



A.S.No. 318 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 25.06.2025

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit No. 318 of 2022

B.K.Ramamoorthi

... Appellant

Versus

1. Sathish Kumar
2. M.V.Balaji
3. Somusekar

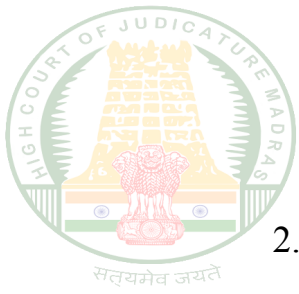
... Respondents

Appeal Suit had been filed under Section 96 r/w. Order XLI, Rule 1 of Civil Procedure Code seeking to set aside the judgment and decree dated 20.01.2022 passed in O.S.No. 85 of 2017 by the learned Additional District Judge, Krishnagiri.

For Appellant	:	Mr. S.P. Vishnu Prasath for Mr. V. Nicholas
For Respondents	:	Mr. V. Srikanth

JUDGMENT

This Appeal Suit had been filed to set aside the judgment and decree dated 20.01.2022 passed in O.S.No. 85 of 2017 by the learned Additional District Judge, Krishnagiri.



2. The brief facts, which are necessary for the disposal of this Appeal

WEB COPY Suit, are as follows:

2.1. The Plaintiff in O.S. No. 85 of 2017 is the son of the first Defendant. The second Defendant is the brother of the Plaintiff and son of the first Defendant. The third Defendant is a stranger to the suit property. The suit property in Survey No. 362/1B was jointly purchased by Baiammal and Sarojammal in the year 1968. Baiammal is the mother of the first Defendant and grandmother of the Plaintiff and the second Defendant. After that Sarojammal, sister of Baiammal, executed a release deed in favour of Baiammal in the year 1978. Therefore, Baiammal enjoyed the property as the sole owner. From the date of the above release deed, Patta, Chitta stood in her name. She was paying the property tax as owner of the property. Item 2 in “A” schedule property in Survey No. 476/1 is acquired by the grandmother of the Plaintiff and the second Defendant. Item 3 in “A” schedule property in Survey No.758/10 is natham land and the house in the natham land stood in the name of K.M. Muniappa Chetty who is the father of Baiammal. Patta stands in his name. The tax was paid by the first Defendant father of the Plaintiff and second Defendant after the demise of Baiammal. Baiammal died intestate, leaving behind the first Defendant as her sole legal heir in the year 2008. From 2008 the first Defendant was in possession and enjoyment of the Items 1,



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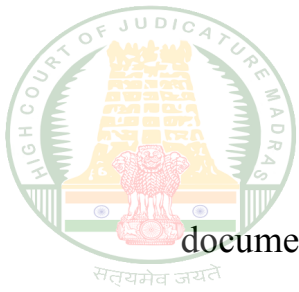
2 and 3 of “A” schedule properties without any interruption. The grandfather of the Plaintiff and the second Defendant, M.V.Veerappa Chetty, the father of the first Defendant, died in the year 1996. “B” schedule property Item 1 was purchased by Kotha Muniyappa Chetty. As a legal heir of Kotha Muniyappa Chetty, K.M. Muniyappa Chetty created a gift deed in favour of his sister Muniammal on the condition to perform the marriage of Chinnathayammal and on performing the condition, Muniammal would acquire full right over the property. She had performed the marriage of Chinnathayammal. Chinnathayammal married Krishnappa Chetty. Through Krishnappa Chetty and Chinnathayammal, the third Defendant was born along with B.K.Chandrasekaran and B.K. Eshwari. Muniammal died in the year 1987 without any legal heirs. During the lifetime of Muniammal, the Plaintiff's grandmother Baiammal was looking after her. Therefore, due to love and affection, Muniammal gave oral gift to the first Defendant and patta was changed in the name of the first Defendant. Immediately the third Defendant came to know about the fact and created problem with the Revenue Officials. Still all the revenue records stood in the name of Muniammal. After the demise of Muniammal, the kist in respect of Item 4 of “B” schedule property was regularly paid by the grandmother of the Plaintiff, Baiammal till her death. After her death, the first Defendant was paying the kist regularly. The revenue



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records stood in the name of the first Defendant. The Plaintiff requested the first Defendant to give him Rs.10,00,000/- or to divide the schedule property and allot 1/3rd equal share for his business purpose. He demanded the same in the first week of December, 2015. The first Defendant refused to heed to the request of the Plaintiff. Therefore, the Plaintiff was forced to file the suit for partition seeking preliminary decree and also seeking declaration to declare the preliminary decree for partition granted by the learned Sub Judge, Krishnagiri in O.S.No. 108 of 2000 without any valid document, as null and void. It is the claim of the Plaintiff in O.S.No. 85 of 2017 that the Plaintiff in O.S.No. 108 of 2000, the third Defendant in O.S. No. 85 of 2017 was well aware that the property involved in the suit in O.S.No. 108 of 2000 is the joint family properties of Late Baiammal and he had suppressed those facts and without impleading Baiammal or her legal heirs obtained a fraudulent decree. Therefore, the decree granted in favour of the Plaintiff in O.S.No. 108 of 2000 by the learned Sub Judge, Krishnagiri to be declared as null and void. It is the further contention of the Plaintiff in O.S.No. 85 of 2017 that the property executed by K.M. Muniyappa Chetty in 1954 in the name of his sister Muniyammal on condition that she has to perform the marriage of Chinnathayammal, the mother of the third Defendant. He does not confer any title on the third Defendant. Further possession of the property and the



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document of the property to item 4 of “B” schedule property stands in the name of the Muniyammal. After her death through her oral gift, the properties stood in possession and enjoyment of the Plaintiff's grandmother and after her death, the property was in possession of the first Defendant. It is the contention of the Plaintiff that the schedule properties were acquired by Baiammal. After her death, schedule properties are the joint family properties of the Plaintiff, first and second Defendants. Therefore, the Plaintiff seeks partition of 1/3rd share by metes and bounds.

2.2. The first Defendant filed written statement in which he had traced title of the suit property as claimed by the Plaintiff. Also he had stated that the third Defendant had filed the suit fraudulently and obtained preliminary decree for partition of 1/3rd share in the properties which are not in possession of the third Defendant/Plaintiff in O.S.No.108 of 2000, and claims that the entire suit “A” and “B” schedule properties are in possession and enjoyment of the family of the Plaintiff and Defendants 1 and 2. He seeks to dismiss the suit for partition.

2.3. The written statement filed by the third Defendant disputes the claim that the third Defendant is a stranger to the suit properties. It is the



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contention of the third Defendant in the written statement that the suit item 1 in “B” schedule property was purchased by Kotha Muniyappa Chetty and after his death, his son K.M.Muniyappa Chetty became the owner of the property and he created a gift deed in favour of his sister Muniammal on condition that she has to perform the marriage of Chinnathayammal. As per the condition, Muniammal performed marriage of Chinnathayammal and she acquired full right of the property in Item 1 of “B” schedule property. The marriage of Chinnathayammal was performed with Krishnappa Chetty and in the course of the married life Chinnathayammal gave birth to the third Defendant and one B.K. Chandrasekaran and B.K. Eshwari. The claim of the Plaintiff that Muniammal to whom K.M. Muniyappa Chetty had gifted the property in Item 1 of “B” schedule with a condition to perform the marriage of Chinnathayammal. The said Muniammal acquired the property as per the condition and she died intestate without any legal heir. Since she was maintained by the grandmother of the Plaintiff Baiammal, Muniammal gifted the property by oral gift to the son of Baiammal, the first Defendant is disputed by the third Defendant as false. The claim of the Plaintiff and the first Defendant is that the Item 4 of “B” schedule property was enjoyed by Muniammal till her death. The kist was paid by the paternal grandmother of the Plaintiff Baiammal and after her death, the first Defendant paid the kist



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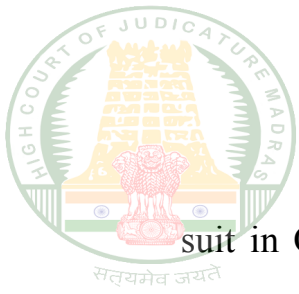
regularly and all the revenue records are in the custody of the first Defendant are also disputed by the third Defendant. The claim of the Plaintiff that the third Defendant in O.S. No.85 of 2017 filed a suit in O.S. No. 108 of 2000 and obtained a fraudulent decree for partition of 1/3rd share is also disputed by the third Defendant in the written statement. It is the claim of the third Defendant that the first item of the suit property belonged to Kotha Muniyappa Chetty. The said Kotha Muniyappa Chetty had a son by name K.M. Muniyappa Chetty and a daughter by name Muniyammal. K.M. Muniyappa Chetty had three daughters viz., Sarojammal, Baiammal and Chinnathayammal. The third Defendant and one B.K.Chandrasekaran and B.K. Eshwari are the sons and daughter born to Chinnathayammal. The first Defendant is the only son born to Baiammal. One Subbulakshmi, Subramani, Kasthuri and Ravi are the sons and daughters born to Sarojammal. The first item of the suit property was enjoyed by the son of Kotha Muniyappa Chetty. After his demise, K.M. Muniyappa Chetty is the only legal heir. K.M.Muniyappa Chetty died leaving behind his three daughters and they had been in possession and enjoyment of the item 1 of the property jointly. K.M. Muniyappa Chetty executed a gift settlement deed dated 22.04.1954 in favour of his sister Muniammal with a condition to perform the marriage of Chinnathayammal, the third daughter of K.M. Muniyappa Chetty. The said Muniammal predeceased



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Chinnathayammal without any issues. Therefore, Chinnathayammal succeeded to item 2 of the property and she is in possession and enjoyment of

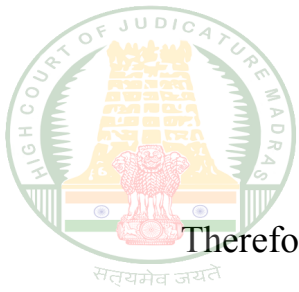
Item 2. All of a sudden, the said Baiammal and Sarojammal attempted to sell the properties without the knowledge of the third Defendant and other legal heirs of Chinnathayammal. Therefore, the third Defendant filed the suit in O.S.No.108 of 2000 before the Sub Court, Krishnagiri against the said Sarojammal and Baiammal. The said suit was decreed on 19.02.2002. After passing the preliminary decree, Sarojammal died. The third Defendant as Plaintiff filed a petition to pass final decree in I.A.No. 68 of 2007 along with the petition to implead the legal heirs of said Sarojammal in I.A. No.69 of 2007. I.A. No.69 of 2007 was allowed. Pending final decree petition, the said Baiammal also died. Since the first Defendant is her only legal heir, he was impleaded in the final decree. After impleading petition was filed, the first Defendant in O.S.No. 85 of 2017 filed a petition seeking to set aside the *ex parte* decree passed in O.S.No.108 of 2000. The said petition was dismissed. The first Defendant had not preferred any appeal or revision against the order. Therefore, final decree was passed in I.A.No.68 of 2007 on 31.03.2016. The first Defendant and his mother also filed a suit in O.S.No. 3 of 2007 before the District Munsif Court, Krishnagiri with false and imaginary allegations. The first Defendant did not come forward to proceed with the suit. Therefore, the



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suit in O.S.No.3 of 2007 was dismissed for non-prosecution. Subsequently, the first Defendant has filed a petition in I.A. No.68 of 2007 with an ulterior motive to drag on the proceedings. The said petition was also dismissed. The third Defendant had taken possession of his share in the Item 1 of the suit property. In fact, Item 1 of the suit property is claimed by the third Defendant and his brother and sister namely B.K. Chandrasekaran and B.K. Eshwari. The Plaintiff in O.S.No. 85 of 2017 had not impleaded the said B.K. Chandrasekaran and B.K. Eshwari, the brother and sister of the third Defendant respectively. Therefore, the suit is bad for non-joinder of necessary parties. The preliminary decree passed in O.S.No.108 of 2000 is binding on the first Defendant as legal heir of Baiammal. The final decree passed in I.A.No.68 of 2007 against the first Defendant against which the first Defendant had not preferred any appeal. Therefore, it has become final. The suit is barred by *res judicata* as per Section 11 of CPC. The claim of the Plaintiff in the suit property through the mother of the first Defendant Baiammal is not maintainable as per Section 15 of the Hindu Succession Act when the son is alive, the grandson is not entitled to any share. The final decree passed in O.S.No.108 of 2000 in I.A.No.68 of 2007 on 31.03.2016. Therefore, the Plaintiff having not amended the Plaint and by not stating the status of the final decree suppressed the above facts after lapse of one year.



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Therefore, the suit is to be dismissed.

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2.4. On perusal of the pleadings in the plaint and the written statement, the learned Additional District Judge, Krishnagiri, had framed the following issues:

(i) Whether the Plaintiff is entitled for partition and separate possession as prayed for?

(ii) Whether the decree passed in O.S. No.108 of 2000 has to be declared as null and void?

(iii) Whether the Plaintiff is entitled for the relief of injunction as prayed for?

(iv) Whether the suit is barred by res judicata?

(v) To what relief?

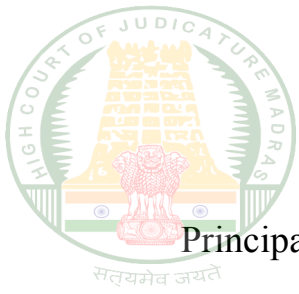
2.5. The Plaintiff examined himself as P.W-1, one Thangavel and one Kasturi were examined as P.W-2 and P.W-3. The Plaintiff had marked documents as Ex.A-1 to Ex.A-13. Ex.A-1 is the certified copy of the sale deed dated 01.09.1967 in the name of Baiammal and Sarojammal in respect of 1st Item of “A” schedule property. Ex.A-2 is the kist receipts series for Patta No.144, 514 and 437. Ex.A-3 is the UDR Patta in the name of Muniammal for “B” schedule property. Ex.A-4 is the certified copy of the decree in



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O.S.No.108 of 2000 on the file of the Sub Court, Krishnagiri. Ex.A-5 is the certified copy of the judgment in O.S.No.108 of 2000 on the file of the Sub Court, Krishnagiri. Ex.A-6 is the certified copy of final decree application Petition and Affidavit and orders in I.A.No.68 of 2007 on the file of the Sub Court, Krishnagiri. Ex.A-7 is the certified copy of the settlement deed in respect of “B” schedule property executed by Kotha Muniyappa Chetty in favour of Bajari Muniyammal. Ex.A-8 is the computerised patta for S.No.404/3 in the name of Bajari Muniyammal. Ex.A-9 is the death certificate of Sarojammal dated 28.02.2002. Ex.A-10 is the computerised patta for S.Nos.362/1B1 and 362/1B2 in the name of Kotha Muniyappa Chetty and Baiammal. Ex.A-11 is the computerised patta for S.No.476/1 in the name of Baiammal. Ex.A-12 is the kist receipt in the name of Baiammal for Patta Nos.514, 144 and 437 (Original). Ex.A-13 is the House tax receipts in the name of Baiammal for Door No.2/188. The first Defendant examined himself as D.W-1, the third Defendant examined himself as D.W-2. In the examination of the first Defendant as D.W-1, the documents were marked as Ex.B-1 which is the certified copy of the release deed executed by Sarojammal in favour of Baiammal in respect of S. No.362/1B. In the evidence of the third Defendant as D.W-2 the documents were marked as Ex.B-2 to Ex.B-7. Ex.B-2 is the certified copy of the order in I.A. No.68 of 2007 on the file of the learned



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Principal Sub Judge, Krishnagiri. Ex.B-3 is the certified copy of final decretal order in I.A.No.68 of 2007 on the file of the learned Principal Sub Judge, Krishnagiri. Ex.B-4 is the certified copy of the Commissioner's Report and Plan filed in I.A.No.68 of 2007. Ex.B-5 is the examination in chief of the third Defendant as filed as affidavit in O.S.No.108 of 2000 on the file of the learned Principal Sub Judge, Krishnagiri. Ex.B-6 is the computer chitta in the name of the third Defendant for S.No.420/1 and 421/2A. Ex.B-7 is the petition and affidavit and order thereon in I.A.No.68 of 2007 on the file of the learned Principal District Judge, Krishnagiri.

2.6. On appreciation of evidence, the learned Judge had answered Issues 2 and 4 in favour of the Plaintiff in O.S. No. 85 of 2017 that the decree passed in O.S.No.108 of 2000 was declared as null and void as it was obtained by misrepresentation by the third Defendant B.K.Ramamoorthi. Therefore, it is non-est in the eyes of law. The decree obtained by misrepresentation of fact cannot be considered to bar the suit in O.S.No.85 of 2017. Therefore, the suit in O.S.No. 85 of 2017 is not barred by *res judicata*. Issues 1 and 3 were answered against the Plaintiff. The learned Additional District judge in paragraph No.8 (2) had held as follows:

“(8-2). But this Court holds that 1 to 3 item of “A” schedule



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property belongs to Baiammal and as her sole legal heir 1st Defendant alone having right in those properties. The other Defendants and Plaintiff have no share in the “A” schedule 1 to 3 item properties and regarding “B” schedule property, legal heirs of Baiammal, Sarojammal and Chinnathayammal are having equal share since that property devolved upon K.M.Muniappa Chetty after the demise of his sister Muniammal. Since, the Plaintiff is not entitled to the relief of Preliminary Decree for partition, he is not entitled to the consequential relief of Permanent injunction also and these issues are answered accordingly.”

2.7. Aggrieved by the judgment and decree dated 20.01.2022 passed in O.S.No. 85 of 2017 by the learned Additional District Judge, Krishnagiri, the third Defendant had filed this Appeal.

3. Thiru. S.P. Vishnu Prasath, learned Counsel appearing on behalf of Thiru. V.Nicholas, learned Counsel for the Appellant submitted that the Appellant is the third Defendant in the suit in O.S.No. 85 of 2017 on the file of the learned Additional District Judge, Krishnagiri. The suit was filed by the first Respondent in this Appeal as Plaintiff in O.S.No. 85 of 2017 seeking the relief of partition and also seeking the relief of declaration to declare the preliminary decree obtained earlier by the third Defendant in O.S.No. 85 of



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2017, as Plaintiff in O.S. No. 108 of 2000 on the file of the learned Sub Judge,

Krishnagiri seeking partition of the properties in O.S. No. 108 of 2000 in

which preliminary decree was granted in favour of the Plaintiff in O.S.No.108

of 2000 for 1/3rd of the property, as null and void, and also restraining the

third Defendant from creating encumbrance over the suit property and

interfering with the peaceful possession and enjoyment of the suit property.

The learned Counsel for the Appellant submitted that the trial Court had

observed that the “B” schedule property is to be divided equally among the

legal heirs of Sarojammal, Baiammal and Chinnathayammal. The first

Defendant was also a party to the final decree proceedings in I.A.No.68 of

2007 in O.S.No.108 of 2000. In O.S.No. 85 of 2017 the Plaintiff seeks to

declare the preliminary decree obtained by the Plaintiff in O.S.No.108 of 2000

as null and void. The learned Counsel for the Appellant invited attention of

this Court to the written statement filed by the third Defendant wherein the

third Defendant stated that Baiammal and Sarojammal were Defendants in the

earlier suit in O.S.No. 108 of 2000 on the file of the learned Sub Judge,

Krishnagiri. The first Defendant in O.S.No.85 of 20017 is the legal heir of

Baiammal. The legal heirs of Sarojammal were impleaded in the final decree

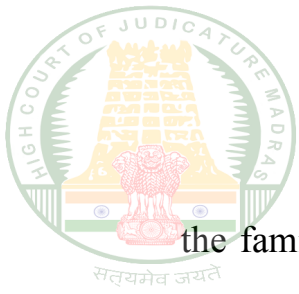
application in O.S.No.108 of 2000 vide I.A.No.69 of 2007. On 31.03.2016,

I.A.No. 68 of 2007 in O.S.No.108 of 2000 final decree was passed. The



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learned Counsel for the Appellant submitted that the Plaintiff had in his plaint admitted that the properties were purchased jointly by Baiammal and Sarojammal. Husband of Baiammal purchased the property in the name of Baiammal. Sarojammal is the sister of Baiammal. Ex.A-10 is the Patta in the name of Kotha Muniyappa Chetty and Baiammal. The brother of the third Defendant B.K. Chandrasekaran and B.K. Eshwari, the sister of the third Defendant as legal heirs of Chinnathayammal, were not impleaded in the suit in O.S.No. 85 of 2017. The relationship of Baiammal, Sarojammal and Chinnathayammal is admitted by P.W-1 in his cross-examination. He had admitted that the third Defendant is his paternal uncle, the cousin of the father of the Plaintiff. Therefore, it is the contention of the learned Counsel for the Appellant that P.W-1 is aware of the proceedings in the earlier suit in O.S.No.108 of 2000. It is the further submission of the learned Counsel for the Appellant that in her cross-examination P.W-3, Kasthuri, daughter of Sarojammal stated she was aware of the earlier proceedings in O.S.No.108 of 2000. Also she admitted in the cross examination that she appeared as P.W-3 on instructions from Plaintiff as P.W-1. Also, the learned Counsel for the Appellant submitted that the first Defendant as D.W-1 in his proof affidavit stated that the third Defendant obtained decree in O.S.No.108 of 2000 by misrepresentation that as though the suit property belongs to the property of



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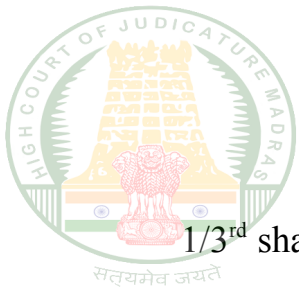
the family of the third Defendant. Therefore, it is non-est in the eyes of law and it has to be declared as null and void. The learned Counsel for the Appellant further submitted that the first Defendant as D.W-1 in his cross examination admitted that he had not filed any appeal against the dismissal of the petition filed by him seeking to set aside *ex parte* preliminary decree in O.S.No.108 of 2000. Therefore, it is the contention of the learned Counsel for the Appellant that the first Defendant had the knowledge of the earlier proceedings in O.S.No.108 of 2000. The learned Counsel for the Appellant submitted that in the the cross examination, the first Defendant as D.W-1 had admitted that his mother Baiammal was a party in the suit in O.S.No.108 of 2000 and she had engaged a Counsel to conduct the case. The Counsel engaged by her had not filed written statement was also admitted by him. The maternal aunt of the first Defendant Sarojammal was also a party to the earlier suit in O.S.No.108 of 2000 was admitted by him in his cross-examination. Since she did not have share in the property, she did not contest the suit in O.S.No.108 of 2000 was also admitted by him. The daughter of Sarojammal, Kasthuri was examined as P.W-3 on behalf of the Plaintiff in O.S. No. 85 of 2017 and she had in her affidavit as examination in chief stated that the properties in O.S.No. 85 of 2017 are the joint family properties of Baiammal, Sarojammal and Chinnathaimmal. The learned Counsel for the Appellant by



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inviting the attention of this Court to the judgment of the learned Additional District Judge, Krishnagiri submitted that it is clear that the Plaintiff and second Defendant are children of the first Defendant. They were aware of the earlier proceedings in O.S.No.108 of 2000. The third Defendant, who was referred as stranger, is not correct in the light of the admission made by P.W-1 in his cross-examination and the admission made by D.W-1 in his cross-examination whereas the learned Judge in the judgment stated that the third Defendant is a stranger. It is the contention of the learned Counsel for Appellant that the petition filed by the first Defendant as legal heir of Baiammal seeking to set aside the *ex parte* decree in O.S.No.108 of 2000 was dismissed which was observed by the learned Additional District Judge in the discussion in the judgment. It is the submission of the learned Counsel for the Appellant that the discussion of evidence and the finding arrived at by the learned Additional District Judge in paragraph Nos. 7(6) to 7(13) is erroneous. The Plaintiff in O.S.No.108 of 2000 is the third Defendant in the suit in O.S.No.85 of 2017. The Plaintiff in O.S.No.108 of 2000 had impleaded Baiammal, the mother of the first Defendant in O.S.No.85 of 2017 and Sarojammal, the mother of P.W-3 Kasthuri as Defendant in the suit. The Plaintiff in O.S.No.108 of 2000 B.K.Ramamoorthi, is the son of Chinnathayammal. Baiammal, Sarojammal and Chinnathayammal are having

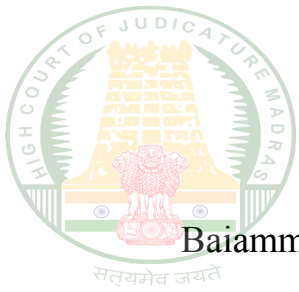


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1/3rd share in “B” schedule property. Therefore, decree granted by the learned

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Principal Sub Judge, Krishnagiri in O.S.No.108 of 2000 in which the first Defendant filed petition to set aside the *ex parte* decree was dismissed after full enquiry. Against which, he did not file any appeal was also observed by the learned Judge. Still in the concluding portion, the learned Judge had set aside the decree by observing that the Plaintiff in O.S.No.108 of 2000 had claimed that the suit properties stand in the name of Kotha Muniyappa Chetty. He claimed that the grandfather of the Plaintiff in O.S.No.108 of 2000 had purchased the properties. Therefore, the Plaintiff is entitled to 1/3rd share in the property as legal heir of Chinnathayammal. Therefore, the decree obtained in the suit in O.S.No.108 of 2000 was declared as null and void. The observation by the learned Judge in paragraph 13 is contradictory. Therefore, the decree passed in O.S.No. 108 of 2000 is to be upheld and the judgment of the learned Additional District Judge regarding preliminary decree passed in O.S.No.108 of 2000 is to be set aside. The Plaintiff in O.S.No. 108 of 2000 had impleaded all the legal heirs, all the shares Baiammal, Sarojammal, since Muniammal died and Muniammal had no issues, the Plaintiff is the son of Chinnathayammal. Therefore, all were represented. Still the learned Judge held that there was suppression which is contradictory. The legal heirs of Sarojammal did not contest the suit as she had released her share in favour of

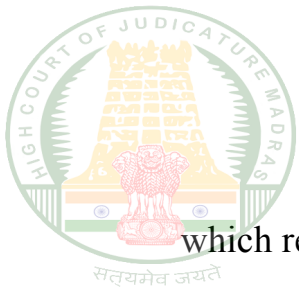


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Baiammal. Therefore, they did not contest the suit. Baiammal also did not contest the suit since Baiammal died, her only legal heir Balaji the first Defendant in O.S.No.85 of 2017 was impleaded. He filed a petition to set aside the *ex parte* decree. After due enquiry the petition was dismissed. By granting 1/3rd share in the properties, Baiammal's legal heirs are in no way prejudiced. Therefore, the judgment and preliminary decree granted by the Principal Sub Judge in O.S.No.108 of 2000 is to be upheld and the judgment and decree passed by the learned Additional District Judge setting aside the preliminary decree passed in O.S.No.108 of 2000 as non-est in law, is to be set aside. This Appeal is to be allowed and the judgment and decree passed by the learned Additional District Judge is to be set aside.

4. The learned Counsel for the Respondents relied on the pleadings in the plaint in O.S. No. 85 of 2017. Also he had relied upon the cause of action stated in paragraph 9 of the plaint and also the prayer in the plaint. The suit is filed by the son of the first Defendant M.V.Balaji. M.V.Balaji the first Defendant is the only legal heir of Baiammal. Baiammal is the daughter of K.M. Muniyappa Chetty. The learned Counsel for the Respondents invited the attention of this Court to the relief granted by the learned Additional District Judge, Krishnagiri in paragraph 10 of the judgment in O.S.No.85 of 2017



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which reads as under:

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- “10.(i). In the result, the suit is dismissed regarding the relief of partition, separate possession and for permanent injunction.
(ii) But this Court holds that, the 1 to 3 item of “A” schedule property belongs to 1st Defendant namely Balaji. The other Defendants and Plaintiff have no share in the “A” schedule 1 to 3 item of properties.
(iii) And regarding “B” schedule property, the legal heirs of Sorajammal, Baiammal and Chinnathayammal are entitled to get equal share.
(iv) The decree passed by Principal Sub Judge, Krishnagiri in O.S.No.108 of 2000 is declared as null and void.
(v) Considering the relationship between the parties to the suit, no cost.”

5. The Plaintiff in O.S. No.85 of 2017 had not preferred any appeal against the refusal to grant decree in favour of the Plaintiff. The third Defendant had sought Appeal to set aside the correctness of the O.S.No.108 of 2000. No property in O.S.No.108 of 2000 is included in this suit. The learned Counsel for the Respondents submitted that in the affidavit filed as examination chief in O.S.No.85 of 2017 by the third Defendant as D.W-2 he had not stated (i) Whether Muniyammal to whom K.M.Muniyappa Chetty had executed settlement deed with a condition that she has to perform the marriage of Chinnathayammal, mother of the third Defendant in O.S.No.85 of 2017; (ii) Whether Muniyammal had performed the marriage of Chinnathayammal or she died without performing the marriage of Chinnathayammal also the date of death of Muniyammal had not been stated by the third Defendant. He had also



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not stated whether Muniammal had performed the marriage of Chinnathayammal before her death. As per the Plaintiff in O.S.No. 85 of 2017 and as per the first Defendant as D.W-1 Muniammal performed the marriage of Chinnathayammal. Muniammal died after the marriage of Chinnathayammal. Therefore, “B” schedule property that was gifted by K.M. Muniyappa Chetty in favour of Muniammal with the condition, devolved on her. The condition was complied by Muniyammal, as per the Plaintiff. But as per the third Defendant, Muniyammal died prior to the date of marriage of Chinnathayammal, the mother of the third Defendant which is not stated in the affidavit. Whether the marriage of Chinnathayammal was performed or not, was answered by the learned Judge by observing that Muniammal performed marriage of Chinnathayammal and based on the condition in the gift deed, the property belong to Muniammal and she had a full right over “B” schedule property. The third Defendant in O.S. No.85 of 2017 B.K.Ramamoorthi and one B.K.Chandrasekaran and B.K.Eshwari were born through Krishnappa Chetty and Chinnathayammal. Baiammal's family took care of Muniyammal. Therefore, Muniyammal gifted “B” schedule property to the first Defendant. Hence “B” schedule property is the joint family property of Plaintiff, first and second Defendant.



6. The learned Counsel for the Respondents invited the attention of

WEB COPY this Court to paragraph 5 of the affidavit filed by the third Defendant

B.K.Ramamoorthi, as D.W-2 which is extracted as under:

“ 5. நான் தாக்கல் செய்த வழக்கில் பையம்மாளுக்கு எதிராக பிறப்பிக்கப்பட்ட முதல் நிலை தீர்ப்பாணை முதல் பிரதிவாதியை கட்டுப்படுத்தும். மேலும் இறுதிநிலை தீர்ப்பாணை மனுவில் முதல் பிரதிவாதிக்கு எதிராக பிறப்பிக்கப்பட்ட இறுதி நிலை தீர்ப்பாணை வாதியையும் கட்டுப்படுத்தும். ஆனால் மேற்படி வாதி கிரையப்பத்திரம் மூலமும், விடுதலைப்பத்திரம் மூலமும் பையம்மாள் என்பவருக்கு தாவா சொத்து பாத்தியப்பட்டதாக பொய்யாக பாத்தியம் கோரியுள்ளார். பையம்மாள் என்பவருக்கு முதல் பிரதிவாதி ஒரே மகன் என்பதால் அவர் தாவா முதல் அயிட்ட சொத்தில் அவருக்கு பங்கு கோர பாத்தியமுண்டு. ”

7. The Plaintiff in O.S.No.108 of 2000 attempted to create an impression that Muniammal did not perform the marriage of Chinnathayammal. If that be the case, how B.K.Ramamoorthi the Plaintiff in O.S.No.108 of 2000 was born? who performed the marriage of her mother Chinnathayammal? In O.S.No. 108 of 2000 it was a decree granted by the Court without any documents. Therefore, as per the provisions of Code of Civil Procedure and as per the provisions of the Evidence Act, the decree granted by the learned Principal Sub Judge, Krishnagiri is non-est in the eyes of law. The learned Counsel for the Respondents submitted that the third Defendant as D.W-2 in his cross examination admitted that he had no knowledge about the document filed regarding the claim of first item of the suit “A” scheduled property in O.S. No. 85 of 2017 but it is known only to his



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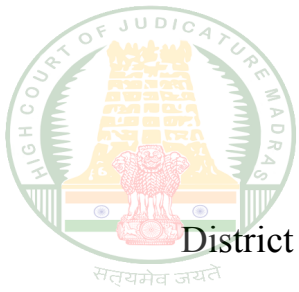
Counsel. Therefore, without filing any document he had obtained preliminary decree which is non-est in the eyes of law. Therefore, the learned Additional District Judge had on proper appreciation of evidence based on the documents marked on the side of the Plaintiff under Ex.A-1 to Ex.A-13, set aside the decree granted by the Principal Sub Judge, Krishnagiri as it was granted without considering the documents. Whereas the documents filed on behalf of the Plaintiff and the first Defendant under Ex.B-1 clearly proved the title is in the name of Baiammal. When that be the case, the grant of preliminary decree in favour of B.K.Ramamoorthi for the properties in the name of Baiammal is an erroneous decree without any document. Therefore, the learned Additional District Judge, had rightly set aside the decree granted by the learned Principal Sub Judge, Krishnagiri to the Plaintiff in O.S.No. 108 of 2000 the third Defendant in O.S.No. 85 of 2017. The learned Counsel for the Respondents invited the attention of this Court to the admission in cross examination by the third Defendant as D.W-2 that he had admitted that Muniyammal died after the marriage of Chinnathayammal. He had denied the suggestion without filing any document in support of his contention in the plaint in O.S.No.108 of 2000 he had obtained an *ex parte* decree which is non-est in law. He had admitted in the cross examination that Survey No.476/1 stood in the name of Baiammal and Patta also stood in the name of Baiammal. The learned Counsel for the



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Respondents relied on the evidence of Kasturi, the daughter of Sarojammal, who was examined as P.W-3 in O.S.No. 85 of 2017 wherein she admitted that her mother Sarojammal had released her share in the property in favour of Baiammal. She admitted that she did not contest the case in O.S.No. 108 of 2000, as she does not have any claim in the property. B.K.Ramamoorthi is the son of Chinnathayammal who does not have any right in the “B” schedule property as it was gifted by K.M.Muniyappa Chetty in favour of Muniammal with a condition that she has to perform the marriage of Chinnathayammal the mother of the Plaintiff in O.S.No. 108 of 2000. Muniammal died after the marriage was performed to Chinnathayammal. Therefore, the property gifted by K.M.Muniyappa Chetty in favour of Muniyammal was her property and she died issueless. She was maintained by Baiammal. Therefore she had executed oral gift in favour of Baiammal. Baiammal enjoyed the property till her lifetime. While the facts stood so, the Plaintiff suppressing those facts had filed suit for partition as though the suit properties belong to Sarojammal and Baiammal, as Muniammal not having performed the marriage of Chinnathayammal, died before the marriage of Chinnathayammal, the property gifted by K.M. Muniyappa Chetty to Muniammal behold on Chinnathayammal. Therefore, the claim of partition is contrary to the facts in O.S. No. 85 of 2017. Therefore, the observation of the learned Additional



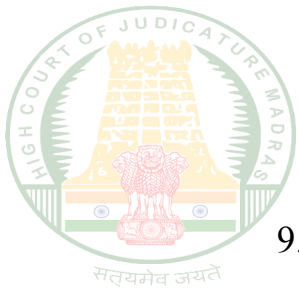
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District Judge that the Plaintiff in O.S.No. 108 of 2000 having obtained the decree without any document, whereas the documents in O.S.No. 85 of 2017 clearly proved the title in the name of Baiammal and Baiammal is survived by her only son the first Defendant/Balaji. Therefore, the preliminary decree obtained by the Plaintiff in O.S.No.108 of 2000 was declared as non-est in the eyes of law by the learned Additional District Judge, Krishnagiri in O.S.No.85 of 2017 is a well reasoned judgment that does not warrant any interference by this Court.

8. The learned Counsel for the Respondents further submitted that the evidence of P.W-3 Kasthuri exposes the suppression of fact of the third Defendant in O.S. No. 85 of 2017, who is the Plaintiff in O.S.No.108 of 2000. Therefore, the learned Additional District Judge had on proper appreciation of evidence set aside the preliminary decree passed by the learned Principal Sub Judge, Krishnagiri in O.S.No.108 of 200 as non-est in the eyes of law as it was filed without any document by the Plaintiff. This Appeal lacks merit and is to be dismissed.

9. In support of his contention, the learned Counsel for the Respondents had relied on the following rulings:



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9.1. In the case of ***Meenakshisundaram Textiles vs. Valliammal***

Textiles Ltd. reported in ***2011 (3) CTC 168*** a Division Bench of this Court had held as under:

“Code of Civil Procedure, 1908 (5 of 1908), Section 2(9) & 96(2), Order 9, Rule 13 – Suit for recovery of money – Ex parte decree passed – Defendant sought to set aside ex parte decree – Application dismissed – Order challenged in Civil Miscellaneous Appeal – Question whether judgment comes within ambit of Section 2(9) and can be termed as 'judgment' – Judgment rendered ex parte and decree drawn, is appealable – In case judgment and decree became final, without there being any Appeal, decree is executable – There is no difference between a judgment and decree and an ex parte judgment and decree – In event Defendant is set ex parte, Court should be extra careful in such case – It should consider pleadings and evidence to arrive at a finding as to whether Plaintiff is entitled to a decree – An ex parte decree should show application of minimum requirement of consideration of pleadings and evidence – Judgment passed by Trial Court is not in conformity with provisions of Code of Civil Procedure – Impugned judgment and decree set aside – Trial Court directed to dispose of Suit by recording evidence.”

9.2. In the case of ***C.N. Ramappa Gowda vs. C.C.Chandregowda***

(Dead) by LRs and another reported in ***(2012) 5 SCC 265*** the Hon'ble

Supreme Court has held as follows:

“A. Civil Procedure Code, 1908 – Or. 8, R.10, Or.9 R.6, Or.12, R.6 and Section 33 – Non-filing of written statement – Uncontested or ex parte judgment and decree – When warranted – Matters to be proved by/burden of proof on plaintiff – Existence of disputed questions of fact established from plaint itself – Effect of – Duty of Court – Penal decree – What is – Non-filing of written statement, held, should not have penal consequences – Court should proceed cautiously and exercise its discretion in a



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just manner – Even in absence of written statement, burden of proof would remain on plaintiff and his mere assertion in plaint affidavit would not be sufficient to discharge the burden – Where in view of non-filing of written statement despite repeated opportunities given to defendant, decree was passed without going into merits, merely on basis of affidavit filed by Plaintiff, in case involving disputed questions of fact, held, it would amount to a penal decree – If plaintiff indicates disputed questions of fact, court should require plaintiff to lead evidence, and on independent examination thereof, should it pass a judgment and decree – If, however, Court is satisfied that plaintiff's case is unimpeachable even without evidence in view of admission(s) of defendants and that defendants were adopting delaying tactics, then it can pass an uncontested decree.”

Points for determination:

(i) Whether the judgment of the learned Additional District Judge in O.S.No. 85 of 2017 is erroneous on the ground that the decree had been passed already against M.V.Balaji and his mother Baiammal, the Plaintiff has no right and could not challenge the decree passed in O.S.No.108 of 2000?

(ii) Whether the learned Additional District Judge failed to consider that K.M.Muniyappa Chetty executed a registered settlement deed dated 22.04.1954 in favour of his sister Muniyammal with a condition directing her to perform the marriage of Chinnathayammal, the mother of the third Defendant. But the said Muniyammal predeceased Chinnathayammal without any issues and as such Chinnathayammal succeeded to the suit Item No.2 and that she had been in possession and enjoyment of the



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said property as owner thereof?

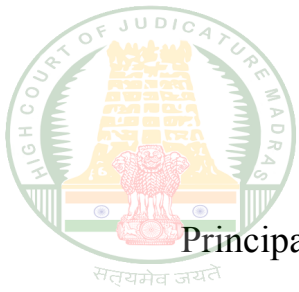
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(iii) Whether the learned Additional District Judge, Krishnagiri failed to see that the Plaintiff did not give the manner and particulars of fraud committed by the third Defendant in getting a decree in O.S.No. 108 of 2000. The decree could not be set aside unless and until the alleged fraud committed by the third Defendant are established in the manner known to law?

10. Heard the learned Counsel for the Appellant Mr. S.P. Vishnu Prasath and the learned Counsel for the Respondents Mr. V. Srikanth.

11. Perused the plaint, written statement, depositions and the judgment dated 20.01.2022 passed in O.S.No.No.85 of 2017 by the learned Additional District Judge, Krishnagiri.

12. On perusal of the of the documents filed in O.S. No.85 of 2017 as Ex.B-2 to Ex.B-7 it is nothing but a certified copies of the affidavit and petition in I.A.No.68 of 2007, final decree application in O.S.No.108 of 2000 and decreetal order passed in I.A.No.68 of 2007 in O.S.No.108 of 2000, certified copy of the Commissioner's report and plaint in I.A.No.68 of 2007, proof affidavit of the third Defendant in O.S.No.108 of 2000 on the file of the



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Principal Sub Judge, Krishnagiri and computer patta, chitta in the name of third Defendant in Survey No.401/1 and 421/2A. The documents under Ex.A-1 to Ex.A-13 are in the name of Baiammal. Ex.A-3 is the UDR Patta in the name of Muniammal for “B” schedule property. Ex.A-1 is the certified copy of the sale deed in the name of Baiammal and Sarojammal in respect of “A” schedule property.

13. On consideration of the evidence through P.W-1 to P.W-3 and D.W-1 and D.W-2, it is found that Chinnathayammal's marriage was performed by Muniammal. Therefore, as per the gift deed in favour of the Muniammal by K.M. Muniyappa Chetty, she had complied with the condition by performing the marriage of Chinnathayammal. Chinnathayammal was married to Krishnappa Chetty through them the third Defendant B.K.Ramamoorthi, his brother B.K.Chandrasekaran and sister B.K.Eshwari were born. That is admitted by the third Defendant as D.W-2 in his cross-examination. Wantonly in the plaint in O.S.No.108 of 2000 he had not stated it clearly. He had stated that Muniammal died prior to performing the marriage of Chinnathayammal. Therefore, the gift in favour of Muniammal with a condition that she had to perform the marriage of Chinnathayammal was not performed. Therefore, the property vested with the Chinnathayammal.



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Also, he had stated that the property in “A” schedule was in the name of K.M.Muniyappa Chetty, grandfather of the Plaintiff in O.S.No.108 of 2000 and therefore, the legal heirs of Baiammal, Sarojammal and Chinnathayammal are entitled to 1/3rd share. Whereas it is not so. O.S.No.85 of 20017 is filed along with documents wherein the claim of the Plaintiff in O.S. No. 108 of 2000 is found to be false. O.S.No.108 of 2000 was decreed by granting 1/3rd share to the legal heirs of Chinnathayammal, 2/3rd share to Baiammal and Sarojammal. In the evidence in O.S. No 85 of 2017, P.W-3 Kasthuri, the daughter of Sarojammal had clearly admitted that Sarojammal had released her share in favour of Baiammal during her life time. Therefore, the legal heir of Sarojammal did not contest in O.S.No.108 of 2000. When “A” schedule property stands in the name of Baiammal, the claim of the third Defendant/Plaintiff in O.S.No. 108 of 2000 is found contrary to the pleadings in O.S.No. 108 of 2000. When Muniammal died, the third Defendant claims that he too shared the funeral expenses along with the first Defendant in O.S. No 85 of 2017. That shows Muniammal had in her life time performed the marriage of Chinnathayammal and the third Defendant is the son of Chinnathayammal. The claim made by the Plaintiff that he is the son of Chinnathayammal, and the claim made by the Plaintiff in O.S.No.108 of 2001 that Muniammal died prior to performance of marriage of Chinnathayammal is



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nothing but suppression of fact. Since Muniammal was maintained by Baiammal, she executed oral gift in favour of Baiammal and Baiammal during her life time paid kist. The learned Judge had on appreciation of evidence and on the strength of the documents under Ex.A-1 to Ex.A-13 had arrived at a conclusion that item 1 to 3 of “A” schedule property belong to first Defendant Balaji. The other Defendants and Plaintiff have no share in item 1, 2 and 3 in “A” schedule property. Regarding “B” schedule property, the legal heirs of Baiammal, Sarojammal and Chinnathayammal are entitled to equal share. The decree passed by the learned Principal Sub Judge, Krishnagiri in O.S.No.108 of 2000 was declared as null and void.

14. The reliance placed by the learned Counsel for the Respondents in the case of *Meenakshisundaram Textiles vs. Valliammal Textiles Ltd.* reported in *2011 (3) CTC 168* and in the case of *C.N. Ramappa Gowda vs. C.C.Chandregowda (Dead) by LRs and another* reported in *(2012) 5 SCC 265* are squarely applicable to the facts of this case. Therefore, in the light of the above rulings, the judgment by the learned Principal Sub Judge, Krishnagiri, granting decree for partition without any document in support of the claim in O.S.No.108 of 2000 was rightly held as non-est in the eyes of law by the learned Additional District Judge, Krishnagiri, in O.S.No. 85 of 2017.



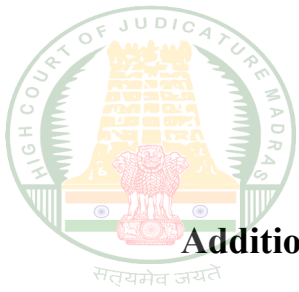
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The reasoning given by the learned Additional District Judge, Krishnagiri, in O.S.No. 85 of 2017 declaring the preliminary decree granted in O.S.No. 108 of 2000 is found to be well reasoned judgment. That does not warrant any interference by this Court. Therefore, this appeal is to be dismissed as having no merits.

15. In the light of the above discussion, the points for determination are answered as follows:

Point for determination 1:

The Plaintiff having filed the suit in ignoring the decree passed in O.S.No.108 of 2000 is not as per the provisions of Civil Procedure Code and as per the rulings cited by the learned Counsel for the Respondents in *Meenakshisundaram Textiles vs. Valliammal Textiles Ltd.* reported in **2011 (3) CTC 168** and in the case of *C.N. Ramappa Gowda vs. C.C.Chandregowda (Dead) by LRs and another* reported in **(2012) 5 SCC 265**. Therefore, the finding of the learned Principal Sub Judge, Krishnagiri, granting preliminary decree based on pleadings of the Plaintiff, based on the fact that the Defendant remained *ex parte* and without any document is non-est in law. The reasoning of the learned Additional District Judge, Krishnagiri in setting aside the decree passed in O.S.No.108 of 2000 is found proper. **The judgment of the learned**



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Additional District Judge in O.S.No. 85 of 2017 is not erroneous on the ground that the decree had been passed already against M.V.Balaji and his mother Baiammal, the Plaintiff has every right to challenge the decree passed in O.S.No.108 of 2000. Therefore, the point for determination-1 is answered against the Appellant and in favour of the Respondents.

Point for determination 2:

The fact that K.M.Muniyappa Chetty has registered settlement deed dated 22.04.1954 in favour of Muniammal with a condition directing her to perform the marriage of Chinnathayammal, mother of the third Defendant but the said Muniammal predeceased Chinnathayammal issueless and as such Chinnathayammal had been in possession and enjoyment of the property thereof is not true as per the admission in cross-examination of the third Defendant B.K.Ramamoorthi as D.W-2. He had in his cross-examination admitted that he attended the funeral of Muniammal. He claims that he too shared the funeral expenses along with first Defendant Balaji. The suggestion of the first Defendant that Muniammal was maintained by Baiammal was denied by the third Defendant in his cross-examination as D.W-2. But he stated that he too shared the funeral expenses, the suggestion that nowhere in the pleadings in the written statement the third Defendant had claimed that



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Muniammal was maintained by him and Chinnathayammal during her lifetime was not stated in the pleadings was also denied by him. It was an evasive denial. Since there was no such pleading to assert the fact that Chinnathayammal and her legal heirs B.K.Ramamoorthi, B.K.Chandrasekaran and B.K. Eshwari maintained Muniammal during her life time. It will be contradictory to the pleadings of the third Defendant as Plaintiff in O.S.No. 108 of 2000. That is the material suppression. He admits the fact that Muniammal died after performing the marriage of Chinnathayammal. If that be the case, as per the condition imposed by K.M.Muniyappa Chetty to Muniammal to perform the marriage, the settlement gift in favour of Muniammal had been executed by him. Therefore, the gift executed by K.M.Muniyappa Chetty in favour of Muniammal had been performed. The property belongs to her. Since she died issueless, the property belongs to Baiammal who maintained her. Since there was no assertion by the third Defendant in his written statement that Muniammal was maintained by Chinnathayammal, it will be contradictory to the averments in the plaint. Therefore, admission in cross-examination that Bajari Muniammal died after the marriage of Chinnathayammal was admitted by third Defendant in his cross examination as D.W-2. He added that he too shared the funeral expenses with first Defendant which cannot be accepted by the Court in the light of the



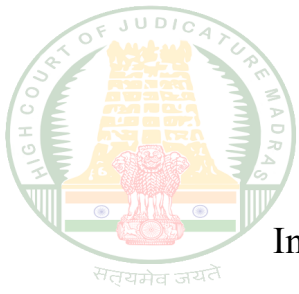
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absence of pleadings which are contradictory to the plaint averments in O.S.No.108 of 2000. Therefore, the claim of the Plaintiff that Chinnathayammal succeeded to the property under the gift deed in favour of Muniammal is not true. It is a suppression. When the Defendant had not contested the suit, without perusing any document, without perusing any evidence, the learned Principal Sub Judge, Krishnagiri, having decreed the suit granting preliminary decree in O.S.No. 108 of 2000 is set aside by the learned Additional District Judge, Krishnagiri in O.S.No. 85 of 2017 is found proper on appreciation of evidence available through P.W-1 to P.W-3, D.W-1 and D.W-2, Ex.A-1 to Ex.A-13 and Ex.B-1 to Ex.B-3. The learned Judge had on appreciation of evidence and on the strength of the documents under Ex.A-1 to Ex.A-13 had arrived at a conclusion that item 1 to 3 of “A” schedule property belong to first Defendant Balaji. The other Defendants and Plaintiff have no share in item 1, 2 and 3 in “A” schedule property. Regarding “B” schedule property, the legal heirs of Baiammal, Sarojammal and Chinnathayammal are entitled to equal share. The reasoning of the learned Additional District Judge, Krishnagiri in setting aside the decree passed in O.S.No.108 of 2000 is found proper. **Therefore, the point for determination-2 is answered against the Appellant and in favour of the Respondents.**



Point for determination 3:

WEB COPY The learned Judge had on appreciation of evidence through P.W-1 to P.W-3, D.W-1 and D.W-2, Ex.A-1 to Ex.A-13 and Ex.B-1 to Ex.B-3 found that decree granted by the learned Principal Sub Judge, Krishnagiri in O.S. No.108 of 2000 is without proper reasoning and on appreciation of evidence as per the Indian Evidence Act and as laid down by this Court in *Meenakshisundaram Textiles vs. Valliammal Textiles Ltd.* reported in *2011 (3) CTC 168* and in the case of *C.N. Ramappa Gowda vs. C.C.Chandregowda (Dead) by LRs and another* reported in *(2012) 5 SCC 265*. Therefore, fraud committed by the third Defendant is with regard to the fact of death of Muniyammal in the plaint in O.S.No.108 of 2000. He claims Muniammal died prior to the performance of marriage of Chinnathayammal, whereas in the evidence in O.S. No. 85 of 2017 he admits that Bajari Muniammal died long after the performance of marriage of Chinnathayammal. That is the fraud played by the third Defendant as Plaintiff in O.S.No.108 of 2000. Therefore, the judgment granting preliminary decree for partition of the Plaintiff without any documentary proof is non-est in the eyes of law. **Therefore, the point for determination-3 is answered against the Appellant and in favour of the Respondents.**



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In the result, **this Appeal Suit is dismissed.** The judgment and decree dated 20.01.2022 passed in O.S.No. 85 of 2017 by the learned Additional District Judge, Krishnagiri is confirmed. No costs.

25.06.2025

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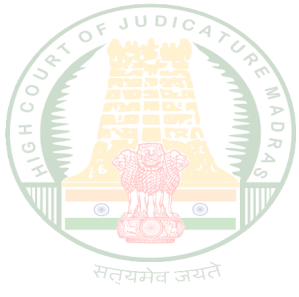
Index : Yes/No

Internet : Yes/No

Speaking/Non-speaking order

To

1. The Additional District Judge,
Krishnagiri.
2. The Principal Sub Judge,
Krishnagiri.
3. The Section Officer,
V.R. Section,
High Court Madras.



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SATHI KUMAR SUKUMARA KURUP, J.,

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Judgment made in
A.S.No. 318 of 2022

25.06.2025