



WEB COPY

S.A.No.332 of 2020

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**JUDGMENT RESERVED ON : 01 / 10 / 2024**

**JUDGMENT PRONOUNCED ON : 07 / 01 / 2025**

**CORAM :**

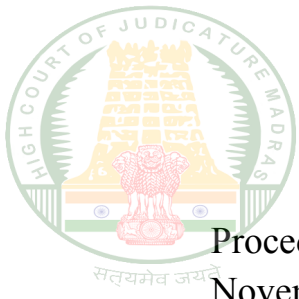
**THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

**S.A.NO.332 OF 2020**

|                       |                                                                                            |
|-----------------------|--------------------------------------------------------------------------------------------|
| 1.Ganesan             |                                                                                            |
| 2.Ilayaperumal        | ... Appellants / Appellants /<br>Defendants                                                |
| <b>Vs.</b>            |                                                                                            |
| 1.Palaniammal (Died)  |                                                                                            |
| 2.Ravichandran @ Ravi |                                                                                            |
| 3.Raj                 |                                                                                            |
| 4.Velayudham          | ...Respondents 1 to 4/ Respondents /<br>Plaintiffs                                         |
| 5.Ramayee             |                                                                                            |
| 6.Anjalai             |                                                                                            |
| 7.Chinnachi           |                                                                                            |
| 8.Lakshmi             |                                                                                            |
| 9.Jayanthi            |                                                                                            |
| 10.Padmavathi         | ... Respondents 5 to 10 /<br>legal representatives of<br>First Respondent -<br>Palaniammal |

**(Note:** R.1 passed away. R.5 to R.10 are brought on record as legal representatives of the deceased - R1 (Palaniammal) vide Order of this Court dated February 2, 2024 made in CMP No.1616 of 2024 in S.A.No.332 of 2020)

**PRAYER:** Second Appeal filed under Section 100 of the Code of Civil



**S.A.No.332 of 2020**

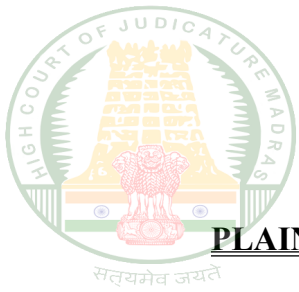
Procedure, 1908, praying to set aside the Judgment and Decree dated November 28, 2018 made in A.S.No.72 of 2016 by the Additional District and Sessions Court, Ariyalur, confirming the Judgment and Decree dated April 30, 2012 made in O.S.No.344 of 2004 by the District Munsif Court, Jayankondam.

|                        |   |                                                     |
|------------------------|---|-----------------------------------------------------|
| For Appellants         | : | Mr.P.Valliappan<br>Senior Counsel for M/s.B.Shivani |
| For Respondent-1       | : | Passed away                                         |
| For Respondents 2 to 9 | : | Mr.D.Selvaraju                                      |
| For Respondent 10      | : | Mr.M.S.Shriram Narayanan                            |

### **J U D G M E N T**

This Second Appeal is directed against the Judgment and Decree dated November 28, 2018 passed in A.S.No.72 of 2016 by the 'Additional District and Sessions Court, Ariyalur' ['First Appellate Court' for brevity], whereby the Judgment and Decree dated April 30, 2012 passed in O.S.No.344 of 2004 by the 'District Munsif Court, Jayankondam' ['Trial Court' for brevity] was confirmed.

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



**PLAINTIFFS' CASE**

WEB COPY

**3.** Murugan, the first plaintiff's husband, moved to Malaysia in his young age, where he married the first plaintiff. Their children, including late Subramaniyan and Plaintiff Nos.3 and 4, were born there. The second plaintiff is Subramaniyan's son. Murugan and the first plaintiff sent money from Malaysia to one Ayyakkannu, who used it to purchase 5.82 Acres in Survey No. 211/1 in Murugan's name vide two Sale Deeds dated August 28, 1940 and September 6, 1940.

**3.1.** Ayyakkannu managed the land for over 10 years on behalf of the first plaintiff and Murugan. Due to Ayyakkannu's illness, the first plaintiff and Murugan entrusted the purchased property to Rathinam, the son of Karuppan and father of the first defendant, along with original Sale Deeds around the year 1950. Karuppan who is none other than the elder brother of Murugan. Rathinam managed the land while Murugan and the first plaintiff sent funds for its maintenance and kist payments.

**3.2.** In 1961, the first plaintiff, Murugan, and their children returned to India. After Karuppan's demise, Murugan and Rathinam divided the ancestral properties, each receiving 1.71 Acres of land and a house site. Later, Murugan fell ill and the first plaintiff was unable to

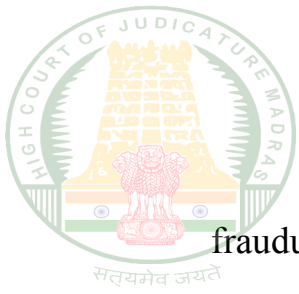


WEB COPY

manage the properties as her children were minors. Taking advantage of this situation Rathinam offered assistance but after Murugan's demise in 1962 he began to explode.

**3.3.** Hence, the first plaintiff reclaimed the properties and personally managed them. Rathinam later agreed to cultivate 10 plots in Survey No. 211/1 and executed a *waram* chit on March 30, 1970. The Patta for the property was in Subramaniyan's name, and the first plaintiff was paying the kist.

**3.4.** Subsequently, first plaintiff and Subramaniyan had conveyed 1 Acre ancestral land on September 23, 1971 to one Erudhiyam. At that time, first defendant and his father Rathinam and second defendant's father – Thangarasu were present and they had mingled a false Partition Deed covering the plaintiffs' Survey No.211/1 with the said Sale Deed. Upon learning the same, the plaintiffs refused to sign therein. On August 21,1972, the 3<sup>rd</sup> plaintiff, who did not sign the Sale Deed dated September 23, 1971, executed a Release Deed in respect of his shares in ancestral properties. Further, on the same day, the plaintiffs executed another Sale Deed to Erudhiyam in respect of 71 Cents of ancestral properties. At that time, on the pretext of assisting, the defendants



S.A.No.332 of 2020

WEB COPY

fraudulently created a Partition Deed by mingling it with the other two documents and registered them on the next day. This came to light only on second week of September 2002, when first defendant stopped paying *waram* upon stealthily obtaining an Updating Registry Scheme [UDR] Patta. Hence, the 3<sup>rd</sup> plaintiff approached the Village Administrative Officer to mutate the Patta and during enquiry, the first defendant produced an unregistered deed dated September 23, 1971 and another registered deed dated August 21, 1972. After updating Survey, the plaintiffs are in possession and enjoyment of sub divisions - 1D, 1E, 1K, 1L of Survey No.211, consisting totally an extent of 0.89.5 Hectare (2.23 Acres). The defendants are in illegal occupation of sub divisions - 1A, 1B, 1C, 1F, 1G, 1H, 1I, 1J, 1M, 1N of Survey No.211, along with 60 Cents on the southern side of Survey No.211/1H, total extent being 2.92 Cents.

**3.5.** The first defendant purchased 72 Cents on the northern side of Survey No.211/1H from the plaintiffs. Hence, the plaintiffs seek declaration of title, recovery of possession and *mesne* profits against the defendants.



**S.A.No.332 of 2020**

WEB COPY

**DEFENDANTS' CASE**

4. The defendants filed written statement wherein it is stated that the first plaintiff's husband - Murugan and Karuppan are brothers and had owned ancestral properties. Karuppan's sons are Rathinam, Manickam and Vadivel. Vadivel and Murugan went to Malaysia and since the Patta for ancestral properties stands in the name of Rathinam and Karuppan, through the money sent by Vadivelu and Murugan, an extent of 5.82 Cents in Survey No.211 was jointly purchased in the name of Murugan.

4.1. In the year 1961, Murugan returned to India and partitioned ancestral properties along with the said 5.82 Cents in Survey No.211 with the first defendant's father – Rathinam, which was however not registered. In 1971-72, the plaintiffs sold ancestral properties of an extent of 1 Acre in Survey No.210/6 in favour of Erudhiyam on September 23, 1971. Since the 3<sup>rd</sup> plaintiff – Raj did not sign, the 3<sup>rd</sup> plaintiff executed a Release Deed later on August 21, 1972. On the same date, the plaintiffs executed a Sale Deed in favour of Erudhiyam in respect of 71 Cents of ancestral properties. In other words, the plaintiffs' family sold their entire share of 1.71 Acres in the total extent of 3.46 Acres of



*S.A.No.332 of 2020*

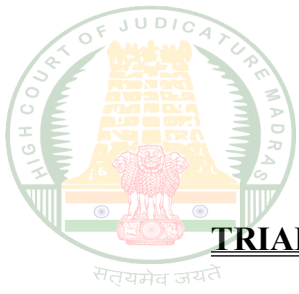
ancestral properties in Survey No.210/6.

WEB COPY

**4.2.** As ancestral properties along with 5.82 Cents in Survey No.211 purchased by Murugan were already partitioned vide unregistered Partition Schedule and since now there are no ancestral properties left, with a view to avoid disputes, the plaintiffs partitioned with Rathinam, the said 5.82 Cents in Survey No.211 purchased by Murugan through a registered Partition Deed.

**4.3.** Thereafter, the first defendant purchased an extent of 72 Cents from the plaintiff in Survey No.211/1H on August 9, 1974. The plaintiffs and the first defendant are in possession of their respective properties, with Patta issued in their individual names for their respective properties.

**4.4.** The plaintiffs have suppressed the existence of these Partition Deeds and falsely claimed ownership. According to the defendants, the Suit is barred by limitation and estoppel as the plaintiffs' failed to challenge the validity of the Partition Deeds or seek cancellation of those documents. Thus, the defendants sought to dismiss the Suit with costs.



S.A.No.332 of 2020

**TRIAL COURT**

WEB COPY

5. At trial, 3<sup>rd</sup> plaintiff – Raj examined himself as P.W.1 and two other witnesses were examined as P.W.2 and P.W.3 and Ex-A.1 to Ex-A.12 were marked on the side of the plaintiffs. On the side of the defendants, 1<sup>st</sup> defendant – Ganesan was examined as D.W.1, 2<sup>nd</sup> defendant – Ilayaperumal was examined as D.W.2 and another witness was examined as D.W.3, and Ex-B.1 to Ex-B.40 were marked.

6. Upon hearing both sides and considering the evidence available on record, the Trial Court concluded that the extent of 5.82 Acre purchased by Murugan vide Ex-A.1 and Ex-A.2 – Sale Deeds are his self-acquired properties and there is no evidence available on record to say that they are purchased using the money sent by Vadivelu. Hence the defendants have no right over the properties covered under Ex-A.1 and Ex-A.2. Since the said properties are not joint family properties but self-acquired properties of Murugan, the plaintiffs and the defendants have no necessity to execute Ex-B.8 - Partition Deed in respect of it and the same was obtained by fraud. The defendants were in possession and enjoyment of the Suit Property based on the *waram* and taking advantage of the same, the defendant obtained UDR Patta and the same will not confer any



**S.A.No.332 of 2020**

title to the defendants. The fraudulent act came to light only in September 2, 2002 and the Suit is filed on April 23, 2004 and hence not barred by limitation. Accordingly, the Trial Court decreed the Suit as prayed for.

### **FIRST APPELLATE COURT**

7. Feeling aggrieved, the defendants preferred an appeal before the First Appellate Court, which after hearing both sides and perusing the documents available on record, dismissed the Appeal Suit concurring with the findings rendered by the Trial Court.

### **SECOND APPEAL**

8. Feeling aggrieved, the defendants have preferred this Second Appeal which was admitted by this Court on August 23, 2024 on the following Substantial Questions of Law:

*'(a)When the respondents failed to prove their plea that the appellants were in permissive possession and failed to establish their alleged title, whether the Courts below are correct in law in granting the reliefs of declaration and recovery of possession?*

*(b)When the respective parties had treated the Suit properties as well as other properties as Hindu Joint Family properties and entered into Ex-B.8 Partition Deed to which the*



WEB COPY



**S.A.No.332 of 2020**

*1<sup>st</sup> respondent is a signatory, whether the Courts below are correct in law in disbelieving Ex-B.8?*

*(c)When there is necessary pleading as well as proof to establish that the appellants have also perfected title, whether the Courts below are correct in law in rejecting the said claim?*

*(d)Whether the Courts below are correct in law in not adhering to the provisions of Section 27 of the Limitation Act, 1963 and thereby, non-suiting the respondents?'*

### **ARGUMENTS:**

9. Mr.P.Valliappan, Senior Counsel for M/s.B.Shivani, learned Counsel for the appellants / defendants would argue that the plaintiff and the defendants' family owned ancestral properties in Survey No.210. The Patta pertaining to ancestral properties stands in the name of Rathinam and Karuppan. The first plaintiff's husband - Murugan and Rathinam's brother – Vadivelu were working in Malaysia. Both sent money to India, for the purpose of purchasing property. Since the Patta in respect of ancestral properties stands in the name of Rathinam, the Suit Property has been purchased in the name of Murugan vide Ex-A.1 and Ex-A.2 – Sale Deeds. Hence the properties covered under Ex-A.1 and Ex-A.2 are joint family properties.

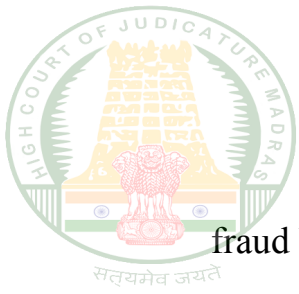


**S.A.No.332 of 2020**

**9.1.** After Murugan returned to India, a Partition Schedule

was executed in the presence of elders whereby ancestral properties of an extent of 1.73 Acres in Survey No.210 and 2.83 Acres in Survey No.211/1 were allotted to the plaintiffs. Similarly, ancestral properties of an extent of 1.73 Acres in Survey No. 210 and 2.50 Acres in Survey No.211/1 were allotted to Rathinam's branch. The plaintiffs sold a portion of the ancestral properties allotted to them to one Erudhiyam in 1971 and the remaining in 1972, vide two Sale Deeds. To address the prevailing disputes and to maintain harmony, they entered into Ex-B.8 - registered Partition Deed on August 21, 1972, whereby the properties covered under Ex-A.1 and Ex-A.2 were partitioned with Rathinam, the first defendant's father. Thereafter the plaintiffs sold an extent of 72 Cents in Survey No.211/1 in favour of first defendant. Accordingly the Suit Properties belonged to the first defendant. Through an oral arrangement between the defendants, the Suit Properties now are being enjoyed by both the defendants. The plaintiffs are enjoying their respective portions. The plaintiffs suppressed the above facts and filed the Suit with a view to get unjust enrichment and unlawful gains.

**9.2.** He would further argue that the plaintiff who pleaded



*S.A.No.332 of 2020*

WEB COURT

fraud bears the burden to prove the same. In this case, the plaintiffs did not discharge the said burden. The plaintiffs admitted their possession and enjoyment of sub divisions - 1D, 1E, 1K, 1L of Survey No.211, consisting totally an extent of 0.89.5 Hectare (2.23 Acres). The UDR Survey was done in 1986 and hence the Suit is barred by limitation. Defendants are in continuous possession and enjoyment of the their respective portions. Revenue records stand in their name. Further, they have made huge developments in the Suit Properties. The Trial Court as well as the First Appellate Court erroneously appreciated the evidence and decreed the Suit. Their Judgments and Decrees are liable to set aside. Accordingly, he would pray to allow the Second Appeal, set aside the Judgment and Decree of First Appellate Court as well as the Trial Court, and dismiss the Suit.

**10.** Mr.D.Selvaraju, learned Counsel for the respondents 1 to 9 would argue that there is no evidence available on record to show that the properties covered under Ex-A.1 and Ex-A.2 – Sale Deeds were purchased under the joint contribution of first plaintiff's husband – Murugan and Vadivelu, who is the brother of Rathinam. On the other hand, Vadivelu has sent money to Rathinam and purchased properties in



**S.A.No.332 of 2020**

WEB COPY

Vadivelu's wife -Thayalnayagi's name and hence, the defendants cannot take a hot and cold stand. The Trial Court and the First Appellate Court concurrently held that the properties covered under Ex-A.1 and Ex-A.2 are self-acquired properties of Murugan. Further concurrently held that the Murugan's self-acquired properties cannot be partitioned with the defendants who had no right or interest in it. Ex-B.8 - Partition Deed was obtained by fraud. Further would argue that a person who had pre-existing right alone would be entitled to partition the properties. Partition is not a transfer. Since the defendants have no right in the property, the alleged Partition Deed does not confer any title to them. The Partition Deed was created fraudulently with a view to defeat and defraud the plaintiffs' rights over the Suit Properties. The First Appellate Court and the Trial Court appreciated the evidence in the right perspective and decreed the Suit. There is no reason to interfere with the same. Accordingly, he would pray to dismiss the Second Appeal and confirm the Judgment and Decree of First Appellate Court and the Trial Court.

**11.** Mr.M.S.Shriram Narayanan, learned Counsel for the Respondent No.10 would argue in line with Mr.D.Selvaraju, learned Counsel for the respondents 1 to 9 and pray to dismiss the Second Appeal

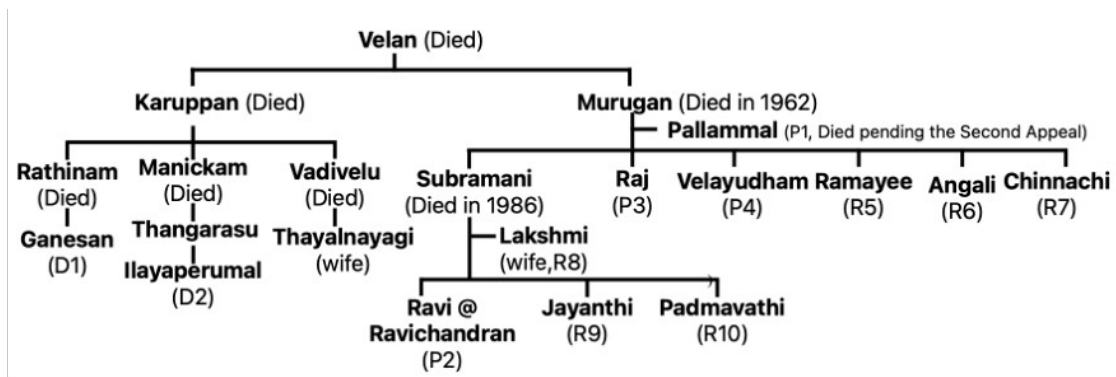


confirming the Judgment and Decree of the First Appellate Court and the Trial Court.

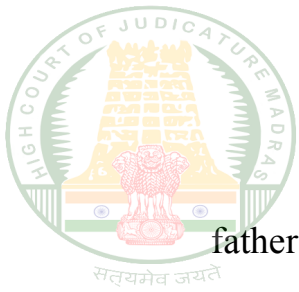
### **DISCUSSION:**

12. This Court has heard on either side and perused the materials available on record in light of the Substantial Questions of Law.

13. The following genealogy shows the admitted relationship between the parties:



14. On perusal of records, it is seen that an extent of 3.46 Acres in Survey No. 210 was owned by Karuppan and Murugan (first plaintiff's husband) as ancestral properties. Patta in respect of the aforesaid ancestral properties stood in the name of Rathinam who is the



**S.A.No.332 of 2020**

father of first defendant and brother of Vadivelu. Vadivelu and Murugan went to Malaysia for work, earned and sent money to India to purchase property.

**15.** According to the plaintiffs, Murugan sent money for purchasing property solely in his name. According to the defendants, both Vadivelu and Murugan jointly sent money and the property covered under Ex-A.1 and Ex-A.2 were purchased jointly.

**16.** Survey No.210, 211 and 212 are situate contiguously. Vadivelu's wife - Thayalnayagi had purchased an extent of 2 Acre situated in Survey No.212. Admittedly, the plaintiffs sold their share in Survey No.210 to one Erudhiyam and thereafter Ex-B.8 – Partition Deed was allegedly executed. The plaintiffs pleaded that Ex-B.8 – Partition Deed was obtained by fraud. In such a scenario, the burden is upon the plaintiffs to prove that Ex-B.8 - Partition Deed was obtained by fraud. The plaintiff miserably failed to do so. Moreover, in 1983 to 1986, UDR Scheme was introduced, and Patta was issued under the said scheme recognising the possession of the plaintiffs and the defendants of their respective properties. As per Ex-A.11 - Patta, the plaintiffs' family is in possession and enjoyment of sub divisions - 1D, 1E, 1K, 1L of Survey No.211,



**S.A.No.332 of 2020**

WEB COPY

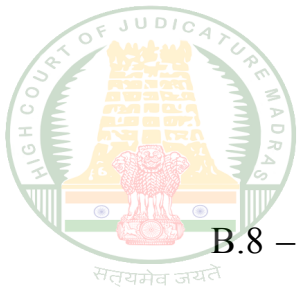
consisting totally an extent of 0.89.5 Hectare (2.23 Acres). The plaintiffs have categorically admitted the same in the plaint (Paragraph No. 23 and 24) as well as in 3<sup>rd</sup> plaintiff / P.W.1's evidence. Relevant portion of the plaint reads thus:

*“23.After updating survey now Plaintiffs are in possession of 1D, 1E, 1K and 1L totally 0.89.5 acres (Acre 2.23). Defendants are in illegal occupation of 1A, 1B, 1C, 1F, 1G, 0.60 cents on southern side in 1H, 1L, 1J, 1M and 1N. Totally their illegal occupation comes to Acre 2.92.*

*24.1st defendant's purchased 0.72 cents is on northern side in 1H.”*

**17.** It is settled law that admission made in the pleadings is a judicial admission admissible under Section 58 of Indian Evidence Act, 1872 and bears strong evidentiary value. Hence, the plaintiffs are in possession and enjoyment of sub divisions - 1D, 1E, 1K, 1L of Survey No.211, consisting totally an extent of 2.23 Acres.

**18.** The plaintiffs sold 72 Cents under Ex-A.8 – Sale Deed to first defendant, wherein the southern boundary has been recited as Rathinam's portion [ரத்தினம் பாகத்திற்கு வடக்கு]. The plaintiff did not challenge Ex-A.8 – Sale Deed. These facts strengthen the credence of Ex-



S.A.No.332 of 2020

WEB COPY

B.8 – Partition Deed. To be noted, the plaintiffs filed Suit in O.S.No.108 of 2006 seeking permanent injunction against the first defendant and the has marked the plaint therein as Ex-B.3, but there is no evidence adduced by either side to show the outcome of the Suit. Nor is there any other document regarding the said Suit. Till date the plaintiff did not challenge Ex-A.8 – Sale Deed executed in favour of first defendant. Further, the revenue records show that from 1975 the plaintiffs and defendants are enjoying their respective shares as per Ex-B.8 - Partition Deed and Ex-A.8 – Sale Deed. The defendants have mortgaged the Suit Properties, obtained loan on it, and even dug a bore well and obtained electricity service connection in it. The plaintiffs who are admittedly residing in a contiguous property cannot plead that they are unaware of the same. In these circumstances, the Suit is barred by limitation.

19. Further the defendants denied Ex-A.10 – *Warram Mochalika* in their written statement. It being an unregistered document, the burden is upon the plaintiffs to prove the alleged *warram*. The plaintiffs did not examine any witness with regard to Ex-A.10 and they failed to prove it. It is true that the first defendant (D.W.1) has admitted the signature found in Ex.A.10 as that of his father – Rathinam. Mere



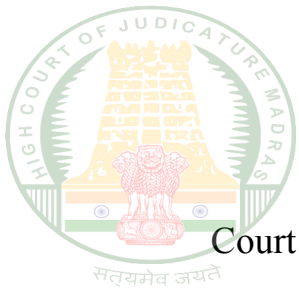
**S.A.No.332 of 2020**

WEB.COM

admission of signature alone is not sufficient, in the facts and circumstances of this case, to conclude that Ex-A.10 was executed by Rathinam. Further, Ex-A.12 – Field Measurement Book [‘FMB’] Sketch shows that the Suit Properties are divided into various plots, and the Pattas show that the plots under the possession and enjoyment of the defendants are scattered and not contiguous So are the plots under the possession and enjoyment of the plaintiffs. If really the defendants are enjoying the plots under their possession and enjoyment for *warram*, there is no acceptable reason assigned by the plaintiffs for giving such scattered plots to the defendants under Ex-A.10. In these circumstances, this Court is of the view that the plaintiffs failed to discharge their burden satisfactorily. They failed to establish their title over the Suit Properties as well as that the defendants are permissive occupants. Hence, the Judgment and Decree of the First Appellate Court as well as the Trial Court are liable to be interfered with. Substantial Questions of Law are answered accordingly.

### **CONCLUSION:**

20. Resultantly, the Second Appeal is allowed. The Judgment and Decree of the Trial Court as well as the First Appellate



**S.A.No.332 of 2020**

Court are hereby set aside. The Original Suit is dismissed. Keeping in mind the facts and circumstances of the case, there shall be no order as to costs.

**07 / 01 / 2025**

Index : Yes

Speaking Order : Yes

Neutral Citation : Yes

TK

To

1.The Additional District and Sessions Court  
Ariyalur.

2.The District Munsif Court  
Jayankondam.



WEB COPY



**S.A.No.332 of 2020**

**R. SAKTHIVEL, J.**

TK

**PRE-DELIVERY JUDGMENT MADE IN**  
**S.A.NO.332 OF 2020**

**07 / 01 / 2025**