



AS No. 434 of 2024

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

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DATED : 24-06-2025

CORAM:

**THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP**

Appeal Suit No.434 of 2024

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G. Sivagami

.. Appellant

Versus

1. N. Ganesan

2. D. Bhuvaneswari

3. G. Balamurugan

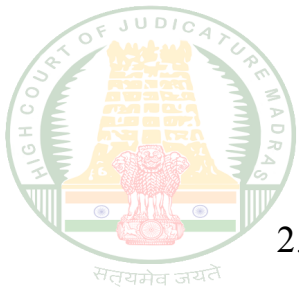
.. Respondents

Appeal Suit is filed under Section 96 (1) of Civil Procedure Code against the judgment and decree dated 14.02.2024 passed in I.A. No. 2 of 2022 in O.S. No. 3515 of 2022 on the file of the learned II Additional Judge, City Civil Court, Chennai.

|               |   |                                               |
|---------------|---|-----------------------------------------------|
| For Appellant | : | Mr. N. Karthikeyan                            |
| For R1 & R2   | : | Mr. A.M. Amutha Ganesh                        |
| For R3        | : | Mr. R. Shine Kumar<br>for M/s.K.M.Nalinishree |

**JUDGMENT**

This Appeal Suit is filed against the judgment and decree dated 14.02.2024 in passed in I.A. No. 2 of 2022 in O.S. No. 3515 of 2022 on the file of the learned II Additional Judge, City Civil Court, Chennai.



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2. The Appellant is the Plaintiff in O.S. No. 3515 of 2022. She has filed the said suit for the relief of partition and separate possession of the suit scheduled property. The first Defendant in the suit is none other than the father of the Plaintiff. The second Defendant is the brother of the Plaintiff. The third Defendant is the sister of the Plaintiff. The father as first Defendant and sister as third Defendant had filed petition under Order VII, Rule 11 CPC in I.A.No.2 of 2022 in O.S.No.3515 of 2022 seeking to reject the plaint on the ground that there is no cause of action to file the suit. The suit of the Plaintiff for partition is not maintainable against self-acquired property of the father when the father is alive. Therefore, they sought rejection of the plaint.

3. The Plaintiff as first Respondent vehemently objected to the petition under Order VII, Rule 11 CPC by filing counter. After due enquiry the petition in I.A.No.2 of 2022 in O.S.No.3515 of 2022 was allowed by order dated 14.02.2024. Thereby the Plaint in O.S.No.3515 of 2022 was rejected.

4. The averments in the affidavit filed in support of I.A.No. 2 of 2022 in O.S.No. 3515 of 2022 are as follows :

4.1. The Petitioners are the Defendants 1 and 3. The suit property was originally purchased by the first Petitioner's father Nagappa Gramani vide sale

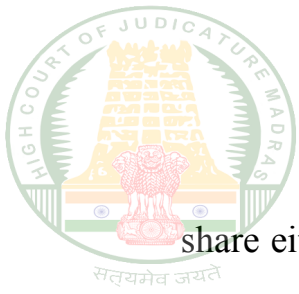


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deed dated 17.03.1959. He was in absolute possession and enjoyment of the same and executed a settlement deed in favour of the first Petitioner on 06.07.1979. The settlement deed was acted upon, and possession was handed over to the first Petitioner. He has been in absolute possession and enjoyment of the suit property for more than 40 years. The Revenue Records stands in the name of the first Petitioner. Since, the Settlement Deed is acted upon, no one has right to question the settlement deed. Now at present the 2nd Respondent is living along with his family in the suit property. The first Petitioner is utilizing the income derived from the suit property for his day to day expenses. 'B' Schedule property belongs to the temple and superstructure was put up by the 3<sup>rd</sup> Respondent at her own cost. The first Respondent/Plaintiff has no love and affection towards the family of the first Petitioner. In fact the first Petitioner has repaid the loan obtained by the first Respondent to the tune of Rs.31,286/-. The first Respondent used to quarrel with the first Petitioner frequently.

4.2. The first Respondent filed a suit in O.S.No. 4051/2016 on the file of the XV Assistant City Civil Court, Chennai. The suit was dismissed as not pressed on 07.09.2017. The first Respondent did not obtain any liberty to file a fresh suit on the same cause of action. The first Respondent is not entitled to a



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share either in the 'A' Schedule property or in the "B' schedule property. There

is no cause of action for the suit. It is therefore prayed to reject the plaint.

5. The contents of the counter filed by the first Respondent/Plaintiff are as follows:-

5.1. The petition is not maintainable. The petition is liable to be dismissed. The first Respondent has filed the suit for declaration of 1/4 share in the 'A' and 'B' schedule property and for consequential relief. The Petitioners, without contesting the case by filing written statement has filed this present petition to reject the plaint. The plaint shall be rejected on any one of the grounds contemplated under Order VII, Rule 11 (a) to (f) of CPC viz., if the plaint does not disclose any cause of action, if the suit is incorrectly valued and sufficient Court fee is not paid despite the Court instruction, if the suit is barred by any law and if the plaint has not been filed in duplicate and if Rule 9 of Order VII of CPC has not been duly complied with. However, in the present case, the grounds for rejection of plaint is not available. 'A' schedule property is not a self acquired property of the first Petitioner. It consists of ancestral properties also. The temple had leased out "B" schedule property to the first Respondent's maternal grand mother. After the demise of her maternal grand mother, her mother was in possession of the property as a lessee. Hence,



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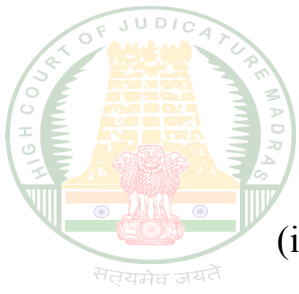
the first Respondent is having share in the 'B' schedule property also. Unless and otherwise the suit is adjudicated, the first Respondent will not be able to prove her contention in the plaint. It is therefore prayed to dismiss the petition.

6. The learned III Additional Judge, City Civil Court, Chennai holding Full Additional Charge of II Additional Judge, City Civil Court, Chennai, after hearing both parties, passed the order dated 14.02.2024 in I.A.No. 2 of 2022 in O.S.No.3515 of 2015 allowing the I.A.

7. Aggrieved by the order dated 14.02.2024 in I.A.No. 2 of 2022 in O.S.No.3515 of 2015 the Plaintiff has filed this Appeal Suit.

8. The Appellant has filed this Appeal Suit raising the following grounds:

(i) The Lower Court failed to appreciate the recitals in the settlement Deed as to the true nature of inheritance. The recitals will show that it is a partition of various properties held by the Appellant's paternal grandfather and the Appellant inherits a right along with her father as per the Hindu Succession (Tamil Nadu Amendment) Act 1989. The Appellant was married in 2003.



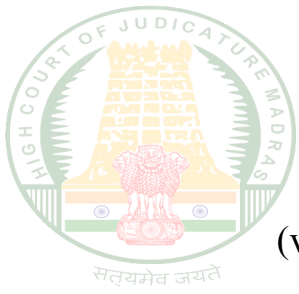
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(ii) The Lower Court proceeded on the basis that the Schedule “A” property was governed by the settlement deed and erroneously held that the First Respondent's right was absolute. Without going into the nature of the inheritance and merely going by the nomenclature of the document deprives the Appellant of her legitimate right.

(iii) The Lower Court failed to see that none of the requirements to file an application under Order VII, Rule 11 of CPC exist and hence the application under Order VII, Rule 11 of CPC is not maintainable.

(iv) The Lower Court is erroneous in observing that the Appellant herein, the Plaintiff has not pleaded that the suit property is ancestral property. The specific plea of the Appellant/Plaintiff is that it is ancestral and therefore the Appellant has an equal right along with son as per the Hindu Succession (Tamil Nadu Amendment) Act, 1989.

(v) The Lower Court is erroneous in relying on the nomenclature of the document. It is clear from the recitals that the settlement is nothing but a Partition between the family members. Hence, the Schedule A property has an ancestral nucleus.



(vi) The Lower Court has not considered the amendment in the Hindu Succession (Tamil Nadu Amendment) Act, 1989 and the Hindu Succession (Amendment) Act 2005 (Act 39 of 2005) and its applicability to the suit properties.

(vii) The lower Court's view of the withdrawal of the previous suit as a bar under Order XXII is erroneous as the decision of the Hon'ble Supreme Court in **2023 Live Law SC 262** and other Apex Court decisions have repeatedly held that any compromise or withdrawal pursuant to a compromise has to be signed by all parties and the Court has to apply its judicial mind and as such the suit is maintainable.

9. The learned Counsel for the Appellant submitted that according to the Plaintiff, the “A” schedule property in the plaint was acquired by her father through a settlement deed dated 06.07.1979 registered as document No. 1060 of 1979 in the office of the District Registrar, Madras South, as such the property has an ancestral nucleus. It is further stated that the Plaintiff was given in marriage in the year 2003 and the third Defendant got married in the year 2000. After the marriage, the Plaintiff is living separately. Similarly, the “B” schedule property in the plaint belongs to grandmother of the Plaintiff by



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name A. Rajam. After her demise, the Plaintiff's mother and daughter of Rajam namely Vasantha and the second and third Defendants continued to remain in possession of the said property. The mother of the Plaintiff Vasantha died and therefore, the Plaintiff also got a share in the “B” Schedule property. According to the Plaintiff, she has been demanding for a share in the suit scheduled properties, but it was postponed by the Defendants. Earlier, the Plaintiff filed O.S. No. 4051 of 2016 claiming partition and separate possession against the Defendants. During the pendency of the suit, the first and third Defendants convinced and cajoled the Plaintiff to withdraw the suit and that she would be given a share. Believing their representation to be true, the Plaintiff did not press the suit in O.S. No. 4051 of 2016 and accordingly it was dismissed on 07.09.2017. After dismissal of the suit in O.S. No. 4051 of 2016, the Plaintiff was not given any share and therefore, on 18.08.2021, she had sent a notice to the Defendants seeking partition of the “A” and “B” Schedule properties. A reply dated 04.10.2021 was sent by the first and third Defendants denying any share to the Plaintiff in the suit properties. Thereafter, the present suit in O.S. No. 3515 of 2021 has been filed by the Plaintiff for partition and separate possession of the suit properties.

10. During the pendency of the present suit in O.S. No. 3515 of 2021,



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the Defendants 1 and 3 have filed I.A. No. 2 of 2022 under Order VII, Rule 11 of C.P.C. seeking rejection of the plaint. According to the Defendants, the first Defendant is the absolute owner of the plaint “A” scheduled property and he can utilise the property in a manner he wishes. The first Defendant admitted that the second Defendant along with his wife and children are residing in the “A” Schedule property and he is utilising the income generated thereof on his own. It is also stated that the second Defendant constructed superstructure at his cost in the “A” schedule property and therefore, the question of partition will not arise. It is also stated that the second Defendant had financially helped the Plaintiff in several ways including repayment of the loan of Rs.31,286/- received by the Plaintiff. Further, the earlier suit filed in O.S. No. 4051 of 2016 is a bar for filing the present suit. The earlier suit was filed for the very same prayer and after withdrawal of the same on 07.09.2017, the Plaintiff is legally estopped from filing the present suit. Accordingly, the first Defendant prayed for rejection of the plaint.

11. The Plaintiff filed a counter in I.A.No.2 of 2022 reiterating the claim made in the plaint in O.S. No. 3515 of 2022. After due enquiry, the learned II Additional Judge, City Civil Court allowed the petition filed by the first Defendant under order VII Rule 11 of CPC, thereby rejected the plaint.

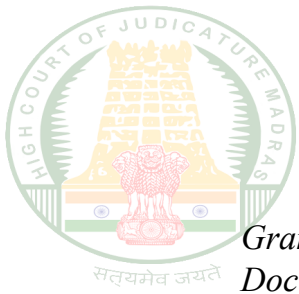


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Aggrieved by the order passed by the learned II Additional Judge, in I.A. No.2 of 2022 in O.S. No. 3515 of 2022, this Appeal has been preferred by the Plaintiff.

12. The learned Counsel for the Appellant submitted that the “A” Schedule property described in the plaint belonged to the paternal grand father of the Plaintiff and father of the first Defendant. The first Defendant did not partition the suit property with his son. Therefore the nature of the property is ancestral in character. As per Section 6 of the Hindu Succession Act as amended in 2005, the daughter has to be treated as a co-parcener in the Hindu Joint family property. Therefore, the Plaintiff is entitled to a share in the suit properties, which the first Defendant could not deny. It is the further contention of the learned Counsel for the Appellant that the suit property includes the leasehold right over the suit property, which was leased out to the maternal grand mother which is transferable and which can also be partitioned. The learned Counsel for the Appellant invited the attention of this Court to the averments in the plaint and relief sought by the Plaintiff in the prayer clause in the plaint in page 53 and 54 of the typed set which are as follows.

*"The Plaintiff states that the property at No.41, Arunachalapuram Main Road, Adayar Chennai 600 020 more fully described in Schedule A to the plaint, was acquired by the first Defendant under a family partition understanding and by way of a settlement deed from his father Nagappa*



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*Gramani, under a settlement deed dated 06.07.1979 and registered as Document No.1060 of 1979 in the office of the District Registrar, Madras South. As such the property has an ancestral nucleus. The Plaintiff was married in the year 2003, and the Defendant-3 was married in the year 2000. After marriage, the Plaintiff has been living separately and is presently in Palavakkam. Hence as per the Hindu Succession Act the Plaintiff has a 1/4<sup>th</sup> share in the schedule A property.”*

13. The learned Counsel for the Appellant relied on the settlement deed executed by the paternal grand father in favour of the first Defendant, which was registered as Document No.1060 of 1979. A copy of it is available in the typed set at page 24. Even though the wordings are settlement, on reading the recitals, it is found that it is a Partition Deed executed by paternal grand father in favour of the father of the Plaintiff, whereby the suit property was partitioned between father and paternal uncle. Therefore, the Plaintiff is entitled to claim a share in the suit property and it cannot be denied by the Defendants. As per the recitals in Document No.1060 of 1979, what was retained by paternal grand father is 1200 Sq.ft. But what was settled in favour of the father of the Plaintiff is 600 Sq.ft. As per Section 3 of the Hindu Succession Act, the Appellant, as a daughter, has got 1/4 share in the suit property from the date of her birth and it cannot be curtailed by the Defendants in any manner. The learned Counsel for the Appellant also invited the attention of this Court to Para No. 5.3 of the order passed in I.A.No.2 of 2022 in O.S.No.3515 of 2022 which reads as follows:-

*“5.3. In order to reject the plaint the averments in the plaint and the*



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*documents rely upon by the Plaintiff alone has to be taken into account. The defense in the written statement or the documents relied upon by the Defendants cannot be looked into. On perusal of the plaint pleading, the first Respondent/Plaintiff never pleaded that the family had ancestral property. The first Respondent did not say that the suit property is ancestral property of the family in the hands of the first Petitioner. Further more, on perusal of the settlement filed by the first Respondent it could be seen that the property was the absolute property of the first Petitioner's father. Therefore, the first Respondent cannot claim partition in the separate property of the first Petitioner. The property was allotted to the first Petitioner under Settlement deed. Hence, only after the demise of the first Petitioner, the property will devolve upon his legal heirs under Section 8 of the Hindu Succession Act. During the life time of the first Petitioner the first Respondent cannot claim partition”*

14. Further, reference was made to the averments in the plaint (Page 52 of the typed set) where it is mentioned that the leasehold right is also included in the suit for partition, whereas the Trial Judge has observed that the plaint did not contain averments regarding transferable right of the Plaintiff. The Trial Judge also erred in holding that the leasehold right cannot be partitioned, which is contrary to law. In this context, reliance was placed on the decision of the Hon'ble Supreme Court in the case of **Prasanta Kumar Sahoo and Others -vs- Charulata Sahu and Others** reported in **2023 LiveLaw (SC) 262** wherein in Page 26, Paragraph 89 it was held by the Honourable Supreme Court as follows:-

*“89. In the aforesaid context, we may refer to the decision of this Court in the case of Banwari Lal -vs- Chando Devi (Smt) and Another reported in (1993) 1 SCC 581, more particularly, paras 9 to 13 therein:*

*"9. Section 96(3) of the Code says that no appeal shall lie from a decree passed by the Court with the consent of the parties. Rule 1-A(2) has been introduced saying that against a decree passed in a suit after*



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*recording a compromise, it shall be open to the Appellant to contest the decree on the ground that the compromise should not have been recorded. When Section 96(3) bars an appeal against decree passed with the consent of parties, it implies that such decree is valid and binding on the parties unless set aside by the procedure prescribed or available to the parties. One such remedy available was by filing the appeal under Order 43, Rule 1(m). If the order recording the compromise was set aside, there was no necessity or occasion to file an appeal against the decree. Similarly a suit used to be filed for setting aside such decree on the ground that the decree is based on an invalid and illegal compromise not binding on the Plaintiff of the second suit. But after the amendments which have been introduced, neither an appeal against the order recording the compromise nor remedy by way of filing a suit is available in cases covered by Rule 3-A of Order 23. As such a right has been given under Rule 1-A(2) of Order 43 to a party, who challenges the recording of the compromise, to question the validity thereof while preferring an appeal against the decree. Section 96(3) of the Code shall not be a bar to such an appeal because Section 96(3) is applicable to cases where the factum of compromise or agreement is not in dispute".*

15. Also, the learned Counsel for the Appellant invited the attention of this Court to Order 43 Rule 1-A (2) and Section 96(3) of C.P.C as well as the reported decision in the case of ***Commissioner of Wealth tax. Kanpur Etc -vs- Chander Sen Etc*** dated 16.07.1986 reported in ***AIR 1986 1753*** to Page 7 of the judgment. It was thus submitted that the order passed by the learned II Additional Judge, City Civil Court, rejecting the plaint on the ground that the suit in O.S. No. 3515 of 2022 is not maintainable as the earlier suit in O.S. No. 4051 of 2016 for the same cause of action was filed by the Plaintiff and withdrawn on 07.09.2017 without seeking leave of the Court is erroneous. The learned Counsel for the Appellant submits that the plaint cannot be rejected as the averments in the plaint has to be subjected to evidence regarding the claim

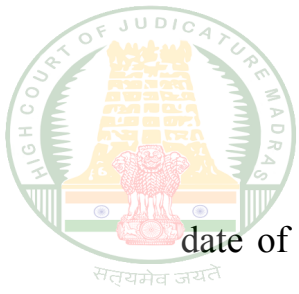


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made in the plaint. Facts stated in the plaint were to be proved through evidence only and it cannot be rejected based on the pleadings alone. The learned Counsel seeks to set aside the order of the learned II Additional Judge, City Civil Court in I.A. No. 2 of 2022 in O.S. No. 3515 of dated 14.02.2024.

16. Per contra, the learned Counsel for the Respondent submitted that the Document No.1060 of 1979 is a settlement deed executed by the paternal grand father of the Plaintiff in favour of the father of the Plaintiff. On perusal of the recitals, it is clear that the grand father had purchased the property. After having purchased the property he had settled the property to his two sons. Therefore from the date of execution of the settlement deed, the property vested with the sons and it is their absolute property. Also it contains recitals that the father by executing settlement deed in favour of the sons had transferred title in their favour and he does not have any right over those properties including right to revoke the same. Therefore, it is an irrevocable settlement deed. As on the date of the settlement deed, the father who had purchased the property does not have any right and only the sons in whose favour settlement deed was executed has the right of ownership of the property and it is their absolute property. When the father is alive, the Plaintiff cannot seek partition over his absolute properties. There is no cause of action on the



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date of filing of the suit. If the Plaintiff had sought partition on the ground that it is ancestral property. In that case, the Plaintiff ought to have impleaded the paternal uncle of the Plaintiff and his children as Defendants in the suit and and sought declaration that the settlement deed executed by the paternal grand father in favour of the father and paternal uncle of the Plaintiff is to be declared as null and void. It is an accepted principle that there cannot be a partition in the self acquired property when the father of the Plaintiff is alive. If he died intestate, then the claim of the Plaintiff is justified. As on the date of the filing of the suit, the father and the grand father of the Plaintiff were alive.

17. Also the learned Counsel for the Respondent submitted that in the earlier suit filed in O.S. No. 4051 of 2016 for partition, the father of the Plaintiff, as Defendant, was in the witness box as D.W-1 and at that stage, the Plaintiff had withdrawn the suit without obtaining leave of the Court to institute a fresh suit on the same cause of action. However, after 6 years of withdrawal of the suit, the Plaintiff had filed the present suit in O.S. No. 3515 of 2022 with the same action of action. Therefore the learned Judge had rightly observed that the suit is barred under Order XXIII Rule 1(4)) of C.P.C and there is no cause of action to file the suit for partition against the absolute property of the father. The nature of the property as claimed by the Plaintiff is



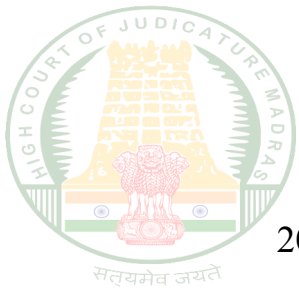
not correct. It is the self-acquired property of the paternal grand father which was subsequently settled in favour of his sons, the Defendant-1 and his brother. Therefore, on the date of the execution of the settlement deed, the property is the self-acquired property of the father of the Plaintiff/ Defendant-1. As on the date of filing of the suit there is no cause of action. This Appeal lacks merit and is liable to be dismissed by confirming the order passed by the court below.

***Point for determination:***

***Whether the judgment and decree of the learned II Additional Judge, City Civil Court in I.A.No.2 of 2022 in O.S.No.3515 of 2022, dated 14.02.2024, is to be set aside as perverse?***

18. Heard the learned Counsel for the Appellant and the learned Counsel for the Respondents.

19. Perused the plaint in O.S. No. 3515 of 2022 and the order passed by the learned II Additional Judge, City Civil Court, Chennai in I.A.No.2 of 2022 in O.S.No.3515 of 2022 dated 14.02.2024.



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20. On perusal of the order passed by the learned II Additional Judge, City Civil Court and the averments in the plaint in O.S. No. 3515 of 2022, it is found that the order passed by the learned II Additional Judge, City Civil Court, Chennai is a well reasoned order. As per Order 23 Rule 1 (4) of C.P.C and as per the recitals in Document No.1060 of 1979, the grand father of the Plaintiff had executed irrevocable settlement deed. Therefore, the property vested with the father of the Plaintiff as his absolute property. Also as rightly pointed by the learned Judge in the order, the Plaintiff in O.S. No. 3515 of 2022 had withdrawn the earlier suit in O.S. No. 4051 of 2016 for partition without retaining the right to file a fresh suit on the same action of action. In the absence of such a right, without obtaining leave of the Court the filing of the present suit is barred. Thus, the Plaintiff is legally estopped from agitating the same dispute once again by filing the suit for partition afresh.

21. On perusal of the plaint, it is found that the Plaintiff had sought relief of partition against her father. The suit property is the absolute property of the father, as rightly contended by the learned Counsel for the Respondent. The settlement deed registered as Document No.1060 of 1979 is an irrevocable settlement deed wherein the owner of the property, the father of Defendant-1 claims that the property was purchased by him. Therefore it is the self-



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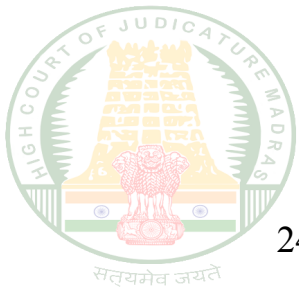
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acquired property of the paternal grand father of the Plaintiff. After acquiring the property, the paternal grand father of the Plaintiff had executed settlement deed in favour of his two sons, one of whom is Defendant-1. In the recitals in the settlement deed, he had clearly stated that it is an irrevocable settlement deed. While so, he does not have power even to revoke the settlement deed. Therefore as on the date of the filing of the suit, the suit property is the absolute property of the father of the Plaintiff. Under those circumstances, the order passed by the learned II Additional Judge, City Civil Court in I.A.No.2 of 2022 in O.S.No.3515 of 2022 is found proper and reasonable.

22. The decisions cited by the learned Counsel for the Appellant in the cases of *Prasanta Kumar Sahoo and Others -vs- Charulata Sahu and Others* reported in *2023 LiveLaw (SC) 262* and *Commissioner of Wealth tax. Kanpur Etc -vs- Chander Sen Etc* dated 16.07.1986 reported in *AIR 1986 1753* are not applicable as they are factually distinguishable. In this case, the Plaintiff had filed earlier suit for partition in O.S. No. 4051 of 2016 and withdrew it, without obtaining leave of the Court to file a fresh suit on the same cause of action. Therefore as rightly pointed out by the learned II Additional City Civil Court, Chennai, the subsequent suit on the same cause of action is hit by Order XXIII, Rule 1(4) of CPC.



**WEB COPY**23. The suit properties are self-acquired properties of the paternal grand father of the Plaintiff. He had executed settlement deed in favour of his two sons separately. In the same settlement deed, he had stated that he has transferred title in favour of his sons. Therefore the father of first Defendant does not have any right, including the right to revoke the settlement deed. From the date of settlement deed, it is an absolute property of the sons of paternal grand father, father and paternal uncle of the Plaintiff. When the owner of the property viz., father of the Plaintiff as absolute owner of the property is alive, the Plaintiff cannot seek partition against him. Therefore, as on the date of the filing of the suit, there is no cause of action in favour of the Plaintiff to seek preliminary decree for partition. Under those circumstances, the learned II Additional Judge, City Civil Court had rightly rejected the plaint as it does not have any cause of action on the date of filing of the suit. The Defendants need not be forced to face the reverse effect of trial of the civil cases and it would only frustrate them. In such circumstances, the learned II Additional Judge, City Civil Court had rightly rejected the plaint. There is no legal infirmity or perversity in the said judgment passed by the learned II Additional Judge, City Civil Court, Chennai.



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24. In the light of the above discussion, the point for consideration is answered in favour of the Respondents/Defendants and against the Appellant/Plaintiff. The judgment and decree passed by learned II Additional Judge, City Civil Court, Chennai in I.A. No. 2 of 2022 in O.S. No. 3515 of 2022 dated 14.02.2024 is found proper and the same is to be confirmed.

In the result, the **Appeal Suit is dismissed as having no merits.** The judgment and decree passed by learned II Additional Judge, City Civil Court, Chennai in I.A. No. 2 of 2022 in O.S. No. 3515 of 2022 dated 14.02.2024 is confirmed. No costs.

24-06-2025

shl/srm

Index : Yes/No

Internet : Yes/No

Speaking/Non-speaking order



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1. The II Additional Judge,  
City Civil Court, Chennai.
2. The Section Officer,  
V.R. Section,  
High Court Madras.



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**SATHI KUMAR SUKUMARA KURUP, J**

shl/srm

Judgment in  
A.S.No.434 of 2024

24-06-2025