



WEB COPY

A.S.NO.519 OF 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18 / 08 / 2025

PRONOUNCED ON : 20 / 08 / 2025

CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL SUIT NO.519 OF 2013

G.Ayyasami ... Appellant / Defendant

Vs.

G.Kulasekaran ... Respondent / Plaintiff

PRAYER: First Appeal filed under Section 96 read with Order XLI Rules 1 and 2 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated December 19, 2011 passed in O.S.No.7944 of 2010 by the Additional District and Sessions Judge, Fast Track Court – V, Chennai.

For Appellant : Mr.P.Thiagarajan
For Respondent : Mr.C. Johnson

J U D G M E N T

Feeling aggrieved by the Judgment and Decree dated December 19, 2011 passed in O.S.No.7944 of 2010 by the 'Additional District and Sessions Judge, Fast Track Court – V, Chennai' ['Trial Court' for brevity], the defendant therein has filed this Appeal Suit under Section 96 read with



A.S.NO.519 OF 2013

Order XLI Rule 1 and 2 of 'the Code of Civil Procedure, 1908' ['CPC' for short].

WEB COPY

2. To be noted, originally the plaint was presented before this Court seeking the relief of permanent injunction on January 8, 2010 and numbered as C.S. No.32 of 2010. Later it was transferred to the City Civil Court, Chennai on account of pecuniary jurisdiction and renumbered as O.S. No.7944 of 2010, and then made over to the Trial Court. The Trial Court decreed the Suit and feeling aggrieved by the same, the defendant therein has preferred this Appeal Suit *viz.*, A.S. No.519 of 2013.

2.1. After the Trial Court's Judgment and Decree in O.S. No.7944 of 2010, on January 31, 2012, one Smt.M.Baby filed a Suit in O.S. No.952 of 2012 on the file of First Assistant Judge, City Civil Court, Chennai against G.Ayyasami and three others, seeking the relief of declaration and permanent injunction. The said G.Ayyasami is the appellant herein and also the defendant in O.S. No.7944 of 2010. In both the aforesaid Original Suits, the Suit Property is more or less the same. The Suit filed by Smt.M.Baby *viz.*, O.S. No.952 of 2012 was partly decreed by negating the claim for declaration and granting the relief of permanent injunction.

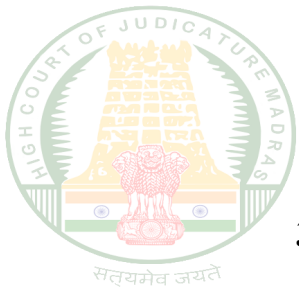


WEB COPY

Feeling aggrieved, G.Kulasekaran, the 3rd defendant therein (O.S. No.952 of 2012), who is also the plaintiff in O.S. No.7944 of 2010 as well as the brother of the appellant herein, preferred an appeal in A.S. No.169 No.2016 before the XIX Additional Judge, City Civil Court, Chennai. The plaintiff therein (O.S. No.952 of 2012) namely Smt.M.Baby, filed a cross Appeal Suit in A.S. No.159 of 2017 before the same Appellate Court.

2.2. At the instance of the appellant herein, the Appeal Suits in A.S. No.169 No.2016 and A.S. No.159 of 2017 were withdrawn and transferred to this Court vide Common Order dated February 6, 2019 made in Tr. CMP. Nos.1004 and 1005 of 2017, and renumbered as A.S. Nos.437 and 436 of 2022 respectively.

2.3. Then, vide the Administrative Order dated January 7, 2023 made by the Honourable Acting Chief Justice of this Court, the said two Appeal Suits were tagged with the present Appeal Suit. Separate trials were conducted and separate Judgments were pronounced in the concerned Original Suits. The parties are also different. Keeping in mind the same, the Appeal Suits were heard simultaneously and separate Judgments are being pronounced today.



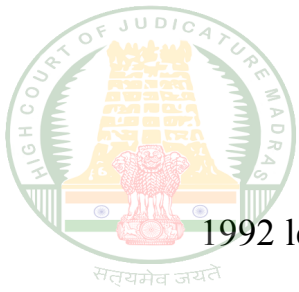
WEB COPY

3. For the sake of convenience, hereinafter, the parties herein will be referred to as per their array in the Original Suit in O.S.No.7944 of 2010 *i.e.*, the appellant herein will be referred to as the defendant and the respondent herein as the plaintiff.

PLAINTIFF'S CASE

4. The defendant is the elder brother of the plaintiff. The Suit is filed for permanent injunction restraining the defendant from in any manner dealing with or alienating the Suit Property. The Suit Property and some more properties were allotted to Natesa Naicker, who is the paternal grandfather of the plaintiff and the defendant, vide registered Partition Deed dated May 17, 1937.

4.1. Natesa Naicker had two sons, Ganapathy and Dharmalingam, who after the demise of Natesa Naicker entered into registered Partition Deed dated February 25, 1983, whereby 'A' Schedule Properties therein were allotted to Ganapathy. 'A' Schedule Properties comprise a total extent of 4065 sq. ft. land along with the house thereon, and includes the Suit Property and some other properties. Ganapathy was in possession and enjoyment of the 'A' Schedule Properties. He passed away on July 11,



1992 leaving behind his wife – Lakshmiammal and his two sons – plaintiff and defendant. Thus, each of them became entitled to 1/3 share in the Suit Property.

4.2. Out of the total extent of 4065 sq. ft. land, an extent of 570 sq. ft. within specific four boundaries was sold to one D.Malarvizhi vide Sale Deed September 8, 1993 by Lakshmiammal, plaintiff and defendant. Thereafter, an extent of 560 sq. ft. out of the said 4065 sq. ft. land was sold to one A.V. Simon Jayakumar vide Sale Deed dated April 13, 1994. The remaining extent of 2935 sq. ft. was in possession and enjoyment of plaintiff, defendant and their mother – Lakshmiammal.

4.3. On June 17, 1996, the plaintiff's mother and the defendant relinquished their 2/3 undivided share in the Suit Property in favour of plaintiff for consideration vide registered Release Deed. Thereafter, Lakshmiammal passed away in the year 1998. By virtue of the Release Deed dated June 17, 1996, the plaintiff acquired absolute right over the Suit Property and has been in continuous possession and enjoyment thereof. The plaintiff out of good will and brotherly love permitted the defendant to reside in the front portion of the Suit Property. The plaintiff



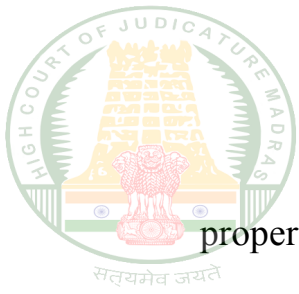
WEB COPY

have to cross the portion in which the defendant is permitted to reside, in order to reach the remaining portion of the Suit Property where he resides.

In 2009, the defendant claimed title over the entire Suit Property and even tried to obstruct the plaintiff from accessing his portion of the Suit Property by raising a wall. Further, he attempted to sell the Suit Property to third parties. Hence the Suit.

DEFENDANT'S CASE

5. The defendant has no dispute with the facts set out in Paragraph Nos.4 to 4.2 *supra*. The defendant's case is that, the said Release Deed dated June 17, 1996 is only in respect of the releasors' 2/3 share in an extent of 1018 sq. ft within specific four boundaries, and not in respect of the entire Suit Property measuring 2935 sq. ft. as claimed by the plaintiff. The said Release Deed was executed by the defendant and his mother in order to enable the plaintiff to build a house in the aforesaid extent of 1018 sq. ft., and accordingly, the plaintiff constructed a house and he is residing in it while the defendant was in continuous possession and enjoyment of the remaining portion of the Suit Property in his own right. There are separate paths for accessing the plaintiff's and the defendant's

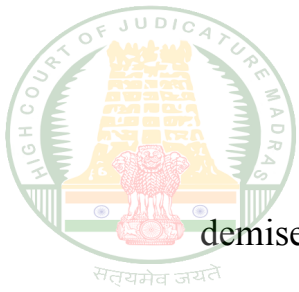


WEB COPY

property. Under the Release Deed dated June 17, 1996, the plaintiff has no right to claim over and above what has been given to him thereunder, that is to say, he cannot claim more than 1018 sq. ft.

5.1. An extent of 1917 sq. ft. was remaining after the sale to D.Malarvizhi and A.V. Simon Jayakumar and after the Release Deed dated June 17, 1996. As stated *supra*, plaintiff, defendant and their mother are each entitled to 1/3 share. Thus, upon the demise of the mother, the plaintiff and the defendant would be entitled to half share in the said 1917 sq. ft *i.e.*, each of them would be entitled 958 sq. ft.

5.2. Out of his share of 958 sq. ft., the defendant executed a registered Settlement Deed dated March 28, 2007 in respect of 700 sq. ft. within four specific boundaries in favour of his wife– Parvathy, who in turn executed a Power of Attorney Deed dated December 14, 2009 in favour of Muralidharan, who pursuantly executed a Sale Deed dated February 7, 2011 in respect of the said 700 sq. ft. in favour of Smt.M.Baby. Now an extent of 258 sq. ft. is remaining in the defendant's possession and enjoyment. The plaintiff is entitled to only the 1018 sq. ft. released in his favour and the 958 sq. ft. that devolved upon him after the



demise of the mother – Lakshmiammal, and not the entire Suit Property as

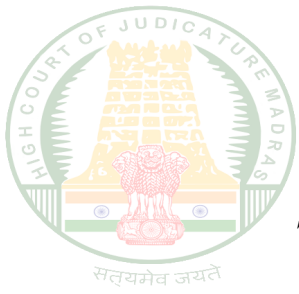
claimed. The Suit is bad for non-joinder of necessary parties. Accordingly,

he sought to dismiss the Original Suit.

TRIAL COURT

6. Based on the above pleadings, the Trial Court framed the following issues:

- "1. Is the plaintiff entitled to permanent injunction as prayed for?*
- 2. Whether the defendant is a co-owner of suit property ?*
- 3. Whether the shares of the defendant and his mother were released by the deed dated 17.6.1996 ?*
- 4. Is the plaintiff absolute owner of suit property ?*
- 5. Is the defendant in permissive occupation ?*
- 6. Whether 1018 sq. feet was alone in favour of plaintiff?*
- 7. To what other relief ? "*



A.S.NO.519 OF 2013

WEB COPY

7. At trial, on the side of the plaintiff, the plaintiff was examined as P.W.1 and Ex-A.1 to Ex-A.9 were marked. On the side of the defendant, the defendant was examined as D.W.1, defendant's wife was examined as D.W.2, and Ex-B.1 to Ex-B.4 along with Ex-X.1 to Ex-X.9 were marked.

8. After full-fledged trial, the Trial Court has held that the defendant and the mother – Lakshmiammal released their entire share in the Suit Property to the plaintiff and not 1018 sq. ft. alone as alleged by the defendant. The defendant is not a co-owner of the Suit Property. The plaintiff is its absolute owner. The defendant is only in permissive possession of the Suit Property. The alienations made by the defendant would not bind the plaintiff. Accordingly, the Trial Court decreed the Suit with costs as prayed for.

9. Feeling aggrieved, the defendant has preferred this First Appeal under Section 96 read with Order XLI Rules 1 and 2 of the CPC.

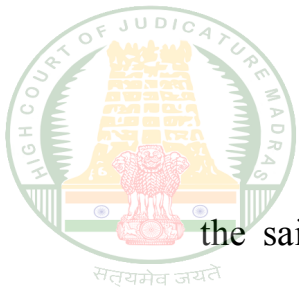
ARGUMENTS:

10. Mr.P.Thiagarajan, learned Counsel for the appellant / defendant would invite the attention of this Court to schedule of property in Ex-A.5



– Release Deed dated June 17, 1996 and argue that the property described therein measures 38.3 feet east to west and 26.6 feet north to south; it is an extent of 1018 sq. ft., within specific four boundaries. The defendant and his mother – Lakshmiammal released their 2/3 share in the schedule of property *i.e.*, 2/3 share in the 1018 sq. ft. alone, and not the entire Suit Property as alleged by the plaintiff. This is evident from the fact that while the market value of the said 1018 sq. ft. is Rs.3,40,012.50/- even as per Ex-A.5, the defendant and the mother – Lakshmiammal have received only Rs.2,26,675/- as consideration under Ex-A.5, which is 2/3rd of the market value of the total extent of 1018 sq. ft. They have received consideration for only 2/3 share in the said 1018 sq. ft. Further, in Ex-A.5 itself, the western boundary of its subject matter has been described as the remaining property of the releasors and the releasee. The schedule of property in Ex-A.5 is very clear. A clear schedule of property prevails over anything else.

10.1. He would further argue that in the property left behind by Ganapathy, an extent of 1917 sq. ft. was remaining after the Release Deed dated June 17, 1996 and after the alienations under Ex-A.3 and Ex-A.4 – Sale Deeds dated September 8, 1993 and April 13, 1994 respectively. In



the said 1917 sq. ft., the defendant, the plaintiff and their mother are entitled to 1/3 share each. After the demise of their mother, the defendant and the plaintiff are entitled to equal share in it *i.e.*, each of them are entitled to 958 sq. ft. For convenient enjoyment, the plaintiff and the defendant entered into arrangement, as per which, the defendant was enjoying the western portion of the said extent of 1917 sq. ft. along with the house therein, while the plaintiff was enjoying the eastern portion of the said extent of 1917 sq. ft. which adjoins the 1018 sq. ft. described in the schedule of property of Ex-A.5.

10.2. He would further submit that, out of his entitlement of 958 sq. ft., the defendant executed a Settlement Deed in respect of 700 sq. ft. within specific four boundaries in the western portion of the said 1917 sq. ft. in favour of his wife, who subsequently alienated the same through power agent. To be noted, Settlement Deed and Power of Attorney were executed before the Suit and at the time of execution of Sale Deed, the present Suit stood dismissed for default and there was no order of interim injunction. The Suit is bad for non-joinder of the defendant's wife and the subsequent alienees.



WEB COPY

10.3. Further he would submit that the plaintiff has a path to access the Suit Property from its northern side. The Trial Court failed to consider the above aspects and erroneously concluded that the Ex-A.5 – Release Deed dated June 17, 1996 was executed in respect of entire Suit Property. The Judgment and Decree of the Trial Court deserves to be interfered with. Accordingly, he would pray to allow the Appeal Suit and dismiss the Original Suit.

11. On the other hand, Mr.C.Johnson, learned Counsel for the respondent / plaintiff would argue that after the sales under Ex-A.3 and Ex-A.4 – Sale Deeds, the entire remaining property, which is the Suit Property, was released in favour of the plaintiff by the defendant and the mother – Lakshmiammal. In Ex-A.5, the western boundary of its subject matter has been wrongly stated as belonging to the releasor and the releasee. In fact, even the eastern boundary has been wrongly described as one Dhandapani's land who is the husband of the purchaser under Ex-A.3 – Malarvizhi, instead of A.V. Simon Jayakumar's land who is the purchaser under Ex-A.4. There do not exist 1917 sq. ft. of land on the

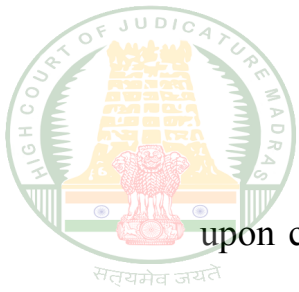


western side of the released property as claimed by the defendant. Ex-A.5

– Release Deed dated June 17, 1996 was executed for a valid consideration of Rs.2,26,675/-.

11.1. Further would argue that, even while assuming that Ex-A.5 – Release Deed was executed only in respect of 2/3 share in the 1018 sq. ft. described under the schedule of property therein, even then the defendant has no rights to execute Settlement Deed in respect of any specific portion within four specific boundaries, that too without ascertaining the available portion after Ex-A.5 –Release Deed. Pursuant to the Settlement Deed, the defendant's wife sold the Suit Property to one Smt.Baby through a power agent. The Sale Deed was executed pending Suit only with a view to defeat and defraud the rights of the plaintiff. The sale is hit by *lis pendens*.

11.2. He would further submit that after Ex-A.5, the defendant was permitted to occupy the front portion of the Suit Property. The plaintiff can access his residence only via the front / western portion of the Suit Property. The defendant by fraudulent means sets up title in respect of the front / western portion of the Suit Property in favour of him and is obstructing the plaintiff from accessing his residence. The Trial Court



upon considering the entire evidence available on record, rightly decreed the Suit as prayed for. There is no need to interfere with the Judgment and Decree of the Trial Court. Accordingly, he would pray to dismiss the Appeal Suit and confirm the Judgment and Decree of the Trial Court.

DISCUSSION:

12. Heard on either side. Perused the entire evidence available on record. The following points arise for consideration in this Appeal Suit:

- (i) Whether the defendant and Lakshmiammal (mother of plaintiff and defendant) released their 2/3 share in the entire extent of Suit Property, or their 2/3 share in a specific extent of 1018 sq. ft. alone ?
- (ii) Whether the description of Suit Property in the plaint is correct?
- (iii) Whether the averment of the defendant that an extent of 1917 sq. ft. is available next to the western side of the property released under Ex-A.5, is true?
- (iv) Whether the averment that the defendant was in possession and enjoyment of an extent of 958 sq. ft. on the western side of



WEB COPY



A.S.NO.519 OF 2013

the property released under Ex-A.5 in his own right, is proved ?

- (v) Whether the Settlement Deed executed in favour of defendant's wife by the defendant is valid and binding on the plaintiff ?
- (vi) Whether the plaintiff and the defendant are co-owners of the Suit Property or any portion thereof ?
- (vii) Whether the Judgment and Decree of the Trial Court is liable to be interfered with ?

13. The relationship between the parties is admitted. Vide Ex-A.2 – Partition Deed dated February 25, 1983, an extent of 4065 sq. ft. in T. Survey No.58, part Block No.3, Door No.26/1 more fully described under 'A' Schedule Property therein, was allotted to Ganapathy, who is the father of plaintiff and defendant. Ganapathy passed away as a Hindu on July 11, 1992 leaving behind his wife – Lakshmiammal and his two sons – plaintiff and defendant. Upon his demise, each of them became entitled to 1/3 share in the Suit Property. Under Ex-A.3 – Sale Deed dated September 8, 1993,



WEB COPY

an extent of 570 sq. ft. on the eastern most side of the said extent of 4065 sq. ft. was sold to D.Malarvizhi, wife of Dhandapani. Further, under Ex-A.4 – Sale Deed dated April 13, 1994, an extent of 560 sq. ft. adjacent to the western side of the property sold to D.Malarvizhi under Ex-A.3, was sold to A.V. Simon Jayakumar. Remaining extent after the aforesaid sales in the said total extent of 4065 sq. ft., is 2935 sq. ft. Then, the defendant and mother – Lakshmiammal executed Ex-A.5 – Release Deed dated June 17, 1996 in favour of plaintiff. The aforesaid facts are admitted and there are no dispute *qua* them between the parties. It is made clear that there is no dispute with the execution of Ex-A.5.

14. Case of the plaintiff is that under Ex-A.5, the defendant and mother – Lakshmiammal released their 2/3 share in respect of the entire Suit Property. Suit Property is the extent of 2935 sq. ft. remaining after the sales under Ex-A.3 and Ex-A.4. His further case is that, in Ex-A.5, the western boundary of the property released thereunder has been wrongly described.

15. Case of the defendant is that he and his mother released their 2/3 share in a specific extent of 1018 sq. ft. measuring 38.3 feet east to west



and 26.6 feet north to south within specific four boundaries alone, and not in respect of the entire Suit Property as claimed by the plaintiff.

Point No.(i)

16. This Court has perused Ex-A.5 –Release Deed dated June 17, 1996. Ex-A.5 *inter alia* recites as follows:

"WHEREAS the releasors have got undivided 1/3rd share each that in all 2/3rd share and the releasee has got undivided 1/3rd share in the schedule property;

WHEREAS the releasor have decided to release their 2/3rd share in the schedule mentioned property in favour of the releasee and the releasee has also agreed have the said share released in his favour;

NOW THAT THEREFORE THIS DEED OF RELEASE WITNESSETH AS FOLLOWS.

1. That in consideration of a sum of Rs. 2,26,675/- (Rupees two lakhs twenty six thousands six hundred and seventy five only) paid by the releasee, to the releasors towards their undivided 2/3rd share in the schedule mentioned property, the receipt of which sum the releasors doth hereby agree, admit and acknowledge, the releasor do hereby absolutely release and relinquish and disown and for ever discharge all and every such of their 2/3rd share right, title interest claim or demand what so ever in the schedule mentioned property TO AND IN FAVOUR OF THE RELEASEE who shall hold the same without any let or hindrance; ..."

(emphasis supplied by this Court)



WEB COPY 17. Schedule of property under Ex-A.5 reads thus:

"SCHEDULE OF PROPERTY

Madras District, Mylapore Taluk, Sount Madras Registration District, Adayar Sub Registration District, at 26/1, Bajanai Koil Street, No.117, Pallipattu village, the undivided 2/3rd share of the releasors in the site measuring 38'3" east to west and 26'6" north to south admeasuring 1018 sq.ft. comprised in T.S. No.56 (old No.58) in block No.3, being bounded on the north by Channel, south by the property of Elumalai Naicker, east by the property of Thandapani and on the west by the remaining property of the releasors and the releasee. The total market value of this property is Rs. 3,40,012.50 paise. The market value of the undivided 2/3rd share of the released property is Rs. 2,26,675/- This property is coming with in the Corporation Limits of Madras."

(emphasis supplied by this Court)

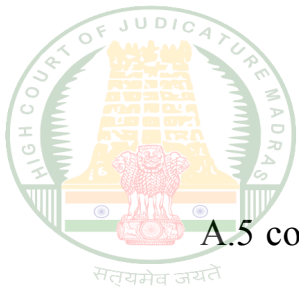
18. Bare reading of Ex-A.5, especially the afore-extracted portions, would make it clear that the defendant and his mother released 2/3 share in a specific extent of 1018 sq. ft. land measuring 38.3 feet east to west and 26.6 feet north to south within specific four boundaries. Further, the western boundary of the land released under Ex-A.5 has been described as the remaining property of the releasors and the releasee. The recitals and description of property in Ex-A.5 clearly and unambiguously show that the releasors released only their 2/3 share in the specific extent of 1018 sq. ft.



(described in the schedule of property therein).

WEB COPY

19. Further, the defendant in his written statement as well as in his evidence as D.W.1 has stated that the purpose behind Ex-A.5 –Release Deed dated June 17, 1996 was for the plaintiff to construct his house in the said extent of 1018 sq. ft. His aforesaid evidence has not been specifically denied by the plaintiff. Admittedly, there exist an old house towards the western side of the property released under Ex-A.5. The defendant's case is that he has *inter alia* been in possession and enjoyment of the said house property. Ex-X.5 – Water Tax Receipts, Ex-X.6 - Property Tax Demand Card, Ex-X.7 - Property Tax Receipt, Ex-X.8 - Water and Sewerage Tax Card, all standing in the name of Ganapathy, show the existence of an old house on the portion next to the western side of the released property since the year 1987. Ex-A.7 which is property tax receipt standing in the name of plaintiff, show that after the release, the property released under Ex-A.5 has been in plaintiff's possession and enjoyment and he has constructed a house thereon. As already alluded to *supra*, the plaintiff has not specifically denied the evidence of D.W.1 / defendant that the release under Ex-A.5 was made to enable the plaintiff to construct a house. The intention of the parties behind the execution of Ex-



WEB COPY

A.5 could be gathered from the above. As there is already a house for one of the brothers *i.e.*, the defendant, the defendant and his mother wanted to facilitate building a house for the another *i.e.*, the plaintiff. When the intention behind Ex-A.5 is to enable the plaintiff to build a house, there is no need for the releasors to release their share in the entire Suit Property which already includes a house, that too being enjoyed by the defendant. In other words, the undenied D.W.1's evidence *qua* the purpose behind Ex-A.5, Ex-X.5 to Ex-X.8 and Ex-A.7 & Ex-A.8, when seen cumulatively through the lens of facts and circumstances of this case, probablizes the case of the defendant that the release under Ex-A.5 was only in respect of a specific extent of 1018 sq. ft. for the plaintiff to construct a house thereon and not in respect of the entire Suit Property.

20. Only one error could be identified in Ex-A.5, which is that the eastern boundary to the property described in the schedule of property therein, has been mentioned as Dhandapani's land who is the husband of the vendee under Ex-A.3 – D.Malarvizhi. As it could be gathered from the evidence available on record, more specifically Ex-A.3 and Ex-A.4 – Sale Deeds, the eastern boundary ought to be described as A.V. Simon Jayakumar's land. This however does not cause any prejudice to the



WEB COPY

defendant's case. This could be an oversight. One may contend that in a similar manner, the western boundary could have also been wrongly described as the remaining portion of the releasors and releasee. In Ex-A.5, the schedule of property speaks of a specific extent of land *i.e.*, land measuring 38.3 feet (East-West) X 26.6 feet (North-South) = 1018 sq. ft. When the extent of the property has been described in such clear and unambiguous terms, the general proposition of law that boundaries must prevail over extent cannot be applied. Even while assuming that the western boundary has been described wrongly, when the extent as well as the intention of the parties is clear in Ex-A.5, description of boundary cannot be used to contend that more extent was intended to be released in favour of plaintiff. The aforesaid view gathers support from the decision of a learned Single Judge of this Court in ***Dina Malar Publications -vs- Tiruchirapalli Municipality***, reported in ***1984 (97) LW 365***.

21. Thus, Ex-A.5 – Release Deed dated June 17, 1996 is only *qua* the releasors' 2/3 share in the specific extent of 1018 sq. ft. within specific four boundaries more fully described in schedule of property therein, and not the entire Suit Property. **Point No.(i) is answered accordingly in**



favour of defendant and against the plaintiff.

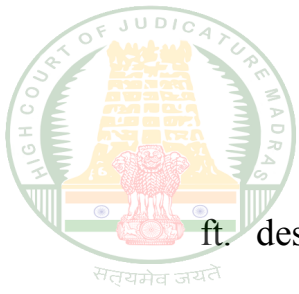
WEB COPY

Point No.(ii)

22. As regards Point No.(ii), as stated *supra* out of the total 4065 sq. ft., the extent of property remaining after the sale of 570 sq. ft. and 560 sq. ft. under Ex-A.3 and Ex-A.4 – Sale Deeds respectively, is 2935 sq. ft. As decided under Point No.(i), the defendant and the mother – Lakshmiammal released their 2/3 share in the specific extent of 1018 sq. ft. within specific four boundaries. Being one among the three legal heirs of Ganapathy, the plaintiff is entitled to 1/3 share in the said extent of 1018 sq. ft. With the release of 2/3 share in 1018 sq. ft. in his favour, the plaintiff becomes absolutely entitled to entire extent of 1018 sq. ft.

23. Subtracting the said 1018 sq. ft. from the area of land available after the alienations under Ex-A.3 and Ex-A.4, the available extent on paper would be 1917 sq. ft., to which the three legal heirs of Ganapathy are equally entitled. After the demise of Lakshmiammal, the plaintiff and the defendant would be each entitled half-a-share in the said 1917 sq. ft., which means each are entitled to 958 sq. ft.

24. Even when we add the said extent of 958 sq. ft. and the 1018 sq.



ft. described under Ex-A.5 to which the plaintiff is absolutely entitled as

stated above, it comes to 1976 sq. ft. alone. It does not even go near to the

2935 sq. ft. described by the plaintiff as his total entitlement in the Suit

Schedule of property. It can be seen that the plaintiff has described more

than the extent he is legally entitled to. Hence, the description of Suit

Property is incorrect. **Point No.(ii) is answered accordingly in favour of**

defendant and against the plaintiff.

Point No.(iii)

25. As stated under Point No.(ii), an extent of 1917 sq. ft. is

available after the alienations under Ex-A.3 & Ex-A.4 and after the release

under Ex-A.5. While it is available on paper, its actual existence on the

ground is doubtful. There is no proper evidence such as a Surveyor Report

to show that on the ground an extent of 1917 sq. ft. is available. Neither

of the parties have measured the Suit Property with the help of a surveyor.

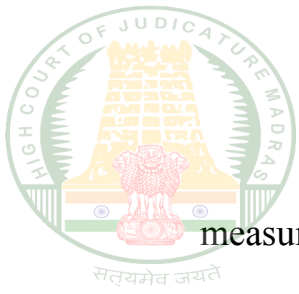
While it is usually not required to separately prove the actual existence

when existence on paper is proved, this case is an exception. In this case,

there arises a doubt as to whether the extent shown by the documentary

evidence is available on the ground. This is because, in Ex-A.2 – Partition

Deed dated February 25, 1983, the North-South and East-West



measurements are not provided for 'A' Schedule Property therein which

was allotted to Ganapathy. Further, from the recitals and description of

boundaries in Ex-A.5, it could be seen that there were larger extent of

properties owned jointly by the sons of Natesa Naicker - Ganapathy and

Dharmalingam, which were sold off to meet out the family expenses. So it

seems like there had been multiple sales followed by a partition without

ascertaining the available extent. Further, the description of property

contained in Ex-A.2 speaks of a sketch annexed thereto, which is said to

further describe or describe in detail the 'A' Schedule Property in Ex-A.5.

The said sketch has not been presented before this Court. Hence, Ex-A.2 is

an incomplete document. In this scenario, the actual existence of 4065 sq.

ft. at the time allotment of 'A' Schedule Property to Ganapathy is itself

doubtful. When so, the actual existence of 1917 sq. ft. after the alienations

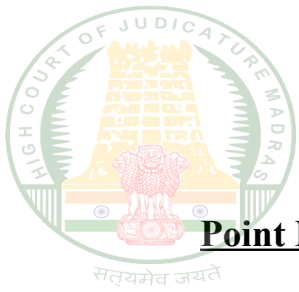
of specific extents under Ex-A.3, Ex-A.4 and after the release under Ex-

A.5 is also doubtful. Hence, the averment of the defendant that there exist

1917 sq. ft. after the transactions under Ex-A.3 to Ex-A.5 is not proved.

Point No.(iii) is answered accordingly in favour of plaintiff and

against the defendant.



Point Nos.(iv), (v) and (vi)

WEB COPY 26. As stated *supra*, vide Ex-A.2 – Partition Deed dated February 25, 1983 an extent of 4065 sq. ft. was allotted to Ganapathy as 'A' Schedule Properties. In the total extent of 4065 sq. ft., the plaintiff and the defendant are equally entitled to whatever extent remaining after the transactions under Ex-A.3 to Ex-A.5. When no actual partition has been effected, the defendant cannot claim exclusive ownership in respect of a specific extent within specific four boundaries or any specific portion. Joint ownership has not been severed and continues to exist. Hence, the defendant and the plaintiff are co-owners equally entitled to whatever extent remaining out of 4065 sq. ft. after the transactions under Ex-A.3 to Ex-A.5. All co-owners have equal rights and co-ordinate interest in the property. Every co-owner has the right of enjoyment and possession equal to that of the other co-owners. *"Each co-owner is in theory interested in every infinitesimal portion of the subject-matter and each has the right, irrespective of the quantity of his interest, to be in possession of every part and parcel of the property, jointly with the others. Each joint owner has the right to the possession of all the property held in common equal to the right of each of his companions in interest and superior to that of all other*



WEB COPY

persons. He has the same right to the use and enjoyment of the common

property that he has to his sole property, except in so far as it is limited by

the equal rights of his cosharers. Every co-owner is entitled to dispose of

his interest in the joint property, unless prevented from doing so under any

law, e.g., a coparcener under the Mitakshara Law" [from **Mitra's Co-**

Ownership & Partition, 8th Edition (Eastern Law House), Page Nos.2 &

3]. Hence, the question of permissive occupancy is ruled out and at the

same time, the defendant cannot claim exclusive ownership over a specific

portion measuring 958 sq. ft or any specific portion for that matter.

Further, it was found under Point No.(iii) that the actual existence of 1917

sq. ft. is doubtful, and on that ground also the defendant cannot claim

exclusive ownership over a specific extent of 958 sq. ft. The defendant and

the plaintiff are equally entitled to whatever is remaining, no doubt with

that. But when the extent in actual existence is doubtful, they cannot claim

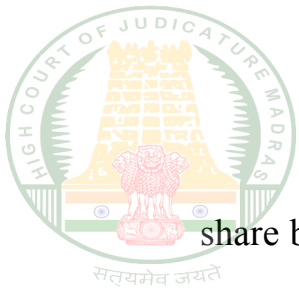
ownership over a specific extent. For the same reason, a co-owner cannot

execute a Settlement Deed in respect of a specific extent of property

within specific four boundaries. A co-owner may execute Settlement Deed

in respect of the right of his share but not a specific portion. The defendant

could have executed a Settlement Deed in respect of his undivided half



share but not a specific portion measuring a certain extent when the actual

extent remaining is doubtful and when joint ownership has not been severed. In such a scenario, the Settlement Deed executed by the defendant in favour of the defendant's wife is not binding on the plaintiff.

Point Nos.(iv), (v) and (vi) are answered accordingly.

Point No.(vii)

27. The Trial Court failed to consider Ex-A.5 carefully. The Trial Court was not right in holding that the defendant and his mother executed Ex-A.5 – Release Deed dated June 17, 1996 in respect of the entire Suit Property when Ex-A.5 clearly recites that only 2/3 share in the schedule of property therein is released in favour of the plaintiff and the schedule of property therein clearly describes a specific extent of 1018 sq. ft. within specific four boundaries. Hence, the plaintiff is not entitled to permanent injunction for more than the extent of 1018 sq. ft. described under schedule of property in Ex-A.5. The Suit Schedule of property is incorrect. Suit Schedule of property is a vital element in injunction Suits. It is settled law that injunction can only be granted in respect of specific extent of property and also that description of property should be clear in a Suit for permanent injunction. Further, right to property is a constitutional right,



A.S.NO.519 OF 2013

and the plaintiff and the defendant are co-owners of a portion of the Suit

Property. Hence, their rights can be worked out only in a Partition Suit. A

blanket permanent injunction cannot be granted against the co-owner /

defendant who has every right to sell his undivided shares. The Trial Court

ought not to have decreed the Suit as prayed for. **Point No.(vii) is**

answered accordingly.

CONCLUSION:

28. Resultantly, the Appeal Suit stands allowed. The Judgment and

Decree of the Trial Court is hereby aside. The Original Suit is dismissed.

Considering the relationship between the parties, there shall be no order as

to costs.

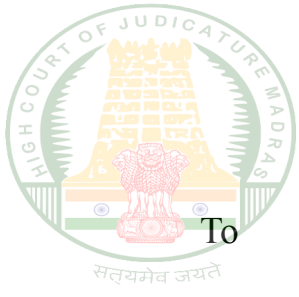
20 / 08 / 2025

Index : Yes

Speaking Order : Yes

Neutral Citation : Yes

TK



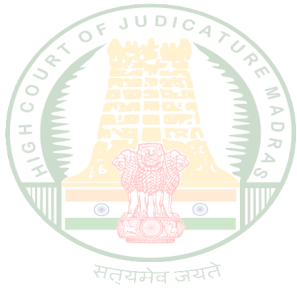
WEB COPY



A.S.NO.519 OF 2013

To

- 1) The Additional District and Sessions Judge,
Fast Track Court – V,
Chennai
- 2) The Principal Judge
City Civil Court
Chennai.



WEB COPY



A.S.NO.519 OF 2013

R. SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
APPEAL SUIT NO.519 OF 2013

20 / 08 / 2025

Page No.30 of 30