 2011 for the relief of permanent injunction. The Sister (O.P.Bhaanumathee) contested the Suit and the Suit was decreed in favour of the Brother (O.P.Sivakumar). There was no appeal against the Suit as could be seen from Ex.B11.

11.After the second round of litigation, the Mother (Chellam) died on 05.09.2013, leaving behind the Sister (O.P.Bhaanumathee) and Brother (O.P.Sivakumar) viz., Plaintiff and Defendant as legalheirs.

12(a).The third round of litigation:



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The Brother (O.P.Sivakumar) filed a Suit in O.S.No.3445 of 2013 before the VI Assistant Judge, City Civil Court, Chennai, for the relief of permanent injunction against the Sister (O.P.Bhaanumathee). After trial, the Suit was dismissed as could be seen from Ex.A6. The written statement in O.S.No.3445 of 2013, Judgment and Decree in O.S.No.3445 of 2013 were marked as Ex.A7, Ex.A8 & Ex.A9 respectively.

12(b).Aggrieved against the said Decree and Judgment, the Brother (O.P.Sivakumar) preferred Appeal Suit No.227 of 2016 before the XIX Additional City Civil Court, Chennai. In that Appeal, notice served on the Sister (O.P.Bhaanumathee) and she entered appearance and after hot contest the Appeal was allowed as could be seen from Ex.B4 and Ex.B5. No further appearance by the Sister (O.P.Bhaanumathee). And the fourth round of litigation is in Suit No.6042 of 2015.

13(a).In short, the case of the Sister (O.P.Bhaanumathee) is that the suit property was originally belonged to her Father (O.D.Premraj), after his demise, herself, Mother (Chellam) and Brother (O.P.Sivakumar)



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have got undivided 1/3rd share and after the demise of Mother (Chellam), Sister (O.P.Bhaanumathee) and Brother (O.P.Sivakumar) have got undivided 1/2 share in the suit property. Hence the Suit.

13(b).The Brother (O.P.Sivakumar) both in his pleadings as well as in his evidence stated that though the Father (O.D.Premraj) was allotted with land by the Tamil Nadu Housing Board, the said Board transfer the title of the suit property in the name of Mother (Chellam) through a registered sale deed dated 24.09.1985. On attaining majority, Sister (O.P.Bhaanumathee) has not challenged the sale deed and hence it is not open to challenge the same after 25 years. Consequently, as per the settlement deed executed by the Mother (Chellam) under Ex.B6 in favour of the Brother (O.P.Sivakumar) on 08.02.2007, the Brother (O.P.Sivakumar) has become an absolute owner of the property.

13(c).To substantiate the pleadings, the Sister (O.P.Bhaanumathee) examined herself as PW1 and marked Ex.A1 to Ex.A10 and the Brother (O.P.Sivakumar) was examined as DW1 and Ex.B1 to Ex.B.10 were marked.



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13(d).The trial Court has framed three issues and subsequently additionally four issues have been framed.

1.Whether the Plaintiffs are entitled for preliminary decree of partition of half share in the suit schedule property?

2.Whether the Plaintiff is entitled for decree for rendition of accounts from the Defendant in the suit schedule property?

3.To what other relief?

Additional issues:

1.Whether the Plaintiff has got undivided $\frac{1}{2}$ share in respect of the suit schedule property?

2.Whether the mother of the Plaintiff and Defendant namely Chellam is entitled to execute the settlement deed dated 8.2.2007 in favour of the Defendant?

3.Whether the Defendant is an absolute owner of the suit property by virtue of settlement deed dated 8.2.2007?

4.Whether the suit is hit by principle of res judicata in view of judgment and decree passed in O.S.No.4829 of 2011 by the VIII Assistant Judge, City Civil Court, Chennai dated 27.02.2013?

13(e).On considering both oral and documentary evidences, the trial Court held that mere execution of settlement deed by the Mother



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(Chellam) in favour of the Brother (O.P.Sivakumar) under Ex.B6 will not preclude the Sister (O.P.Bhaanumathee) from claiming the property. The trial Court further held that the suit for permanent injunction was not operated as *resjudicata* in a suit for title or partition. The trial Court further held that though the sale deed stands in the name of Mother (Chellam), the property was belonged to Father (O.D.Premraj) and on his death, the Mother (Chellam), Brother (O.P.Sivakumar) and Sister (O.P.Bhaanumathee) were entitled for 1/3rd share and the settlement deed executed by the Mother (Chellam) is valid only to the extent of 1/3rd share of the Mother (Chellam) and therefore, the Brother (O.P.Sivakumar) is entitled to $1/3 + 1/3 = 2/3$ share. For the above said reasons, the trial Court has granted preliminary decree of 1/3rd share to the Sister (O.P.Bhaanumathee).

13(f).Aggrieved against the grant of Decree of 1/3rd share the Brother (O.P.Sivakumar) filed A.S.No.943 of 2019. As against the allotted portion viz., granting 1/3rd instead of $\frac{1}{2}$, the Sister (O.P.Bhaanumathee) filed A.S.No.126 of 2023. Since both the Appeals are arising out of the very same issue, the Appeals have been heard



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together and common order is passed.

14.Heard the learned counsel appearing on both sides.

15.After hearing the learned senior counsel appearing on behalf of the Brother (O.P.Sivakumar) and the learned counsel appearing on behalf of the Sister (O.P.Bhaanumathee), the following points are raised for determination of the issue:

- 1.Whether the Sister (O.P.Bhaanumathee) is entitled for $\frac{1}{2}$ share in the suit property?
- 2.Whether the Mother (Chellam) is entitled to execute Ex.B6 settlement deed dated 08.02.2007 in favour of the Brother (O.P.Sivakumar), if so to what extent?
- 3.Whether the Father (O.D.Premraj) is the owner of the property as pleaded by the Sister (O.P.Bhaanumathee) or as per sale deed dated 24.09.1985, the Mother (Chellam) is the owner of the property as pleaded by the Brother (O.P.Sivakumar)?
- 4.Whether the sale deed executed by the Tamil Nadu Housing Board in favour of Mother (Chellam) is sham and nominal?
- 5.Whether the Suit is hit by *resjudicata* on the basis of



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O.S.No.4829 of 2011?

6. Whether the Suit is hit by *resjudicata* as per the judgment made in O.S.No.3445 of 2013?

16. On a combined reading of Exs.A1, A2 & A3, this Court finds that initially the Housing Board has allotted the land measuring to an extent of 3760 sq. ft., to Father (O.D.Premraj) and subsequently lease cum sale agreement was entered on 24.12.1971 between the said persons. The cost has been paid by the Father (O.D.Premraj), but no document has been filed to that effect by the Plaintiff. Mother (Chellam) was working as Head Master in a High School and the same was not disputed. It appears that Mother (Chellam) filed an application for grant of planning permission, as could be seen from Ex.A4, which is of year 1982. That building was subsequently demolished and fresh building was constructed by Brother (O.P.Sivakumar), as could be seen from Ex.B.13 and Ex.B.18, the same is discussed infra.

17. The Father (O.D.Premraj) was the original allottee by Ex.A1 allotment order dated 30.10.1971 and he died on 18.08.1984, leaving



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being his wife viz., Chellam and Plaintiff and Defendant as legalheirs.

The Mother (Chellam) died on 05.09.2013. The sale deed by the Housing Board in favour of the Mother (Chellam) is of the year 1985. Now the C.M.P.No.11828 of 2020 is ordered and this document taken on record as Ex.B21. The case of daughter is that at the relevant point of time both son [Brother (O.P.Sivakumar)] and daughter [Sister

(O.P.Bhaanumathee)] are minors and therefore, document has been executed in favour of the Mother (Chellam). Per contra, the case of the Brother (O.P.Sivakumar) is that Mother (Chellam) was working as Head Master in a High School, she contributed the amount and obtained the sale deed from the Tamil Nadu Housing Board. Even after obtaining the majority, the daughter has not challenged the said sale deed executed by the Housing Board in favour of the Mother (Chellam). This vital aspect of the factual background has not been looked into in the earlier litigation, including the trial Court which rendered the impugned judgment.

18.The trial Court appears to have been get along with the facts



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given by the Brother (O.P.Sivakumar) in O.S.No.3445 of 2013, wherein allotment has been made initially in favour of the Father (O.D.Premraj) and the said answer has been taken as a admission and the trial Court rendered baseless finding that admission of the Brother (O.P.Sivakumar) is valid. This Court is of the considered view that when the sale deed admittedly stands in the name of the Mother (Chellam), no oral evidence can be adduced affecting the title. It remains to be stated that the Mother (Chellam) during her life time has filed C.S.No.483 of 2011 and both the Mother (Chellam) and Brother (O.P.Sivakumar) filed O.S.No.4829 of 2011 under Ex.B11, in which it is a specific stand of the Mother (Chellam) that she is the sole and absolute owner of the property.

19.To sum up, the Mother (Chellam) initially, filed Suit to set aside Ex.B6 settlement deed in favour of her son [Brother (O.P.Sivakumar)] in C.S.No.483 of 2011 and after withdrawing the suit she filed another suit along with Brother (O.P.Sivakumar) in O.S.No.4829 of 2011 for permanent injunction against the Sister (O.P.Bhaanumathee). A specific finding has been rendered in the Suit that the Mother (Chellam) is an absolute owner of the property and she



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had executed settlement in favour of the Brother (O.P.Sivakumar) and they are the owner of the property, consequently, injunction has been granted against the Sister (O.P.Bhaanumathee). The trial Court has lost sight of the above fact. Another suit was filed by the Brother (O.P.Sivakumar) in O.S.No.3445 of 2013. The same was decreed on 17.08.2015. Against which A.S.No.227 of 2016 was preferred, whereby the Decree granted in O.S.No.3445 of 2013 got set aside and there is a specific finding given by the trial court that on the date of the settlement by the Mother (Chellam) in favour of the Brother (O.P.Sivakumar) is valid as it is attested by none other than the Sister (O.P.Bhaanumathee). Hence she had knowledge. It remains to be stated that the Respondent/Plaintiff [Sister (O.P.Bhaanumathee)] as PW1 in the witness box admitted that she is L.L.M., degree holder and a practising advocate, she was also working as guest faculty in Dr.Ambedkar Law University, Taramani and hence the ignorance of law cannot be pleaded.

20.The trial Court appears to have been slept over the entire trial, without insisting the parties to file the document, which is under challenge as stated supra. Now the said document is taken on file as



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Ex.B.21.

21.Be that as it may, in view of Ex.B.21 and in view of the admitted position of the parties, the sale deed stands in the name of the Mother (Chellam). Though the Sister (O.P.Bhaanumathee) claimed that she was a minor at the time of execution of sale deed by the housing board, a perusal of Ex.A1, Ex.A2 & Ex.A3 and admission of the parties as PW1 and DW1, reveals that the date of birth of the Sister (O.P.Bhaanumathee) is 25.08.1968 and the Brother (O.P.Sivakumar) is 30.06.1970, Father (O.D.Premraj) died in the year 1984 and the sale deed executed in the year 1985.

22.On a close perusal of Ex.A2/lease cum sale agreement, a specific clause has been incorporated that in case of death of the lessee/purchaser, if all the instalments have been paid, the sale will be executed in the name of the heirs of the Lessee/Purchaser or any one of them with the consent of all the others in writing. Therefore, as per Ex.A2, if the allottee died, the Chairman, Tamil Nadu Housing Board has got discretion to execute the sale in the name of any one of them with the



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consent of all other heirs in writing. In the case on hand, the sale deed for the suit property has been executed in the name of Mother (Chellam). As per the admission of PW1, her date of birth is 25.08.1968 and she could have been attained majority during 1986 and she ought to have filed a suit by challenging the sale deed in favour of the Mother (Chellam). For the reasons best known, even after marriage she has not filed any suit for partition, however, she tried to create rucuks in the family, resulted in filing of the Suit by the Mother (Chellam) in the year 2013. Hence, in the absence of any challenge by the Sister (O.P.Bhaanumathee), challenging the sale deed in favour of the Mother (Chellam) of the year 1985 within the statutory period, now she cannot challenge after lapse of 25 years. The trial Court appears to have lost sight of this legal position. However, plaintiff's facts appear to have reproduced in the written statement filed before the trial Court, such attitude of the trial Court is hereby deprecated.

23.Initially the Mother (Chellam) filed suit against the Son [Brother (O.P.Sivakumar)], subsequently, she withdrew the same. It remains to be stated that the Mother (Chellam) along with Son [Brother



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(O.P.Sivakumar)] filed Suit in O.S.No.4829 of 2011 for permanent injunction against the Sister (O.P.Bhaanumathee). On perusal Ex.B11/Judgment passed in O.S.No.4829 of 2011 reveals that the trial Court (in O.S.No.4829 of 2011) has taken note of Ex.A10 therein, which is a copy of the letter to the Executive Engineer, stating that Sister (O.P.Bhaanumathee) has no objection to transfer the allotment in the name of the Mother (Chellam) and requested to execute necessary document in her favour. The trial Court in Ex.B.11 observed as follows:

“9.The undisputed fact about this case is that the suit property was originally allotted to Shri O.D.Premraj, father of the first plaintiff and the defendant and after his death sale deed was executed in favour of his wife, the second plaintiff. As per Ex.A10 the defendant had given letter to the Housing Board stating that she has no objection to transfer the allotment in the name of her mother Smt.E.Chellam and requested to execute necessary document in her favour. There may not be any dispute that the sale deed for the suit property was came to be executed in favour of the second plaintiff therefore, the second plaintiff became the absolute owner of the suit property. It is evident from Ex.A11 that as owner, the second plaintiff has mortgaged the property and



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the first plaintiff and the defendant have signed in the said document as security as per the recitals. Therefore, the second plaintiff had exercised her right as absolute owner in the suit property as per Ex.A11.

10.As per Ex.A1, the suit property was settled in the name of the first plaintiff and in the said settlement deed the plaintiff had signed as witness. Therefore, as per law the first defendant is estopped from denying the factum of execution of settlement deed and the acceptance by the defendant for having signed as witness in the settlement deed would amount to proving the execution of the document. Therefore, the contention of the defendant that she is co-owner and as such she is entitled to 1/3 share in the suit property cannot be accepted.”

24.The Sister (O.P.Bhaanumathee) has not filed any appeal against the above finding as to the title of the Mother (Chellam) and the settlement deed executed by the Mother (Chellam) in favour of the Brother (O.P.Sivakumar). The trial Court has relied upon the decision of this Court that mere attestation will not operate as estoppel. The same will be discussed infra.



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25.In Ex.A10 in O.S.No.4829 of 2011, it was observed that the Sister (O.P.Bhaanumathee) gave letter of consent for execution of sale deed in favour of the Mother (Chellam). But for the reasons not known the said letter was not marked in present Suit O.S.No.6042 of 2015. Hence, it is found that the Plaintiff has suppressed the material fact of giving no objection, whereby admitting the title of the Mother (Chellam) by suppressing material documents she claimed and challenged the title of the Mother (Chellam) in the present Suit.

26.The Mother (Chellam) along with Brother (O.P.Sivakumar) filed a Suit in O.S.No.4829 of 2011, wherein the Mother (Chellam) has admitted the execution of the settlement deed Ex.B6 dated 08.02.2007 in favour of the Brother (O.P.Sivakumar). When the executor himself admitted the truth and validity of the document, it is not open to the third party to question, except on the capacity to convey the entire property as stated supra. Based upon the letter given by the very same Sister (O.P.Bhaanumathee) to the housing Board, the Housing Board appears to have executed the sale deed in favour of the Mother (Chellam) in the year 1985. If the Sister (O.P.Bhaanumathee) had any grievance over the



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conveyance of the entire property under the sale deed by the Housing Board, she ought to have filed necessary Suit to set aside the sale deed in favour of the Mother (Chellam) as per Hindu Minority and Guardianship Act, immediately within a period of three years on attaining the majority. Even in the year 2013 she has not filed any Suit, only after the death of the Mother (Chellam) she filed the present Suit, wherein she challenged the sale deed in favour of the Mother (Chellam) for entire extent in the year 2015, but sale deed is of the year 1985 for the past 30 years she has slept over the matter as stated supra.

27.The Sister (O.P.Bhaanumathee) is the law graduate, practising advocate and also working as guest faculty in Dr.Ambedkar Law University. Hence, she cannot plead the ignorance of law, though pleaded, it is not excusable.

28.In the absence of any challenge in O.S.No.4829 of 2011 and O.S.No.3445 of 2013 or filing of any Suit challenging the illegality of extent conveyed to her Mother (Chellam) in the year 1985, after 30 long years, the same cannot be challenged and hence, the trial Court has not



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looked into this vital aspect and plea of the Sister (O.P.Bhaanumathee) that the Mother (Chellam) is not the owner of the entire extent of the land. The Mother (Chellam) is the owner of the 1/3rd of land stands negatived.

29.It remains to be stated that in respect of Ex.B.6 settlement deed executed by the Mother (Chellam) to the Brother (O.P.Sivakumar), their rival contentions are as under:

29(a).According to the Sister (O.P.Bhaanumathee), Ex.B6 settlement deed was executed for the purpose of obtaining Visa, so as the Brother (O.P.Sivakumar) settled in Canada. On the other hand, it is a case of the Brother (O.P.Sivakumar) that the Mother (Chellam) out of love and affection had executed the property. Since the construction put up by the Mother (Chellam) at the earlier point of time was weak, Brother (O.P.Sivakumar) has demolished and reconstructed the same. Reliance was placed upon Ex.B.13 and Ex.B.18 certified copies of the sanctioned plans. Thereafter water and sewerage taxes have been paid and property tax has also been paid and electricity connection card also in the name of



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the Brother (O.P.Sivakumar) as could be seen from Ex.B2, Ex.B3, Ex.B.16, Ex.B.17, Ex.B.19 & Ex.B.20.

29(b).Though the Sister (O.P.Bhaanumathee) could take the stand that the settlement was executed for the limited purpose of getting Visa, the same was not in title in purpose or in any document evidence or in any oral evidence. It remains to be stated that the donor of Ex.B6 settlement deed viz., Mother (Chellam) herself filed O.S.4489 of 2011, wherein she admitted her execution.

29(c).Therefore, the third party to the document cannot put a different story to challenge this settlement deed. Therefore, the finding of the trial Court that the contention of the Sister (O.P.Bhaanumathee) that settlement deed was exclusively made for the limited purpose of getting visa is hereby negatived.

30.The next point is that in view of the specific statement by the Mother (Chellam) in the previous proceedings, wherein she had admitted that Ex.B6 settlement deed was executed by her in favour of her son viz.,



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Sivakumar out of love and affection is upheld.

31.The next point is, to what extent the Mother (Chellam) has right over the property to execute the settlement deed. Though the Sister (O.P.Bhaanumathee) contended that the Mother (Chellam) did not have any right to execute the settlement deed, for the reasons stated supra, she is the absolute owner of the property by virtue of sale deed executed by the housing board in the year 1985. In absence of any challenge during the statutory period, Mother (Chellam)'s right over the property has become absolute and as noted supra in the preceding paragraphs.

32.Whether mere attestation by a party amounts to knowledge as to its contents, is to be considered in the light of the pleadings and evidence let in before the trial Court. It is a specific case of the Brother (O.P.Sivakumar) that the Sister has attested the settlement deed executed by the Mother (Chellam) in favour of Brother (O.P.Sivakumar) under Ex.B.6, wherein her Mother (Chellam) as an absolute owner of the entire property has settled the suit property in favour of her son viz., Brother (O.P.Sivakumar) amounts to knowledge and thereby whether she was



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estopped from raising the Suit by challenging the sale deed.

33.A perusal of the prayer shows that it is a Suit for partition simplicitor and there is no relief sought for the declaration of Ex.B6/ settlement deed dated 08.02.2007. The limitation aspect has been discussed infra.

33(a).The effect of the pleadings was that the Sister (O.P.Bhaanumathee) was a consenting party for the execution of the settlement deed Ex.B6 dated 08.02.2007, executed by the Mother (Chellam) of the parties, in favour of the Brother (O.P.Sivakumar) and so, when, as the plaintiff, Sister (O.P.Bhaanumathee) alleged that she being a consenting party for such a settlement deed under Ex.B6, the onus of proof that this settlement deed was allowed to be executed by her only on the above said understanding is upon the Sister (O.P.Bhaanumathee) herself, whereas, the Sister (O.P.Bhaanumathee) failed to prove her allegations as made in her plaint.

33(b).Whether the Sister (O.P.Bhaanumathee) had knowledge



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about the contents of Ex.B6 settlement deed, the lower Court should have only taken into the status of the Sister (O.P.Bhaanumathee), who is a Master Degree holder in law, viz., L.L.M., and also, she is a practicing Advocate, as well as a visiting Professor of Ambedkar Law College, Chennai, and so, she cannot in any manner pretend as if that she did not know the contents of Ex.B6 settlement deed.

33(c).It is a settled law that mere attestation of a document does not amounts to notice or knowledge about the document. There is a clear distinction between the execution of the document and present the document for registration. However, it is to be stated that though mere attestation of the document does not amounts to notice of contents, attending circumstances has to be assessed and ascertained as to whether the person has a knowledge of contents before attesting the document. Whether she speaks the truth or otherwise, before the Court has to be ascertained from the other evidence. We look from this angle. During her cross examination as PW1, admitting that there was no such recital in Ex.B6 to the effect that only for the purpose of boosting the financial capacity of the Brother (O.P.Sivakumar) with the further statement, Sister



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(O.P.Bhaanumathee) did not know as to whether any separate memorandum was received from the Brother (O.P.Sivakumar) are totally unacceptable.

34.In the cross examination, as PW1 she had categorically admitted that she has also identified the Mother along with one M.Bharathi. On perusal of Ex.B6 settlement deed, she has attested the document as attesting witness and also identifying witness in the second page of the settlement deed. In normal circumstances, the documents would be executed by the executant or executants only at residence or a place, other than the office of the Sub Registrar or Registrar, and following the same, the documents would be presented for registration, and the person presenting the document would be identified two persons who could be either the attestors themselves, or different person. In the instant case, the attestation was made by the Sister (O.P.Bhaanumathee) along with one Bharathi, whereas, the Sister (O.P.Bhaanumathee) is not only an attestor to the document along with one M.Bharathi, but also both of them are the identifying witnesses before the office of the Sub Registrar at Virugambakkam and it can clearly demonstrate that the story



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put forth by the Sister (O.P.Bhaanumathee) as if that she did not know anything about the contents of the document cannot be countenanced.

35.Yet another point is that the Sister (O.P.Bhaanumathee) came out with her pleadings in the plaint, that the settlement deed Ex.B6 came to be executed by her Mother in favour of her Brother, to enable to boost the financial capacity of her brother, to get a visa for going to Canada, but later, the evidence as if that she did not know anything about the nature of the document Ex.B6 and its contents, and that she did not go through the document in the office of the Sub Registrar, especially when, she was not only the attesor to Ex.B6, but also an identifying witness. Hence the evidence of PW1 runs counter to the statement made in the pleadings.

36.On perusal of Ex.B6,as per the plaint allegations when Ex.B6 came to be executed by the deceased E.Chellam, the Mother of the parties hereto in favour of her only son viz., Brother (O.P.Sivakumar), in the circumstances, either by taking it for granted that it came to be executed only for that purpose as stated in the plaint, or in the manner as spoken to by Sister (O.P.Bhaanumathee) during her cross examination that they



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came to know about the same in the month of April or May of the year 2007, then, unless and until, the Sister (O.P.Bhaanumathee) instituted the suit to declare the settlement deed Ex.B6 as null and void, Ex.B6 settlement deed is very much binding upon the Sister (O.P.Bhaanumathee), and as such, the present suit for partition without a prayer for setting aside Ex.B6 settlement deed is not at all maintainable.

37.Thus, from the pleadings and evidence of Sister (O.P.Bhaanumathee) and answer elicited during her cross examination as PW1, this Court finds that going by the plea of the Sister (O.P.Bhaanumathee), Ex.B6 is a voidable document and thus, Ex.B6 being one voidable nature, in so far as the Sister (O.P.Bhaanumathee) is concerned, such a suit should have been taken by the Sister (O.P.Bhaanumathee), atleast within a period of three years from the month of May 2007. Whereas, the present suit had been instituted by the Sister (O.P.Bhaanumathee), only in the month of October 2015, and as such, the suit is hopelessly barred by limitation under Article 58 of the Limitation Act, the time from which period began to run was from the month of May 2007.



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38.The Sister (O.P.Bhaanumathee) having not instituted the suit, challenging Ex.B6 settlement deed, within the time allowed, under Article 58 of the Limitation Act, all her rights have become extinguished, in terms of the provisions contained under Section 27 of the Limitation Act. Therefore, on the point of limitation also she has to fall and thus, this Court finds that the attending circumstances touching upon Ex.B6 settlement deed and the evidence of the Sister (O.P.Bhaanumathee) runs contrary to the pleadings and in the cross examination she stands exposed.

39.In view of the overwhelming attending circumstances, she is not speaking truth, and the fact that she has also attested the document and her legal acumen as a L.L.M., degree holder and a practising advocate and she was also working as guest faculty in Dr.Ambedkar Law University, she cannot in any manner pretend as if she did not know the contents of Ex.B6 settlement deed and her attestation also will form part of the piece of evidence as to her contents. She was also present in the Sub Registrar's Office for identifying the Mother while registering the



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settlement deed in favour of the Brother (O.P.Sivakumar), for which she come with an explanation that in order to attend the professional duty for her client in the office of Sub Registrar, she was present at the very same Sub Registrar's office. Though such allegation has been raised by the Sister (O.P.Bhaanumathee), she came to the very same office in connection with her professional duty, she has not produced or deposed the details, for whom she came to the Sub Registrar's Office and this Court has no hesitation to held that she is whisking away from telling the truth before the Court.

39(a).And thus this Court finds that if there is overwhelming evidence on record from the mouth of PW1 herself, to discrete her own evidence with regard to alleged lack of knowledge as to the contents of Ex.B6 settlement deed and thus Sister (O.P.Bhaanumathee) was fully aware of the execution of Ex.B6 settlement deed by her Mother in favour of her Brother (O.P.Sivakumar). Even on the day when it came to be executed, she was a consenting party not only at the time of giving her consent for such execution, by attesting the signature, but also at the time of presenting the document for registration as identifying witness.



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Besides she is an educated personality, with practical knowledge in law, practicing Advocate and a visiting Professor to Ambedkar Law College, Chennai.

40.Hence this Court comes to the conclusion that though mere attestation of the document, *ipso facto* cannot lead to the conclusion that the attester knew the contents of the document. However attending circumstances are such compelling to show and demonstrate that the Sister (O.P.Bhaanumathee), who is PW1 knew the contents very well and thus this point is answered against the Sister (O.P.Bhaanumathee) and in favour of the Brother (O.P.Sivakumar).

41.Thus on the point of challenge as to the capacity of Mother to execute the settlement deed in favour of her son, in entirety of the land, this Court has noticed that the Sister (O.P.Bhaanumathee) herself as PW1 during her cross examination had admitted that after obtaining majority in the year 1987, she did not challenge the same, as she was in cordial relationship in the family and that so, there was no need to question the document, and that there arose no necessity to demand partition, and so,



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when, even as early as in the year 1987, she was conscious of the fact that the sale deed pertaining to the suit property stood in the name of her mother. Whatever may be the reason for not challenging the sale deed, the sale deed having been not challenged, then, within 3 years, after attaining the majority, her right to claim any interest over the suit property after the year 2000 had become extinguished by reason of Section 27 of the Limitation Act.

42.Coming to the point of decree in connection with award of means profit with regard to building, the Sister (O.P.Bhaanumathee) filed Ex.A4 planning perit. It is her own evidence as PW1 that at the time of the initial construction, there was only one floor with area of 744 sq. ft., which was subsequently demolished and fresh construction was put up by the Brother as could be seen from Ex.B.13 dated 09.07.2004 viz., sanctioned plan. As per the sanctioned plan, at present there is a ground floor and a first floor, each consisting of 1529 sq. ft. In the cross examination as PW1, she had admitted that she did not make any payment to the builders for the construction made by the Brother (O.P.Sivakumar) in the year 2004 and hence this Court infers that she has



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knowledge of construction even in the year 2004. Original building was in existence in the year 1982 and in the year 2004 it was demolished and reconstructed by the Brother (O.P.Sivakumar). Hence, the Sister (O.P.Bhaanumathee) is trying to burke the pumpkin in the rice as contended by the Brother (O.P.Sivakumar) found to have force.

43.When the constructions were made in the year 2004, under the sanctioned plan Ex.B13, and when, the Sister (O.P.Bhaanumathee) herself has not contributed anything towards the constructions, and even she denied the knowledge about such construction and wanted the Court to believe that the constructions put up under Ex.A4 read with Ex.B18 alone stood, it is illogical. Thus, the Sister (O.P.Bhaanumathee) had no right over the superstructure put by the Brother (O.P.Sivakumar), pursuant to Ex.B13 sanctioned plan.

44.Mrs.Chitra Sampath, Learned senior counsel also draw my attention on the point of limitation that the father of the parties O.D.Premraj died on 18.08.1984, and the Sister (O.P.Bhaanumathee) claims her right, treating the suit property as the property, forming part of



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the estate of her deceased father O.D.Premraj. But the suit had been instituted by her, for partition, after 31 years, and so, the suit is barred by limitation, having been not filed by her, within 12 years from the date of her attaining majority. In any event, in the year 1990, when the three years period after attaining majority in the year 1987, and so, the suit is hopelessly barred by limitation.

45.The trial Court held that the suit property belonged to O.D.Premraj, still it has not considered the question of limitation, in the suit instituted by the Sister (O.P.Bhaanumathee) for partition. Especially when the present suit came to be instituted by the Sister (O.P.Bhaanumathee) only in the month of October 2015, nearly after 31 years, from the date of the death of O.D.Premraj.

46.To sum up, the Sister (O.P.Bhaanumathee) had already suffered a Decree in O.S. No.4829 of 2011 wherein it had been held that the suit property absolutely belonged to the Mother viz., Chellam, and she had validly executed the Deed of Settlement in favour of her son viz., Brother (O.P.Sivakumar). Hence, the Sister (O.P.Bhaanumathee) cannot



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sue again for a share on the basis that the suit property continues to be a part of the estate of her deceased father. The Judgment in O.S. No.3445 of 2013 was set aside in the Appeal in A.S. No.227 of 2016 and the said Judgment had confirmed the absolute right of Mother (Chellam) to the entire suit property. O.S. No.4829 of 2011, operates as *resjudicata* in the present suit claim. The superstructure presently in the suit property was raised at the cost and expense of the Brother (O.P.Sivakumar) with the knowledge and consent of the Sister (O.P.Bhaanumathee).

47.In view of the above discussions, this Court holds that the Sister (O.P.Bhaanumathee) was estopped by her conduct from making any claim to the suit property on the following grounds:

- i).By signing as an attesting witness to the Settlement Deed dated 08.02.2007 executed in favour of the Brother (O.P.Sivakumar) by the Mother (Chellam).
- ii).Never challenging the absolute right of Mother, which she had asserted in C.S. No.483 of 2011.
- iii).Failure to raise objections to constructions made by the Brother (O.P.Sivakumar) in the suit property, and acquiring



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iv).Failing to challenge the Judgment and Decree in O.S.

No.4829 of 2011.

48.Hence the trial Court has committed error on all those aspects. All the points are answered in affirmation in favour of the Brother (O.P.Sivakumar) herein. In view of the above discussion, this Court holds that the Sister (O.P.Bhaanumathee) is not entitled for any relief.

49.Accordingly, the Appeal filed in A.S.No.943 of 2019 is allowed. Consequently, Decree and Judgment dated 17.09.2019 passed in O.S.No.6042 of 2015 by the learned XVI Additional Judge, City Civil Court, Chennai is hereby set aside.

50.In view of the discussions in the preceding paragraphs, whereby this Court has held for the reasons stated therein, Mother of the parties viz., Chellam is an absolute owner of the property and in Ex.B6 settlement deed she has settled the entire property in favour of the Brother



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(O.P.Sivakumar), who is the Appellant in A.S.No.943 of 2019. She is entitled for the entire extent of the land, both on facts and on the law of limitation. In view of the same the Brother (O.P.Sivakumar), who is the Defendant in O.S.No.6042 of 2015 is an absolute owner of the entire suit property and the Sister (O.P.Bhaanumathee) is not entitled for any share in the property. Accordingly, A.S.No.126 of 2023 stands dismissed, in view of the order passed in A.S.No.943 of 2019 as stated supra.

51.S.A.No.37 of 2018 is arising out of O.S.No.3445 of 2013 filed by the Brother (O.P.Sivakumar) seeking for permanent injunction against the Sister (O.P.Bhaanumathee). After trial the said Suit was dismissed. On appeal in A.S.No.227 of 2016 preferred by the Brother (O.P.Sivakumar), the appeal was allowed and an injunction has been granted against the Sister (O.P.Bhaanumathee), who is the Defendant therein and the Plaintiff in O.S.No.6042 of 2015. Aggrieved against the same, the Sister (O.P.Bhaanumathee) has preferred this Appeal in S.A.No.37 of 2018.

52.After trial in O.S.No.3445 of 2013, the trial Court has framed



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the following issues:

- 1. Whether the Plaintiff is entitled for the permanent injunction as prayed for?*
- 2. To what relief the Plaintiff is entitled for?*

53. For the reasons stated in the preceding paragraphs, this Court has come to the conclusion that by virtue of the sale deed executed by the housing board in favour of the Mother, the Mother being the absolute owner of the property, settled property to his viz., Brother. Now, he is the absolute owner of the property and hence in view of the decision in the above said Appeal Suits, which squarely covers all the issues in the Second Appeal, this Second Appeal filed by the Sister against the order made in A.S.No.227 of 2016 is devoid of merits and dismissed. Consequently, order passed in A.S.No.227 of 2016 dated 20.09.2017 by the learned XIX Additional Judge, City Civil Court, Chennai is hereby confirmed.

54. In fine,

- (i) A.S.No.943 of 2019 is allowed and A.S.No.126 of 2023 is



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dismissed. Consequently, Decree and Judgment dated 17.09.2019 passed in O.S.No.6042 of 2015 by the learned XVI Additional Judge, City Civil Court, Chennai is hereby set aside.

(ii) S.A.No.37 of 2018 is dismissed. Consequently, order passed in A.S.No.227 of 2016 dated 20.09.2017 by the learned XIX Additional Judge, City Civil Court, Chennai is hereby confirmed.

Consequently, connected Miscellaneous Petitions are closed. No costs.

01.07.2024
(2/2)

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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RMT.TEEKAA RAMAN, J.

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To
1.The XIX Additional Judge,
City Civil Court,
Chennai.

2.The XVI Additional Judge,
City Civil Court,
Chennai.

3.The VI Assistant Judge,
City Civil Court,
Chennai.

Pre-delivery common Judgment made in
A.S.Nos.943 of 2019 & 126 of 2023
and
S.A.No.37 of 2018
and

C.M.P.Nos.647 of 2018, 27155 of 2019 & 5074 of 2023

Dated: 01.07.2024
(2/2)