



A.S.NO.567 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 02/07/2025

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JUDGMENT PRONOUNCED ON : 09 / 10 / 2025

CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL SUIT NO.567 OF 2016

AND

CMP NO.14251 OF 2016

AND

CMP NO.13573 OF 2025

1.S.Jalaja (Died)

... Appellant No.1 / Defendant

2.K.Damodaran

3. Senthil Kumar

4. Narmadha Priya

... Appellant Nos.2 to 4 /
Legal representatives of
deceased Appellant No.1

(**Note:** Appellant Nos. 2 to 4 brought on record as legal representatives of the deceased sole appellant - S.Jalaja vide Order of this Court dated July 29, 2022 made in CMP.No.3940 of 2022 in AS.No.567 of 2016)

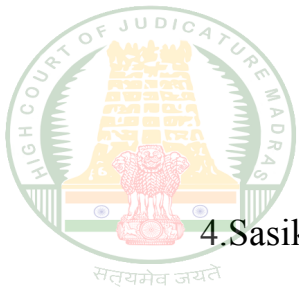
Versus

Kasturi (Deceased)

1.S.Sarveswaran

2.S.Mageswari

3.S.Ganesa Moorthy



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4.Sasikala (Died)

... Respondent Nos.1 to 4
/ Plaintiff Nos.2 to 5

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5. K.Subramaniam

... Respondent No.5 /
Legal representative of
deceased Respondent No.4

(**Note:** Respondent No.4 brought on record as legal representative of the deceased Respondent No.4 - Sasikala vide order of this Court dated February 18, 2020 made in C.M.P. No.22807 of 2018 in A.S. No.567 of 2016)

PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated June 04, 2016 passed in O.S.No.11820 of 2010 by the Learned I Additional Judge, City Civil Court, Chennai.

For Appellants : Mr.K.Mani

For Respondent : Mr.Ravichandran Sundaresan
Nos.1 to 3 & 5



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J U D G M E N T

WEB COPY Feeling aggrieved by the Judgment and Decree dated June 04, 2016

passed in O.S.No.11820 of 2010 by the 'learned I Additional Judge, City Civil Court, Chennai' ['Trial Court' for brevity], the defendant therein has filed this Appeal Suit under Section 96 read with Order XLI Rule 1 of 'the Code of Civil Procedure, 1908' ['CPC' for short].

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

3. To be noted, the plaint was first presented by the plaintiff before this Court on August 28, 2001 and taken on file as C.S. No.728 of 2001. Thereafter, in view of the change in pecuniary jurisdiction brought by the amendment made in Chennai City Civil Courts Act, 1892 through Tamil Nadu Civil Courts and Chennai City Civil Court (Amendment) Act, 2010 (T.N.Act 19 of 2010), the Suit was transferred to the Trial Court and renumbered as O.S. No.11820 of 2010.

4. During the pendency of the Suit, the first plaintiff - Kasturi passed away and her legal representatives were impleaded.

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5. The facts of the case, shorn of elaboration, necessary for the disposal of this Appeal Suit are as follows:

6. One Shanmuga Mudaliar and Kamalavathy had three daughters, who are Kasthuri / first plaintiff, Jalaja / defendant, Santha Bai and one son - Chandrasekaran. Above relationship between the parties is undisputed.

7. The brief version of the case of the plaintiffs is that Shanmuga Mudaliar acquired the Suit land along with a superstructure through a transfer of leasehold rights and his leasehold rights have been recognised by the Special Trustee of Bharani Abisekam Sri Arunachaleswarar Swami Temple, Tiruvannamalai. He made improvements to the said superstructure. Then Shanmuga Mudaliar and Kamalavathy passed away intestate on November 11, 1964 and July 21, 1966 respectively.

7.1. Further case of the plaintiffs is that following their demise, the first plaintiff, defendant, their brother - S. Chandrasekaran and sister - Santha Bai succeeded the leasehold right over the Suit Item No.1. Then, on August 18, 1966, the first plaintiff and defendant executed a registered



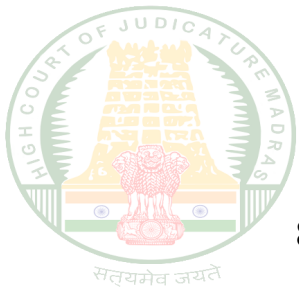
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Release Deed in favour of their brother - S. Chandrasekaran and sister -

Santha Bai, releasing all their rights and interests over the Suit Item No.1.

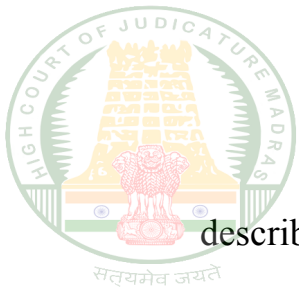
7.2. Further case of the plaintiffs is that after the release, Chandrasekaran constructed a superstructure in addition to the existing superstructure, utilising rental income from the Suit Item No.1 and also out of his own exertions. Both Chandrasekaran and Santha Bai remained unmarried. Santha Bai passed away intestate on December 22, 1989, and Chandrasekaran passed away intestate on April 10, 1999, leaving behind the first plaintiff and defendant as their only legal heirs. Thus, the first plaintiff is entitled to $\frac{1}{2}$ share in the Suit Item No.1 as well as in the rental income therefrom. The first plaintiff and defendant being co-sharers were in joint possession of Suit Item No.1. The defendant is refusing to give the first plaintiff her proportionate share in the rental income and also refusing amicable partition. Further, the defendant is refusing to give the first plaintiff's shares in the movable assets including gold described as Suit Item No.2. Notices were exchanged between the parties and then the present Suit for the main relief of partition and the consequent reliefs of rendition of accounts and future mesne profit from the date of plaint and till actual partition.

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8. The defendant filed written statement contending that after

Shanmuga Mudaliar's (Father) demise in 1964, it is the defendant who has been paying rent to the Devasthanam for the lease of suit property. The first plaintiff is not in joint possession of the suit property as alleged. The Suit valuation is incorrect. The defendant admits the Release Deed in favour of Chandrasekaran and Santha Bai executed by her and the first plaintiff. But defendant contends that it is she who put up the additional superstructure for her brother - Chandrasekaran in the backside of the Suit land and also renovated existing superstructure by converting it from a tiled house to RCC building, all at her own expense. In fact, it is she who took care of her brother - Chandrasekaran, who was suffering from heart ailment and her specially abled sister - Santha Bai. During his lifetime, Chandrasekaran had declared that the defendant would be the sole owner of the superstructure and entitled to its entire rental income. The first plaintiff refused to look after Chandrasekaran and Santha Bai, and Chandrasekaran intended that the suit property falls into the hands of defendant after his lifetime as evident from his letter (nil dated) to defendant. The first plaintiff is not entitled to any share in the suit property. Further, the defendant does not have custody of any movables as



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described in Suit Item No.2. Accordingly, the defendant sought to dismiss the Suit.

9. In response to the written statement, a reply statement was filed on the side of the plaintiffs denying the allegations made in the written statement.

10. In turn, the defendant filed an additional written statement reiterating the averments made in the written statement and denying the case of the plaintiffs.

TRIAL COURT

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

- “1. Whether the plaintiff is entitled for partition and separate possession of her one-half share in the schedule mentioned property?*
- 2. Whether the plaintiff is entitled for rendition of accounts as asked for?*
- 3. Whether the plaintiff is entitled to future mesne*



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profits from the date of plaint till the date of final decree?

4. *Whether the plaintiff is entitled to one-half share in the rental income from Item 1 of the schedule mentioned property from the date of plaint till the date of final decree or till the date of realization?*
5. *Whether the suit framed, is not maintainable?*
6. *Whether the defendant is the owner of the superstructure in Item No.1 of the suit property?*
7. *Whether the valuation of the suit and payment of court fee is proper since the plaintiff is not in joint possession and enjoyment of the Item No.1 of the suit property?*
8. *Whether the suit properties are correctly valued and proper court fee is paid by the plaintiff?*
9. *Whether Item No.2, moveable items as mentioned in the plaint schedule are imaginary items and not in existence and in possession of the defendant on the date of filing of the suit?*

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10. Whether the defendant is a lessee for the land for item No.1 of the suit property under Bharani Abishekam Sri Arunacheleswarar Swami Temple Devasthanam, Tiruvannamalai?

11. Whether the release deed dated 18.08.1996 is true, valid and binding on the defendant?

12. To what other reliefs the parties are entitled to?"

12. At trial, on the side of the plaintiffs, the second plaintiff was examined as P.W.1 and exhibits Ex-A.1 to Ex-A.11 were marked. On the side of the defendants, the defendant examined herself as D.W.1 and marked Ex-B.1 to Ex.B.27 as exhibits.

13. After full-fledged trial, the Trial Court held that Chandrasekaran and Santha Bai were the absolute leaseholders of the Suit Item No.1 in view of the Release Deed executed by the first plaintiff and the defendant. After the demise of Santha Bai on December 22, 1989 and Chandrasekaran on April 10, 1999, the first plaintiff and the defendant became entitled to the leasehold right over Suit Item No.1 equally and

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thus, each are entitled to $\frac{1}{2}$ share in it. After the demise of Chandrasekaran and Santha Bai, the defendant is in exclusive enjoyment of Suit Item No.1.

The first plaintiff and the defendant are co-owners and hence, both are deemed to be in joint possession and therefore, the valuation of the Suit and the Court Fee paid is correct. Merely because the defendant is in possession and enjoyment of Suit Item No.1 by paying ground rent to the lessor, that *per se* does not confer exclusive right over Suit Item No.1 excluding the first plaintiff. Accordingly, a Preliminary Decree was granted in respect of Suit Item No.1 for partition and rendition of accounts. It also directed the plaintiffs to take separate steps for future mesne profits. *Qua* Suit Item No.2, as the presence and custody of such items with the defendant was not proved, the Suit was dismissed.

FIRST APPEAL

14. Feeling aggrieved, the defendant therein has preferred this Appeal Suit under Section 96 read with Order XLI Rule 1 of the CPC for Suit Item No.1.

14.1. To be noted, the plaintiff has not preferred appeal against the dismissal of the suit qua Suit Item No.(2). Hence, the dismissal decree

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passed by the Trial Court qua Suit Item No.(2) reached finality.

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15. During the pendency of this Appeal Suit, Appellant No.1 – S.Jalaja/defendant passed away and her legal representatives were brought on record as Appellant Nos. 2 to 4; and Respondent No.4 - Sasikala passed away and hence, her legal representative was impleaded as Respondent No.5.

CIVIL MISCELLANEOUS PETITION NO.13573 OF 2025

16. During the pendency of this Appeal Suit, Appellant No.1 / defendant (since deceased) filed a petition under Order XLI Rule 27 of CPC seeking to receive additional evidence.

17. Mr.K.Mani, learned Counsel for the appellants would submit that the first document sought to be received is a notice issued by Assistant Commissioner / Executive Officer of Arulmigu Bharani Abisekam Sri Arunachaleswarar Swami Temple, Tiruvannamalai, enhancing the rent for the Suit Item No.1 to Rs.2170/- from November 1, 2001 as fair rent. The second document is the receipt for ground rent paid by defendant on August 13, 1994. He would contend that these two documents are vital to

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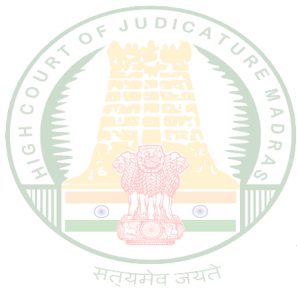
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WEB COPY prove the case of the defendant. Accordingly, he would pray to allow the petition, and receive and mark the additional evidence.

18. On the other hand, Mr.Ravichandran Sundaresan, learned Counsel for the respondents would argue that the first document sought to be marked is dated April 10, 2002 i.e., after the Suit. As regards the second document, there are various ground rent receipts in Ex-B.22 series for the years between 1964 and 1990 standing in the name of Shanmuga Mudaliar and the second document also stands in the name of Shanmuga Mudaliar and pertains to the year 1994. In these circumstances, the second document is not necessary for deciding the matter. Accordingly, he would pray to dismiss the petition.

19. This Court has considered both sides' submissions and perused the affidavit filed in support of the Order XLI Rule 27 petition. As per Ex-B.22 series, in the year 1964, ground rent to Suit Item No.1 was Re.0.94/- which has gradually increased to Rs.37.60/- in 1995 in the year. This has been enhanced to Rs.2170/- by the Fair Rent Fixation Committee, post the Suit. Already sufficient evidence is available on record and the said document would in no manner be helpful to decide the Suit.

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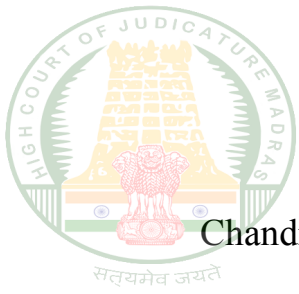
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20. Similarly, as regards the second document, when a series of rent receipts standing in the name of Shanmuga Mudaliar have been marked in Ex-B.22 series, the second document, a rent receipt pertaining to 1994, which also stands in the name of Shanmuga Mudaliar, is not going to help this Court decide the Suit in any manner. More so, when it is admitted that the defendant was residing along with Chandrasekaran and Santha Bai and that the ground rent payments were made in the name of Shanmuga Mudaliar. In these circumstances, this Court is of the view that the additional documents sought to be received and marked are in no way necessary for the disposal of this case and hence, the Order XLI Rule 27 petition deserves to be dismissed. Accordingly dismissed.

ARGUMENTS:

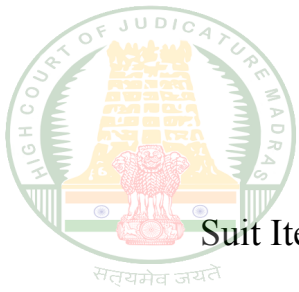
21. Mr.K.Mani, learned Counsel for the appellants would argue that during the lifetime of Chandrasekaran, the defendant alone put up additional construction by spending more than Rs.1,00,000/-. Further, after the first plaintiff's marriage in 1966, the first plaintiff left the suit property and is residing elsewhere with her husband. The defendant alone took care of her specially abled sister - Santha Bai and ailing brother -



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Chandrasekaran. The defendant was working as an Assistant in the Office of Executive Engineer, PWD Department. Ex-B.21 is the GPF Advance Sanction Order wherein purpose is mentioned as for medical treatment and prolonged illness of sister (Santha Bai). Ex-B.25 - Medical Bills would show that the defendant alone was looking after Chandrasekaran and took care of his medical expenses. Further, Ground Rent Receipts in the Ex-B.22 series would show that the defendant alone paid the ground rent for Suit Item No.1 since 1967 till filing of the Suit.

21.1. Further, Chandrasekaran during his lifetime, nominated the defendant as his nominee in the joint account (either or survivor). Further, Chandrasekaran executed Ex-B.9 - 'Kurichittu' expressing his desire that as the additional superstructure was built by the defendant, she alone is entitled to collect rent from Suit Item No.1 and succeed it after his demise. The Trial Court failed to consider Ex-B.9 and other exhibits, and erred in decreeing the Suit *qua* Suit Item No.1 in a cryptic fashion without any proper discussion. The Trial Court ought to have declared that the defendant is the owner of the superstructure and bears the leasehold rights over the Suit land. Accordingly, he prayed to allow the Appeal Suit, set aside the Judgment and Decree of the Trial Court and dismiss the Suit *qua*

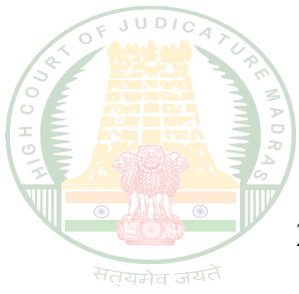


Suit Item No.1.

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21.2. He would rely on the following in support of his submissions:

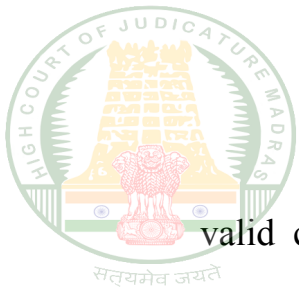
- (i) ***Sanjay Kumar Singh's Case*** – Judgment of Hon'ble Supreme Court in ***Sanjay Kumar Singh -vs- The State of Jharkhand***, reported in ***2022 LiveLaw (SC) 268***
- (ii) ***Rangammal's Case*** - Judgment of this Court in ***Rangammal -vs- Sundarambal & another***, reported in ***2021-2-L.W.373***;
- (iii) ***M.C.Anantharaman's Case*** - Judgment of this Court in ***M.C.Anantharaman (died) and Others -vs- M.C.Krishnamoorthy***, in ***C.R.P.Nos.629 & 1146 of 2017 dated October 26, 2022***;
- (iv) ***V.Durai's Case*** - Judgment of this Court in ***V.Durai and another -vs- V.Venkatesan***, in ***C.R.P.(PD)No.2511 of 2017 dated December 10, 2021***;
- (v) ***Renugopal's Case*** - Judgment of this Court in ***Renugopal -vs- Arulmighu Gangai Narayana Perumal Temple***, reported in ***(2001) 2 M.L.J. 507***;
- (vi) ***C.G.Rajendran's Case*** - Judgment of this Court in ***C.G.Rajendran -vs- M.Senthilkumar***, reported in ***(2002) 2 M.L.J. 809***;



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22. Per contra, Mr.Ravichandran Sundaresan, learned Counsel for the respondents would argue that Chandrasekaran and Santha Bai were the leaseholders of Suit Item No.1. Santha Bai passed away on December 22, 1989 and Chandrasekaran on April 10, 1999. After their demise, the first plaintiff and the defendant are equally entitled to the leasehold right over Suit Item No.1 as well as to partition the same equally. The Suit was filed in August 2001. Late Chandrasekaran was gainfully working as a cashier in George Town Co-operative Bank. He remained unmarried and utilised his own income and the rental income from Suit Item No.1 to set up the additional superstructure.

22.1. The ground rent is being paid in the name of Shanmuga Mudaliar till date. Hence, though the defendant is paying the ground rent, she cannot claim exclusive rights over the Suit Item No.1. The payment of ground rent by defendant, who is enjoying the rental income from Suit Item No.1 absolutely without giving the due and proportionate share of first plaintiff, can only be considered to be made on behalf of the first plaintiff as well. The first plaintiff and the defendant are co-owners in respect of the leasehold property viz., Suit Item No.1. In the absence of



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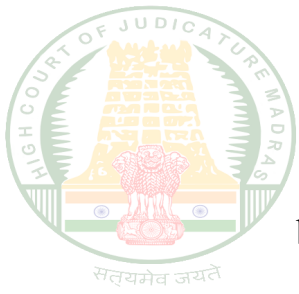
valid conveyance as per the Transfer of Property Act, 1882, or valid testate as per the Indian Succession Act, 1925, the first plaintiff's right over Suit Item No.1 cannot be deprived of. As regards Ex-B.9 - 'Kurichittu', it does not bear any date, witnesses' name or signature and it was not proved despite denial of Chandrasekaran's alleged signature found in it. There is no acceptable evidence to show that it is the defendant who put up the additional superstructure. Ex-B.26 - Payment Receipt allegedly made towards the maintenance of Suit Item No.1, was not proved as per law and the same is a self-serving document. The Trial Court after considering the evidence available on record, rightly granted the relief of partition and rendition of accounts *qua* Suit Item No.1. There is no warrant to interfere with the Judgment and Decree of the Trial Court. Accordingly, he would pray to dismiss the appeal and confirm the Judgment and Decree of the Trial Court.

DISCUSSION:

23. Heard on either side. Perused the evidence available on record.

The following points arise for consideration in this Appeal Suit:

- (i) Whether the additional construction in Suit Item No.1 was put up

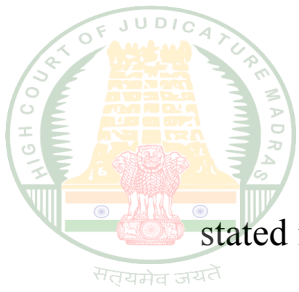


by the defendant or by Chandrasekaran ?

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- (ii) Whether Ex-B.9 - 'Kurichittu' and Ex-B.22 - Rent Receipts would deprive the first plaintiff of her leasehold right over Suit Item No.1 and grant it exclusively to the defendant ?
- (iii) Whether the Suit valuation and Court Fee paid is correct ?
- (iv) Whether the plaintiffs are entitled to the relief of partition, rendition of accounts and mesne profits?

24. There is no dispute with the relationship between the parties as stated in the plaint. The Suit land and the old superstructure (tiled house as it then was) belongs to the Bharani Abisekam Sri Arunachaleswarar Swami Temple, Tiruvannamalai. Shanmuga Mudaliar obtained the leasehold rights of the Suit land along with the said old superstructure vide Ex-A.12 = Ex-B.27 - Sale Deed. The first plaintiff and the defendant executed Ex-A.1 - Release Deed in favour of Chandrasekaran and Santha Bai. Both of them died unmarried and intestate. There is no dispute with the above facts. Further, there is no dispute with the date of demise of Shanmuga Mudaliar, Kamalavathy, Chandrasekaran and Santha Bai as



stated in the pleadings.

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Point No.(i)

25. According to the plaintiffs, after the demise of Chandrasekaran and Santha Bai, the first plaintiff and the defendant are each entitled to $\frac{1}{2}$ share in the leasehold right over Suit Item No.1. The defendant's case is that the defendant put up additional construction in the Suit land by spending more than Rs.1,00,000/- and also has been paying ground rent for Suit Item No.1.

26. Though the defendant pleaded that she put up additional construction, no building plan or permission was marked. She marked Ex-B.26 series containing plumbing work receipts, labour charge receipts and construction materials invoice. Admittedly, Suit Item No.1 is situated in the heart of Chennai city within the Greater Chennai Corporation limits. When so, the defendant's claim that she constructed additional superstructure in Suit land without any building plan or permission is not plausible.

27. Mr.K.Mani, learned Counsel for the appellants would contend that since the land belonged to temple, the temple authorities would not



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grant necessary permission and it is practically impossible to take up construction after obtaining building permission. This Court is unable to accept the argument for the reason that Ex-B.2 is the additional building plan submitted by Shanmuga Mudaliar in 1954 and the same was approved by the corporation authorities after collecting necessary fee therefor vide Ex-B.3 - Receipt. Chandrasekaran had significant income from his bank job and was the owner of Suit Item No.1 along with Santha Bai at the material point of time viz., 1979, when the defendant claims to have constructed the additional structure. In these circumstances, there is heavy burden upon the defendant to prove that she put up additional construction in the Suit land. The defendant has failed to examine any independent evidence in this regard. There is no sufficient evidence available on record to support her case that she put up the additional construction. Hence, this Court is of the view that any additional superstructure would have been put up by Chandrasekaran alone or Chandrasekaran along with his co-owner - Santha Bai. Even while assuming that the defendant put up additional construction in Suit Item No.1, that does not confer her with right over Suit Item No.1, other than what she is legally entitled to. **Point No.(i) is answered accordingly.**

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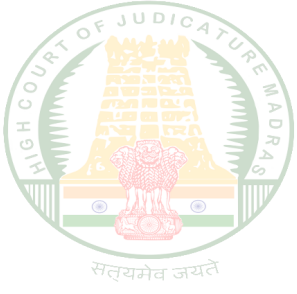
Point No.(ii)

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28. Ex-B.22 containing a series of rent receipts in respect of Suit land for the years between 1964 and 1999 stands in the name of Shanmuga Mudaliar. From Ex-B.22, it could be seen that from 1967, the defendant has been paying ground rent in the name of Shanmuga Mudaliar. It is an admitted fact that the defendant was residing in the suit property along with her sister - Santha Bai and brother - Chandrasekaran and that the first plaintiff is residing elsewhere along with her husband. Further, from the evidence of D.W.1, it is discerned that after the demise of Chandrasekaran, the defendant has been receiving rent from the tenants and there is no serious dispute with regard to it from the side of plaintiffs.

29. The defendant very much relies on Ex-B.9 - 'Kurichittu' and for ease of reference, its contents are extracted hereunder:

“ஆரம்ப நாள் முதல் கொண்டு இந்த கட்டிடம்
(No.8, சைவமுத்தையா முதலி 3ம் தெருவில்,
இராயபேட்டை) என்னுடைய இளைய தமக்கை ஜலாஜா
அவளால் கட்டப்பட்டதாலும் இதில் அவளுக்கு எல்லாவித
அனுபவ பாத்தியம் உள்ளதாலும், அவளை
இக்கட்டிடத்தின் மூலம் வரும் வாடகையை வசூலித்து,



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வரி மற்ற பராமரிப்பு வேளைகளுக்கு வேண்டியதை
எடுத்து மீதத்தை அவள் விருப்பப்படி செலவு செய்யலாம்.
கடவுள் திருப்பணிக்கு ஏதேனும் செலவு செய்தால்
மிகவும் உசிதம், இந்த வீட்டு வாடகையை யாருக்கும்
பகிர்ந்து அளிக்க வேண்டியதில்லை. வீட்டையும் பகிர்ந்து
கொள்வதை நான் விரும்பவில்லை.”

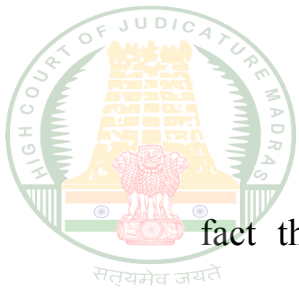
30. Ex-B.9 - 'Kurichittu' does not bear any date or nomenclature. It is written on a plain paper. It bears no witness signatures or names. Despite denial on the side of the plaintiffs, the defendant did not send the signature found in Ex-B.9 for expert opinion. To be noted, sample signatures of Chandrasekaran are very well available on various exhibits. Even while assuming that Ex-B.9 - 'Kurichittu' was executed by Chandrasekaran, it alone will not confer any exclusive right over the suit property to the defendant after his demise. Any immovable property can be transferred between inter-vivos by any of the modes contemplated under the Transfer of Property Act, 1882. After the lifetime of the owner, the immovable property would be inherited as per the applicable law of succession. If the owner wants to divert the mode of succession, then, he or she can bequeath the property only by way of Will as contemplated under Section 63 of Indian Succession Act, 1925 which shall be proved as



per Section 68 of the Indian Evidence Act, 1872. Ex-B.9 cannot be termed as a Will as there is no attestation. Ex-B.9 cannot be termed as a document of conveyance/ Transfer Deed under the Transfer of Property Act, 1882, as it is unstamped and unregistered. It cannot also be considered as a family arrangement in the absence of stamp duty and registration. In short, Ex-B.9 is not proved and even while assuming for a moment that it is proved, it does not confer any right to the defendant over the Suit Item No.1.

31. Mr.K.Mani would rely on *V.Durai's Case* to contend that Ex-B.9 is valid. In *V.Durai's Case*, a Kurichittu was relied on in a partition Suit and the same was held to be admissible and valid evidence. However, it has to be noted that partition is not a transfer under the Transfer of Property Act, 1882. Ex-B.9 - 'Kurichittu' cannot be said to be a document of conveyance as stated *supra*. Hence, *V.Durai's Case* is not applicable to the instant case.

32. Ex-B.22 - rent receipts stand in the name of Shanmuga Mudaliar, while Ex-B.23 - corporation tax receipt and Ex-B.24 - water tax receipt stands in the name of Chandrasekaran. This will not in any manner help the case of the defendants and affect the case of the plaintiffs. The



fact that Santha Bai and Chandrasekaran were taken care of by the defendant and not by first plaintiff, also does not affect the case of the plaintiffs in any manner. It does not deprive the first plaintiff of her right in Suit Item No.1. **Point No.(ii) has been answered accordingly.**

Point Nos.(iii) and (iv)

33. Admittedly, as per Ex-A.1, Chandrasekaran and Santha Bai were owners of the leasehold right over Suit Item No.1. Santha Bai died intestate on December 22, 1989 as a Hindu. Hence as per Section 15 (1) (d) of the Hindu Succession Act, 1956, her $\frac{1}{2}$ share in the leasehold right shall devolve upon the plaintiff, the defendant and Chandrasekaran.

34. Upon the demise of Chandrasekaran intestate on April 10, 1999, his $\frac{1}{2}$ share along with the $\frac{1}{6}$ share inherited by him from Santha Bai, totally $\frac{4}{6}$ share in the leasehold right over in Suit Item No.1 would devolve equally upon the first plaintiff and the defendant as per Section 8 of the Hindu Succession Act, 1956. Thus the plaintiff and the defendant would each be entitled to $\frac{1}{6} + \frac{4}{12}$ share = $\frac{1}{2}$ share in the leasehold right over the Suit Item No.1. They are co-owners / co-sharers entitled to equal share in Suit Item No.1. It is settled law that possession of one co-



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owner / co-sharer is deemed to be that of the other co-owner as well.

Hence, the first plaintiff is deemed to be in joint possession and enjoyment of Suit Item No.1 along with defendant. Hence, the Court Fee paid under Section 37 (2) of the Tamil Nadu Court-Fee and Suits Valuation Act, 1955 is correct and the Suit has been properly valued [See *Neelavathi -vs- N.Natarajan*, reported in *AIR 1980 SC 691*]. **Point Nos.(iii) is answered accordingly in favour of the plaintiffs and against the defendant.**

35. This Court in *R.Rani -vs- R.Hemavathi*, having the neutral citation **2025:MHC:1581**, reported in *MANU/TN/2700/2025* held as follows:

“35. It is settled law that in a Suit for partition, Order XX Rule 12 of CPC cannot be applied. In a Partition Suit covered under Order XX Rule 18 of CPC, the further relief shall only be rendition of accounts and not mesne profits. Without appreciating the said aspect in the right perspective, the Trial Court granted mesne profits, which is not the right approach. The defendants are liable to render accounts in respect of the income from the Suit Item No.1 from the date of Suit up to complete partition and delivery of possession [See Judgment of this



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Court in *Babburu Basavayya -vs- Babburu Guravayya*, reported in *AIR 1951 Mad 938 (FB)*, and in *Subba Reddiar -vs- Hazra Bibi*, reported in *AIR 1973 Mad 237*] ... ”

36. In view of the above legal position, the plaintiffs are not entitled to the relief of *mesne profits* but in view of the findings of this Court, they are entitled to the relief to partition and rendition of accounts. The Trial Court rightly held that the first plaintiff is entitled to $\frac{1}{2}$ share in the leasehold right over Suit Item No.1. There is no need to interfere with the findings of the Trial Court. **Point No.(iv) is answered accordingly.**

37. There is no dispute with *Madhukar's Case* relied on the learned Counsel for appellant. In *Madhukar's Case* the obligations of a First Appellate Court were reiterated. This Court has carefully considered the factual as well as the legal aspects of the case, considered the contentions on either side and have rendered findings with reasons, in line with what was reiterated in *Madhukar's Case*.

38. The other case laws relied on by the learned Counsel for appellant are not relevant and not applicable to the facts and circumstances of the case. In view of the above narrative, the Appeal Suit must fail as

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devoid of merits.

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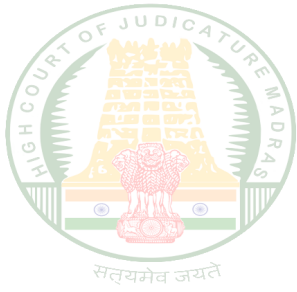
CONCLUSION:

39. Resultantly, the Order XLI Rule 27 Petition in CMP No.13573 of 2025 is dismissed as the additional documents sought to be received are not necessary for deciding the matter. The Appeal Suit also stands dismissed as devoid of merits. The Judgment and Decree of the Trial Court is confirmed. Taking into consideration the relationship between the parties, there shall be no order as to costs. Connected Civil Miscellaneous Petition in CMP No.14251 of 2016 shall be closed.

09.10.2025

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
jai/pam

To
The Additional Judge,
City Civil Court, Chennai.



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R. SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
APPEAL SUIT NO.567 of 2016

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