



A.S.NO.455 OF 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 01 / 07 / 2025

JUDGMENT PRONOUNCED ON : 07 / 07 / 2025

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL SUIT NO.455 OF 2020

AND

CMP NO.5157 OF 2020

1.R.Rani

2.R.Babu

3.R.Dhandapani

4.R.Anand

... Appellants /
Defendants

Vs.

R.Hemavathi

... Respondent /
Plaintiff

PRAYER: First Appeal filed under Section 96 read with Order XLI of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated September 26, 2019 passed in O.S.No.437 of 2014 by the learned XVI Additional Judge, City Civil Court, Chennai.

For Appellants : Mr.Balan Haridas
For Respondent : Mr.K.Prem Kumar



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JUDGMENT

Feeling aggrieved by the Judgment and Decree dated

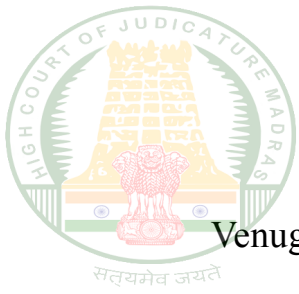
September 26, 2019 passed in O.S.No.437 of 2014 by the 'learned XVI Additional Judge, City Civil Court, Chennai' ['Trial Court' for brevity], the plaintiff therein has filed this Appeal Suit under Section 96 read with Orders XLI of 'the Code of Civil Procedure, 1908' ['CPC' for short].

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

PLAINTIFF'S CASE

3. The case of the plaintiff as put forth in the plaint is that the Suit Properties belong to Late Ramalingam, who is the father-in-law of the plaintiff. He married one Parvathi as first wife and out of their wedlock, one male child was born on January 10, 1971, namely R.Venugopal, who is none other than the husband of the plaintiff. First wife - Parvathi passed away in the year 1974. Subsequently, Ramalingam married the first defendant - R.Rani as his second wife. Out of the second wed-lock, defendants 2 to 4 were born. Ramalingam passed away intestate in the year 1990 leaving behind plaintiff's husband - Venugopal and the defendants as his legal heirs. The marriage between the plaintiff and

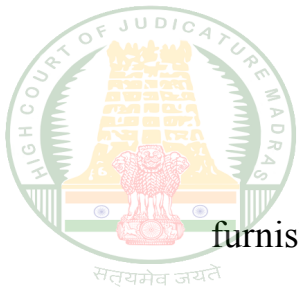
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Venugopal was held on November 28, 2004 and they had no children in their marriage.

3.1. Further case of the plaintiff is that during his lifetime, Ramalingam purchased the Suit Properties out of his own funds. After the demise of Ramalingam, the plaintiff's husband - Venugopal also passed away issueless on May 11, 2012. After the demise of Venugopal, the plaintiff has got 1/5 share in the undivided Suit Properties. Subsequently, when the plaintiff demanded partition, the defendants refused to partition the Suit Properties. Hence, the plaintiff issued a legal notice to the defendants on February 19, 2013 and the defendants replied on February 26, 2013. In the reply notice, it was stated that the plaintiff's husband - Venugopal and the defendants 2 to 4 have already executed a registered Settlement Deed dated February 18, 2005 bearing Document No.154 of 2005 on the file of Sub Registrar's Office, Anna Nagar, in favour of the first defendant and thus, the entire Suit Properties belongs to the first defendant. On coming to know about this, the plaintiff verified with the Office of the Sub Registrar, Anna Nagar and came to know that no such Settlement Deed was executed and registered. Therefore, the plaintiff sent a rejoinder notice on March 20, 2013 calling upon the defendants to



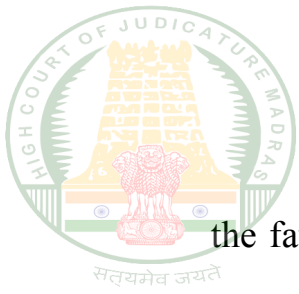
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furnish the copy of the Settlement Deed. The defendants did not respond to the rejoinder notice. Hence, the plaintiff filed the Original Suit initially for partition.

3.2. Thereafter, during trial, the defendants produced the alleged Settlement Deed dated February 18, 2005 (Registered as Document No.575 of 2005 in the Sub-Registrar's Office, Anna Nagar, Chennai). Hence, the plaintiff amended the plaint and incorporated Paragraph Nos.13(a) to 13(e) and averred that the signature and thumb impression found on the aforesaid Settlement Deed are not those of the plaintiff's husband - Late R.Venugopal and are forged by the defendants with the assistance of an impersonator. The plaintiff specifically denied the execution of the Settlement Deed dated February 18, 2005 as false and fabricated and sought for the additional relief of declaration that the Settlement Deed is null and void.

DEFENDANTS' CASE

4. The sum and substance of the defendants' case as projected by them during trial is that Item No.1 of the Suit Properties originally belonged to Late. Ramalingam who is the husband of the first defendant,



the father of defendants 2 to 4 and also the father-in-law of the plaintiff.

Ramalingam passed away on July 26, 1990 leaving behind the plaintiff's husband - R.Venugopal and the defendants as his legal heirs / legal representatives to succeed his estate and interest. After the demise of Ramalingam, the plaintiff's husband - R.Venugopal and defendants 2 to 4 jointly executed a Gift Settlement Deed on February 18, 2005, whereby Item No.1 of the Suit Properties was bequeathed in favour of the first defendant. From the date of the Settlement Deed, the first defendant alone has title and interest in respect of Item No.1 of the Suit Properties.

4.1. As far as Item No.2 of the Suit Properties is concerned, the said property was allotted by the Tamil Nadu Housing Board in the name of Late Ramalingam. However, the Equated Monthly Instalments (EMIs) were being paid by the first defendant. After the demise of plaintiff's husband - R.Venugopal, the first defendant permitted the plaintiff to reside in Item No.2 of Suit Properties as 'permissive occupant'. The plaintiff has no right or title in Item No.2 of Suit Properties. It is further averred that so far, Sale Deed has not been executed by the Tamil Nadu Housing Board in respect of Item No.2 of Suit Properties. Hence, the plaintiff's claim *qua* Item No.2 of Suit Properties is unsustainable.



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4.2. As already alluded to *supra*, the above is the case projected by the defendants during trial. On the other hand, in the written statement filed by the defendants, it is averred that during the lifetime of Late.Ramalingam, he executed a Settlement Deed in favour of the first defendant on February 18, 2005 and the same was registered at the Sub Registrar's Office, Anna Nagar as Document No.154 of 2005 and therefore, the first defendant alone is the absolute owner of the Suit Properties. Accordingly, the defendants prayed to dismiss the Suit.

TRIAL COURT

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

'1.Whether the plaintiff is entitled for 1/5th share in the Suit Property?

2.Whether the plaintiff is entitled for mesne profit?

3.To what other relief?'

6. The Trial Court framed the following issue as additional



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issue on August 27, 2019:

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1. Whether the Settlement Deed dated 18.2.2005 registered as Doc.No.575 of 2005 (Sic 515 of 2005) said to be executed by Venugopal and others in favour of D1 is genuine and valid?

7. At trial, plaintiff was examined as P.W.1 and one A.Perumal, District Revenue Officer, was examined as P.W.2. and Ex-A.1 to Ex-A.11 were marked on the side of the plaintiff. On the side of the defendants, first defendant was examined as D.W.1 and Ex-B.1 was marked.

8. After full-fledged trial, the Trial Court held that the defendants failed to prove the execution of Ex-B.1 - Settlement Deed dated February 18, 2005 in the manner known to law and that it is a fabricated document, not genuine, and void. Accordingly, the Trial Court declared the Settlement Deed as null and void and held that the plaintiff is entitled to 1/5th share in the Suit Properties. Consequently, the Trial Court decreed the Suit and passed a Preliminary Decree for partition.

9. Feeling aggrieved, the second defendant has preferred this First Appeal under Section 96 read with Orders XLI of the CPC.

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ARGUMENTS

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10. Mr.Balan Haridas, learned Counsel appearing for the appellants / defendants would argue that the Trial Court failed to consider the documents and evidence in right perspective. After the demise of Ramalingam, the plaintiff's husband - R.Venugopal and the defendants 2 to 4 executed Ex-B.1 - Registered Settlement Deed bequeathing their share in favour of the first defendant. Afterwards, the first defendant alone is in possession and enjoyment of Item No.1 of Suit Properties. As regards Item No.2 of Suit Properties, it is a Tamil Nadu Slum Clearance Board's property allotted to one Umapathy. However, the EMIs are being paid by the first defendant. After the demise of the plaintiff's husband, the plaintiff is permitted to reside in Item No.2 of the Suit Properties out of mercy and till date, the plaintiff is residing in Item No.2 of Suit Properties as a permissive occupant. The Trial Court failed to consider the fact that Ex-B.1 - Settlement Deed has been acted upon. Further, during the lifetime of the plaintiff's husband - R.Venugopal, he did not raise any question about Ex-B.1 - Settlement Deed. The plaintiff's husband, who is the competent person to deny the execution of Ex-B.1 - Settlement Deed, has not denied the same during his lifetime. In these circumstances, the plaintiff claiming through her husband – R.Venugopal



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is not entitled to question Ex-B.1 - Settlement Deed. Further, at the time of registration, a Voter Identity Card was produced to prove the identity of the plaintiff's husband. In the said identity card, there was a mismatch with the plaintiff's husband's name. Based on this alone, it cannot be said that Ex-B.1 - Settlement Deed is a fabricated one. Accordingly, he prayed to allow the appeal and set aside the Trial Court's Judgment and Decree.

10.1. In support of the arguments urged by the learned Counsel for the appellants / defendants, the following Judgments of the Hon'ble Supreme Court have been accited:

- (i) *State of Gujarat Vs. Kothari and Associates*,
reported in (2016) 14 SCC 761;
- (ii) *Rattan Singh Vs. Nirmal Gill*, reported in (2021) 15
SCC 300.

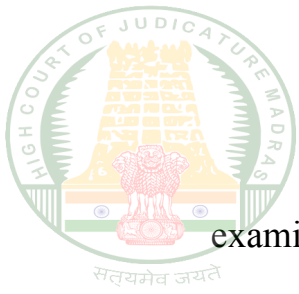
11. Per contra, Mr.K.Prem Kumar, learned counsel appearing for the respondent/plaintiff would contend that the defendants in their reply notice dated February 26, 2013 (Ex-A.9) provided misleading particulars by stating that the plaintiff's husband - R.Venugopal and



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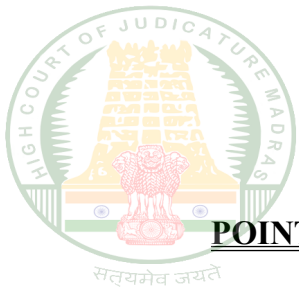
defendants 2 to 4 jointly executed a registered Settlement Deed on February 18, 2005 bearing Document No.154 of 2005 on the file of the Sub Registrar's Office, Anna Nagar. However, in their written statement, they have averred that Ramalingam, during his lifetime, executed a Settlement Deed in favour of the first defendant registered as Document No.154/2005. The alleged Settlement Deed executed by Venugopal and defendants 2 to 4 in favour of first defendant was not filed in the Court until the defendants presented their evidence. Hence, until the defendants entered the witness box, they maintained a misleading statement regarding Ex-B.1 - Settlement Deed. While Ex-B.1, the alleged Settlement Deed executed by Venugopal and defendants 2 to 4 in favour of first defendant, actually bears the Document No.575 of 2005, the defendants misled the plaintiff by stating that it bears Document No.154/2005. Upon learning about Ex-B.1 - Settlement Deed, the plaintiff promptly amended the plaint to incorporate Paragraphs 13(a) to 13(e) denying the execution and attestation of Ex-B.1 - Settlement Deed by her husband - Venugopal. The plaintiff specifically pleaded that the signature of the plaintiff's husband was forged and that the Settlement Deed was registered by way of impersonation. Despite the specific denial, the defendants did not



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examine any attesting witnesses as required under Section 122 of Transfer of Property Act, 1882 read with Section 68 of the Indian Evidence Act, 1872.

11.1. Further he would contend that the plaintiff's side marked Ex-A.2, Voter Identity Card of the plaintiff's husband - Late R.Venugopal. The Voter Identity Card submitted to identify the plaintiff's husband - Late R.Venugopal while executing Ex-B.1 – Settlement Deed, is different from Ex-A.2, which fact shows that the defendants registered Ex-B.1 by way of impersonation. As regards Item No.2 of the Suit Properties owned by the Tamil Nadu Slum Clearance Board [now Tamil Nadu Urban Habitat Development Board], the Board allotted the same to a third party named Umapathy, and the plaintiff's father-in-law - Ramalingam paid the subscription amount during his lifetime, and the plaintiff alone has been in possession and enjoyment of the same till date. Hence, there is no bar to divide Item No.2 of the Suit Properties, even though the Sale Deed has not yet been executed by the Board. The Trial Court rightly decreed the Suit and there is no warrant to interfere with the Trial Court's Judgment and Decree. Accordingly, he prayed for the dismissal of the appeal



POINTS FOR CONSIDERATION

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12. The points that arise for consideration in this Appeal Suit are as follows:

- (i) *Whether the Settlement Deed (Ex-B.1) has been proved in accordance with law?*
- (ii) *Whether the Suit is barred by limitation qua relief of declaration?*
- (iii) *Whether the plaintiff is entitled to partition qua Item No.1 of the Suit Properties?*
- (iv) *Whether Item No.2 of the Suit Properties is available for partition?*

DISCUSSION

13. Heard on either side. Perused the entire evidence available on record.

14. The plaintiff's father-in-law, Late Ramalingam, first married one Parvathi and through her, plaintiff's husband - R.Venugopal was born. The said Parvathi passed away in or about 1972. Thereafter, Ramalingam married the first defendant as his second wife in the year 1973. In the second marriage, defendants 2 to 4 were born. Ramalingam



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passed away on July 26, 1990. Subsequently, the plaintiff's husband –

R.Venugopal passed away on May 11, 2012. The plaintiff has no children.

There is no dispute with regard to the aforesaid facts.

15. The case of the plaintiff is that Item No.1 of Suit Properties was purchased by Ramalingam and he passed away on July 26, 1990 leaving behind the plaintiff's husband - R.Venugopal and defendants 1 to 4 as his legal heirs / legal representatives. Hence, the plaintiff's husband was entitled to 1/5 share in the Suit Properties and after him, the plaintiff is entitled to 1/5 share in the Suit Item No.1. The further case of the plaintiff is that Item No.2 of the Suit Properties is a Tamil Nadu Housing Board's property allotted to Ramalingam. Hence, the plaintiff is entitled to a 1/5 share in Item No.2 of the Suit Properties as well. The plaintiff filed the plaint on January 18, 2014 putting forth the aforesaid averments.

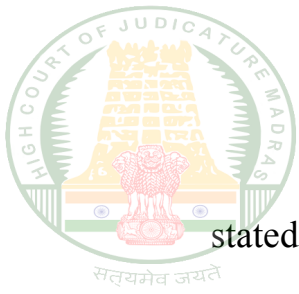
16. The plaintiff sent a legal notice on February 19, 2013 (Ex-A.7) seeking partition. The defendants sent a reply notice on February 26, 2013 (Ex-A.9) stating that after the demise of Ramalingam, the plaintiff's husband - R.Venugopal and defendants 2 to 4 executed a



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Settlement Deed on February 18, 2005, vide Document No.154 of 2005 at the Sub Registrar's Office, Anna Nagar. The plaintiff applied for a certified copy of Document No.154/2005, which was later marked as Ex-A.11 during trial. Ex-A.11 is not the Settlement Deed related to the parties to the Suit as alleged; on the other hand, it is a Sale Deed concerning third parties and unrelated to the Suit Properties. Hence, ignoring the alleged Settlement Deed, the plaintiff filed a Suit for partition.

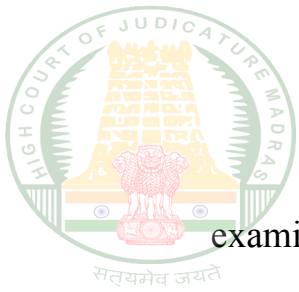
17. The defendants filed a written statement claiming that Ramalingam, father of plaintiff's husband and the defendants 2 to 4, husband of first defendant, executed the Settlement Deed vide Document No.154/2005 in favour of the first defendant. To be noted, the aforesaid averments in the written statement are contrary to those in Ex-A.9 – Reply Notice of the defendants. For the first time, after the commencement of the trial, defendants produced the original Settlement Deed dated February 18, 2005, which was marked as Ex-B.1. Perusal of the Settlement Deed (Ex-B.1) shows that it was registered on February 18, 2005, as Document No.575 of 2005 in the records of the Sub Registrar's Office, Anna Nagar, and not as Document No.154 of 2005. Hence, the defendants, in their reply notice as well as in their written statement,



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stated incorrect particulars. Consequently, the plaintiff who was not initially aware of the existence of Ex-B.1 - Settlement Deed, upon subsequently coming to know about the same when the defendants let in Ex-B.1, rightly amended the plaint to incorporate Paragraphs 13(a) to 13(e) and denied the execution of Ex-B.1 - Settlement Deed. Furthermore, the plaintiff alleged that the signature and thumb impression found in Ex-B.1, as well as the registration of the document, were obtained by impersonation.

18. To substantiate the plaintiff's case, the plaintiff marked Ex-A.2, the original Voter Identity Card of her husband - Venugopal. She produced Ex-A.2 and compared it with the original Voter Identity Card issued by Election Commission of India. Perusal of Ex-A.2 shows that it bears the I.D. No: TN/02/006/0402196. However, as per the endorsement made behind Page No.1 of Ex-B.1 - Settlement Deed, the ID number of the Voter Identity Card used to prove R.Venugopal's identity at the time of registration was TN/02/006/0402521. There is clearly a mismatch of the ID number. According to the plaintiff, her husband never executed the Ex-B.1 - Settlement Deed nor did he visit the Sub Registrar's Office to register the document. To further substantiate her case, the plaintiff



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examined P.W.2 - District Revenue Officer (Election), Corporation of Chennai, who deposed that the Voter Identity Card bearing No. TN/02/006/0402521 (the one endorsed in Ex-B.1) is in the name of one Babu. In other words, the Voter Identity Card mentioned in Ex-B.1 is not that of the plaintiff's husband; rather, it belongs to one Babu and the said fact has been proved by the plaintiff through the evidence of P.W.2, who is the competent government authority to depose about the Voter Identity Card. From the oral and documentary evidence, this Court is of the view that the plaintiff has made out a *prima facie* case *qua* Ex-B.1 Settlement Deed.

19. Moreover, as per Sections 122 read with 123 of the Transfer of Property Act, 1882, a Gift Settlement Deed is a compulsorily attestable document. Section 122 deals with the definition of a Gift and Section 123 speaks of how a Gift is to be made. For ready reference, Section 123 of Transfer of Property Act, 1882 is extracted hereunder:

“123. Transfer how effected.—For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.



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For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.”

20. When the execution of a compulsory attestable document, such as Ex-B.1 – Gift Settlement Deed, is denied, Section 68 of the Indian Evidence Act, 1872 requires the document be proved by examining at least one attesting witness. For ease of reference, Section 68 is extracted hereunder:

“68. Proof of execution of document required by law to be attested.

If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence :

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration



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Act, 1908 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.”

21. In this case, despite the specific denial of the plaintiff that Ex-B.1 is false and executed by way of impersonation, the defendants did not examine any attesting witness. It is to be noted that Ex-B.1 bears the signatures of three attesting witnesses and was drafted by an advocate. There is no evidence on record to show that the attesting witnesses are not available. Even if the attesting witnesses are not available, the defendants ought to have availed themselves of the recourse provided under Sections 70 and 71 of the Indian Evidence Act, 1872.

22. As regards ***Rattan Singh's Case*** (cited *supra*) relied on by the learned Counsel for the appellants / defendants, it deals with registered General Power of Attorney. Hon'ble Supreme Court held therein that registered General Power of Attorney attracts the presumption of valid execution. However, this Case revolves around a Gift Settlement Deed which is a compulsorily attestable document and hence, must be proved by the defendants as contemplated under Sections 122 and 123 of Transfer of Property Act, 1882 read with Section 68 of Indian Evidence



Act, 1872 by examining at least one of the attesting witness. Thus, **Rattan**

Singh's Case is distinguishable on facts and does not come to the aid of the defendants.

23. Therefore, this Court is of the view that Ex-B.1 Settlement Deed was not proved in accordance with law, and the plaintiff is entitled to disregard the same. **Point No.(i) is answered accordingly in favour of plaintiff and against the defendants.**

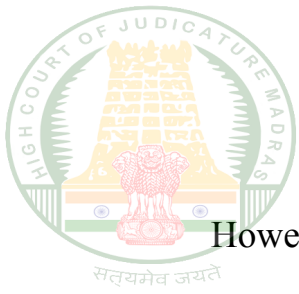
24. As stated *supra*, Item No.1 of Suit Properties was purchased by Ramalingam and Ramalingam passed away in 1990 as Hindu leaving behind the plaintiff's husband - R.Venugopal and defendants 1 to 4 as his legal heirs / legal representatives. Hence, as per Section 8 of the Hindu Succession Act, 1956, the plaintiff's husband and the defendants are each entitled to 1/5 share in the Suit Properties. After the demise of plaintiff's husband, his 1/5 share shall devolve upon his wife / plaintiff under Section 8 of the Hindu Succession Act, 1956. To be noted, under Section 8, mother means biological mother and does not include step-mother. To put differently, first defendant being the plaintiff's husband's step-mother, is not a legal heir under Section 8 of the Hindu Succession Act, 1956 and the plaintiff's husband's separate



property would not devolve upon first defendant. Hence, the plaintiff and the defendants are co-owners, each entitled to 1/5 share in the Suit Properties. **Point No.(iii) is answered accordingly in favour of the plaintiff and against the defendants.**

25. The law is well settled that the possession of one co-owner is deemed to be the possession of the other co-owners as well. Though the plaintiff is not in actual possession and enjoyment of Item No.1 of the Suit Properties, she remains a co-owner / co-heir and is in deemed possession of the same. The law presumes that the plaintiff is in joint possession and enjoyment thereof. Hence, the Court Fee paid under Section 37(2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1965, is justified [See *Neelavathi -vs- N.Natarajan*, reported in *AIR 1980 SC 691*].

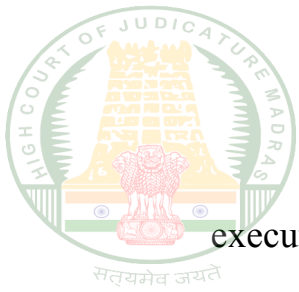
26. As regards Item No.2 of the Suit Properties, the plaintiff has averred that the property belongs to Ramalingam. However, the plaintiff did not produce any documents to substantiate this claim. On the other hand, the defendants, in their written statement, averred that the said property was allotted to Ramalingam by Tamil Nadu Housing Board but they claim that it is the first defendant who had been paying EMIs.



However, during evidence, the defendants claimed that Suit Item No.2 was originally allotted to one third party by name Umapathy.

27. It is an admitted fact that the plaintiff, since her marriage, is residing in Item No.2 of the Suit Properties. Though it is the plaintiff who has been in actual possession and enjoyment of the Suit Item No.2, law presumes that the defendants have been in joint possession and enjoyment of the Suit Item No.2 along with the plaintiff, as both the sides are claiming through Ramalingam. While assuming for a moment that Suit Item No.2 was not allotted to Ramalingam, even then, considering the fact that the plaintiff and the defendants have been in joint possession and enjoyment of the Suit Item No.2 till date, the said property can be divided among the plaintiff and the defendants and enjoyed by them until the original owner *i.e.*, the original allottee / Tamil Nadu Housing Board / Tamil Nadu Slum Clearance Board (Now Urban Habitat Development Board) claims it. The plaintiff is entitled to 1/5 share in Suit Item No.2 as well, in the same manner she is entitled to 1/5 share in Suit Item No.1.

28. The contention of the defendants that, as Suit Item No.2 is Tamil Nadu Housing Board's property and Sale Deed is not yet

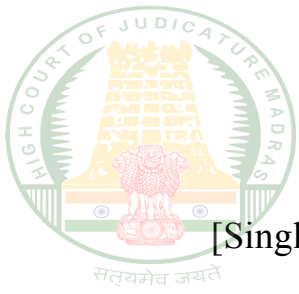


executed, the same cannot be partitioned, deserves to be rejected. This

Court is of the view that until the lawful owner claims, Suit Item No.2 can be partitioned and enjoyed by the plaintiff and defendants, and the partition will not bind the lawful owner. The said view is fortified by the Judgment of a learned Single Judge of this Court in ***Packiyam Ammal -vs- Pattu Ammal***, reported in (1999) 2 Mad LJ 757, wherein it has been held that even if it is a *Poramboke* land, if a family is in possession and enjoyment of the same, there is no bar to partition the property. Relevant extract is hereunder:

“16. In regard to Item No. 10, the only reason for dismissing the suit was that the family is not having title to the property. Under Ext. A-2, it is found that the family is in possession. It could be a Government land. The possessory right continuous in the family. Any arrangement between the members of the family may not bind the Government. But, as between them, it has to be treated as a family asset and available for partition. A preliminary decree also will have to be passed with regard to Item 10.”

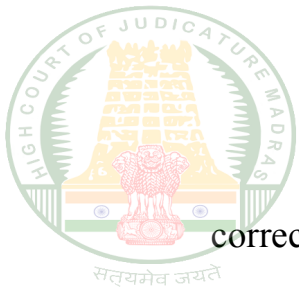
29. In this regard, reference shall also be made to Judgment of this Court in ***C.Mani -vs- C.Rajan***, reported in (2024) 6 MLJ 238



[Single Judge], wherein, referring to *Packiyam Ammal's Case*, a similar view has been taken with regard to *Natham Poromboke* land.

30. It is made clear that merely granting the relief of partition in respect of Suit Item No.2 does not confer any title or possessory title to the plaintiff or the defendants. It only means that till the true owner / lawful allottee / Board claims possession, the plaintiff and the defendants are entitled to divide and enjoy Suit Item No.2. It is further clarified that, at any instance, if either the plaintiff or the defendants claims any right *qua* Suit Item No.2, then the Tamil Nadu Housing Board or the Tamil Nadu Slum Clearance Board [Now Tamil Nadu Urban Habitat Development Board] as the case may be, may consider the request as per the relevant rules and regulations or any relevant law, untrammelled and uninfluenced by this Judgment. It is furthermore clarified that this Judgment shall not in any manner cause prejudice to the original lawful owner to initiate any action / proceedings against the plaintiff and the defendants as per law. Thus, **Point No.(iv) is answered accordingly in favour of plaintiff and against the defendants.**

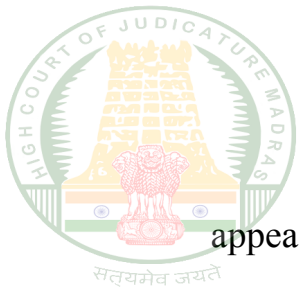
31. As regards limitation, the defendants did not furnish



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correct particulars regarding Ex-B.1. In their reply notice and written statement, the defendants provided misleading particulars and did not send a photocopy of Ex-B.1 to the plaintiff. The plaintiff only became aware of the existence of Ex-B.1 when it was produced before the Court by the defendants on November 5, 2015. Immediately, the plaintiff filed an amendment petition and amended the plaint denying the execution of Ex-B.1–Settlement Deed as false and fabricated. Therefore, this Court is of the view that the plaintiff challenged the Settlement Deed within three years from the date of her knowledge *viz.*, November 5, 2015. Hence, the Suit has been filed well within the period of limitation and not barred under Article 58 of the Limitation Act, 1963 *qua* the relief of declaration that Ex-B.1 –Settlement Deed dated February 18, 2005 is void.

32. *Kothari and Associates's Case* (cited *supra*) was relied on by the learned Counsel for the appellants / defendants for the proposition that the question of limitation is a mandate to the forum and the Courts must consider limitation even if the plea is not raised by the parties, and that even if the said plea was not raised before the Trial Court and even if the Trial Court has failed to consider the said plea on its own, the plea of limitation can be raised at the time of appeal or any successive



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appeal for that matter. There is no quarrel with regard to the legal proposition. This Court has considered the question of limitation *supra*.

Point No.(ii) is answered accordingly in favour of plaintiff and against the defendants.

33. The Trial Court, after appreciating the entire evidence and documents has rightly concluded that Ex-B.1 was not proved in accordance with law. Further it held that the plaintiff and the defendants are joint co-owners / co-heirs, each entitled to 1/5 share in the Suit Schedule Properties and rightly decreed the Suit. There is no warrant to interfere with its decision.

34. It is apposite to state here that the plaintiff's case is that her husband's signature was forged and the defendants registered the Settlement Deed by impersonating the plaintiff's husband. Defendants 2 to 4 did not deny the execution and registration of Ex-B.1. Therefore, Ex-B.1 is *non-est* in law as against the plaintiff and would not bind her, but would bind defendants 2 to 4 for they have not denied execution of Ex-B.1 Settlement Deed.



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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 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***]. The Trial Court's Judgment and Decree shall be modified to the above extent alone.

RESULT

36. Resultantly, the First Appeal is partly allowed in the following terms:

- (i) The Settlement Deed dated February 18, 2005 registered as Document No.575 of 2005 at the Sub Registrar's Office, Anna Nagar, Chennai, is not binding on the plaintiff as well



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as her 1/5 share in respect of Item No.1 of the Suit Property;

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(ii) A Preliminary Decree is passed in favour of the plaintiff, declaring that the plaintiff is entitled to 1/5 share in the Suit Properties;

(iii) The plaintiff is entitled to receive accounts from the defendants for the income from Suit Item No.1 from the date of Suit till the complete partition & delivery of possession;

(iv) Considering the facts and circumstances of the case, there shall be no order as to costs;

(v) Consequently, connected Civil Miscellaneous Petition is closed.

07 / 07 / 2025

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK

To
The XVI Additional Judge
City Civil Court,
Chennai.

R. SAKTHIVEL, J.

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