



WEB COPY



C.S.No.43 of 20..

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	30.04.2025
Pronounced On	02.07.2025

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.S.No.43 of 2012

D.S.Kumari

...plaintiff

Vs.

1.Mr.Lakshmi Narasimhalu
@ Kannan (Deceased)

2.Mr.G.Krishna Bhaskar

3.Mrs.M.S.Radhalakshmi

4.G.Sudharsan

5.G.Supraja Vybhavi

...Defendants

[The fourth and fifth defendants were brought on record as legal heirs of the deceased first defendant *vide* order dated 21.09.2021 passed in Application No.2569 of 2021]

Prayer:

This suit is filed under Order VII Rule 1 of C.P.C. r/w. Order IV Rule 1 of O.S.Rules for the following reliefs:

(a) For partition and separate possession of 1/3rd undivided share in the suit properties;



WEB COPY

C.S.No.43 of 20..



(b) For appointment of an Advocate Commissioner to divide the suit properties by metes and bounds and to allot 1/3rd share to the plaintiff; and

(c) for the costs of the suit.

For plaintiff	:	Mr.S.Sadasharam
For Defendant – 1	:	Mr.P.Murugaiyan
For Defendant – 2	:	Mr.R.Rajesh Vivekananthan
For Defendant – 3	:	Mr.V.G.Suresh Kumar
For Defendants – 4 & 5	:	No Appearance

JUDGMENT

This partition suit has been filed by the plaintiff for the following reliefs:-

- (a) For partition and separate possession of 1/3rd undivided share in the suit properties;
- (b) For appointment of an Advocate Commissioner to divide the suit properties by metes and bounds and to allot 1/3rd share to the plaintiff; and
- (c) For the costs of the suit.

2. Details of the suit scheduled property are as under:



Suit Schedule Item No.	Document No	Description of Property
Item No.I	1272 of 2007	House, Ground and Premises bearing Door No.9, Kasi Chetty Lane, Sowcarpet, Chennai 600079 comprised in R.S.No 10589/1, O.S.No.2707 measuring an extent of 1 Ground 357 sq.feet.
Item No.II	1273 of 2007	House, Ground and Premises bearing Door No.12, Cope Venkatachala Iyer Lane (called Kasi Chetty Lane), Sowcarpet, Chennai 600079 comprised in R.S.No.10580, O.S.No 2767, C.C.No.1026 measuring an extent of 1 Ground and 838.5 sq.feet. - [Western Portion]
	1274 of 2007	House, Ground and Premises bearing Door No.12, Cope Venkatachala Iyer Lane (called Kasi Chetty Lane), Sowcarpet, Chennai 600079 comprised in R.S.No.10580, O.S.No 2767, C.C.No.1026 measuring an extent of 1 Ground and 838.5 sq.feet. - [Eastern Portion]
Item No.III	-	Gold and Diamond Jewels weighing about 200 sovereigns worth about Rs.45,00,000/-

3. The brief facts of the case are that the deceased Mrs.G.Subbarathinamma, W/o.Late Mr.Narasimmalu Chetty had three children viz., late Mrs.Alamelu Ammaal, Mrs.D.S.Kumari (plaintiff herein) and late Mrs.Andal. The defendants are the children of the late Mrs.Alamelu Amaal and late Mrs.Andal, who pre-deceased their mother late Mrs.G.Subbarathinamma.

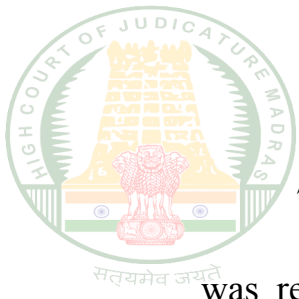


WEB COPY

4. The first defendant is the son of Late Mrs.Alamelu Ammaal. The second defendant is the son of Late Mrs.Andal and the third defendant is the daughter of Late Mrs.Andal.

5. The plaintiff's mother Mrs.G.Subbarathinamma died on 23.01.2010 leaving behind the plaintiff and the first to third defendants as her surviving legal heirs, who are entitled to succeed her estate which includes the immovable properties as shown in Item No.I & Item No.II of the Suit Schedule and also, Gold & Diamond jewels weighing about 200 Sovereigns worth about Rs.45 Lakhs as described in Item No.III of the Suit Schedule. During her lifetime, late Mrs.G.Subbarathinamma had executed Exhibits P1 to P3, Settlement Deeds, dated 12.12.2007.

6. As per Exhibit P1, the Settlement Deed, dated 12.12.2007 which was registered as Document No.1272 of 2007 before the Sub Registrar, Sowcarpet, Chennai - 600 079, Item No.I of the Suit Schedule Property was settled in favour of the first defendant subject to the condition that the first defendant pays a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) to the plaintiff, within one year from the date of death of the Settlor late Mrs.G.Subbarathinamma.

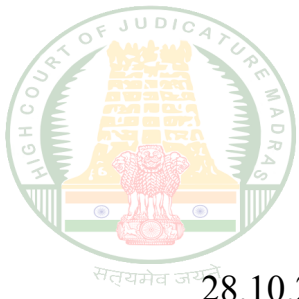


WEB COPY

7. As per Exhibit P2, the Settlement Deed, dated 12.12.2007 which was registered as Document No.1273 of 2007 before the Sub Registrar, Sowcarpet, Chennai - 600 079, the western portion of the Item No.II of the Suit Schedule Property was settled in favour of the second defendant subject to a similar condition that the second defendant pays a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) to the plaintiff, within one year from the date of death of the Settlor late Mrs.G.Subbarathinamma.

8. As per Exhibit P3, the Settlement Deed, dated 12.12.2007 which was registered as Document No.1274 of 2007 before the Sub Registrar, Sowcarpet, Chennai - 600 079, the eastern portion of Item No.II of the Suit Schedule Property was settled in favour of the third defendant subject to a similar condition that the third defendant pays a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) to the plaintiff, within one year from the date of death of the Settlor late Mrs.G.Subbarathinamma.

9. However, the first to third defendants did not pay the amounts to the plaintiff as per the condition imposed by the late Mrs.G.Subbarathinamma in Exhibits P1 to P3, Settlement Deeds dated 12.12.2007.



WEB COPY

10. During the pendency of the suit, the first defendant also died on 28.10.2020 leaving behind his son & daughter as his legal heirs. Hence, the plaintiff filed Application No.2569 of 2021 for bringing the legal heirs of the first defendant as the fourth and fifth defendants in the suit which was allowed by this Court *vide* order dated 21.09.2021.

11. Therefore, the fourth and fifth defendants were impleaded as the legal representatives of the deceased first defendant. Though the fourth and fifth defendants were served with suit summons, there is no representation on behalf of the fourth and fifth defendants. They have thus not come forward with any defence.

12. Thus, the second defendant remained *ex-parte*. Since the third defendant had not taken any steps to represent her Written Statement, the third defendant was also set *ex-parte* by this Court *vide* order dated **16.11.2021**. The third defendant had however filed the **Application No.440 of 2022** for setting aside the *ex-parte* order dated **16.11.2021** which was allowed by this Court *vide* Order dated **21.02.2022**.



WEB COPY

13. Meanwhile, the plaintiff and the third defendant filed their respective Draft Issues before this Court. On 28.04.2022, when this case was taken up for consideration, the following issues were framed :-

“1. Whether the suit filed by the plaintiff for partition and separate possession of 1/3rd undivided share in the suit properties is maintainable?

2. Whether the condition imposed on the defendants to pay Lump sum amount as stipulated in the Settlement Deeds of Late G.Subbarathinamma, the deceased mother of the plaintiff dated 12.12.2007 bearing Document Nos.1272, 1273 and 1274 of 2007 in favour of the defendants 1 to 3 is a condition subsequent?

3. Whether the plaintiff is entitled to claim 1/3rd share in the suit properties, when he has not challenged the Deeds of Settlement executed in favour of the defendants 1 to 3?

4. Whether the defendants 1 to 3 were unable to pay the sums as specified in the Deeds of Settlement to the plaintiffs by reason of the Award passed by the Assistant Registrar of Co-operative Societies against the plaintiff in the proceedings initiated by Mysore Silk Cloth Merchants Co-operative Bank Limited?

5. Whether the defendants 1 to 3, who had been made Garnishees in the said proceedings, and are governed by a prohibitory order were justified in complying with the said order and consequently not paying the sums due to the plaintiff as specified in the Deeds of Settlement?

6. To what other reliefs, the parties are entitled to?”

14. After considering the Draft Issues filed by the plaintiff and the 3rd



Defendant, now, the following additional issues are framed by this Court:

WEB COPY

“(i) Whether the failure of the Defendants to keep up with the time line prescribed in Ex.P1 to P3 (Settlement Deed dated 12.12.2007) to pay the amount to the plaintiff, within one year from the date of death of the Settlor, Mrs.G.Subbarathinamma on 23.01.2010 would render properties Exs.P1 to P3 available for partition between the parties hereto?”

“(ii) Whether the payment of Rs.5 Lakhs purportedly by the 3rd Defendant pursuant to the Order dated 16.06.2012 in Case No.ARB-45/Section 101(1)(a)/02/2011-12Arb and payment of Rs.15 Lakhs by the 3rd Defendant pursuant to the Order dated 21.12.2021 in the present suit can be considered as mitigating circumstances for the 3rd Defendant to take a defence that the property in Ex.P3 is not available for partition?”

15. On behalf of the plaintiff, the plaintiff deposed evidence as P.W1.

Following documents were marked as Exhibits by the plaintiff:

Sl. No.	Exhibits	Description
1	Ex.P1	Certified Copy of Settlement Deed dated 12.12.2007 (Doc.No.1272 of 2007)
2	Ex.P2	Certified Copy of Settlement Deed dated 12.12.2007 (Doc.No.1273 of 2007)
3	Ex.P3	Certified Copy of Settlement Deed dated 12.12.2007 (Doc.No.1274 of 2007)
4	Ex.P4	Copy of Letter dated 05.07.2011 sent by the 1 st Defendant to the Catholic Syrian



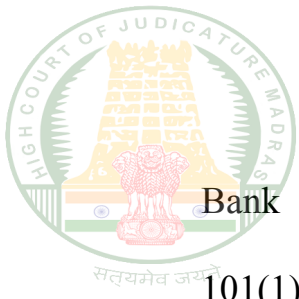
Sl. No.	Exhibits	Description
		Bank
5	Ex.P5	Copy of Letter dated 15.07.2011 sent by the Catholic Syrian Bank to the 2 nd Defendant
6	Ex.P6	Photocopy of the Letter dated 27.07.2011 sent by the 1 st Defendant to the learned Counsel for the plaintiff
7	Ex.P7	Photocopy of the Letter dated 19.01.2011 sent by the plaintiff to the 1 st Defendant
8	Ex.P8	Photocopy of the Letter dated 19.01.2011 sent by the plaintiff to the 2 nd Defendant
9	Ex.P9	Photocopy of the Letter dated 19.01.2011 sent by the plaintiff to the 3 rd Defendant
10	Ex.P10	Office Copy of the Lawyer Notice dated 23.04.2011

16. On behalf of the defendants, the third defendant deposed evidence as D.W.1. Except for the first and third defendants, none of the other defendants have either filed written statement or were examined as witness and during trial, on behalf of the Defendants, the third defendant deposed evidence as D.W.1. Through D.W.1, the following documents were marked as Exhibits:-



Sl. No.	Exhibits	Description
1	Ex.D1	Certified Copy of Settlement Deed dated 12.12.2007 (Doc.No.1271 of 2007)
2	Ex.D2	Certified Copy of Settlement Deed executed in December 2008
3	Ex.D3	Certified Copy of Settlement Deed executed in July 2008
4	Ex.D4	Certified Copy of Order passed by Office of the controller of the Cooperative Societies
5	Ex.P5	Copy of Letter dated 15.07.2011 sent by the Catholic Syrian Bank to the 2 nd Defendant
6	Ex.P6	Photocopy of the Letter dated 27.07.2011 sent by the 1 st Defendant to the learned Counsel for the plaintiff
7	Ex.P7	Photocopy of the Letter dated 19.01.2011 sent by the plaintiff to the 1 st Defendant
8	Ex.P8	Photocopy of the Letter dated 19.01.2011 sent by the plaintiff to the 2 nd Defendant
9	Ex.P9	Photocopy of the Letter dated 19.01.2011 sent by the plaintiff to the 3 rd Defendant
10	Ex.P10	Office Copy of the Lawyer Notice dated 23.04.2011

17. The plaintiff, her husband viz., Mr.D.T.Srinivasan, and two others viz., Mrs.D.N.Shashidhar & Ms.D.S.Archana had availed a loan from a Bank viz., Mysore Silk Cloth Merchant Co-operative Bank Limited. However, they failed to repay the same to the said bank. Hence, the said

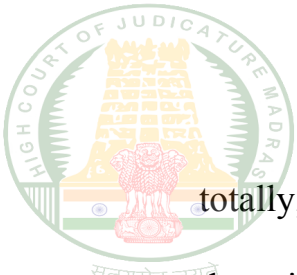


WEB COPY

Bank initiated Arbitration Proceedings in Case No.ARB-45/Section 101(1)(a)/02/2011-12Arb against the plaintiff, her husband, and the two others viz., Mrs.D.N.Shashidhar & Ms.D.S.Archana. In the said proceeding, deceased first defendant to the third defendant were proceeded as garnishees in view of Exhibits P1 to P3, Settlement Deeds, 12.12.2007.

18. The Assistant Director of Cooperative Societies, Bangalore *vide* order dated 16.06.2012, directed the plaintiff, deceased first defendant and the third defendant along with Mrs.D.N.Shashidhar & Ms.D.S.Archana to deposit a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) in the Mysore Silk Cloth Merchant Co-operative Bank Limited towards the loan. Pursuant to the order dated 21.12.2021, the third defendant had deposited a sum of Rs.5,00,000/- (Rupees Five Lakhs only) before the Tribunal. This is not disputed by the plaintiff.

19. This Court *vide* order dated 21.12.2021 in this suit, directed the third defendant to deposit the remaining sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) to the credit of this suit, as per which, the third defendant deposited a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) to the credit of this suit by way of Demand Draft dated 18.12.2021. Thus,



totally, a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) has been deposited by the third defendant.

WEB COPY

20. Thereafter, the third defendant filed Application No.1460 of 2023 for filing additional document being the order dated 16.06.2012 made in Arbitration Proceedings Dispute No.ARB-45/Section 101(1)(a)/02/2011-12 initiated before the Assistant Director of Cooperative Societies, Bangalore by the Chief Executive Officer of the Mysore Silk Cloth Merchant Co-operative Bank Limited and the English translation thereof to be marked as an Exhibit on the side of the third defendant in the suit. This Court *vide* order dated 20.03.2023, allowed the said Application subject to proof and relevancy.

21. The learned counsel for the plaintiff submits that since the defendants, who were directed to pay a lump sum amount as per Exhibits P1 to P3, Settlement Deeds, dated 12.12.2007, failed to comply with the conditions imposed therein, these Settlement Deeds stand cancelled. It is submitted that failure to comply with the conditions will result in cancellation of the gift. It is further submitted that the plaintiff has every right to claim a 1/3rd undivided share in the entire suit properties, both



movable and immovable, as shown in the Schedule of Properties annexed to the plaint.

WEB COPY

22. It is further submitted that on 13.06.2011, a meeting was convened to take inventory of gold jewellery, ornaments, and articles from the locker in the property described in Suit Schedule Item No.I, as those ornaments and articles belonged to late Mrs.G. Subbarathinamma and also to the plaintiff. However, upon opening the locker, no gold articles or ornaments were found. When the plaintiff questioned the first and third defendants, who were present at the time of opening the locker and had control and custody over it, they did not provide any satisfactory explanation. The second defendant also refused to participate in the inventory proceedings held on 13.06.2011.

23. It is further submitted that the first defendant, in a letter dated 21.07.2011 addressed to the plaintiff's counsel, alleged that the second defendant had tampered with the gold jewels kept in the locker of the premises. The first defendant is liable to clarify that he was not aware of the removal of the jewels from the locker by the second defendant. It is further submitted that the first and second defendants colluded with each other in



tampering with the jewels. Therefore, the plaintiff has filed the present partition suit.

WEB COPY

24. The learned counsel for the third defendant submitted that only a charge has been created against the third defendant as also the first defendant and the second defendant under Exhibits P1 to P3, Settlement Deeds, dated 12.12.2007, as they failed to pay the amounts as is contemplated in Exhibits P1 to P3, Settlement Deeds, dated 12.12.2007 registered as Document Nos.1272 of 2007, 1273 of 2007, 1274 of 2007 , before the Sub Registrar, Sowcarpet, Chennai - 600 079.

24.1. It is further submitted by the learned counsel for the third defendant that the Settlor, late Mrs.G.Subbarathinamma (mother of the plaintiff and maternal grandmother of the defendants) had settled a property in favour of the plaintiff *vide*, Exhibit D1, Settlement Deed, dated 12.12.2007. That apart, it is submitted that late Mrs.G.Subbarathinamma had settled another property in favour of the plaintiff's daughter viz., Smt.D.S.Meera *vide* Exhibit D2, Settlement Deed, dated 14.12.2008. Thereafter, the late Mrs.G.Subbarathinamma and plaintiff had settled the property covered in Exhibit D1 in favour of plaintiff's daughter by way of



Exhibit D3, Settlement Deed, dated 01.07.2008.

WEB COPY

24.2. Therefore, it is submitted that the plaintiff has suppressed the execution of Exhibits D1 to D3. It is also submitted that the failure to pay the amounts in time would not result in either revocation or cancellation of Exhibit P3 (Settlement Deeds dated 12.12.2007 which was registered as Document Nos. 1272 of 2007, 1273 of 2007 & 1274 of 2007 on the file of the Sub Registrar, Sowcarpet, Chennai – 600 079).

24.3. The learned counsel for the third defendant also submitted that as per Section 126 of the Transfer of Property Act, 1882, a gift can be suspended or revoked under the circumstances only if the donor and donee agree to a specific event that is beyond the control of the donor or if the gift can be revoked in part or wholly at the will of the donor, in which case, it is void. Additionally, a gift can be revoked, if it could be rescinded, if it were a contract.

24.4. Alternatively, it is submitted that the plaintiff ought to have filed the suit for declaration to declare that the Settlement Deeds dated 12.12.2007 (Ex.P1 to Ex.P3) are unenforceable. It is submitted that since



the third defendant has paid Rs.20,00,000/- (Rupees Twenty Lakhs only) as per Exhibit P3, Settlement Deed, dated 12.12.2007 registered as Document No.1274 of 2007 before the Sub Registrar, Sowcarpet, Chennai - 600 079, it is not open to the plaintiff to claim for partition of the suit schedule property.

24.5. In support of his submissions, the learned counsel for the third defendant has placed reliance on the following decisions:

- (i) N.Thajudeen Vs. Tamil Nadu Khadi & Village Industries Board (2024) SCC Online SC 3037***
- (ii) Sehdev Singh Verma Vs. J.P.S.Verma & Anr. (2015) SCC Online Del 11654***
- (iii) Rayar Naidu & Ors. Vs. Kartheepan & Ors. (2012) 1 MWN (Civil) 617***

25. In response to the above submissions made by the learned counsel for the third defendant, the learned counsel for the plaintiff submits that the properties settled under Exhibits D1 to D3 have no relevance, as they are not the subject matter of the present case.

26. I have considered the arguments advanced by the learned counsel



WEB COPY

for the plaintiff and the defendants. I have perused the plaint filed in support of the present suit and the written statements of the first and third defendants.

27. I have also perused Exhibits P1 to P10 and Exhibits D1 to D10 executed by late Mrs.G.Subbarathinamma. I have also perused the deposition of the respective witnesses as well.

28. The defendants are the beneficiaries under Exhibits P1 and P3 executed by late Mrs.G.Subbarathinamma. They are children of the late Mrs.Alamelu Ammal and late Mrs.Andal respectively. Late Mrs.Alamelu Ammal and late Mrs.Andal are two of three daughters of late Mrs.G.Subbarathinamma.

29. The plaintiff is the other daughter, who survived late Mrs.G.Subbarathinamma. Both late Mrs.Alamelu Ammal and late Mrs.Andal pre-deceased the settlor, i.e., their mother late Mrs. G.Subbarathinamma.

30. Late Mrs.G.Subbarathinamma had also executed Exhibits D1 to



WEB COPY

D3, Settlement Deeds, in favour of the plaintiff and her daughter. However, execution of Exhibits D1 to D3 in favour of the plaintiff and her daughter are of no relevance to the facts of the present case. They are independent settlements deeds executed by Late Mrs.G.Subbarathinamma in their favour.

31. Principal dispute in this suit pertains to rights over the immovable properties settled in favour of the defendants *vide* Exhibits P1, P2 and P3, Settlement Deeds, dated 12.12.2007 by late Mrs.G.Subbarathinamma in their favour. Exhibits P1, P2 and P3, Settlement Deeds, dated 12.12.2007 executed by late Mrs.G.Subbarathinamma are Conditional Settlement Deeds.

32. For the sake of clarity, relevant clause in Settlement Deed (Exhibits P1) viz., Doc.No.1272 of 2007 dated 12.12.2007 is extracted hereunder:-

“That in consideration of the premises and in further consideration of natural love and affection the Settlor has towards the Settlee, the Settlor doth hereby Settle as and by way of absolute gift unto the Settlee the property namely HOUSE, GROUND AND PREMISES BEARING NO.9, KASI CHETTY LANE, SOWCARPET, CHENNAI 600 079 MOREFULLY DESCRIBED IN THE SCHEDULE HEREUNDER free of all encumbrances together with the right to have the electricity connection with the MES and also



WEB COPY



C.S.No.43 of 20..

deposits with MES in Account Nos. as per the sheet attached transferred in the name of the Settlee to have the Schedule mentioned property registered as owner in the assessment registers maintained by the Corporation of Chennai and CMWSS Board and to have the patta transferred in the name of the Settlee, to be possessed and enjoyed by him absolutely after the life time of the Settlor subject to the condition that the Settlor reserves her right to enjoy the said property for her life without any power of any kind of alienation and subject to further condition that the Settlee pays a sum of Rs.10,00,000/- (Rupees Ten lakhs only) to Smt.D.S.Kumari, wife of D.T.Srinivasa (settlor's third daughter) within one year since the demise of the Settlor to secure equal distribution of the Settlor's three immovable properties amongst her above said three branches of her heirs.

The Settlor doth covenant with the Settlee that she shall not revoke this Deed of Settlement under any circumstances and this Settlement is irrevocable.

The Settlor doth also covenant with the Settlee that the amount payable to the above said Smt.D.S.Kumari shall be a first charge on the Schedule mentioned property and that the said amount shall be paid to Mrs.D.S.Kumari within one year after her life time.”

33. Similar Clauses are there in Exhibits P2 and P3, Settlement Deeds, dated 12.12.2007 executed in favour of the second and third defendants. Clauses in Exhibits P1, P2 & P3, Settlement Deeds, dated 12.12.2007 thus make it clear that the settlement deeds are irrevocable.



WEB COPY

34. Exhibits P1, P2 and P3, Settlement Deeds, dated 12.12.2007 also make it clear that the plaintiff is entitled to the amounts specified therein and incase the defendants fail to pay the amounts specified therein to the plaintiff, the plaintiff will have a first charge over the suit schedule properties under the respective Exhibits.

35. The Settlor late Mrs.G.Subbarathinamma had merely retained a life interest in the demised premises/properties settled in favour of the defendants in Exhibits P1, P2 and P3, Settlement Deeds, dated 12.12.2007.

36. Where a gift is complete and the donor has done all in his power to give effect to it, it is irrevocable except in the circumstances mentioned in Section 126 of the Transfer of Property Act, 1882.

37. Section 126 of the Transfer of Property Act, 1882 also makes it clear that a gift deed which prescribes that the gift is revocable wholly or in part, at the mere will of the donor, is void to that extent.

38. Thus, if Exhibits P1, P2 and P3, Settlement Deeds, dated 12.12.2007 contained clauses reserving power to the revoke the settlement,



the gift/settlement itself would have been void in term of Section 126 of the Transfer of Property Act, 1882.

WEB COPY

39. Under, Section 126 of the Transfer of Property Act, 1882, a gift can be revoked and/ or suspended only under the following circumstances:-

- a) Where the donor and donee agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked.
- b) A gift may be rescinded in any of the cases if it were a contract except for want or failure of consideration.
- c) A gift can be also revoked on the ground of coercion, fraud, misrepresentation or undue influence, if it were a contract (except want or failure of consideration).

40. If under a gift deed, the donee/settlee has to maintain the donor/settlor and if the donee/settlee fails to maintain the donor/settlor, the donor/settlor as the case may be had no right to not cancel the gift, exception being, under Section 23 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007. However, this is not the case.

41. Thus, Exhibits P1, P2 and P3, Settlement Deeds dated 12.12.2007 could not have been revoked even by the settlor late Mrs.G.Subbarathinamma during her life time except under the circumstances specified under Section 126 of the Transfer of Property Act, 1882. For the sake of clarity, Section 126 of the Transfer of Property



Act, 1882 is reproduced below:-

WEB COPY

Section 126:-When gift may be suspended or revoked.—

The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

42. As per Section 126 of the Transfer of Property Act, 1882, the rights of transferees for consideration without notice is also untouched by the gift. This is in tune with Section 53 of The Transfer of Property Act, 1882. Section 53 of the Transfer of Property Act, 1882 reads as under:-

Section 53 -Fraudulent transfer.—

- (1) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.**



WEB COPY



C.S.No.43 of 20..

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

A suit instituted by a creditor (which term includes a decree -holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor, shall be instituted on behalf of, or for the benefit of, all the creditors.

(2) Every transfer of immoveable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.

43. The Donor/Settlor, late Mrs.G.Subbarathinamma had put an obligation on the beneficiaries namely the first, second and third defendants under Exhibits P1, P2 and P3, Settlement Deeds, dated 12.12.2007. These defendants are to pay a sum of **Rs.10,00,000/-** (Rupees Ten Lakhs only), **Rs.20,00,000/-** (Rupees Twenty Lakhs only) and **Rs.20,00,000/-** (Rupees Twenty Lakhs only) each to the plaintiff within one year from the date of



her death i.e., within one year from the date of death of the

WEB COPY

44. Exhibits P1, P2 and P3, Settlement Deeds, dated 12.12.2007 have merely cast obligations on the defendants to pay the amounts specified in Exhibits P1, P2 and P3, Settlement Deeds, dated 12.12.2007 to the plaintiff.

45. The terms of Exhibits P1, P2 and P3, Settlement Deeds, dated 12.12.2007 are valid and therefore, the rights conferred on the plaintiff and the defendants cannot be diluted.

46. Exhibits P1, P2 and P3, Settlement Deeds, dated 12.12.2007 merely declare that the plaintiff will have “**first charge**” over the demised properties in Exhibits P1, P2 and P3, Settlement Deeds, dated 12.12.2007 in case the respective defendants fail to pay the aforesaid amounts to the plaintiff within one year from the death of the Settlor namely late Mrs.G.Subbarathinamma.

47. The Donor/Settlor, late Mrs.G.Subbarathinamma died on **23.01.2010**. Thus, the these defendants who are the beneficiaries under Exhibits P1, P2 and P3, Settlement Deeds, dated 12.12.2007 were required



to pay a sum of **Rs.10,00,000/-** (Rupees Ten Lakhs only), **Rs.20,00,000/-** (Rupees Twenty Lakhs only) and **Rs.20,00,000/-** (Rupees Twenty Lakhs only) each to the plaintiff latest by **22.10.2011**.

WEB COPY

48. Since the Donor/Settlor, late Mrs.G.Subbarathinamma died on **23.01.2010**, the first, second and third defendants should have made payments to the plaintiff on or before **22.01.2011**.

49. However, they failed to pay the amounts to the plaintiff. Only the third defendant has paid the amounts belatedly pursuant to order of the Cooperative Tribunal and this Court as mentioned in above.

50. Thus, the plaintiff's right over the suit scheduled property crystallized on 22.10.2011 within one year from the death of her mother, Mrs.G.Subbarathinama, the maternal grandmother of the respective defendants on 23.01.2010.

51. The plaintiff thus only has a charge over the property settled in Exhibits P1, P2 and P3, Settlement Deeds, dated 12.12.2007 in favour of the defendants.



WEB COPY

52. Since the plaintiff has a “**first charge**” over the property, it is deemed that there is “**simple mortgage**” in terms of Section 58(b) of the Transfer of Property Act, 1882 in terms of Section 100 of the said Act. Section 100 of Transfer of Property Act, 1882 reads as under:

Section 100: Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; **and all the provisions hereinbefore contained which apply to simple mortgage shall, so far as may be, apply to such charge.**

Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust, [and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge.

53. Section 58(b) of the Transfer of Property Act, 1882 defines the expression “**simple mortgage**”as under:

(b) Simple Mortgage:-Where,without delivering possession of the mortgaged property, the mortgagor



WEB COPY



C.S.No.43 of 20..

binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to this contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, **the transaction is called simple mortgage** and the mortgagee a simple mortgagee.

54. Therefore, all the provisions relating to a simple mortgage would apply to the property settled in favour of defendants under Exhibits P1, P2, and P3, Settlement Deeds, dated 12.12.2007.

55. Since the Exhibits P1, P2, and P3, Settlement Deeds, dated 12.12.2007 are irrevocable, they are not available in common pool for partition merely defendants failed to discharge their liability under Exhibits P1, P2, and P3, Settlement Deeds, dated 12.12.2007 within one year of the death of their maternal grandmother, Mrs.G.Subbarathinama on 23.01.2010.

56. Since Exhibits P1, P2, and P3, Settlement Deeds, dated 12.12.2007 are irrevocable, the properties settled therein are not available for either inheritance or partition between the plaintiffs and defendants. Therefore, Issue Nos.1, 3 and Supplementary Issue No.(i) are answered



against the plaintiff. Consequently, Issue Nos.2 and 4 are also answered against the plaintiff.

WEB COPY

57. Since the plaintiff has a “**first charge**” over the property settled in Exhibits P1, P2, and P3, Settlement Deeds, dated 12.12.2007, the plaintiff has right to recover amounts from the respective defendants as if a simple mortgage was created in favour of the plaintiff under Exhibits P1, P2, and P3, Settlement Deeds, dated 12.12.2007 in terms of Section 58(b) of the Transfer of Property Act, 1882.

58. The plaintiff is entitled to recover the amount specified in Exhibits P1, P2, and P3, Settlement Deeds, dated 12.12.2007 as if the defendants had created a simple mortgage as the defendants are bound by the charge over the property in favour of the plaintiff under Exhibits P1, P2, and P3, Settlement Deeds, dated 12.12.2007.

59. It is therefore open for the plaintiff to have the suit scheduled immovable properties sold, and the proceeds of the sale to be applied, towards the payment of the money under Exhibits P1, P2, and P3, Settlement Deeds, dated 12.12.2007. At best, the first, second and third



defendants only have a right to redeem the property settled under Exhibits

P1, P2, and P3, Settlement Deeds, dated 12.12.2007 under Section 60 of the

Transfer of Property Act, 1882.

60. Thus, while the plaintiff has a right to have the suit schedule immovable property sold and to apply the proceeds of sale of the property towards the charge created in favour of the plaintiff under Exhibits P1, P2, and P3, Settlement Deeds, dated 12.12.2007, the plaintiff is entitled for a decree for the amounts specified Exhibits P1, P2, and P3, Settlement Deeds, dated 12.12.2007.

61. The first, second and third defendants also have a corresponding right to redeem the mortgage under Section 60 of the Transfer of Property Act, 1882.

62. In the present case, neither the plaintiff has not applied for sale of the suit schedule immovable property nor have the defendants filed a suit for redemption of mortgage under Section 60 of the Transfer of Property Act, 1882. Instead, the plaintiff has applied for partition of the suit schedule



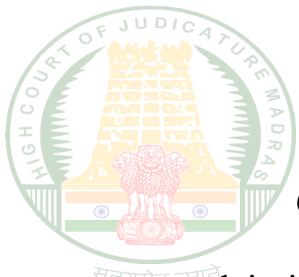
immovable property, which is impermissible under law.

WEB COPY

63. As mentioned above, the plaintiff is merely entitled to recover the money from the defendants, the prayer of the plaintiff for partition of properties in Exhibits P1, P2, and P3, Settlement Deeds, dated 12.12.2007 are liable to be rejected.

64. It is also noticed that the plaintiff's husband, namely Sri.D.T.Srinivas, had availed a loan for a sum of **Rs.10,00,000/-** (Rupees Ten Lakhs only) from The Mysore Silk Cloth Merchants Cooperative Bank Limited. The plaintiff, along with Sri.D.N.Shashidhar and his wife, namely Sri.D.S.Archana stood as guarantors for the said loan.

65. Since the loan was not repaid by the plaintiff's husband, an award came to be passed by the Joint Director of Loan Recovery in Bangalore at the instance of The Mysore Silk Cloth Merchants Cooperative Bank Limited, where by the plaintiff's husband, plaintiff and Sri.D.N.Shashidhar and his wife, namely Sri.D.S.Archana were held liable.



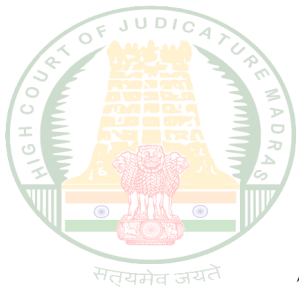
WEB COPY

66. In the recovery proceedings pursuant to the aforesaid Award, the plaintiff, namely Smt.D.S.Kumari, was arrayed as the second respondent before the Cooperative Tribunal. There, the plaintiff referred to the charge in Exhibits P1, P2, and P3, Settlement Deeds, dated 12.12.2007, in favour of plaintiff on account of defaults committed by the first, second and third defendants under Exhibits P1, P2, and P3, Settlement Deeds, dated 12.12.2007.

67. Under these circumstances, the first and third defendants alone were impleaded as garnishees in the recovery proceeding as the fifth and sixth respondents in the recovery proceedings.

68. The amount due to the plaintiff from the first and third defendants, under Exhibits P1, P2, and P3, Settlement Deeds, dated 12.12.2007 alone were thus attached.

69. The plaintiff and the first and third defendants herein were directed to deposit a sum of **Rs.30,00,000/-** (Rupees Thirty Lakhs only) with the said bank. A sum of **Rs.5,00,000/-** (Rupees Five Lakhs only) was purportedly deposited by the third defendant with the Tribunal.



WEB COPY

70. Pursuant to the orders of this Court dated 21.12.2021, another sum of **Rs.15,00,000/-** (Rupees Fifteen Lakhs only) was also deposited by the third defendant to the credit of this suit by drawing a Demand Draft in favour of the Registrar General, High Court, Madras. Thus, Issue No.5 is answered against the defendants. These defendants are governed by a prohibitory order.

71. Thus, the third defendant has discharged the liability cast on the third defendant although belatedly under Exhibit P3, Settlement Deed, dated 12.12.2007. For such belated payment, the third defendant is at best liable to pay interest at such rates as may be ordered under Section 34 of Code of Civil Procedure.

72. The aforesaid amount of **Rs.15,00,000/-** (Rupees Fifteen Lakhs only) deposited by the third defendant to the credit of this suit by drawing a Demand Draft in favour of the Registrar General, High Court, Madras is payable to Mysore Silk Cloth Merchants Co-operative Bank Limited.

73. The Registry is therefore directed to send suitable communication

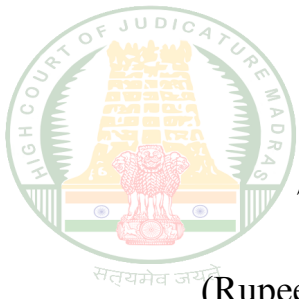


to The Mysore Silk Cloth Merchants Co-operative Bank Limited to file application for payment out of the aforesaid amount of **Rs.15,00,000/-** (Rupees Fifteen Lakhs only) if the amount was not paid by the plaintiff and her husband to The Mysore Silk Cloth Merchants Co-operative Bank Limited.

74. Since the amount of Rs.20,00,000/- (Rupees Twenty Lakhs only) was not paid then and there or before the due date on 22.01.2011 by the third defendant, the plaintiff is entitled to interest for the delayed payment at the rate of 12.5% per annum for a period delay.

75. Therefore, the charge over the property in Exhibit P3, Settlement Deed, dated 12.12.2007 executed in favour of the third defendant stands partly discharged. The charge shall however continue to remain in favour of the plaintiff until the third defendant discharges the interest liability.

76. Although, in the Written Statement of the first defendant, he had stated that he had paid **Rs.50,000/-** (Rupees Fifty Thousand only) in cash to the plaintiff, there are no documents to establish the same.



WEB COPY

77. Therefore, there shall be a decree for a sum of **Rs.10,00,000/-** (Rupees Ten Lakhs only) against the first defendant in terms of Settlement Deed in Exhibit P1 dated 12.12.2007 together with interest at 12.5% per annum from **22.01.2011**, being the due date i.e after a lapse one year from the death of the Settlor late Mrs.G.Subbarathinamma on **23.01.2010** till the date payment of aforesaid amount of **Rs.10,00,000/-** (Rupees Ten Lakhs only) to the plaintiff.

78. Therefore, the fourth and fifth defendants, who represent the interest of the first defendant, shall pay the amounts of **Rs.10,00,000/-** (Rupees Ten Lakhs only) to the plaintiff in terms of Exhibit P1, Settlement Deed, dated 12.12.2007 together with interest at 12.5% per annum from **22.01.2011** till the date of payment specified in Exhibit P1, Settlement Deed, dated 12.12.2007, failing which the plaintiff has a right to bring the property in Exhibit P1, Settlement Deed, dated 12.12.2007 to sale by filing suitable application/petition before the Execution Court.

79. There shall be also a decree against the second defendant for a sum of **Rs.20,00,000/-** (Rupees Twenty Lakhs only) in terms of Settlement Deed in Exhibit P2 dated 12.12.2007 together with interest at 12.5% per annum from **22.01.2011**, being the due date, i.e after the lapse one year from



WEB COPY

the death of the Settlor late Mrs.G.Subbarathinamma on **23.01.2010** till the date payment of aforesaid amount of **Rs.20,00,000/-** (Rupees Twenty Lakhs only) to the plaintiff.

80. The plaintiff is therefore entitled to a decree against the second defendant for a sum of **Rs.20,00,000/-** (Rupees Twenty Lakhs only) specified in Ex P2, Settlement Deed, dated 12.12.2007 together with interest at 12.5% per annum from **22.01.2011** till the date of payment failing which the plaintiff has a right to bring the property in Exhibit P2, Settlement Deed, dated 12.12.2007 to sale by filing suitable application/petition before the Execution Court.

81. There shall be also a decree against the third defendant for interest on belated payment of **Rs.20,00,000/-** (Rupees Twenty Lakhs only) at rate 12.5% per annum from **22.01.2011**, being the due date, i.e after the lapse one year from the death of the Settlor late Mrs.G.Subbarathinamma on **23.01.2010** till the date payments by the third defendant.

82. Therefore, the plaintiff is entitled to a decree against the second



defendant for interest on belated payment of **Rs.20,00,000/-** (Rupees Twenty Lakhs only) at rate 12.5% per annum from **22.01.2011** till the date of payment failing which the plaintiff has a right to bring the property in Exhibit P3, Settlement Deed, dated 12.12.2007 to sale by filing suitable application/petition before the Execution Court.

83. Therefore, it is for the plaintiff to file a suitable application for the execution of this decree by giving a proper calculation after, setting-off the principal amount of **Rs.20,00,000/-** (Rupees Twenty Lakhs only).

84. During the course of hearing, the learned counsel for the third defendant submitted that the jewels mentioned in Schedule Item No. III to the plaint are in the custody of the third defendant and will be available for partition among the plaintiff and the defendants in the following ratio:

Plaintiff [one of the daughters of late Mrs.G.Subbarathinamma]	1/3 rd
First defendant [son of late Alamelu Ammal, who is one of the daughters of late Mrs.G.Subbarathinamma]	1/3 rd
Second defendant [son of late Andal Ammal, who is one of the daughters of late Mrs.G.Subbarathinamma]	
Third defendant [daughter of late Andal Ammal, who is one of the daughters of late	1/3 rd



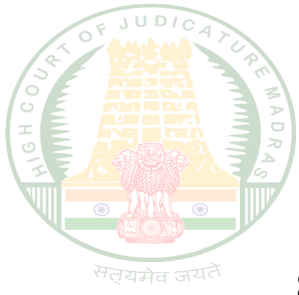
C.S.No.43 of 20..

[Mrs.G.Subbarathinamma]

WEB COPY 85. Therefore, an Advocate Commissioner is appointed to take possession of the jewels described in Schedule Item No. III to the plaint and the same shall be kept in safe custody and handed over to the plaintiff and the defendants.

86. However, there shall be a continuing charge over the said jewels in favour of the Mysore Silk Cloth Merchants Co-operative Bank Limited until the amounts due are discharged by the plaintiff and the first, second, and third defendants. The plaintiff shall have a second charge over the 1/3rd share of the jewels of the defendants, after the satisfaction of the amounts due to the Mysore Silk Cloth Merchants Co-operative Bank Limited.

87. Since the plaintiff has filed this partition suit by paying a nominal court fee under Section 37 of the Tamil Nadu Court-Fees and Suits Valuation Act, 1965, the plaintiff is directed to pay the deficit court fee under Section 22 of the said Act read with Sl.No.1 to Appendix I-A of the High Court Fees Rules, 1956, within a period of 60 days from the date of receipt of a copy of this Judgment. Subject to the aforesaid payment only, the Decree shall be drafted by the Registry.



C.S.No.43 of 20..

WEB COPY

88. In the result, the suit is partly decreed and is partly dismissed as above. No costs.

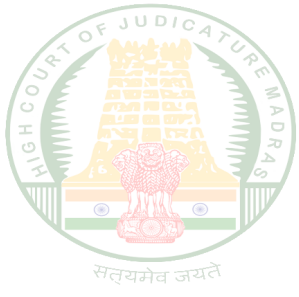
02.07.2025

mrr/arb/jen

Index : Yes/No

Neutral Citation: Yes/No

Speaking Order (or) Non-Speaking Order



WEB COPY



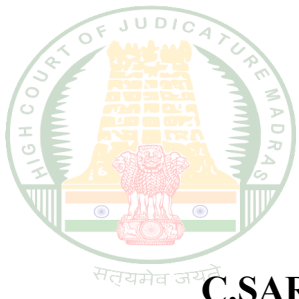
C.S.No.43 of 20..

C.SARAVANAN, J.

mrr/arb

C.S.No.43 of 2012

02.07.2025

**C.S. No.43 of 2012****C.SARAVANAN..J**

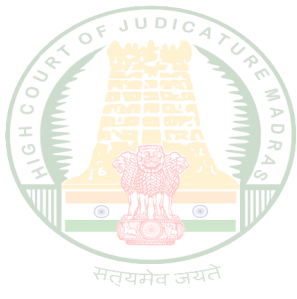
WEB COPY The case is listed under the caption “for clarification”, after the judgment was pronounced on 02.07.2025 and after it was uploaded.

2. I had however refrained from naming an Advocate Commissioner to be appointed for distributing the jewels mentioned in Schedule Item No. III to the plaintiff to the parties in the judgment and decree. In paragraph Nos.84 and 85 of the judgment and decree, it was held that each of the three legal heirs of the late.G.Subbarathinamma are entitled to 1/3 share.

3. In paras 84 and 85, it has been held as under:

“84. During the course of hearing, the learned counsel for the third defendant submitted that the jewels mentioned in Schedule Item No. III to the plaintiff are in the custody of the third defendant and will be available for partition among the plaintiff and the defendants in the following ratio:

<i>Plaintiff [one of the daughters of late Mrs.G.Subbarathinamma]</i>	<i>1/3 rd</i>
<i>First defendant [son of late Alamelu Ammal, who is one of the daughters of late Mrs.G.Subbarathinamma]</i>	<i>1/3 rd</i>
<i>Second defendant [son of late Andal Ammal, who is one of the daughters of late Mrs.G.Subbarathinamma]</i>	



WEB COPY



C.S.No.43 of 20..

<i>Third defendant [daughter of late Andal Ammal, who is one of the daughters of late Mrs.G.Subbarathinamma]</i>	<i>1/3 rd</i>
--	---------------

85. Therefore, an Advocate Commissioner is appointed to take possession of the jewels described in Schedule Item No. III to the plaint and the same shall be kept in safe custody and handed over to the plaintiff and the defendants.”

4. It is informed that the jewels are presently in the custody of the second defendant, namely, G.Krishna Bhaskar and not with the third defendant and that the legal heirs of the first defendant as well as the third defendant consent for the decree. Therefore, it is submitted that paras 84 and 85 have to be altered. Recording the submission, paras 84 and 85 are ordered to be deleted and substituted with the following paragraphs:-

“84. Today, it is informed by the counsel for the plaintiff as also the counsel for the third defendant presented through Video Conference that the jewels are presently in the custody of the second defendant, namely, G.Krishna Bhaskar and that the legal heirs of the first defendant as well as the third defendant consent for the decree.

85.1. Since there is no representation on behalf of the



WEB COPY



C.S.No.43 of 20..

second defendant before this Court to give effect to the judgment and decree, Ms.P.Pavithra Ragavi, Enroll No.Ms.4652/2021 (30/43, TNHB, Agavan Apartments, MIG, Phase-3, Sholinganallur, Chennai-119) (Mobile No.91768 09917) is appointed as an Advocate Commissioner to visit the second defendant and to take delivery of Schedule Item 'III' to the plaintiff and to make an inventory of the same in presence of the plaintiff/plaintiff's counsel, second and third defendants/second and third defendants' counsel and the fourth and fifth defendants/fourth and fifth defendants' counsel and thereafter, in their presence, get it valued for eventual distribution among the plaintiff and defendants as per the judgment.

85.2. The learned Advocate Commissioner shall be paid an Rs.60,000/- covering initial expenses for execution of warrant. The plaintiff and the second and third defendants shall each pay a sum of Rs.15,000/- to the learned Advocate Commissioner. The defendants 4 and 5,



WEB COPY

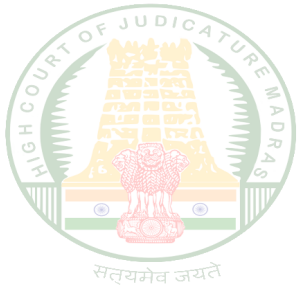


C.S.No.43 of 20..

representing the interest of the deceased first defendant shall jointly pay a sum of Rs.15,000/-. In case the second defendant fails to pay the amount, the plaintiff and the third, fourth and fifth defendants shall pay the amount in pro rata to the learned Advocate Commissioner. This amount will have to be adjusted from the final decree.

85.3. After getting the valuation from an approved valuer, the learned Advocate Commissioner shall produce the jewels with proper inventory and valuation report with the Registrar, Original Side, High Court, Madras. The learned Advocate Commissioner may, if desired, package Item No.III- Jewellery in a sealed package/container in the presence of the plaintiff and the defendants and/or their respective counsel and the Registrar, Original Side, High Court, Madras.

85.4. The Registrar, Original Side, High Court, Madras, shall, thereafter, deposit the jewels in a Bank Account before the Final Decree is passed. Thereafter, the parties are at liberty to move suitable application for final



WEB COPY



C.S.No.43 of 20..

order.

85.5. If any difficulty arise to the implementation of this order, the learned Advocate Commissioner may approach this Court for suitable directions.

85.6.The Registry is directed to issue necessary warrant to the learned Advocate Commissioner.”

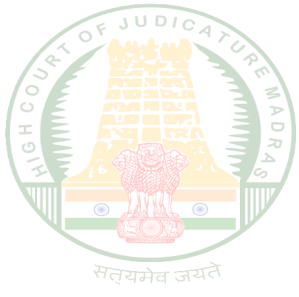
5. This order shall form part of the judgment and decree, dated 02.07.2025.

6. Registry is directed to issue a fresh order copy.

09.07.2025

apd

C.SARAVANAN.,J



WEB COPY



C.S.No.43 of 20..

apd

C.S. No.43 of 2012

09.07.2025