

A.S.No.286 of 2013

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.02.2025

PRONOUNCED ON : 04.03.2025

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

A.S.No. 286 of 2013
and
CMP No.12716 of 2024

1. Thiruvengadam

2. V. Devakumar

...

Appellants

(Amended vide order of Court
dated 30.08.2023 made in
CMP No.18919 of 2023 in
A.S.No.286 of 2013)

Vs.

1. Hilda

2. R.Rajendra Kani Ammal

3. R. Sivabalan

4. Mani

...

Respondents



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Prayer: First Appeal has been filed under Section 96 of the Civil Procedure Code to set aside the judgment and decree of the III Additional District Judge, Tiruvallur @ Poonamallee in O.S.No.29 of 2010 dated 31.01.2013.

For Appellants : Mr. M.S. Subramanian

For Respondents : Mr.V. Manohar,
for R2 & R3

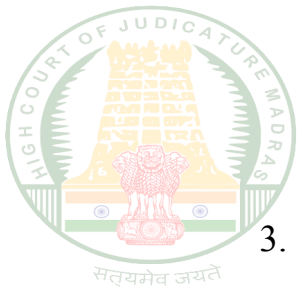
: R1 dismissed
vide order dated 10.02.2023

: R4- set exparte
vide order dated 17.02.2025

JUDGMENT

Aggrieved over the judgment and decree dated 31.01.2013 passed in O.S.No.29 of 2010 on the file of the III Additional District Court, Tiruvallur @ Poonamallee, the plaintiffs have preferred the first appeal.

2. On 17.02.2025, though the name of the 4th respondent was printed in the cause list, none appeared on behalf of the 4th respondent either in person or through his counsel and hence, the 4th respondent was called absent and set exparte.



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3. For the sake of convenience, the parties are referred to as per their

rankings in the trial Court.

4. The plaintiffs filed the suit for declaration of plaintiffs' title over the suit property, recovery of possession and for mesne profit and for cost.

5. The appellants/plaintiffs case is as follows:

Originally, Tmt.Muniammal and others owned the suit property as a plot and she sold the same to Thiru.Balasingam under sale deed dated 5.12.1981. The said Balasingam, who was an employee in A.G.S. Office, had availed a housing loan by mortgaging the suit property and constructed a house therein and he was in possession of the suit building. Balasingam died on 11.03.1985 and hence, the legal heirs of his wife Tmt.Manickavalli Suseela and daughter Tmt.Mary Suba Rathina, inherited the suit property and discharged the mortgaged debt and obtained deed of re-conveyance dated 20.09.2002 from the Government. Tmt.Manickavalli Suseela leased out the suit property to their family friend Ramachandran as per lease agreement dated 7.12.1987.

Tmt.Mary Suba Rathina obtained a General Power of Attorney Deed dated



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21.04.2008 from her mother Tmt.Manickkavalli Suseela and entered into a registered agreement of sale dated 25.04.2008 with one Thiru.Gopi and subsequently cancelled the said sale agreement by executing a cancellation deed dated 18.09.2008. Thereafter, Tmt.Mary Suba Rathina sold the suit property to the plaintiff as per sale deed dated 18.09.2008 and handed over possession. The plaintiffs are in actual possession and enjoyment of the suit property from the date of purchase and they have obtained necessary permission from the authority for demolition of the existing super structure in the suit property.

6. That being so, first defendant Tmt.Hilda, claimed to be the wife of Late Balasingham, opposed Tmt.Manicka Valli Suseela and Tmt.Merry Suba Rathina (Wife and daughter of Late. Thiru. Balasingham), from receiving certain money due to late Thiru. Balasingham. Hence, Tmt.Manickka Valli Suseela and Tmt.Mary Suba Rathina had filed petition S.C.O.P.No.30/2000 on the file of Sub-Court, Tuticorin by arraying Tmt.Hilda as the respondent. The said Succession O.P. was allowed by conclusively decided that first defendant Hilda is not the wife of deceased Balasingham and Tmt.Manickkavalli Suseela is the wife and Tmt.Mary Suba Rathina is the daughter of Late. Balasingham. It is falsely claimed by the defendants that the first defendant had executed an



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agreement to sell the suit property to second defendant and consequently the

second defendant was put in possession of the suit property and the second

defendant has settled the suit property in favour of her son the third defendant.

The claim of the defendants over the suit property is absolutely false and

vexatious. The fourth defendant has filed a suit in O.S.383/2008 on the file of

District Munsif Court, Poonamallee against the plaintiffs for permanent

injunction that he should not be evicted except under due process of law.

Further the third defendant filed a suit in O.S.392/2009 on the file of District

Munsif Court, Poonamallee against the plaintiffs and others for a declaration

that a settlement deed created by them is true and valid and the sale deed in

favour of the plaintiffs is invalid and consequential relief of permanent

injunction. So the plaintiffs are constrained to file the suit for declaration of

their title over the suit property and consequentially for the relief of permanent

injunction. If the court holds that the plaintiffs are ousted from possession and

the defendants are in actual possession the plaintiffs alternatively seeking the

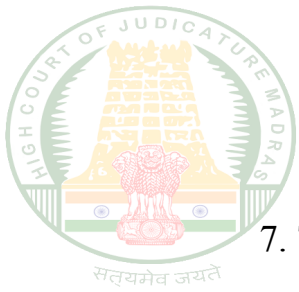
relief of declaration and title and consequently for recovery of possession of

the suit property. Hence the suit is filed for declaration declaring the plaintiffs

title over the suit property and recovery of possession of the suit property and

also directing the defendants to pay mesne profits at the rate of Rs.10,000/-

p.m. from the date of plaint till the delivery of possession and for costs.

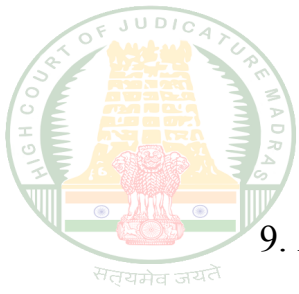


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7. The first defendant not contested the suit. The defendants 2 to 4 alone contested the suit.

8. The contentions in the written statement filed by the 3rd defendant and adopted by the defendants 2 and 4 in brief are as follows:-

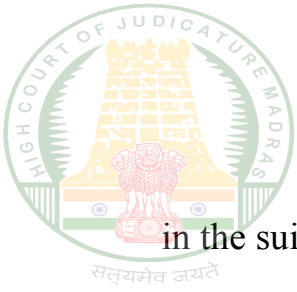
Except the facts, which are admitted herein, all other allegations in the plaint are denied. The power agent of the plaintiffs is not competent to file the suit. Requisite permission is not obtained from the court. The suit is bad for non joinder of necessary parties. Plaintiffs' alleged predecessors are proper and necessary parties. First defendant's husband is Thiru Balasingham and he is known to the plaintiffs. Second defendant's husband entered into a sale agreement with first defendant in respect of the suit property. In pursuance of the said agreement, possession was delivered to the second defendant and it was ratified by the first defendant. Second defendant is the mother of 3rd defendant. The 3rd defendant, his father and mother made improvements in the suit property by investing huge moneys.



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9. As entire sale consideration was paid to the first defendant, the second

defendant became the ostensible owner in possession. In that capacity, the second defendant settled the suit property in favour of the 3rd defendant and delivered possession. Now, the entire superstructure available in the suit property belongs to the 3rd defendant. It is true that originally Balasingham purchased the suit property under sale deed dated 05.12.1981. It is false to say that Balasingham was in possession and enjoyment of the suit property till his demise. The claim made by the plaintiffs that Tmt.Manickka Valli Suseela and the Tmt. Mary Suba Rathina are the legal heirs of deceased Balasingham is specifically denied as false. It is false to state that Tmt.Manickkavalli Suseela leased out the suit property to Ramachandran, the father of 3rd defendant on 07.12.1987. Despite the plaintiffs not being in possession, they have alleged that they obtained permission to demolish the superstructure in the suit plot. The sale deed in favour of the plaintiffs dated 18.09.2008 is a sham and nominal document and it is not valid in law. The Succession Original Petition No.30/2000, which was filed after 15 years of death of Balasingham, is not maintainable. The plaintiffs are not bonafide purchasers of the suit property for consideration. The suit claim is barred by limitation for the relief of declaration and also for recovery of possession. The suit claim is under valued. There is no cause of action for the suit. The plaintiffs are not entitled for the relief claimed



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in the suit and the suit is liable to be dismissed.

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10. On the basis of the abovesaid pleas set out by the respective parties, the trial Court framed the following issues for consideration:-

1. Whether the plaintiffs are entitled for declaration and recovery of possession of the suit property as prayed for in the suit?

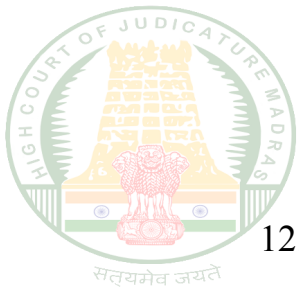
2. Whether the suit is barred by limitation?

3. Whether the suit is properly valued?

4. Whether the plaintiffs are entitled for mesne profits as prayed for in the suit?

5. To what other relief the plaintiffs are entitled to?

11. Before the trial Court, the power of attorney of the plaintiffs, one Mr.S.Ravi has been examined as PW1 and fourteen documents were marked as Ex.A1 to A14. The 2nd defendant Tmt. Rajendra Kani and her son 3rd defendant Tr.Sivabalan have been examined as DW1 and DW2 respectively and fifteen documents were marked as Ex.B1 to B15.



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12. The Trial Court, upon considering the evidence on record, dismissed the suit with cost. Aggrieved by this judgment and decree of the Trial Court, the plaintiffs have preferred this First Appeal before this Court.

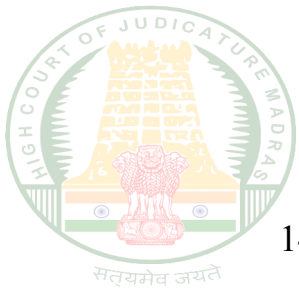
13. The points for consideration before this Court are as follows:-

1. Whether the plaintiffs are entitled for declaration of title over the plaint schedule properties and to recover the possession of the suit properties as prayed for in the suit and also for mesne profit as claimed?

2. Whether the suit is barred by limitation ?

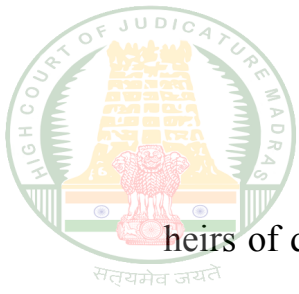
3. Whether the Trial Court is right in not accepting the plaintiffs' title on the ground that first defendant Hilda is the second wife of Balasingam and her son and daughter as illegitimate children of deceased Balasingam, are entitled for a share as legal heirs and the plaintiffs' vendor are not absolute owner of the entire property ?

4. To what other relief?



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14. The learned counsel for the appellants/plaintiffs would submit that the judgment and decree of the Trial Court is contrary to law, against the weight of evidence and probabilities of the case. The learned counsel further contended that the Trial Court failed to appreciate that the plaintiffs have clearly pleaded as to his right over the property and let evidence in support of such pleadings. The first defendant is not the wife of Balasingam and she remained exparte. They have not filed any written statement. The Trial Court overlooked the document Ex.B.3. It reflects that Mrs.Manickavalli Suseela is wife of Balasingam in the records. The Trial Court overlooked the fact of succession certificate issued by the competent Court. Mrs.Manickavalli Suseela is the only legally wedded wife of Mr.Balasingam. Without any evidence and materials, the Trial Court found that the first defendant is also the wife of Balasingam. The said findings runs contrarily to the legal principles. Parties being Christians, second wife is not recognised and illegitimate children are also not entitled to have any share over the properties. The Christians law of succession is governed by the Indian Succession Act. In the Indian Succession Act, there is no reference to illegitimate child gaining any right. Therefore, the finding of the Trial Court that illegitimate children will be entitled to a share in the property is contrary to the provisions of Indian Succession Act. When Mrs.Manickavalli Suseela and her daughter are legal



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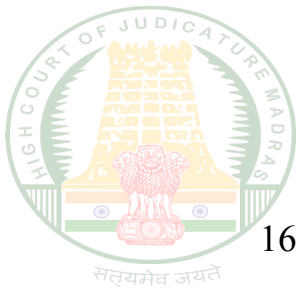
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heirs of deceased Balasingam, they are entitled to the property. It is admitted

fact that the Balasingam is the original owner of the plaint schedule property.

Under these circumstances, claiming title through first defendant Mrs.Hilda is unsustainable one. The Trial Court overlooked the facts and documents, dismissed the suit contrary to the evidence on records and legal principles and hence, the judgment and decree of the Trial Court is unsustainable one and the learned counsel reiterated the other grounds raised in the grounds of appeal and thus, pleaded to set aside the judgment and decree of the Trial Court and allow the appeal.

15. The learned counsel for the respondents 2 and 3/defendants 2 and 3 supported the judgment and decree of the Trial Court. Further contended that the defendants are in possession and enjoyment of the suit property from the year 1987. The plaintiffs' vendor is never in possession and enjoyment of the suit property. Admittedly, the possession of property was not handed over to the plaintiffs in pursuance of the sale deed Ex.A.7 dated 18.09.2008. There is no illegality in finding of the Trial Court and no merit in the appeal and thus, pleaded to dismiss the appeal as it has no merit.



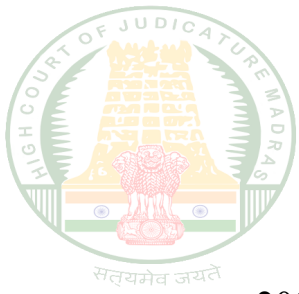
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16. I have considered the matter in the light of the submissions made by the learned counsel for the parties and perused the materials available on records carefully.

17. **CMP No.12716 of 2024**

The appellants filed this petition to receive the following documents as additional evidence on the side of the appellants in the above appeal:-

1. Legal Heirship Certificate of Balasingh, marked as Ex.R9 in O.S.No.383 of 2008, District Munsif Court, Poonamallee, dated 15.05.1985.
2. Registration copy of General Power of Attorney executed by Muniammal wife of Vijayaraghavalu Naidu in favour of Jayaraman Son of Janardhanam, dated 02.06.1986.
3. Registration copy of General Power of Attorney executed by Hilda wife of Balasingh in favour of Rajendrakani Wife of late Ramachandran, dated 03.01.1991.
4. Original Petition in Succession O.P.No.30 of 2000 Subordinate Judge, Tuitorin, dated 13.03.2000.
5. Certified copy of plaint in O.S.No.383 of 2008 ,Disrict Munsif Court, Poonamallee, dated 16.12.2008.
6. Written statement of defendants 3 and 4 in O.S.No.383 of 2008, D.M.C., Poonamallee, dated 16.12.2008.



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7. Fair order in I.A.No.1716 of 2008 in O.S.No.383 of 2008, DMC, Poonamallee, dated 24.06.2009.

8. Certified copy of plaint in O.S.No.392 of 2009, District Munsif Court, Poonamallee, dated 13.11.2009.

9. Certified copy of judgment in O.S.No.383 of 2008, District Munsif Court, Poonamallee, dated 04.02.2013.

10. Certified copy of decree in O.S.No.383 of 2008, District Munsif Court, Poonamallee, dated 04.02.2013.

11. Certified copy of judgment in O.S.No.392 of 2009 District Munsif Court, Poonamallee, dated 08.07.2014.

12. Certified copy of decree in O.S.No.392 of 2009 District Munsif Court, Poonamallee, dated 08.07.2014.

13. Online copy of property tax receipt in the joint names of B.Thiruvengatam and V.Devakumaran for the period II/2022-2023, 1/2023-2024 and II/2023-2024, dated 23.11.2023.

14. Patta in favour of B. Thiruvengatam and V. Devakumarn in Patta No.5824 in respect of Survey No.6A1A1B, Valasaravakkam Village, Maduravoyal Taluk, dated 30.11.2023

18. I have heard the counsel for the petitioner and gone through the additional documents filed as additional evidences. All these additional documents 1 to 14 were not filed during the time of trial. For non filing of the documents before the Trial Court has not been satisfactorily explained. Further these documents are not important to decide the issue on hand, and therefore,



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this petition is liable to be dismissed as it has no merits. **Accordingly, CMP**

WEB No.12716 of 2024 is dismissed.

19. A.S.No.286 of 2013

Point No.3

On perusal of records, the facts reveal that the suit property was originally purchased by one Mr. Balasingam and he constructed building thereon. It is evidenced by Ex.A.1 sale deed dated 05.12.1981. The said Mr.Balasingam died on 06.03.1985, which is evidenced by Ex.A2 the death certificate of Balasingam and there is no dispute with regard to this. According to the plaintiffs, the suit property was leased out to Ramachandran, father of the third defendant and the date of lease is stated as 07.12.1987. For these allegations, there is no material on records.

20. According to the plaintiffs, Mr.Balasingam's wife is Mrs.Manickavalli Suseela and his daughter is Mrs.Mary Shuba Ratna. They are only the legal heirs to the deceased Mr.Balasingam. According to the



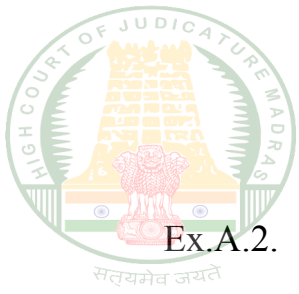
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defendants, the first defendant Mrs.Hilda is the second wife of the deceased

Mr.Balasingam. She entered into a sale agreement with the second defendant, Mrs.Rajendra Kani in respect of the suit property agreeing to convey the suit property. In pursuance of sale agreement, the possession was delivered to the second defendant and it was ratified by the first defendant. The third defendant made improvement and constructed a house in the suit property and enjoying the same.

21. On perusal of evidence, it reveals that admittedly the deceased Balasingam was the owner of the suit property, which is a house and land situated in survey no.1/6, bearing plot no.47 in Sri Balaji Nagar, Alwar Thirunagar, Valasaravakkam, Chennai 87 to an extent of 2418 sq.ft. Mr.Balasingam purchased the property from Muniammal, which is evidenced by Ex.A1 sale deed 05.02.1981. The copy of the same is marked as Ex.B.6. He got the permission from the Valasaravakkam Town Panchayat for constructing the building in the suit property, which is evidenced by document Ex.A.12 proceedings of the Executive Officer dated 25.01.1982. Further evidence reveals that the Balasingam availed housing loan by executing a mortgage deed dated 08.04.1982, which is evidenced by Ex.A.13. Subsequently, he died on 06.03.1985, which is evidenced by death extract



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Ex.A.2.

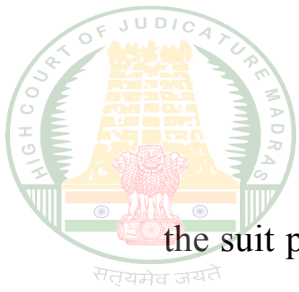
WEB COPY 22. The evidence reveals that the parties are Christians. Deceased Mr.Balasingam was survived with his wife Mrs.Manickavalli Suseela and Mrs.Mary Subha Ratna. Though the first defendant is projected as widow of deceased Balasingam, it is not supported by any evidence or materials on records. The order copy of the Succession O.P.No.30 of 2010, Ex.A8 revealed that Manickavalli Suseela and her daughter Mrs.Mary Subha Ratna are the legal heirs of deceased Mr.Balasingam and they were permitted to receive the death benefit of deceased Mr.Balasingam from the Accountant General Office, Chennai and they have also got certificate for family pension. Therefore, the claim of the defendants that the first defendant Mrs.Hilda is the widow of deceased Balasingam is not supported by any material evidence on record. The Trial Court overlooked the fact and held that Mrs.Hilda is the second wife of deceased Balasingam and her son and daughter are illegitimate children of deceased Balasingam and they have also got certificate for family pension and they are entitled for share in the suit property is legally unsustainable in view of the fact that the parties being a Christian, they are governed by the Indian Succession Act. In the Indian Succession Act, illegitimate children never recognised for a share of a deceased Christian and second marriage is also not recognised. Therefore, the finding of the Trial Court that the vendors of the



plaintiffs are not absolute owners of the entire suit property, since Mrs.Hilda, second wife of mr.Balasingam has the son and daughter, they being the illegitimate children had share over the properties, are unsustainable in law since the parties are governed by Indian Succession Act as Christian. In view of the above, finding of the Trial Court is against the evidence on record and on fact and on law. Therefore, liable to be set aside and the point no.3 is answered in favour of the plaintiffs.

23. Point No.1, 2 and 4

On perusal of the records, further reveal that the plaintiffs' vendor i.e. Manickavalli Suseela and Mrs.Mary Subha Reddy, after paying housing loan availed by the deceased Balasingam, got a re-conveyance from the Tamilnadu Housing Board. This fact is revealed by the Ex.A.3(Ex.B.7). Further evidence reveals that Mrs.Manickavalli Suseela had executed a general power of attorney dated 21.04.2008 and thereby nominating her daughter Mrs.Mary Subha Ratna as her power agent to deal with the property. On 25.04.2008, she entered into a sale agreement with one Gopi to sell the property, which is evidenced by Ex.A.5. Subsequently, it was cancelled by a cancellation deed 18.09.2008 evidenced by Ex.A.6. Further the revenue document, viz.,patta for



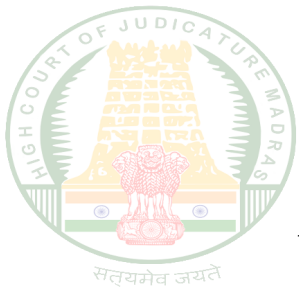
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the suit property stands in the name of Manickavalli Suseela and her daughter

WEB COPY Mrs. Mary Subha Ratna, which is evidenced by Ex.A.9 and permission for demolition of old super structure in the suit property was obtained by the plaintiffs' vendor in the name of Mrs.Mary Subha Ratna. It is evidenced by Ex.A.11. It reveals that the suit property has been dealt with by the plaintiffs' vendor. The plaintiffs purchased the property by way of sale deed dated 18.09.2008, which is evidenced by Ex.A.7. It reveals the plaintiffs' valid title over the plaint schedule properties.

24. The contention of the defendants that the first defendant Mrs.Hilda is the widow of deceased Balasingam and she entered into sale agreement with respect to the suit property with the second defendant is not supported by any material evidence on records. This contention in the written statement is only a bald allegation and they did not mention the date of sale agreement. They not even mentioned with whom, he entered into the sale agreement and paragraph 7 of the written statement is reproduced here for better appreciation:-

" 7. The 2nd defendant's husband entered into a sale agreement in respect of the suit property agreeing to convey the suit property. In pursuant thereto, possession



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was delivered to the 2nd defendant, the mother of the 2nd defendant and ratified by the 1st defendant. "

25. This contention is not proved by the defendants. Further on perusal of the records, it reveals that the defendants relied upon the settlement deed dated 19.09.2008 executed in favour of R.Sivabalan(Ex.B.14) . On perusal of the contention of the settlement deed dated 19.09.2008(Ex.B.14), in which, it is stated that settlor had purchased the suit property by way of document no.4 of 1991 dated 03.01.1991, Ex.B.13. On perusal of Ex.B.13, it reveals that it is only a General Power of Attorney executed by Hilda. Therefore, the contention in the settlement deed, Ex.B.14 that settlor has purchased the property from Hilda is erroneous one. Though the defendants are in possession, they failed to prove a better title than the plaintiffs over the plaint schedule property. Under these circumstances, the plaintiffs are entitled for declaration of title over the plaint schedule property. The Trial Court overlooked the facts and failed to considered the documents filed by the parties properly and therefore, the findings of the trial Court in this regard is liable to be set aside.

26. Now, considering whether the suit is barred by limitation and recovery of possession. Admittedly there is no evidence on record as to when



the defendants came into possession. Article 65 of the limitation Act prescribes

the period of limitation for possession of immovable property or any interest therein based on title as 12 years and the period begins to run when the possession of the defendant become adverse to the plaintiff. In this case, there is no clear evidence on record to show when the defendants 2 and 3 came into possession. Under these circumstances, I find that the suit is not barred by limitation and for recovery of possession of immovable property based on title. Accordingly, the plaintiffs are entitled for declaration of title over the plaint schedule property and entitled for recovery of possession and not entitled for mesne profit in the absence of any specific evidence for income from the property and the suit is not barred by limitation.

27. The finding of the Trial Court that the vendors of the plaintiffs are not absolute owners of the entire suit property. Since Mrs.Hilda, second wife of Mr.Balasingam has the son and daughter, they being the illegitimate children had share over the properties, are unsustainable in law since the parties are governed by Indian Succession Act as Christian. In view of the above, finding of the Trial Court is against the evidence on record and on fact and on law. Therefore, liable to be set aside.



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28. In the result, the judgment and decree of the Trial Court is hereby set aside and the appeal is allowed with cost. With regard to the prayer for mesne profit, the suit is dismissed. The plaintiffs are entitled for declaration of title over the plaint schedule and they are entitled for possession. The defendants are directed to hand over the possession within 3 months.

04.03.2025

Index : Yes / No
Speaking order: Yes/No

mrp

To

1. The III Additional District Court, Thiruvallur @ Poonamallee.
2. The Section Officer, VR Section High Court, Madras.



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K.KALYANASUNDARAM, J.
and
V.SIVAGNANAM, J.

mrp

Pre-delivery judgment made
in
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