

A.S.No.332 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.06.2025

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Coram:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

**A.S.No.332 of 2021
and C.M.P.No.15929 of 2021**

M.Sabareesh

...Appellant/5th Defendant

Versus

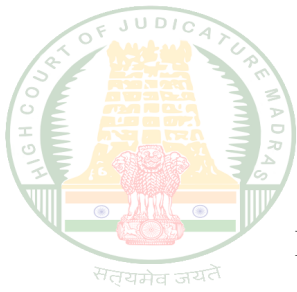
1.Krishnan
2.Ramu
3.Babu
4.Chokalingam
5.Manickam
6.Revathi

...Respondents/Plaintiffs

7.Padavatten
8.Kuppu @ Kuppammal
9.Chinnapaiyan
10.Indirani

...Respondents/Defendants 1 to 4

PRAYER: First Appeal filed under Order XLI Rule 1 of the Code of Civil Procedure, 1908 praying to set aside the Preliminary Decree dated October 31, 2018 passed in O.S.No.93 of 2016 on the file of District Court No.II, Kancheepuram and dismiss the suit in toto.



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For Appellant : Mr.B.Manoharan
For Respondents – 1 to 6 : Mr.K.C.Gandhi
For Respondents – 7 & 10 : Mr.Arunprasath
for Mr.M.Guruprasad
For Respondents – 8 & 9 : *Ex-parte* vide Order
dated 08.02.2022

J U D G M E N T

Feeling aggrieved by the Judgment and Decree dated October 31, 2018 passed by the “learned District Judge, District Court No.II, Kancheepuram” (hereinafter referred to as “Trial Court”) in O.S.No.93 of 2016, the fifth defendant therein has filed this Appeal Suit under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908.

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

PLAINTIFFS' CASE

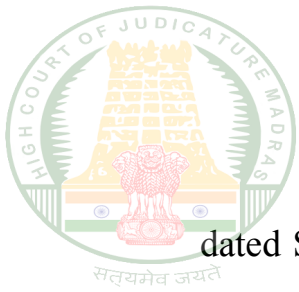
3. The case of the plaintiffs is that the Suit 'A' Schedule Property situate in Nirvalur Village was purchased by one Thulukana and his son (first defendant) vide Sale Deed dated October 29, 1974 for sale consideration of Rs.600/-. The Suit 'B' Schedule Property, a house



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property, is situated in Attuputhur Village, Kanchipuram District which is an ancestral property in the hands of Thulukana. According to the plaintiffs, the said Thulukana died in the year 1976 leaving behind his three sons viz., Rajagopal (father of the plaintiffs), Chinnapaiyan (third defendant) & Padavettan (first defendant) and one daughter – Kuppu @ Kuppammal (second defendant) as his legal heirs. The said Thulukana died intestate leaving behind 1/2 share in Suit 'A' Schedule Property. The plaintiffs' father Rajagopal passed away on June 27, 2010. After the demise of plaintiff's father, the plaintiffs are jointly enjoying the Suit Properties along with the defendants 1 to 3 as joint family properties. The plaintiffs are entitled to 1/8 share in the Suit 'A' Schedule Property and 1/4 share in the Suit 'B' Schedule Property. The first defendant obtained Patta and sub division in his favour. Thereafter, by way of Settlement Deed dated December 27, 1999, the first defendant had settled the Suit 'A' Schedule Property in favour of his wife - Mrs.Indirani / fourth defendant. Subsequently, the fourth defendant had executed a Sale Deed dated November 18, 2010 in favour of the fifth defendant behind the back of the plaintiffs. Hence, the Settlement Deed dated December 27, 1999 and the Sale Deed dated November 18, 2010 are not valid and the same will not bind the plaintiffs and their share. The plaintiffs had issued a Legal Notice

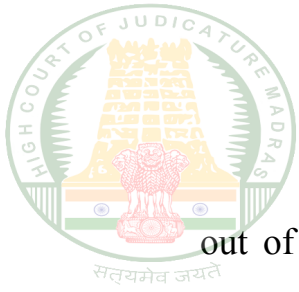


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dated September 28, 2016 to the defendants seeking partition. Though the defendants received the same, they did not reply. Hence, the plaintiffs filed a Suit for declaration that the Settlement Deed dated December 27, 1999 and the Sale Deed dated November 18, 2010 allegedly executed by the fourth defendant in favour of the fifth defendant are invalid and consequently, seeking a Preliminary Decree for partition claiming 1/8 share in the Suit 'A' Schedule Property and 1/4 share in the Suit 'B' Schedule Property.

FIRST AND FOURTH DEFENDANTS' CASE

4. The first defendant filed written statement and the same was adopted by the fourth defendant. It is stated in the written statement that the Suit 'A' Schedule Property was purchased in the name of Thulukana and first defendant. Further, the defendants denied the averment that the Suit 'B' Schedule Property is the ancestral property of Thulukana. Only the defendants 1 & 4 had performed the funeral of Thulukana. It is stated that the Suit 'A' Schedule Property was purchased from the income of the first defendant and by utilizing the money given by the mother of fourth defendant. Only as a sign of respect for the father - Thulukana and



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out of love and affection, the first defendant had purchased the Suit 'A' Schedule Property jointly in his name as well as Thulukana's name. The Suit 'A' Schedule Property absolutely belongs to the first defendant. The first defendant executed the Settlement Deed dated December 27, 1999 in favour of fourth defendant. Subsequently, the fourth defendant executed a Sale Deed dated November 18, 2010 in favour of the fifth defendant. Hence, the plaintiffs have no right to claim partition in the Suit 'A' Schedule Property.

4.1. As regards Suit 'B' Schedule Property, the said property originally belonged to one Ellammal (mother of fourth defendant) who purchased the said property vide registered Sale Deed dated August 01, 1961. The said Ellammal died leaving behind the fourth defendant as her sole legal heir / legal representative to succeed her estate and thus, the fourth defendant has absolute title over Suit 'B' Schedule Property. Except fourth defendant, no one has title over the Suit 'B' Schedule Property. Hence, the plaintiffs are not entitled to partition in Suit 'B' Schedule Property.

4.2. Further, the plaintiffs are not in joint possession and enjoyment of the Suit Properties. Therefore, the court fees paid under

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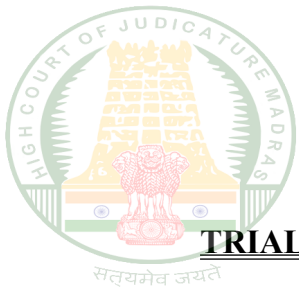


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Section 40 of the 'Tamil Nadu Court-Fee and Suits Valuation Act, 1955' [T.N.C.F. Act' for short] is incorrect. Accordingly, the defendants 1 & 4 prayed to dismiss the Suit.

FIFTH DEFENDANT'S CASE

5. The fifth defendant filed written statement stating that the father of the first defendant viz., Thulukana died in the year 1976. After the demise of Thulukana, an oral partition took place, in which, Suit 'A' Schedule Property was allotted to the first defendant. Then, the first defendant settled the Suit 'A' Schedule Property in favour of fourth defendant vide Settlement Deed dated December 27, 1999. Subsequently, the fourth defendant executed a Sale Deed dated November 18, 2010 in favour of the fifth defendant. Since then, the fifth defendant is in possession and enjoyment of the Suit 'A' Schedule Property. Hence, the plaintiffs have no right to claim partition in the Suit 'A' Schedule Property. The plaintiffs did not challenge the Settlement Deed dated December 27, 1999 and the Sale Deed dated November 18, 2010 within three years from the date of their execution. Hence, the Suit is barred by limitation. Notably, the plaintiffs' father never challenged the Settlement Deed dated December 27, 1999. Accordingly, the fifth defendant prayed for dismissal of the Suit.



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TRIAL COURT

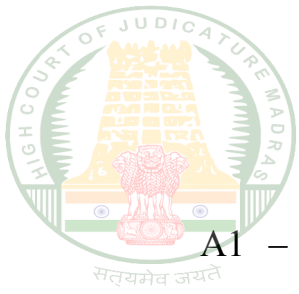
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6. Based on the pleadings, the Trial Court framed the following issues:

- “1. Whether the Settlement Deed dated 27.12.1995 (sic, should be 27.12.1999) is valid and binding the plaintiffs?*
- 2. Whether the Sale Deed dated 18.11.2010 is valid and binding the plaintiffs?*
- 3. Whether the plaintiffs are entitled to 1/8 share in A schedule properties and 1/4 share in B schedule properties?*
- 4. Whether the payment of court fees is correct?*
- 5. Whether the suit is barred by Limitation?*
- 6. Whether the plaintiffs are entitled to decree as prayed for?”*

7. Before the Trial Court, on the side of the plaintiffs, second plaintiff - Ramu was examined as P.W.1 and 11 documents were marked as Ex-A.1 to Ex-A.11. On the side of the defendants, fourth defendant - Indrani was examined as D.W.1 and 11 documents were marked as Ex-B.1 to Ex.B.11.

8. After considering the oral and documentary evidence available on record, the Trial Court has found that there is no recital in Ex-



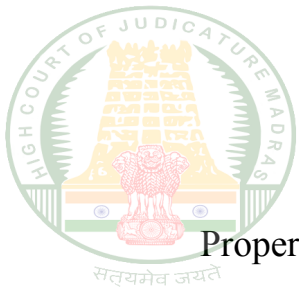
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A1 – Sale Deed dated October 29, 1974 to show that the entire consideration was paid by the first defendant and that Thulukana was merely a name lender. It has also held that the fifth defendant introduced a new plea of oral partition which was not taken by the defendants 1 & 4 and the fifth defendant has failed to prove the same. Finally, the Trial Court concluded that the Suit 'A' Schedule Property belongs to Thulukana and first defendant, and both were entitled to 1/2 share in the Suit 'A' Schedule Property. Since the said Thulukana died in the year 1976 leaving behind his three sons viz., Rajagopal (father of the plaintiffs), Chinnapaiyan (third defendant), Padavettan (first defendant) and one daughter Kuppu @ Kuppammal (second defendant) as his legal heirs, the plaintiffs are jointly entitled to 1/8 share in the Suit 'A' Schedule Property.

8.1. As regards the Suit 'B' Schedule Property, the Trial Court held that the same was purchased by Ellammal (mother of fourth defendant) vide Ex-B.1 – Sale Deed dated August 1, 1961. Being the only legal heir of deceased - Ellammal, the fourth defendant is alone in enjoyment and possession of the Suit 'B' Schedule Property. The Trial Court held that the plaintiffs have not proved that the Suit 'B' Schedule

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Property is the ancestral property belonged to Thulukana and hence, the plaintiffs are not entitled to any share in the Suit 'B' Schedule Property.

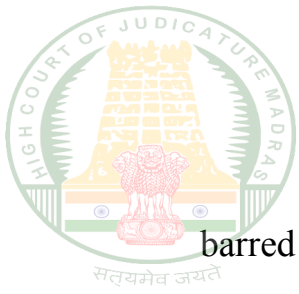
Accordingly, the Suit was partly decreed and dismissed *qua* the Suit 'B' Schedule Property and other reliefs.

FIRST APPEAL

9. Feeling aggrieved, the fifth defendant has preferred this First Appeal under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908.

ARGUMENTS

10. Learned Counsel for the appellant/fifth defendant would argue that the Trial Court failed to consider the oral and documentary evidence in the right perspective. Plaintiffs' father – Rajagopal passed away on June 27, 2010. In his lifetime, he did not claim any right in the Suit 'A' Schedule Properties nor did he question Ex-A.2 - Settlement Deed. Since the plaintiff's father himself did not question Ex-A.2 – Settlement Deed, the plaintiff is precluded from questioning the same. Further, the Suit was filed on November 18, 2016 by the plaintiff questioning Ex-A.2 - Settlement Deed dated December 27, 1999 and hence, the Suit is clearly



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barred by limitation under Article 58 of the Limitation Act, 1963.

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10.1. He would further argue that the Trial Court dismissed the Suit *qua* Suit 'B' Schedule Property by rendering a clear finding that the Suit 'B' Schedule Property originally belonged to Ellammal, who is the mother of fourth defendant, vide Ex-B.1 – Sale Deed dated August 1, 1961. The plaintiffs have not preferred any appeal over the same and hence the said finding *qua* Suit 'B' Schedule Property has reached finality. Further, the Trial Court failed to appreciate the revenue records, particularly Ex-A.9 – revenue records namely Computer Patta, Settlement Register and Copy of Field Measurement Book, and failed to consider the fact that the plaintiffs have failed to prove their alleged joint possession and enjoyment of the Suit Properties. The Trial Court further failed to consider that the Court Fee paid under Section 37 (2) of the T.N.C.F. Act is incorrect. Hence, the Judgment and Decree of the Trial Court is liable to be interfered with. Accordingly, he would pray to allow the First Appeal.

10.2. He would rely on the following decisions in support of his contentions:

- (i) Judgment of the Hon'ble Supreme Court in ***Mallavva Vs. Kalsammanavara Kalamma*** reported in (2024) INSC



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1021 & 2024 SCC OnLine SC 3846;

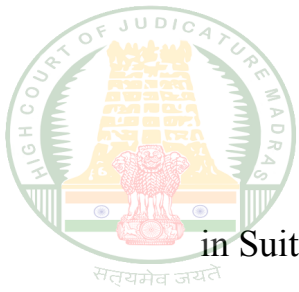
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(ii) Judgment of the Hon'ble Supreme Court in ***N.V.Srinivasa Murthy Vs. Mariyamma*** reported in ***(2005) 5 SCC 548;***

(iii) Judgment of the Hon'ble Supreme Court in ***Khatri Hotels Private Limited Vs. Union of India*** reported in ***(2011) 9 SCC 126.***

11. Learned Counsel for Respondent Nos.7 and 10/ Defendant Nos.1 and 4 adopts the arguments advanced by the learned Counsel for the appellant / fifth defendant.

12. On the other hand, learned Counsel for the respondents 1 to 6 / plaintiffs would argue that the Suit 'A' Schedule Properties were purchased jointly by first defendant – Padavettan and his father - Thulukana vide Ex-A.1 – Sale Deed. Thulukana passed away intestate in 1976 leaving behind Padavettan / first defendant, Rajagopal / plaintiffs' father, Kuppu alias Kuppamal / second defendant, and Chinnapaiyan / third defendant, as his legal heirs. Hence, the plaintiffs are entitled to 1/8 share



in Suit 'A' Schedule Properties.

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12.1. He would further argue that the defendants 1 and 4 (Padavettan and his wife) claimed that the Suit Properties were purchased by them, and Thulukana's name (Padavettan's father) was only nominally included in the Sale Deed. The claim is not legally valid. Further, the fifth defendant who is an alleged purchaser of Suit 'A' Schedule Properties has taken a stand that after the lifetime of Thulukana, whereby Suit 'A' Schedule Properties were allotted to first defendant – Padavettan through Oral Partition and then Padavettan executed Ex-A.2 – Gift Settlement Deed in favour of the fourth defendant, who is his wife and in turn, she executed a Sale Deed in favour of fifth defendant. If it is so, the burden is upon the defendants 1, 4 and 5 to prove the alleged Oral Partition. They miserably failed to do so.

12.2. He would further argue that the first defendant has no right to execute Gift Settlement Deed in respect of entire extent of Suit 'A' Schedule Properties. Hence, the said Gift Settlement Deed is not valid beyond his own share and does not bind the plaintiffs, and the plaintiffs are entitled to seek partition of their 1/8 share in Suit 'A' Schedule Properties. Since, Gift Settlement Deed is not binding on the plaintiffs, there is no



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question of limitation in this case. The Trial Court rightly passed Judgment and Decree in respect of Suit 'A' Schedule Properties. There is no warrant to interfere with it. Accordingly, he prayed to dismiss the Appeal Suit.

POINTS FOR CONSIDERATION

13. This Court has heard on either side and perused the entire materials available on record. The points that arise for consideration are:

- (i) Whether the plea of defendants 1 and 4 that Thulukana's name was only nominally included in Ex-A.1 – Sale Deed, is sustainable in law?
- (ii) Whether the Oral Partition as alleged by fifth defendant is proved?
- (iii) Whether Ex-A.2 – Gift Settlement Deed is valid and binding on the plaintiffs?
- (iv) Whether the Suit is barred by limitation?
- (v) Whether Ex-A.3 – Sale Deed is valid and binding on the plaintiffs?
- (vi) Whether the Suit valuation and Court Fee paid are correct?



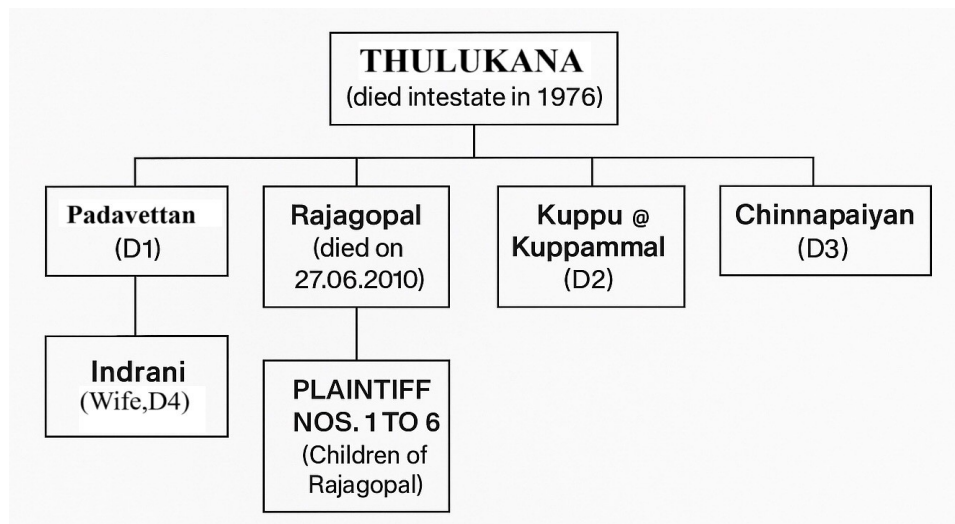
(vii) Whether the Judgment and Decree of the Trial Court

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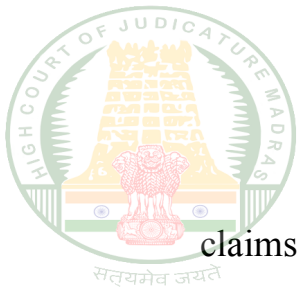
is liable to be interfered with?"

DISCUSSION

14. It is worthwhile to refer to the following Genealogy Chart for easy understanding of the relationship between the parties and better appreciation of the facts of the case:



15. Though the fifth defendant (appellant) denied that the plaintiffs are the legal heirs of Rajagopal, the defendants 1 and 4, who are the competent persons to make such a denial, have in fact admitted the relationship in their written statement. Further, D.W.1 / fourth defendant has also admitted the same in her evidence. To be noted, the fifth defendant



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claims title through defendants 1 and 4 and they both are effectively contesting the case upto this Court. Hence, fifth defendant is precluded from contending otherwise; he cannot take a contra stand. Moreover, he did not enter into the witness box and give evidence in this regard. On the other hand, there are abundant evidence available on record to show that the plaintiffs are the legal heirs of Rajagopal, who died on June 27, 2010. Hence, this Court is of the view that the plaintiffs are the legal heirs of Rajagopal.

16. The Suit 'A' Schedule Properties were purchased vide Ex-A.1 – Sale Deed by Thulukana and Padavettan for a sale consideration of Rs.600/-. Admittedly, Thulukana died intestate in 1976 leaving behind defendants 1 to 3 as well as plaintiffs' father as his legal heirs as stated *supra*. First defendant and fourth defendant in their written statement, have pleaded that Thulukana did not contribute any money for purchasing the property covered under Ex-A.1 *i.e.*, Suit 'A' Schedule Properties, and only out of love and affection, his name was included in the Sale Deed as if he is a joint purchaser. While so, in her evidence, D.W.1 / fourth defendant has introduced a new plea by deposing that during the lifetime of Thulukana, he executed a document and thereby transferred his share in

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respect of Suit 'A' Schedule Properties in favour of first defendant. Their first plea is legally barred under Section 4(1) of the Benami Transactions (Prohibition) Act, 1988 [See ***R.Rajagopal Reddy Vs. Padmini Chandrasekharan*** reported in ***AIR 1996 SC 238*** (Note: The written statement was filed after 1988)], and the newly introduced plea is not substantiated with any evidence. Thus, both the pleas are not sustainable. **Point No.(i) is answered accordingly in favour of plaintiffs.**

17. In Ex-A.1, totally two extents of land measuring 33 Cents each, totally 66 Cents, in Survey No.492 was purchased by Thulukana and Padavettan. While defendants 1 and 4 did not take any stand about Oral Partition, the fifth defendant in his written statement has stated that, after the demise of first defendant's father – Thulukana in 1976, under an Oral Partition, the Suit 'A' Schedule Properties totally measuring 64 Cents were allotted to Padavettan. It is settled law that Oral Partition is valid, provided it is proved by satisfactory evidence, and the burden of proof is upon the person who brings up the plea of Oral Partition. However, the fifth defendant in his written statement has not mentioned any particulars as to when the Oral Partition was effected, who were parties to it, allotment of properties, etc. Further, he did not examine himself and give evidence.

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Since defendants 1 and 4 refrained from taking such a stand, the fifth defendant, claiming right through defendants 1 and 4, is precluded from taking up the plea of Oral Partition. More so, when the defendants 1 and 4 are effectively contesting the case up to this Court and have not taken such a stand. Hence, this Court is of the view that the Oral Partition as alleged is not proved. **Point No. (ii) is answered accordingly in favour of plaintiffs.**

18. This Court has perused Ex-A.1 – Sale Deed, wherein it is recited that both, Thulukana and Padavettan, jointly purchased the properties covered thereunder viz., Suit ‘A’ Schedule Properties. It would further recite that the consideration was provided jointly, without specifying any particular proportion in which consideration was paid by them, which means, in the eyes of law, both have contributed equally and thus are entitled to equal share. Be that as it may, the burden is upon defendants 1 and 4 to prove that Thulukana was a namesake and nominal purchaser, in other words, a mere name lender. Unless the contrary is proved, in the eyes of law, Thulukana and Padavettan are joint owners entitled to equal shares in the Suit ‘A’ Schedule Properties. Admittedly, Thulukana passed away as a Hindu in 1976 leaving behind $\frac{1}{2}$ share in Suit



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‘A’ Schedule Properties and defendants 1 to 3 & Rajagopal as legal heirs.

Hence, as per Section 8 of the Hindu Succession Act, 1956, his legal heirs are entitled to the same equally, which means the plaintiffs’ father would also be entitled 1/8 share in it. Thus, the first defendant is entitled to execute a Gift Settlement Deed only in respect of his 5/8 ($1/2 + 1/8$) share in Suit ‘A’ Schedule Properties. Hence, the Gift Settlement Deed is not valid beyond first defendant’s share in Suit ‘A’ Schedule Properties and not binding in respect of the plaintiffs and their 1/8 share in Suit ‘A’ Schedule Properties. **Point No.(iii) is answered accordingly in favour of plaintiffs.**

19. As regards limitation, as elaborated above, since the Gift Settlement Deed is itself not valid and not binding *qua* plaintiffs’ 1/8 share, the plaintiffs can simply ignore the same and there is no need to cancel or set aside it. Thus, limitation would not come into the picture. **Point No.(iv) is answered accordingly in favour of plaintiffs.**

20. As answered under Point No.(iii), the Gift Settlement Deed in favour of fourth defendant is valid only in respect of first defendant’s 5/8 share. Hence, Ex-A.3 – Sale Deed executed by fourth defendant in favour of fifth defendant will not bind or affect the plaintiffs’ 1/8 share in Suit ‘A’ Schedule Properties in any manner. **Point No.(v) is**

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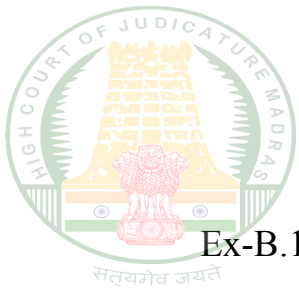
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answered accordingly in favour of plaintiffs.

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21. As stated *supra*, plaintiffs' grandfather – Thulukana passed away in 1976 leaving behind defendants 1 to 3 and their father - Rajagopal. The legal heirs of Thulukana are entitled to equal share as regards his $\frac{1}{2}$ share in Suit 'A' Schedule Properties. Hence, plaintiffs and defendants 1 to 3 are co-owners entitled to equal share in Thulukana's $\frac{1}{2}$ share. Law presumes that possession of one co-owner is that of other co-owners too. Hence, the Suit valuation and Court Fee paid under Section 37 (2) of T.N.C.F. Act is correct [See *Neelavathi Vs. Natarajan* reported in *AIR 1980 SC 691*]. **Point No.(vi) is answered accordingly in favour of plaintiffs.**

22. As regards the Suit 'B' Schedule Property, the case of the defendants 1 and 4 is that originally it belongs to one Ellammal vide Ex-B.1 – Sale Deed. It is admitted by P.W.1 / second plaintiff – Ramu that the fourth defendant is the daughter of Ellammal. The defendants produced

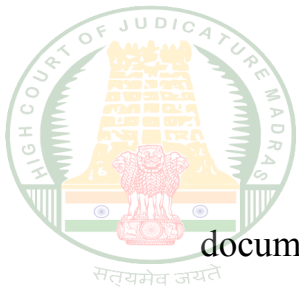


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Ex-B.1 – Sale Deed which stands in the name of Ellammal. Ex-B.2 and Ex-B.3 are Patta issued under Natham land Tax Scheme and Notice issued under Section 9 of Tamil Nadu Surveys and Boundaries Act, 1923 [TN Act No.VIII of 1923] respectively, both in the name of Indirani W/o. Padavettan / fourth defendant. Ex-B.6 to Ex-B.11 – House Tax and Water Tax Receipts stands in the name of fourth defendant. These would prove that Suit ‘B’ Schedule Property originally belonged to Ellammal and after her demise was inherited by fourth defendant. Moreover, the burden is upon the plaintiffs to prove that Suit ‘B’ Schedule Property belonged to Thulukana as his ancestral entitlement, but they miserably failed to do so. In these circumstances, the Trial Court rightly held that Suit ‘B’ Schedule Property originally belonged to Ellammal and after her demise fell in the hands of fourth defendant. The plaintiffs have not preferred any appeal and hence the findings of the Trial Court in respect of Suit ‘B’ Schedule Property have attained finality. Further, the plaintiffs have also not raised any argument under Order XLI Rule 33 of CPC *qua* Suit ‘B’ Schedule Property. Hence, there is no need to interfere with the said findings of the Trial Court *qua* Suit ‘B’ Schedule Property.

23. The Trial Court after considering the evidence and



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documents, rightly concluded that the plaintiffs are entitled 1/8 share in Suit 'A' Schedule Properties and that Ex-A.2 - Gift Settlement Deed is not valid beyond 5/8 share of first defendant as well as not binding the plaintiffs and their share. It further rightly held that the Court Fee is correct and that the Suit is not barred by limitation. Hence, there is no need to interfere with the Judgment and Decree of the Trial Court.

24. Since, in the case on hand, the Gift Settlement Deed is not binding on the plaintiffs and their 1/8 share in the Suit 'A' Schedule Property, the case laws relied on by the appellant / fifth defendant are thus distinguishable on facts and not applicable to the case on hand.

CONCLUSION:

25. Resultantly, the First Appeal stands dismissed. The Judgment and Decree dated October 31, 2018 passed by the Trial Court in O.S.No.93 of 2016 is hereby confirmed. Keeping in mind the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition shall be closed.

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Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
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To

The District Court No.II,
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R.SAKTHIVEL, J.

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