

A.S.(MD)No.33 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 02.08.2024

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

A.S.(MD)No.33 of 2013
and
CROS.OBJ(MD)No.19 of 2013

A.S.(MD)No.33 of 2013:

M.Manickavasagam

... Appellant

/Vs./

1.Ravikumar

2.Aishwarya

3.Malarkann

4.Manimaran

5.M.Manimegalai

6.M.Malaiyarasa Pandi

...Respondents

(1st respondent is declared as major and the guardianship of his mother Dhanalakshmi is discharged vide Court order dated 31.08.2023 made in C.M.P(MD)No.10930 of 2023 in A.S.(MD)No.33 of 2013)

(2nd respondent is declared as major and the guardianship of her mother Dhanalakshmi is discharged vide memo dated 02.08.2024)



A.S.(MD)No.33 of 2013

PRAYER: Appeal Suit filed under Section 96 r/w Order 41 Rule 1 & 2 of the Civil Procedure Code, to set aside the judgment and decree dated 18.07.2012 passed in O.S.No.63 of 2010 by the learned 6th Additional District Judge, Madurai.

For Appellant : Mr.G.Prabhu Rajadurai
For R1 & R2 : Mr.R.Aravindan
For R3 to R6 : Mr.M.Saravanan,
for Mr.R.Pon Karthikeyan

CROS.OBJ.(MD)No.19 of 2013

1.Malarkann
2.Manimaran
3.M.Manimegalai
4.M.Malaiyarasa Pandi ... Cross Appellants

/Vs./

1.M.Manickavasagam
2.Ravikumar
3.Aishwarya ... Respondents

(1st respondent is declared as major and the guardianship of his mother Dhanalakshmi is discharged vide Court order dated 31.08.2023 made in C.M.P(MD)No.10930 of 2023 in A.S.(MD)No.33 of 2013)

(2nd respondent is declared as major and the guardianship of her mother Dhanalakshmi is discharged vide memo dated 02.08.2024)



A.S.(MD)No.33 of 2013

PRAYER: Cross Objection filed under Order XLI, Rule 22 r/w Section 96(1) & (2) of the Civil Procedure Code, to set aside the judgment and decree dated 18.07.2012 passed in O.S.No.63 of 2010 on the file of the learned 6th Additional District Judge, Madurai.

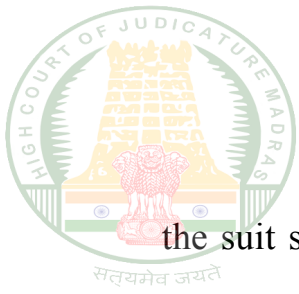
For Appellants : Mr.M.Saravanan,
for Mr.R.Pon Karthikeyan
For R1 : Mr.G.Prabhu Rajadurai
For R2 & R3 : Mr.R.Aravindan

COMMON JUDGMENT

This Appeal Suit is filed by the 3rd defendant in the suit to set aside the Judgment and Decree dated 18.07.2012 passed in O.S.No.63 of 2010, on the file of 6th Additional District Judge, Madurai.

2. The plaintiffs in the suit are the respondents 1 and 2 herein, the 3rd defendant in the suit is the appellant herein and the defendants 1, 2, 4 and 5 are the respondents 3 to 6 herein. For the sake of convenience, the parties shall be referred as plaintiffs and defendants as per the ranking in the suit.

3. The suit in O.S.No.63 of 2010 was filed by the plaintiffs against the defendants for passing preliminary decree for partition claiming 2/15th shares in

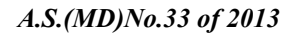


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the suit schedule property. The said suit was allowed granting 2/15th share to the plaintiffs and Rs.2,000/- each towards maintenance for maintaining the minor children. Aggrieved over the same the 3rd defendant had filed the present Appeal Suit.

4. Pending the present Appeal Suit, the parties have arrived at settlement and had filed a joint compromise memo dated 02.08.2024. As per the joint compromise memo, the respondents 1 and 2 are allotted to the shares as per the measurement shown in the sketch. The appellant / Manickavasagam is the son of 3rd respondent / Malarkann and the respondents 4 to 6, namely, Manimaran, Manimegalai and Malaiyarasa Pandi are the sons and daughters of 3rd respondent / Malarkann. The respondents 1 and 2 herein / plaintiffs are the son and daughter of Manickavasagam / appellant herein. In the said allotment, from the share of Manickavasagam, the respondents 1 and 2 are entitled to four cents and the remaining portion will be allotted to the father of Manickavasagam namely Malarkann.

5. For easy reference, the Joint Compromise Memo dated 02.08.2024 is extracted hereunder:- (scanned copy)



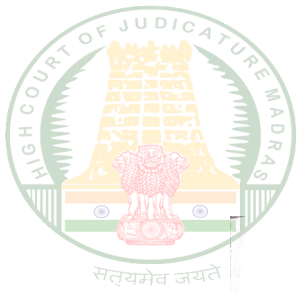
OPY The appellant and respondents 4 to 6 are children of the 3rd respondent. The appellant married one Dhanalakshmi, and out of wedlock, the respondents 1 and 2 were born to them. Due to marital discord, the appellant and Dhanalakshmi are living separately. Respondents 1 and 2 filed O.S.No.63 of 2010 on the file of VI Additional District Judge's Court, Madurai, claiming partition of their 2/15th share in the suit property. By a judgment and decree dated 18.07.2012, the trial Court decreed the suit and granted a preliminary decree allotting 2/15th share in the suit property to respondents 1 and 2. The trial Court has also awarded Rs.4000/- to respondents 1 and 2 as maintenance. Challenging the decree, the appellant filed the above appeal in A.S.(MD)No.33 of 2013. Respondents 3 to 6 filed Cross Appeal No.19 of 2013. The 3rd respondent has shops in the above property and resides in the building constructed on the property with his wife. As the litigation has been pending for several years, close relatives and well-wishers have advised the parties to settle the matter. Now, the appellant and the respondents have settled the matter on the following terms:

7 Name

7 B. Maimelshel

x free

x K. n. m. a. l. e. d. i. o. n.



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a) The appellant and the respondents have divided the suit property, and the vacant land situated on the extreme eastern side of the property measuring 30 feet east-west and 60 feet north-south marked as 'ABCD' in the sketch annexed herewith is allotted to the share of the respondents 1 and 2.

b) The area marked as 'CDEF' in the sketch is allotted to the share of the appellant Manickavasagam.

c) The area marked as 'EFGF' in the sketch is allotted to the share of 6th respondent Malaiyarasa Pandi.

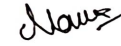
d) The area marked as 'GHIJKLMN' in the sketch along with building is allotted to the share of 5th respondent Manimekalai.

e) The area marked as 'MNOPQRS' and 'QRST' in the sketch along with building is allotted to the share of 4th respondent Manimaran.

f) The area marked as 'PQTU' in the sketch along with building is allotted to the share of 3rd respondent Malarkann.

g) The parties took possession of their respective shares and pray this Hon'ble Court to pass a final decree allotting respective shares to the parties and also record delivery of possession.

x  Manickavasagam,

x  Nave

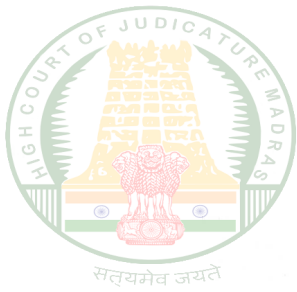
x Ravi Kumar

x B. Manimekalai

x M. Ishay.

x K. M. Malarkann

x  Manimaran



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h) The respondents 1 and 2 hereby acknowledge that they received the maintenance amount of Rs.4000/- from the 3rd respondent from the date of filing of the suit to till 31.07.2024.

i) The respondents 1 and 2 hereby agree to set aside the clause 2 of the decree in O.S.No.63 of 2010 regarding payment of Rs.4000/- towards maintenance.

j) There is no mutual claim between the respondents 1 and 2 and the respondents 3 to 6

Dated at Madurai on this the 02nd day of August-2024

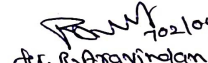

Appellant

Ravi Kumar

M. Ishay.

Respondents 1 & 2

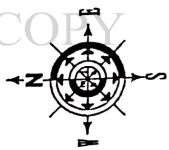
K. Sathya Prabhakar (SASIPRABHA)
For Counsel for Appellant


Dr. R. Aravindan
Counsel for Respondents 1 & 2

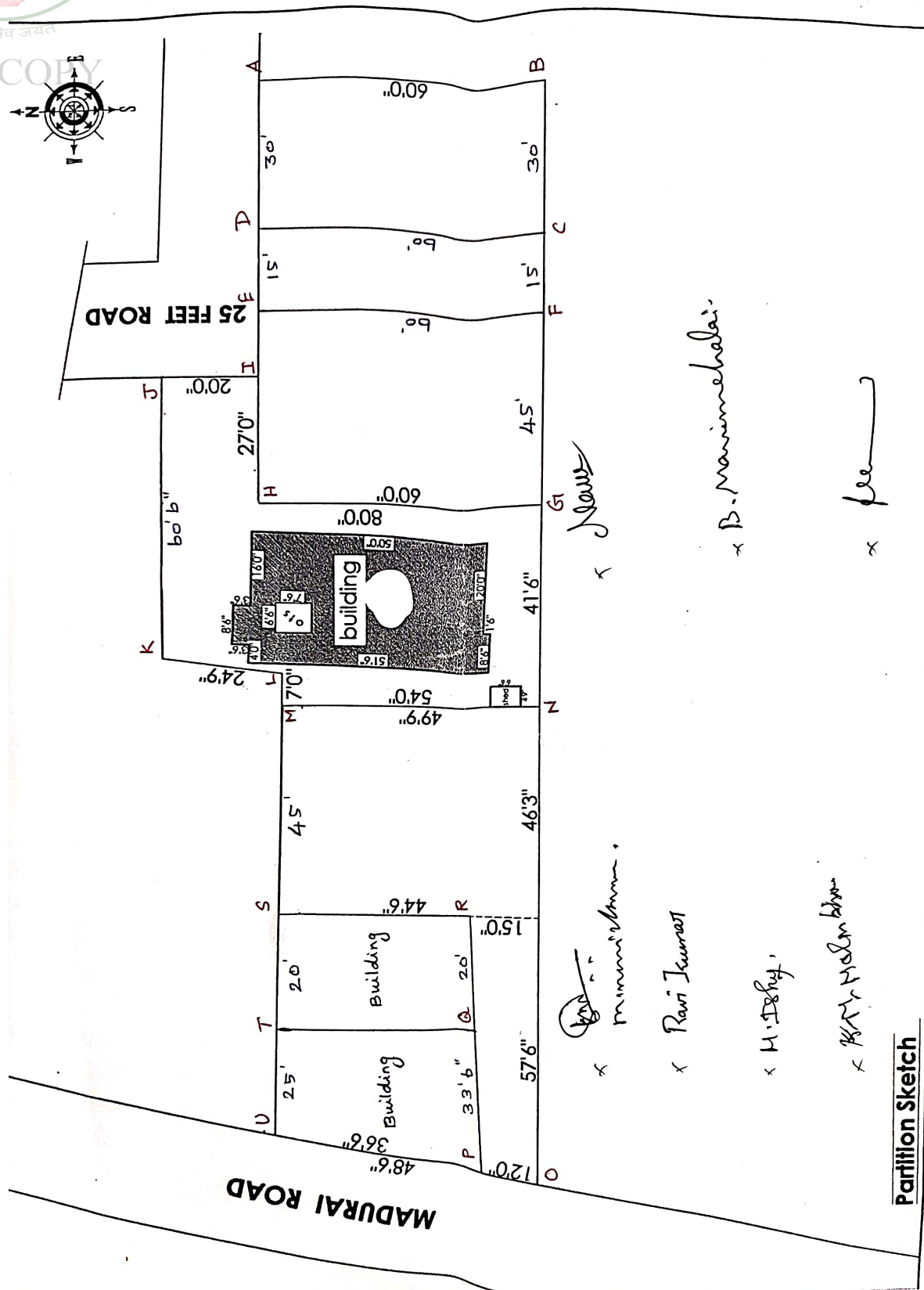
K. B. Mahalingam
B. Mainmehali


Respondents 3 to 6

C. J. Sathya Prabhakar
Counsel for Respondents 3 to 6



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6. The learned counsel for the respondents 1 and 2 has filed a memo, stating that the 2nd respondent had become major. The said memo is recorded.

7. Since the respondents 1 and 2 received maintenance amount till 31.07.2024, thereafter they have attained the age of majority, the petition in E.P.No.153 of 2019 filed for recovery of maintenance from the appellant is directed to be closed.

8. It is also informed that the parties have already taken possession of their respective shares, in view of the compromise entered between them. The said statement is recorded.

9. This Appeal Suit is decreed in terms of the joint compromise memo dated 02.08.2024 and the Cross Objection is closed. The joint compromise memo shall form part and parcel of this judgment and decree. No Costs. Connected Civil Miscellaneous petitions are closed.

02.08.2024

Index : Yes / No

NCC : Yes / No

Yuva



A.S.(MD)No.33 of 2013

WEB **TO:** PY

- 1.The 6th Additional District Court,
Madurai.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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A.S.(MD)No.33 of 2013

S.SRIMATHY, J.

Yuva

Judgment made in
A.S.(MD)No.33 of 2013

Dated:
02.08.2024