



A.S.Nos.84 & 86 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 25.07.2025

Pronounced on: 08.08.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit Nos.84 & 86 of 2023

and

C.M.P.Nos.3851, 8296, 8911 & 16655 of 2023

A.S.No.84 of 2023

1. Vellachi @ Vellayammal (Died)
W/o Thangavelu,
Aged about 77,
Residing at, near Co-operative Bank,
Vellalpuram, Chinnappampatty Post,
Edappadi Taluk, Salem District.

..Plaintiff 1/Appellant 1

2. Chinnapillai,
W/o Thangavel,
Aged about 73,
Residing at
Kaveripurathanur Mecheri Village,
Samarajpet Post, Mettur Taluk,
Salem District.

..Plaintiff 2/Appellant 2

3. Kaveriammal
W/o.Sengkottaiyan,
Aged about 71,
Residing at,
Anna Nagar, Pappampadi Village,
Chinnappampatti Post,
Omalur Taluk, Salem District.



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4. Elumalai

S/o. Late Vellachi,

5. Annadurai,

S/o.Late Vellachi,

6. Muniyappan

S/o. Late Vellachi,

Appellants 4 to 6 Residing at
No.3/62, Vellalpuram,
Chinnappampatty Post,
Edappadi Taluk,
Salem District 636 306.

... Appellants

A1 Died. A4 to A6 brought on record LR's of the deceased 1st appellant, *vide* Court order dated 04.04.2025 made in C.M.P.No.7598 of 2025 in A.S.No.84 of 2023 (NSKJ).

/versus/

Chinnaponnu,
W/o. Late Siddhan,
Aged about 85,
Residing at,
Nathiampatty, Pappampadi Village,
Chinnappampatty Post,
Omalur Taluk, Salem District.

..Defendant 1/Respondent 1

Alamelu (Died)
W/o Govindan and D/o Late Sidhan
Residing at
Senganur, Thuttampatti Village,
Chinnappampatty Post, Omalur Taluk.

..Defendant 2

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2. Srinivasan.

S/o.Late Siddhan,
Aged about 60,
Residing at,
Nathampatti, Pappampadi Village,
Chinnappampatty Post,
Omalur Taluk, Salem District.

.. Defendant 3/Respondent 2

3. Duraisamy,

S/o. Late Siddhan,
Aged about 50,
Residing at,
Nathampatty,
Pappampadi Village,
Chinnappampatty Post,
Omalur Taluk, Salem District.

..Defendant 4/Respondent 3

4. Valarmathi

W/o.Subramani and D/o Late Siddan
Aged about 52,
Residing at
Panangatoor,
Pappampadi village,
Chinnappampatty Post, Omalur Taluk,
Salem District.

..Defendant 5/Respondent 4

5. Lakshmi

W/o.Settu and
D/o late Siddan,
Aged about 45,
Residing at
Kaspakattuvalavu,
Perisoragai village and post,
Mettur Taluk, Salem District.

.. Defendant 6/Respondent 5

6. Perumal

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S/o. Late Siddhan,
Aged about 43,
Residing at,
Nathampatty,
Pappampadi Village,
Chinnappampatty Post,
Omalur Taluk, Salem District.

..Defendant 7/
Respondent 6

7. Ellappan
S/o.late Siddan,
Aged about 43,
Residing at,
Nathampatti Pappampadi Village,
Chinnappampatti post,
Omalur Taluk, Salem District.

..Defendant 8/
Respondent 7

Ramasamy (died on 15.04.2013)
S/o late Ellappan,
Residing at,
Moolakkadai, Pappampadi Village,
Omalur Taluk, Salem District.

.. Defendant 9

8.D. Gnanasekaran
S/o. Late Dharmalingam,
Aged about 50,
Residing at
No.1/113, Mutthu Mariamman Koil Street,
Sikkarayapuram, Chennai 600 069.

.. Defendant 10/
Respondent 8

9.Sumathi
W/o Raja,
Aged about 55,

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Residing at,
Sankari Main Road, Mulakkadai,
Pappampadi Village and Post,
Omalur Taluk,
Salem District.

..Defendant 11/
Respondent 910

10.Murugan
S/o.late Ramasamy,
Aged about 40,
Residing at,
Sankari Main Road,
Mulakkadai,
Pappampadi village and post,
Omalur Taluk, Salem District.

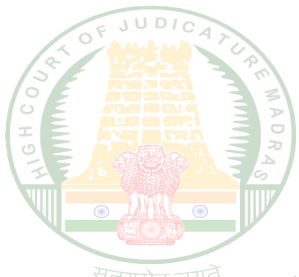
..Defendant 12/
Respondent 10

11.Maheshwari
W/o Mr.Ganesan and D/o.late Ramasamy,
Aged about 60,
Residing at,
Vanichampatty,
Thuddampatty Village,
Omalur Taluk, Salem District.

..Defendant 13/
Respondent 11

12.Sekar
S/o late Ramasamy,
Aged about 55,
Residing at,
Sankari Main Road,
Mulakkadai, Pappampadi Village and Post,
Omalur Taluk, Salem District.

..Defendant 14/
Respondent 12



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13. Seeni @ Srinivasan

S/o late Ramasamy,

Aged about 47,

Residing at,

Sankari Main Road, Mulakkadai,

Pappampadi Village and Post,

Omalur Taluk, Salem District.

.. Defendant 15/
Respondent 13

14. Manickam

S/o. late Ramasamy,

Aged about 46,

Residing at,

Sankari Main Road,

Mulakkadai,

Pappampadi Village and Post,

Omalur Taluk, Salem District.

.. Defendant 16/
Respondent 14

15. Loganathan,

S/o. late Ramasamy,

Aged about 35,

Residing at,

Sankari Main Road,

Mulakkadai, Pappampadi Village and Post,

Omalur Taluk, Salem District.

.. Defendant 17/
Respondent 15

16. Thangammal

W/o Chinnadurai and D/o late Ramasamy,

Aged about 34,

Residing at,

Vanichampatty,

Thuddampatty Village,

Omalur Taluk, Salem District.

.. Defendant 18/

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Respondent 16

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Prayer:- Appeal Suit has been filed under Section 96 read of C.P.C., to set aside the impugned Judgement and Decree in O.S.No.164/2012 on the file of the Honble II Additional District Judge at Salem, dated 23.11.2018 and the findings therein and consequently direct the partition of suit properties as prayed for in the plaint.

For Appellants :Mr.R.Sankarnarayanan,
Senior Counsel for
Mr.Ramaswamy Meyyappan

For Respondents :Mr.D.Shivakumaran for R8

Mr.S.N.Ravichandran for
Mr.R.D.Ashok Kumar for R9 to R16

No appearance for R1 and R7

A.S.No.86 of 2023

1. Vellachi (Died)
W/o Thangavelu,
Aged about 82,
Residing at, near Co-operative Bank,
Vellalpuram, Chinnappampatty Post,
Edappadi Taluk, Salem District.

..Defendant 12 /Appellant 1

2. Chinnapillai,
W/o Thangavelu,
Aged about 80,
Residing at

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Kaveripurathanur Mecheri Village,
Samarajpet Post, Mettur Taluk,
Salem District.

..Defendant 13/ Appellant 2

3. Kaveriammal
W/o.Sengottaiyan,
Aged about 70,
Residing at,
Anna Nagar, Pappampadi Village,
Chinnappampatti Post,
Omalur Taluk, Salem District.

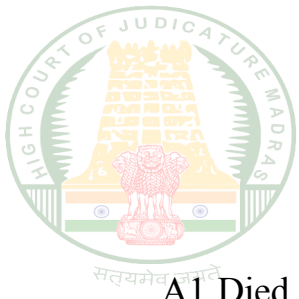
.. Defendant 14/
Appellant 3

4. Elumalai
S/o. Late Vellachi,
Residing at No.3/62, Vellalpuram,
Chinnappampatty Post,
Edappadi Taluk, Salem District 636 306.

5. Annadurai,
S/o.Late Vellachi,
Aged about
Residing at
3/62 Vellalpuram,
Chinnappampatty Post,
Edappadi Taluk, Salem 636 306.

6. Muniyappan
S/o. Late Vellachi,
Aged about
Residing at
No.3/62, Vellalpuram,
Chinnappampatty Post,
Edappadi Taluk,
Salem District 636 306.

... Appellants



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A1 Died. A4 to A6 brought on record LR's of the deceased 1st appellant, *vide* Court order dated 04.04.2025 made in C.M.P.No.7602 of 2025 in A.S.No.86 of 2023 (NSKJ).

/versus/

1.Gnansekaran,
S/o S.K.Dharmalingam,
Aged about 49,
Residing at,
No.1/113, Muthumariamman Koil,
Street, Sikkarayapuram,
Chennai 600 069.

.. Plaintiff/Respondent 1

Siddan (died)
S/o Ellappa Gounder,
Nathiyampatti, Pappambadi Village,
Omalur Taluk, Salem District.

.. Defendant 1

2.Srinivasan,
S/o Late Siddhan
Aged about 45,
Residing at,
Nathiyapatti, Pappampadi Village,
Omalur Taluk, Salem District.

.. Defendant 2/
Respondent 2

Ramasamy (died)
S/o Ellappa Gounder,
Nathiyampatti, Pappambadi Village,
Omalur Taluk, Salem District.

.. Defendant 3

3.Raja
S/o Siddha Gounder,
Aged about 40 years,
Pappambadi, Omalur Taluk

..Defendant 4/



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Respondent 3

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4.Duraisamy

S/o Late Siddha Gounder,
Aged about 43,
Residing at,
Pappampadi , Omalur Taluk.

.. Defendant 5/
Respondent 4

5.Perumal

S/o late Siddha Gounder,
Aged about 42,
Residing at,
Pappampadi , Omalur Taluk.

.. Defendant 6/
Respondent 5

6.Chinnaponnu

W/o late Siddhan,
Aged about 85,
Residing at,
Senganur, Thuttampatti village,
Chinnappampatti Post, Omalur Taluk.

.. Defendant 7/
Respondent 6

Alamelu (died),

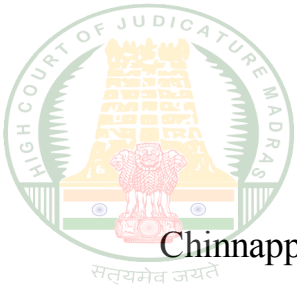
W/o Govindan and D/o late Siddhan,
Residing at,
Senganur, Thuttampatti Village,
Chinnappampatti Post, Omalur Taluk, Salem District.

..Defendant 8

7.Valarmathi

W/o Subramani and D/o late Sidhan,
Aged about 52,
Residing at,
Penangatrur, Pappampadi Village,

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Chinnappampatti Post, Omalur Taluk.

..Defendant 9/

Respondent 7

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8.Lakshmi

S/o Settu and D/o late Siddan,

Aged about 45,

Residing at.

Kaspa Kattuvalavu, Perisorakai Village and Post,
Mettur Taluk.

..Defendant 10/

Respondent 8

9.Ellappan

S/o late Siddan,

Aged about 40,

Residing at,

Nathampatti, Pappambadi Village,
Chinnappampatti Post, Omalur Taluk.

.. Defendant 11/

Respondent 9

10.Sumathi

W/o Raja,

Aged about 55,

Residing at,

Sankari Main Road,

Mulakkadai,

Pappampadi Village and Post,
Omalur Taluk, Salem District.

..Defendant 15/

Respondent 10

11.Murugan

S/o late Ramasamy,

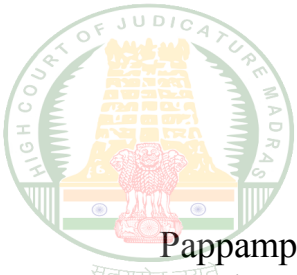
Aged about 40,

Residing at,

Sankari Main Road,

Mulakkadai,

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Pappampadi Village and Post,
Omalur Taluk, Salem District.

..Defendant 16/
Respondent 11

12.Maheshwari
W/o Ganesan and D/o late Ramasamy,
Aged about 60,
Residing at,
Vanichampatty,
Thuddampatty Village,
Omalur Taluk, Salem District.

..Defendant 17/
Respondent 12

13.Sekar
S/o late Ramasamy,
Aged about 55,
Residing at,
Sankari Main Road, Mulakkadai,
Pappampadi Village and Post,
Omalur Taluk, Salem District.

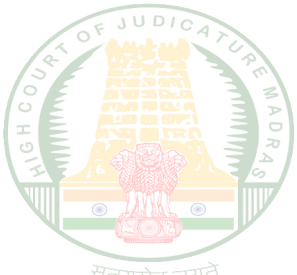
..Defendant 18/
Respondent 13

14.Seeni @ Srinivasan
S/o late Mr.Ramasamy,
Sankari Main Road,
Mulakkadai, Pappampadi Village and Post,
Omalur Taluk, Salem District.

.. Defendant 19/
Respondent 14

15.Manickam
S/o late Ramasamy,
Aged about 46,
Residing at,
Sankari Main Road,
Mulakkadai, Pappampadi Village and Post,
Omalur Taluk, Salem District.

..Defendant 20/
Respondent 15



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16.Loganathan
S/o late Ramasamy,
Sankari Main Road, Mulakkadai,
Pappampadi Village and Post,
Omalur Taluk, Salem District.

..Defendant 21/
Respondent 16

17.Thangammal,
W/o Chinnadurai and D/o Ramasamy,
Aged about 34,
Residing at,
Vanichampatty,
Thuddampatty Village, Omalur Taluk,
Salem District.

.. Defendant 22/
Respondent 16

18.The Tahsildar,
Tahsildar Office,
Omalur Taluk, Salem District 636 455.

.. Respondent -18

(R18 is impleaded vide order of Court dated 21.08.2023
made in C.M.P.No.16659/2023 in A.S.No.86/2023)(ADJCJ)

Prayer:- Appeal Suit has been filed under Order 41, Rule 1 Read With Section 96
of C.P.C., against the judgment and decree made in O.S.No.69 of 2012 on the file
of the II Additional District Judge, Salem District dated 23.11.2018.

For Appellants :Mr.R.Sankarnarayanan,
Senior Counsel for
Mr.Ramaswamy Meyyappan



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For Respondents :Mr.D.Shivakumaran for R1
Mr.S.N.Ravichandran for
Mr.R.D.Ashok Kumar for R10 to R17
No appearance for R2 and R9
Mr.R.Siddharth, AGP for R18

COMMON JUDGMENT

These two appeals are directed against the common judgement passed on 23.11.2018 in O.S.No.69 of 2012 and O.S.No.164 of 2012, on the file of the II Additional District Judge, Salem.

2. The property, which is the subject matter in both the suits, are one and the same. They are land in S.No.98/2 measuring to an extent of 0.94 cents with a well: land in S.No.98/3 measuring to an extent of 0.63cents; and land in S.No.98/4 measuring to an extent of 0.17cents all in Pappampadi Village, Omalur Taluk Salem District.

3. O.S.No.69 of 2012 filed by Gnanasekaran for declaration of his title over the suit property and injunction to restrain the defendants from alternating the physical features of the property by putting up any construction and to restrain them



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from alienating or encumbering the suit property.

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4. O.S.No.164 of 2012 is the counter suit filed by Vellachi @ Vellaiammal, Chinnapillai and Kaveriammal, all sisters and daughter of Ellappan for partition of the suit property into 5 shares and allot one share each of them.

5. The gist of the plaint in O.S.No.69 of 2012:

The plaintiff, Mr.Gnanasekaran in this suit claims title over the suit property and seeks for declaration of title over the suit property, based on the registered sale deed dated 09.03.1971 executed in favour of his father S.K.Dharmalingam by one Palanisamy. According to Gnanasekaran, the plaintiff in this suit, his father purchased this property from Palanisamy and enjoying it, till his death. After his death 07.03.2009, he became the absolute owner of the property, after the other legal heirs of Dharmalingam relinquished their right to him. According to the plaintiff, the suit property originally belonged to one Siddha Gounder. The said Siddha Gounder sold the property to one Palanisamy on 13.03.1969 for his family expenses and to discharge the family debt for a consideration of Rs.2000/-. The said sale deed was duly registered at the Sub Registrar Office, Jalakandapuram, Salem



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District. The possession of the property was delivered to the purchaser Palanisamy by the vendor Siddha Gounder.

6. On the same day, Palanisamy and Siddha Gounder entered into a separate agreement for re-conveyance of the suit property. As per the said deed, if Siddha Gounder repays the sale price of Rs.2000 /- within 5 years during any of the Tamil month Chitirai, Palanisamy has to re-convey the property back to Siddha Gounder. The said re-conveyance deed was registered on the same day of the sale. Later, when Palanisamy insisted for repayment of the loan, Siddha Gounder was not able to mobilize money to get back his property. To clear the debt, he consented Palanisamy to sell the property and after defraying the loan of Rs.2000/- to return the balance sale consideration. Accordingly, with consent of Siddha Gounder, the suit property was sold to S.K.Dharmalingam for Rs.4,500/-. After defraying his loan, Palanisamy gave the balance Rs.2500/- to Siddha Gounder. In the sale deed dated 09.03.1971 executed by Palanisamy in favour of S.K.Dharmalingam, to record his consent, Siddha Gounder signed as witness.

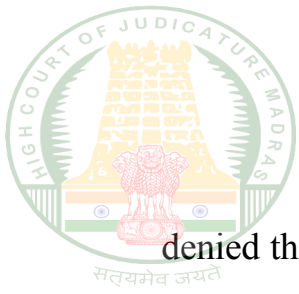


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7. Dharmalingam, after purchase of the suit property, took possession of it and till his life time, he was in enjoyment of the property. He got the names in the revenue records mutated in his name. He was carrying on agriculture operation and the plaintiff being his son used to assist him. Dharmalingam died on 07.03.2009, leaving behind his wife, two sons and two daughters. The other male heir of Dharmalingam executed a power of attorney in favour of the plaintiff Gunasekaran on 6.12.2010. The mother and sisters of the plaintiff relinquished their 4/5 share in favour of the plaintiff and executed a release deed dated 14.12.2010. Thus, the plaintiff had become the absolute owner of the suit property.

8. The defendants have no right in the suit property. Dharmalingam in the year 2006 fell-ill. Therefore, to manage the property allowed Siddha Gounder into the suit property. Three years later Dharmalingam died. Taking advantage of this, the defendants had without permission put up unauthorized structures in the suit land during the month of December 2011. The plaintiff questioned the defendants and told them to remove the construction made in the suit property. The defendants and their supporters obstructed the plaintiff from entering into the suit property and



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denied the plaintiff's right to the suit property. Hence, the suit for declaration of title and for the recovery of possession with the relief of injunction restraining the defendants from altering the physical feature of the property.

9. Pending suit, Ellappan, Siddhan and Ramasamy died. Hence, their legal heirs were brought on record as defendants 7 to 22.

10. The suit contested by the third defendant, who is one of the son of Siddan. He filed a written statement and it was adopted by the fourth defendant.

11. In his written statement, the third defendant had denied the plaint averments and projected his case as under:-

The suit property originally belonged to Palaniyammal, who died 60 years ago, leaving behind her only son Ellappan, the father of the first, third and defendants 12 to 14. On the death of Palaniammal, the property devolved on her son Ellappan, being the sole legal heir. Ellappan developed the suit property during his lifetime and died intestate, leaving two sons by name Siddan and Ramasamy and three daughters by name Vellachi, Chinna Pillai and Kaveriammal. The first

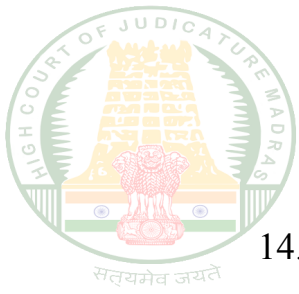


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defendant Siddan had only a 1/5th share in the suit property and he was not the owner of the entire property .

12. Dharmalingam, the father of the plaintiff was running quarry business in which Siddan was working as a bonded labourer. In the year 1969, Siddan borrowed Rs.2000/- from one Palanisamy and executed a sale deed on 13.03.1969 as per the prevailing custom, with an understanding that the property will be reconveyed on repayment of the loan amount. 5 years time was fixed for repayment and reconveyance. Both the sale deed as well as reconveyance deed were executed and registered on the same day i.e 13.03.1969.

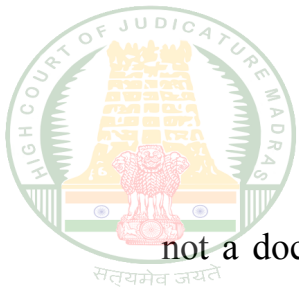
13. Dharmalingam being the employer of the first defendant, cleared the debt to Palanisamy by paying Rs.2000/- to him and paid additional sum of Rs.2,500/- to Siddan and got the sale deed from Palanisamy in his favour on 09.03.1971. The suit property is not a self-acquired property of Siddan Gounder to sale it to the third parties. The property is ancestral joint family property, held by the legal heirs of late Palaniammal.



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14. The contention of the third defendant in his written statement as adopted by the fourth defendant, in short, is that, the suit property originally belonged to Palaniammal, as per the settlement re-survey records of the year 1937. On the death of Palaniammal, it has devolved on her sole son Ellappan. On the death of Ellappan, the property has devolved on the legal heirs by intestate successions. Wife, two sons and the three daughters of Ellappan are entitled for a share in the suit property. On the death of the wife of Ellappan, the property to be shared equally among his 5 children. Hence, the alleged sale of the property by Siddan in favour of Palanisamy in the year 1969 and the sale of Palanisamy in turn to Dharmalingam, in the year 1971, will not bind the other son and three daughters of Ellappan, who hold 4/5 share.

15. That apart, the defendants also contended that the possession of the suit property is always with the descendants of Ellappan. In the suit property, they have put up roofed sheds, Mangalore tiles houses and thatched huts. The land been development by digging well and obtaining electricity service. No portion of the land was left in possession of Palanisamy or Dharmalingam or to the plaintiff at any point of time. Mere mutation of revenue record is not a proof for procession. It is



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not a document for title. In the suit property, the family members of Ellappan are residing after putting construction. The dwelling units are assigned with D.Nos.2/10, 2/11, 2/13. For one house, door number yet to be assigned. Electricity service is provided to door Nos.2/11 and 2/12. The Mangalore tiled House bearing D.Nos.2/14 and 2/15 and one unnumbered house has to be provided with electricity service. The remaining portion of the land is under personal cultivation of the defendants.

16. It is incorrect to say that Siddan came into the land for administering it as Manager, when Dharmalingam fell ill in the year 2006. The suit property was always in possession and enjoyment of the descendants of Ellappan including his son Siddan, Ramasamy and his three daughters. Neither Dharmalingam during his lifetime, nor the plaintiff had claimed any right or possession in the suit property. Till the filing of the suit, with their knowledge and in exclusion of their right the defendants are in possession and enjoyment.

17. The written statement of the third defendant, apart from fourth defendant also adopted by other defendants filing adoption memos.



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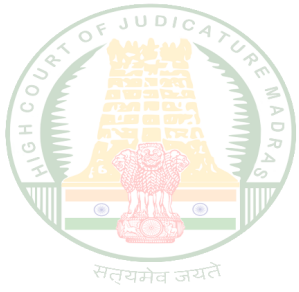
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18. The pleadings in O.S.No.69 of 2012 taken into consideration by the Court below the following issues framed:

1. Whether the plaintiff is entitled to the relief of declaration of title?
2. Whether the plaintiff is entitled for delivery of the suit properties?
3. Whether the defendants are to be restrained by permanent injunction in any way altering the physical features of the suit properties?
4. Whether the defendants are to be restrained for permanent injunction from in any way alienating or encumbering the suit properties?
5. To what other relief?

19. Suit in O.S.No.164 of 2012

Suit by Vellachi @ Vellaiammal, Chinnapillai and Kaveriyammal, the three daughters of Ellappan, had filed this suit for partition and separate possession. The defendants are the descendents of Ellappan and Gnansekaran, the son of Dharmalingam (plaintiff in O.S.No.69 of 2012).



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20. The case of the plaintiffs is that, they are joint owners of the suit property.

Their right trace back to their paternal grandmother Palaniammal, who died sixty years ago, leaving behind her son Ellappan to inherit. The plaintiffs being the daughters of Ellappan, are entitled to get equal share along with the two sons of Ellappan. Only four days prior to filing this suit, they came to know about the fact that their brother Siddan borrowed Rs.2000/- from Palanisamy and as per the prevailing custom in the village for the repayment of the said loan Sidhan executing sale deed in favour of Palanisamy on 13.03.1969, with a simultaneous agreement for re-conveyance, on repayment of the loan amount within five years. Palanisamy even before the expiry of five year period, had sold the property for Rs.4500/- to Dharmalingam on 09.03.1971.

21. Based on the sale deed executed by Palanisamy, Dharmalingam had mutated the Revenue records in his favour. However, the possession of the property was never given to Palanisamy or to Dharmalingam. They also came to know Only two days before filing the suit, that Sidhan in favour of his brother Ramasamy had executed a release deed on 10.08.2007 in respect of $\frac{1}{2}$ share in the suit property.



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Ramasamy in turn on the same day executed a sale deed of the suit property to Srinivasan (the 3rd defendant in O.S.No.164 of 2012). The two documents dated 10.08.2007 will not bind these plaintiffs, since the two brothers Sidhan and Ramasamy had shared the property among them equally, omitting the female heirs of Ellappan. Neither the sale by Siddan in favour of Palanichamy vide, the sale deed dated 13.03.1969; the sale by Palanisamy in favour of Dharmalingam vide, sale deed dated 09.03.1971, nor the release deed and sale deed between Siddan, Ramasamy and Srinivasan are all behind the back of the plaintiffs in O.S.No.164 of 2012 ignoring their share in the suit property along with Siddan and Ramasamy. Since the title of the property been transferred through sham and nominal documents, without consent and knowledge of the co-owners, these documents are not valid. Despite transfer of title, the possession continue to remain jointly with all the legal heirs of Ellappan. Four Asbestos sheet roof houses, two Mangalore tiles houses and three Thatched houses are in the suit property and the defendants are living in the property. They are paying house tax and electricity consumption charges.



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22. In any event, Siddan is entitled only for 1/5 share in the suit property. He have no right to execute the sale deed for the entire suit property to clear his personal debts. The sale deeds are not valid in the eye of law or binding upon the plaintiffs. The 3/5 shares in the suit property vest with the plaintiffs 1 to 3. Hence, the sale deeds conveying title is ignored by the plaintiffs. From 03.08.2012, the plaintiffs are demanding the defendant 1 to 9 to effect division of the suit property into five equal shares and allot one share to each of the plaintiffs. The defendant 1 to 9 are evading partition on one pretext or another.

23. Whiles, the 10th defendant Gnanasekaran, on 26.08.2014 at about 10.am. with assistance of about 20 Rowdy elements, trespassed into the suit property and committed act of waste and attempted to put up a permanent structure in the suit property. The attempt was effectively prevented. Hence, the suit for partition to divide the suit property into five equal shares and allot three shares to the three plaintiffs, who are the daughters of Ellappan and the remaining two shares to the two sons of the Ellappan. Also, for an order of injunction restraining the 10th defendant from effecting any change in the suit property.



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24. The suit contested by the 10th defendant alone. Rest of the defendants had filed written statement stating no objection for passing partition decree.

25. The 10th defendant denying the averments in the plaint, contended that, the subsequent suit for partition denying the claim of the plaintiffs right in the suit property is to counter blast the prior suit in O.S.No.69 of 2012 for declaration of title and possession instituted by the 10th defendant. The averment that the property initially belonged to Palaniammal as per Settlement Re-survey of the year 1937 is false. The contention of the plaintiffs that the property was developed by Palaniammal and her son Ellappan is denied as false. In fact the property originally belonged to one Siddan. He sold it to Palanisamy on 13.03.1969 for valid consideration of Rs.2000/-. Thereafter, they also entered into an agreement that if the sale price of Rs.2000/- is repaid within five years, from the date of sale in any one of the Tamil month of chithirai, the property will be re-conveyed back to Siddan along with the possession. The deed of re-conveyance did not fructified. Even before the expiry of 5 years period, with the consent of Siddan, Palanisamy sold the property to Dharmalingam for consideration of Rs.4500/- on 09.03.1971. The



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physical position of the property was handed over to Dharmalingam.

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26. Gnanasekaran, the 10th defendant in O.S.No.164 of 2012 is the plaintiff in O.S.No.69 of 2012 the earlier suit. In his suit, he had pleaded that his father Dharmalingam was a bonafide purchaser of the suit property for valuable consideration from its rightful owner Palanisamy. In the year 1971, the property was purchased and since then, it is in possession of Dharmalingam. The sale consideration was used to clear the loan availed by Siddan from Palanisamy and the balance of Rs.2500/- given to Siddan. Dharmalingam had mutated the revenue record in his name and was carrying on agriculture operation under direct his supervision, till he became ill in the year 2006. On his request, Siddan took care of the property. The plaintiffs are daughters of Ellappan/sisters of Siddan married 50 years prior to the suit and living separately. They have not claimed any right in the property as grandchildren of Palaniammal or children of Ellappan, who died several years ago. The sale of property by Siddan to Palanisamy was in the year 1969. From Palanisamy S.K.Dharmalingam purchased the suit property in the year 1971. The said sale cannot be questioned after 41 years by the daughters of Ellappan, who have no right in the property.

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27. The later suit is filed to counter blast the earlier suit filed for declaration of title in favour of the 10th defendant herein. The 10th defendant got the property from his father Dharmalingam, after his death, on the deed of relinquishment dated 14.12.2010 executed by other legal heirs of Dharmalingam. The contention of the plaintiffs that they came to know about all the earlier transactions and transfer of title only recently is highly unbelievable.

28. The plaintiffs have come to the Court on the instigation of defendants 3, 4, 7 and 9, The plaintiffs have come with a concocted story. The release deed and sale deed both dated 10.08.2007 are creation of the plaintiffs in collusion with the deceased defendant No.1 with defendants 3 and 4. The plaintiffs or the defendants 3 and 4 have no right in the property.

29. Based on the pleadings in O.S.No.164 of 2012, the trial Court framed the following issues:

1. Whether the plaintiffs are entitled to get any share in the suit properties?
2. Whether the 10th defendant is to be restrained by means of permanent



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injunction, not to alter the nature of the suit properties till final partition is effected.

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3.To what other reliefs?

30. Before commencement of the trial, the parties filed a memo to try both O.S.No:69 of 2012 and O.S.No:164 of 2012 jointly as the properties in the suit and subject matters are one and the same. Considering the memo and the records, the trial Court has recorded evidence in O.S.No.69 of 2012, being a earlier suit. The evidence recorded in O.S.No: 69 of 2012 treated as evidence in O.S.No: 164 of 2012. By consent of the parties, the plaintiff in O.S.No.69 of 2012 mounted the witness box and examined as PW 1. Exhibits 1 to 18 marked on his side. DW-1 to DW-7 were examined on the side of the defendants. 19 documents were marked as Exs.1 to 19. The Aadhaar cards of Palanisamy (DW-3), Saravana Bhavan (DW-4) and Rajagopal (DW6) marked as Ex.C1, Ex.C2 and Ex.C3 respectively.

31. The Trial Court allowed O.S.No.69/2012 and granted decree declaring the title of the suit property in favour of th Gnanaskaran (plaintiff in O.S.No.69 of 2012). The defendants were directed to surrender the possession of the suit property to Gnansekaran within three months. Permanent injunction was granted restraining



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the defendants from in any manner altering the physical feature of the suit property by putting up any construction. Also, permanent injunction granted restraining the defendants from in any manner, alienating or encumbering the suit property. Consequentially, the later suit O.S.No: 164 of 2012 filed by three daughters of Ellappan for partition was dismissed.

32. Being aggrieved, A.S.No.84 of 2012 is filed by the plaintiffs 1 to 3 against dismissal of O.S.No.164 of 2012. A.S.No.86 of 2023 is filed by the defendants 12 to 14 against the decree granting declaration of title in O.S.No.69/ of 2012.

33. The these two appeals, the appellants are same. The contesting party in the appeal is Gnanasekaran, the plaintiff in O.S.No.69 of 2012 and the 10th defendant in O.S.No.164 of 2012.

34. The Learned Senior Counsel Mr.R.Shankaranarayanan, appearing for the appellants in both the appeals, after narrating the background facts vividly, submitted that Ex.B-6, Ex.B-7 and Ex.B-8 are ample proof that the suit property is



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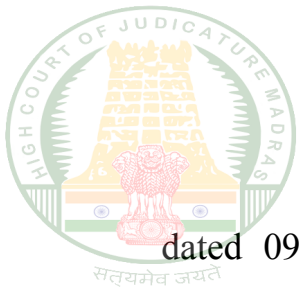
not the self acquired property of Siddan for him to deal absolutely as his own. Ex.A-

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1 and Ex.A-2 are documents executed on the same day in respect of same property between the same parties. Hence, it has to be read together. While reading so, it will make it clear that Ex.A-1 is not an absolute sale deed, but deed of conditional sale reserving right to the vendor to repurchase.

35. Gnanasekaran, the plaintiff in O.S.No.69 of 2012, claims that his father got title and right through Palanisamy. The said Palanisamy is the purchaser of the suit property from Siddan, the predecessor in title. His sale dated 09.03.1971 is not valid in the eye of law, since the alienation was, when the right of repurchase vested with the vendor Siddan was still alive and without foreclosure, the property sold illegally. Further, when Siddan has only a limited share in the property, i.e 1/5 share, the alienation of the total extent, without title or right, is invalid. The oldest revenue records show that the property has devolved from Palaniammal to her descendant Ellappan.

36. When is sale deed and reconveyance deed are executed on same day, the sale deed has to be considered as deed of conditional mortgage. In the sale deed



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dated 09.03.1971 marked as Ex.A3, no doubt Siddan had signed as witness,

nonetheless, just by being the attester to a document or a witness to a document.

The attester cannot be attributed knowledge of the document or his signature be construed as consent for the content in the deed.

37. The third limb of argument by the learned Senior Counsel was that, there is no evidence to show that Dharmalingam or his son Gnanaskaran was enjoying the possession of the property after 1971, except the mutation of revenue record and there is nothing to show that they were in actual or constructive possession of the suit property.

38. It is the defendants, who are the descendants of Ellappan, in possession of the suit property and had put up construction on it and residing. Only after the demise of Dharmalingam, his son Gnanasekaran attempted to dispossess the peaceful possession of the defendants. The release deed dated 10.08.2007 executive by Siddan in favour of his brother Ramasamy (Ex.A18) and the sale deed by Ramasamy in favour of Srinivasan (Ex.A-19) are proof that the appellants and their siblings alone are in possession of the property.



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39. Per contra, the Learned Counsel appearing for the respondent/plaintiff in O.S.No.69 of 2012 submitted that since the purchase of the property by Dharmalingam on 09.03.1971, the title of the property transferred in his name. The same is proved through the encumbrance certificate, 'A' Register Extract, Chitta and Adangal, which are marked as Ex.A-6 to Ex.A-17. The documents relied by the appellants/defendants are all subsequent to the sale in favour of Dharmalingam. Among the family members of Dharmalingam there was no doubt that the partition was effected on 20.04.1995(Ex.B-1)and the suit property did not find place in the partition. However, the said partition and subsequent settlement deeds, which were executed during the lifetime of Dharmalingam on various dates would clearly show that Dharmalingam consciously being distributing his property in a phased manner to his son and daughters. The exclusion of the suit property in the partition Ex.B-1 is not a ground to claim that the suit property does not belong to Dharmalingam. Several items of property not included in the partition deed and they were subsequently settled in favour of the daughter under Ex.B-2 and Ex.B-3. Likewise, Ex.B6 dated 19.04.1992 or Ex.B7 dated 05.02.1925, or Ex.B-8, dated 14.02.1928 not proof to establish that the suit property was held by Palaniammal and inherited



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by her son as ancestral property. Therefore, the trial Court after examining the exhibits as well as the evidence of witnesses had rightly concluded that there is no proof to show that Siddan had only limited share in the suit property. The sale by Palanisamy to Dharmalingam on 09.03.1971 is valid and was with full knowledge of Siddan. Siddan never questioned either his sale in favour of Palanisamy or the sale by Palanisamy in favour of Dharmalingam.

40. For the first time, as the daughters of Siddan, who got married and living separately with their husband for more than 50 years, had come out with the plea of joint possession and the property as ancestor property. The prayer is hopelessly barred by limitation. Hence, the common judgment and decree of the Trial Court has to be confirmed.

41. The Point for Determination:-

1. Whether Ex.B-6, dated 19.04.1922, Ex.B-7 dated 05.03.1925 and Ex.B-8 dated 14.02.1928, prove that the suit property is the ancestral property and Siddan S/o Ellappan have only 1/5th share in it

2. Whether Ex.A-1 sale deed dated 13.03.1969 between Siddan and



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Palanisamy has to be read along with Ex.A-2, the reconveyance agreement deed dated 13.03.1969 ?

3. Whether Ex.A-3 sale deed in favour of Dharmalingam by Palanisamy suffers any legal infirmity ?

4. Whether the construction of dwelling units on the suit property and possession will confer right on the defendants to exclude the plaintiffs to seek declaration of title and delivery of possession ?

42. Mr.Gnanasekaran, thrust his claim of title from Ex.A-1 dated 13.03.1969.

It is the specific case of Gnansekarana that the property is the absolute property of Siddan. Whereas, Vellachiammal and others claim that it is not the absolute property of Siddan. According to them, Siddan along with others inherited the property from Ellappan. The said Ellappan got the property from Palaniammal. To substantiate their plea, the defendants rely on Ex.B-6 to Ex.B-8.

43. In Ex.A-1 sale deed, dated 13.03.1969, Siddha Goundan as vendor had described the suit properties as his self acquired property and it is in his possession. He had sold the property for Rs.2000/- to Palanisamy and handed over the



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possession to the buyer Palanisamy. In Ex.A-2, which is a re-conveyance agreement, Palanisamy and Siddha Goundan had agreed to re-convey the property on receipt of Rs.2000/- within 5 years and give back the possession.

44. From reading of these two documents, the fact that on 13.03.1969, the possession of the suit property given to the purchaser, Palanisamy, the property is described as self acquired property of Siddha Goundan. The defendants had taken a plea that the property is the ancestral property derived from Palaniammal and possession is always with them. Palanisamy, who is common character in Ex.A-1 as buyer and in Ex.A-2 as seller, had been examined as DW-3. He supports the case of the defendants. In the proof affidavit, he had stated several facts about Dharmalingam which are not relevant and not pleaded even by the defendants. In his proof affidavit, he had stated that, Ex.A-1 was executed, when he gave loan of Rs.2,500/- to Siddan on 13.03.1969. As customary practice, it was reduced into writing as sale deed, along with deed of reconveyance agreement. He had deposed that the property was in joint enjoyment of the legal heirs of Ellappan and he never took possession of the property. When he wanted his money back, as instructed by Village Munsif Ponnusamy, he executed sale deed in favour of Dharmalingam and



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received Rs.2,500/- from Dharmalingam. Siddan received the balance.

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45. His proof affidavit in lieu of chief, totally in contradiction to the written and registered document namely Ex.A-1, which says for outright sale of the suit property consideration of Rs.2000/- paid to Siddha Goundan. On the same day, he got possession from Siddha Goundan. The suit property is the self acquired property of Siddha Goundan. Likewise, Ex.A-2 says, he received Rs.4,500/- from Dharmalingam and sold the property in the presence of Siddan.

46. In the cross examination, Palanisamy DW-3 admits that when Ex.A-3 was executed, Dharmalingam paid Rs.4,500/- out of which, he retained Rs.2,500/- and gave balance Rs.2000/- to Siddan. When he purchased the property, the possession of the property was given to him by the entire family members of Siddan. He had deposed that during the life time of Dharmalingam, he along with Siddan and Karnan, Ponnusamy went to the house of Dharmalingam and requested him to reconvey the property. The testimony of Palanisamy (DW-2) is in total contradiction to the written documents. He has contradicted to his own evidence, with only intention, to discredit the two documents in which he is a party. He had

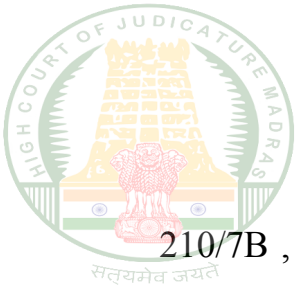


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deposed contradicting the content of a written documents exposing him as an interested witness. He is not a worthy witness to rely for any purpose.

47. DW-1 [Srinivasan] in the cross examination admits that he knew about Ex.A-1 and Ex.A-3, even twenty years before. However, he says he does not know about the content of Ex.B-6 to Ex.B-8. Ex.B-6 is a release deed dated 19.04.1922 by Ponnusamy to Palaniammal and her minor children Ellappan, Chinnapaiyan, Kandasamy and Siddan. In this deed, it is stated that the properties are the property of Ramagounder jointly enjoyed by his children born through his two wives. Ponnusamy is the son of Senior wife. Palaniammal is his junior wife. Ponnusamy had relinquished his 1/5 share in the land corresponding to the present survey numbers totally measuring 1.77 acres.

48. Three years later, on 05.03.1925, under Ex.B-7, Palaniammal on her behalf and on behalf of her minor children to meet out the marriage expenses of her elder son Chinnappan and her daughters had availed loan of Rs.300/- from one Velayutha Chettiar and mortgaged her 3/5 share in the property measuring 4.52 acres at R.S.No:27 along with the suit property measuring 1.77 acres in R.S.No:



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210/7B , 210/5A and 210/5C. This property is later assigned S.No: 98/2, 98/3 and

98/4 under UDR survey with the total measurement shown as 1.74 acres. Ex.B-8, is the second mortgage dated 14.02.1928 of the same property to same Velayutham Chettiar for Rs.200/-. This time, Palaniammal and her children had borrowed Rs.200/- for interest at the rate of 12% p.a. to meet out the expenses for constructing house.

49. The defendants have not explained, how the suit property enjoyed by Palaniammal and her 3 children jointly, later, become the property of Ellappan alone. Vellachi @ Vellaiaammal, the first plaintiff, in the partitions suit, examined as DW-5 claims that, Palaniammal had only one male issue, that is her father Ellappan. In fact, Ex.B-6 to Ex.B-8 discloses, Palaniammal had three sons by name Ellappan, Chinnapaiyan and Siddan (Senior) and also daughters. For the marriage expenses of her sons and daughters, she had mortgaged the property for the second time.

50. Further, the appellants had conveniently failed to show, whether the



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mortgage under Ex.B-7 and Ex.B-8 were discharged. After Ex.B-8 dated 14.02.1928, the next document is Ex.A-1, the sale deed of Siddan (Jr.), Son of Ellappan in favour of Palanisamy (PW-2). In this sale deed, Siddan had described the properties as his self acquired property. Later, when he executed a released deed in favour of his brother Ramasamy under Ex.A-18 dated 10.08.2007, in this document, they described the property as ancestral as well as self acquired and enjoyed jointly. Claiming that they both alone have right in the property equally, unmindful of the earlier alienation to Palanisamy under Ex.A-1, Siddan had relinquished his non-existing $\frac{1}{2}$ share to his brother Ramasamy. The said Ramasamy in turn on the same day had registered a sale deed in respect of the suit property to Srinivasan, Son of Siddan for Rs.70,000/-.

51. The canny way of creating document to show as if the suit property still belongs to Siddan, after his sale to Palanisamy as early as 1969, is well exposed by Ex.A-18 and Ex.A-19. In the suit property, if any other legal heirs of Palaniammal Wife of Ramagounder, had any semblance of right, they, on the alienation of the property by Siddan on 13.03.1969, ought to have objected or ought to have sought for nullifying the sale deed. The suit by the daughters of Palaniammal is laid as if,

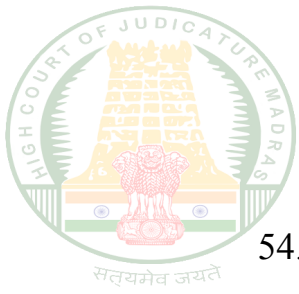


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they came to know about these transactions only few days before filing the suit for partition in the year 2012 and their father Ellappan was the only son for Palaniammal. While claiming right and share through Palaniammal, their paternal grand mother, the appellants are duty bound to disclose about all the legal heirs of Palaniammal and how the property came to her son Ellappan alone. In fact, the plaint of the appellants in O.S.No.164 of 2012 reads as if Palaniammal had only one son by name Ellappan and he got the property absolutely.

52. The suppression of vital facts about the other legal heirs of Palaniammal by the appellants clearly show that they have come to the Court with unclean hands just to counter blast the case of the respondent Gnanasekaran seeking declaration of title and possession.

53. While the case of the female descendants of Ellappan is patently an abuse of law by suppressing the vital fact and feign ignorance of all the earlier transaction going around for 33 years, since 1969, the case of the male descendants of Ellappan is still worst.



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54. Seven witnesses examined in support of the defendants. DW-1 is Srinivasan, Son of Siddan. He is the beneficiary of the sale deed Ex.A-19 executed by Ramasamy, after he got release of ½ share in the suit property from Siddan. In the cross examination, this witness admits about 20 years ago, he came to know his father sold the entire property in the year 1969. He admits that his paternal aunties have filed suit claiming share in the property, despite that his father and junior paternal uncle had shared the property equally and created Ex.A-18 and Ex.A-19 on 10.08.2007. This Court has no hesitation to hold that Ex.A-18 and Ex.A-19 are sham and nominal documents created with fraudulent intention between Siddan and his brother Ramasamy in collusion with Srinivasan, Son of Siddan.

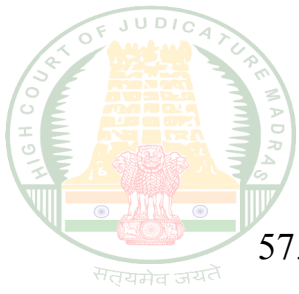
55. DW-2 is another Srinivasan called as Seenu. He is son of the third defendant Ramasamy. The second son of Ellappan, the vendor to Ex.A-19. He also admits about his knowledge about the execution of sale deed by Siddan in favour of Palanisamy and the deed of re-conveyance agreement between them even 20 years ago. (evidence recorded on 01.09.2017). The daughter of Ellappan (plaintiffs in O.SNo.164 of 2012) were all married 40 years ago and living separately with their family. They also know about the earlier transaction of the property.



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56. DW-3 Palanisamy is the person, who purchased the property from Siddan in the year 1969 under Ex.A-1 and sold it to Dharmalingam in the year 1971 under Ex.A-3. The proof affidavit running to pages containing details which are not relevant to the suit and not pleaded by either of the party. His attempt to manoeuvre the content of the registered documents exposed in the cross examination. As per Ex.A-1, the sale consideration is Rs.2000/-. As per Ex.A-2 the amount fixed to repay to get the reconveyance of the property is shown as Rs.2000/-. However, DW-3 in his proof affidavit and in his oral evidence, had stated that it was Rs.2500/- . No explanation for this contradiction given by the witness. Therefore, his oral testimony falls under the classification of wholly unreliable and contrary to the written documents to which he is a party. If there is any truth, in his oral evidence, then Siddan ought to have approached DW-3 or the Court immediately for reconveyance of the property. However, till his life time Siddan never repudiated his sale deed dated 13.03.1969. It is also pertinent to note that unlike the sale deed with Palanisamy accompanied with a separate reconveyance deed on the same day. There is no reconveyance deed with Dharmalingam.



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57. DW-4 Saravana Bavan a document writer by profession claims to be the

Karnam of the village till 1980. He even claims that he was present when Siddan borrowed Rs.2500/- from Palanisamy. His proof affidavit also contains wealth of details about Dharmalingam, but not relevant to the case, but with intent to project Dharmalingam as a land grabber. DW-4 had stated in the proof affidavit about the title of the property and possession of the property. He is a third party. Not known to the parties either by relationship or otherwise. His source of the information stated in the proof affidavit is unknown. He is the scribe of Ex.A-18 and Ex.A-19 dated 10.08.2007 which this Court has held as sham and nominal document created with fraudulent intention between Siddan and his brother Ramasamy in collusion with Srinivasan Son of Siddan. This witness, who speaks about the appellants family in detail, particularly, about Palaniammal, her children about the documents which came into existence even before his birth. He claims that he knows all the children of Palaniammal, who have right in the suit property, but he had shown only Siddan and Ramasamy as persons entitle to the suit property while writing Ex.A-18 and Ex.A-19. Thus, his credential is not worth to rely.

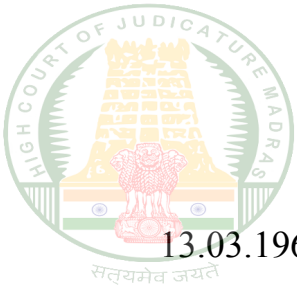
58. DW-5[Vellachi], the daughter of Ellappan and the first appellant herein,



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in her proof affidavit, had reiterated that she came to know about Ex.A-1, Ex.A-2 and Ex.A-3 only 4 days before filing the suit. Whereas, in the cross examination, she admits that the suit property belongs to Siddan and she also admits that there is no document to show, the property was bequeathed to Ellappan by Palaniammal. Her brother's son (Srinivasan) gave Ex.B-13 to Ex.B-19 to her to produce before the Court. The collusion between the appellants and other respondents exposed from this admission. The silence of the appellants for more than 40 years also a point needs to take adverse inference about the ignorance pleaded.

59. DW-6 is yet another third party witness by name Rajagopal. He claims that he know about the family of Siddan and Ramsamy directly. He had seen the title document of the suit property, which stands in the name of Palaniammal. It was shown to him by the legal heirs of Siddan (this document has not been seen the light of the day). He knows the execution of Ex.A-2 in the year 1969. He was 20 years old at that time and he was present, when Ex.A-2 was executed. However, he did not sign in that document as witness. He had deposed in the cross examination that Ex.A-2 was written for the loan of Rs.2500/- borrowed by Siddan from Palanisamy. Now, looking at Ex.A-2 again, we see it is a deed of reconveyance agreement dated



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13.03.1969 wherein Palanisamy has agreed to convey the property back to Siddan, if Siddan pay Rs.2000/- within 5 years.

60. DW-7, Sugavanam, the VAO of the village had spoken about tax receipts issued for the suit property. Ex.B13, 'A' Register entries were made in the year 2017 by the Head Quarters Thasildar and he has not prepared it or affixed signature in it. Ex.B-11 are kist receipts issued for the Government porombokku land in occupation of the villagers.

61. Thus, the documentary evidence as well the oral evidence does not support the case of the appellants. Ex.A-1 and Ex.A-3 not challenged by Vellachi and others. The mutation of the revenue records in favour of Dharmalingam at no point of time objected. The kist receipts and entry in the 'A' Register, after instituting the suits are relied, besides house tax receipts for possession and title. The house tax receipts and EB card, Aadhar card are definitely sufficient proof for possession, but whether the possession is lawful and can be permitted to continue, when the true owner claims recovery of it, is to be tested, based on the nature of the possession.

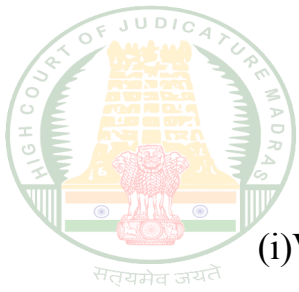


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62. The appellants claim their possession of the suit property is by title. The learned Senior Counsel ventured to sustain the said plea by stating that besides the right of the appellants, in the suit property as legal heirs of Palaniammal through her son Ellappan, the sale deed Ex.A-1 and the reconveyance agreement Ex.A-2, *per se* renders Ex.A-3 sale deed in the name of Dharmalingam, invalid. If Ex.A-3 in favour of Dharmalingam is invalid, Gnanasekaran, Son of Dharmalingam can have no right in the property to seek declaration of title and possession.

63. The Learned Senior Counsel for the appellants, emphasized that the right to repurchase continues till it is specifically extinguished. Ex.A-1 and Ex.A-2 were executed on the same day and simultaneously, though separately. Therefore, both have to be read together and to be treated as mortgage by conditional sale and not as sale deed simplicitor. According to the learned Senior Counsel, alienation of the property by Palanisamy in favour of Dharmalingam under Ex.A-3 before the expiry of 5 years period and before the right to repurchase extinguished, has no legal force. To buttress his submission, the Learned Senior Counsel rely on the following judgments:-



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(i)Vithal Tukaram Kadam and another –vs- Vamanrao Sawalaram Bhosale

and another reported in [(2018) 11 SCC 172].

(ii)Murugan –vs- Jayarama Pillai and others reported in - DB MHC (87 LW 187).

64. Regarding the plea taken by the respondents that the attestation of Sidhan in Ex.A-3 sale deed amounts to waiver of his right to repurchase and deemed to extinguish his right to repurchase, the Learned Senior Counsel rely on the judgments of the *Privy Council in Pandurang Krishanaji –vs- Markandeya Tukaram and others (Vol XXVI Calcutta Weekly Notes 201)* and *Rajammal @ Sundarammal and others –vs- Sabapathi Pillai and another* reported in (58 LW 281) to emphasize, that ‘attestor’ and ‘attested’ to be understood in the light of Section 3 of Transfer of Properties Act, 1882. The attestor is estopped only in respect of fact of witnessing the execution and not about the knowledge of the content of the document. Attestation to the document cannot be taken as consent of the content (or) knowledge of the content in the document.

65. The learned Senior Counsel also submitted that the revenue receipts will

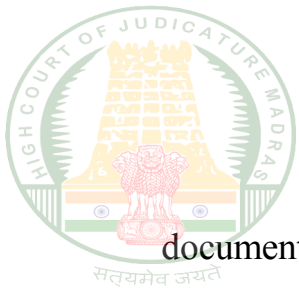


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not confer title. However, they are proof for long possession of the appellants and other defendants in exclusion of Gnanasekaran. This fact cannot be ignored, particularly, when Gnansekaran failed to prove his possession of the suit property either physically or constructively after 2006.

66. The other learned counsels, who were representing the respondents, except one Gnanasekaran, adopted the submissions made by the Learned Senior Counsel appearing for appellants, Mr. R.Sankaranarayanan.

67. Mr.D.Sivakumaran, learned Counsel for the respondent Gnansekaran, in support of the judgment and decree passed by the Court below submitted that, Ex.A-1and Ex.A-2 are two distinct documents. The construction of the each document has to be considered independently and not together. The Courts have repeatedly held that, a document of ostensible sale with right to repurchase by the vendor on a future date fixed, is deemed to be a deed of mortgage by conditional sale, only if the covenant of sale and re-conveyance embodied in the same document. Under Section 58 (c) of Transfer of Properties Act, 1882 for a deed to consider as mortgage by conditional sale, the condition must embodied in the same



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document. A sale through one document and agreement to re-transfer in a different document, cannot carry the trappings of mortgage of conditional sale, even if the documents are contemporaneously executed.

68. Regarding the attestation by Sidhan in Ex.A-3, the learned Counsel for the respondent Mr.Gnanasekaran submitted that the general Rule that attestation to a document as witness, is not admission of the content of the document, is subject to exception. If the attester knows the content of the document and had not raised objection during his life time, it has to be taken as consent. The knowledge of the content of the document to which he is a witness, will estop him and his legal representatives of the attester who enters the shoes of the attester, to plead something contrary. In this case, the sale deed document came into existence on 09.03.1971. The right to repurchase vested on Sidhan through Ex.A-2 on 13.03.1969, after five years period got expired on 12.03.1974. By efflux of time, Siddan right got extinguished on 12.03.1974. Siddan died several years thereafter. While so, Siddan had not sought for repurchase within five years or even thereafter till his lifetime. Thus, by his conduct, the knowledge of the content of Ex.A-3 is implicit.



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69. (1) In *Venkatarama Iyer –vs- K.Raganathan* reported in (78 LW 607) a similar issue came up for consideration before a Learned Single Judge of this Court, while consideration the question whether Ex.B-1 in that case is a document of outright purchase with an agreement to reconvey or a mortgage by conditional sale, as defined under Section 58(c) of the Transfer of Properties Act,1882, the Learned Judge said;-

6. Several decisions were cited before me by both sides. In *Ramachandrayya v.Lakshminarayana Rao* (1956)2 MLJ 565, , Krishnaswami Nayudu, J., observed:

“Where it is found that there was a prior relationship of debtor and creditor between the parties, that the stamp papers for the document were purchased in the name of the transferor, that the price fixed was not the result of bargaining, but represented the exact amount of the pre-existing debt due by the vendor to the vendee, and the price too was not a fair or proper price, there can be no room for any doubt that the transaction is and intended to be only a mortgage by conditional sale”.

7. In 1956 Ramaswami, J., had to consider two different types of cases. In the decision reported in *S.R. Kulathu Iyer Vs. S. Manickavasagam Pillai and Another*, there was evidence to show that the amount at which the price was settled was much lower than the amount due under the earlier debts. The parties described the document as "vayida crayam" in contradiction to the usual phrase



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"sudha crayam". The sale price given in round figures was also the price to be given by the vendor after a stipulated period. There was nothing to show that any interest was payable. But, as mentioned already, in this case, the document recites that the amount of the sale price was the amount arrived at after calculation, of the amount due under the prior debts less adjustment for repayment or scaling down and the price for the reconveyance is less than the price for the sale. In B.A. Khan alias Bahadur Ali Khan Vs. Nawaz Khan and Others, the learned Judge had to consider a different type of transaction, where he catalogued five tests to be applied in similar cases. But it appears to me that the facts of each case have to be considered independently and that any prescription off standardised tests may not be sufficient to meet all situations. In Bhaskar Waman Joshi v. Srinarayan Rambilas Agarwal (1960) 1 M.L.J. S.C. (sic) the Supreme Court observed that

“the question in each case was one of determination of the real character of the transaction, to be ascertained from the contents of the deed, viewed in the light of surrounding circumstances. The circumstance that the condition (of reconveyance) is indicated in the sale deed has undoubtedly to be taken into account, but the value to be attached thereto must vary with the degree of formality attending upon the transaction”.

(2). In Vithal Tukaram case (cited supra), the deed of agreement styled as sale deed, itself contained a clause for reconveyance of the property. The value of the subject property proved to be over Rs.3500/-. Whereas the ostensible sale deed was for Rs.700/-. The seller of the property in that suit earlier filed a suit for specific



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performance and then suit for redemption. In that circumstances, the Supreme Court

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“15. The agreement, Ex.62, though styled as a sale deed, for a consideration of Rs.700/- is but an ostensible sale, containing a clause for reconveyance. The agreement concludes as follows:-

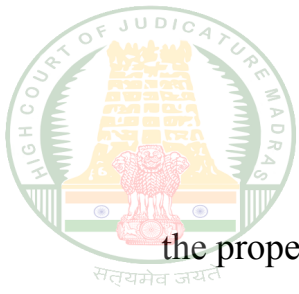
“If I repay your amount of Rs.700/- in any year (at any time) during the period of ten years from now then you have to return my said land to me, subject to this condition I have sold land to you.”

The significance of the words “repay”, “return” and “subject to this condition” cannot be overlooked. They are not commensurate with a deed of absolute sale. The language used, conveys the distinct impression that the plaintiff did not intend to relinquish all rights, title and claims to his lands. The defendant was aware of the limited nature of right conveyed and had agreed to a conditional sale along with an obligation to return the lands if the amount was repaid.

16. The plaintiff initially filed Civil Suit No. 89/1975 for specific performance to transfer the lands back to him. It was withdrawn with liberty to file a fresh suit for redemption. The filing of the fresh suit in 1986, beyond the period of ten years is hardly relevant. The limitation for the right to redeem, under Section 60 of the Act is thirty years.”

(3). In *P.L. Bapuswami -vs- Pattay Gounder reported in (AIR 1966 SC 902)*, the Hon’ble Supreme Court pointed out four circumstances to ascertain whether a document is mortgage by conditional sale. Those circumstances are:-

- (a) The condition for repurchase must be embodied in the same document.
- (b) The consideration for the transaction must be lesser than the real value of



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the property.

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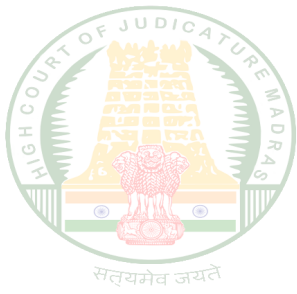
(c) The revenue records should stand on the vendor even after the ostensible sale. Tax remain to be paid in the name of the vendor even after the sale.

(d) The consideration for the repurchase must be the same value shown for the purchase.

70. In the case in hand, the first three circumstances not satisfied. The right to repurchase not embodied in the deed of sale marked as Ex.A1. The patta and revenue records got mutated in favour of Dharmalingam, after Palanisamy sold it to Dharmalingam. Tax are paid by Dharmalingam. The vendor Siddan never come forward to repurchase either before expiry of 5 years and even thereafter until his death.

71. Regarding the effect of attestation, in *Rajammal alias Sundarammal and others v. Sabapathi Pillai and another reported in (58 LW 281)*, the Privy Council observed that,

“It is settled that mere attestation is not enough to involve the witnesses with knowledge of the contents of the deed, and this is equally true of the witnesses who identify the executant before



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the Registrar. While their Lordships' view renders it unnecessary to decide it, their Lordships incline to the view that the language of the deed was so clear as to bring home its meaning and effect to the plaintiff, if he knew the contents, but their Lordships are unable to find any circumstances existing at the time, which could be held to have affixed him with such knowledge.”

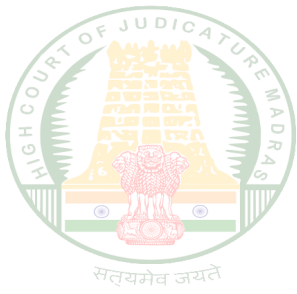
72. In *Pandurang Krishanaji case cited supra*, Privy Council had the occasion to test the right of the attester to the document in which his interest in the property also involved to plead against the content of the document. While the District Judge observed that,

“My impression is that Pandurang did not understand the nature of the consequences that may accrue from his conduct and what interpretations would be put upon the fact of his signing the deed as an attesting witness I therefore hold that the defendant Pandurang is not estopped from raising the question that he was not bound by his mere signature to show that he consented to the result that he was not entitled to them. “

73. The High Court differed with the above view of the District Judge and said:-

“We think that attestation by a person who has or claims any interest in the property covered by the document

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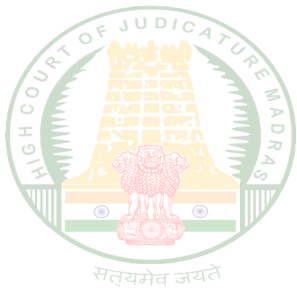
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must be treated, in the absence of any evidence to show that he was tricked into making the signature, prima facie as a representation by him that the title recited in the document is true and will not be disputed by him as against the obligee under the document.”

74. Privy Council, considering the scope of the principle of estoppels under Section 115 of the Indian Evidence Act, 1872 read with Section 60 of the Transfer of properties Act, 1882 has opined that:-

“....Their Lordships are bound to point out that that is an entire misapprehension of the law of estoppel, and that if that misapprehension be not corrected, much mischief may be done in the administration of justice in India.

...It seems to their Lordships impossible to think that in such circumstances a man could have attested a deed for the purpose of relinquishing for no consideration whatever a right which, upon the face of the document, would have been one of great value. Their Lordships do not think that the evidence that Pandurang knew of the contents of this deed and attested for the purpose of evidencing his consent can be accepted, and the burden of establishing that contention lay upon the plaintiff. If in fact there be a practice, as is suggested from the evidence, that when the consent of parties to transactions is required, it can be obtained by inducing, them by one means or another, to attest a signature of the executing parties, the sooner that practice is discontinued the better it will be for the straightforward dealing



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essential in all business matters.”

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75. In ***Biswanath Prasad Singh -vs- Rajendra Prasad and another*** reported in ***2006 Supreme (raj) 570***, Hon’ble Justice P.K.Balasubramaniam, observed as below;-

“39. Going by Section 58(c) of the Transfer of Property Act, it is clear that for an ostensible sale deed to be construed as a mortgage by conditional sale, the condition that on repayment of the consideration by the seller the buyer shall transfer the property to the seller is embodied in the document which effects or purports to effect the same. It has so been clarified by this Court also in *Pandit Chunchun Jha v. Sheikh Ebadat Ali and Another* *[[1955]1SCR174]* by stating, "If the sale and agreement to repurchase are embodied in separate documents, then the transaction cannot be a mortgage whether the documents are contemporaneously executed or not." Therefore, it is clear that what was involved in this case was the sale followed by a contemporaneous agreement for re- conveyance of the property. Such an agreement to re-convey is an option contract and the right has to be exercised within the period of limitation provided therefore. It has also been held that in such an agreement for re-conveyance, time is of the essence of the contract. The plaintiffs not having sued within time for re-conveyance, it would not be open to them to seek a declaration that the transaction of sale entered into by them construed in the light of the separate agreement for re-conveyance executed by the purchaser, should be declared to be a



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mortgage. Such a suit would also be hit by Section 91 of the Evidence Act, subject to the exceptions contained in Section 92 of that Act.”

76. In ***Chunchun Jha –vs- Ebadat Ali*** reported in (***AIR 1954 SC 345***), the Hon’ble Supreme Court has held that, “if the sale and agreement to repurchase are embodied in separate documents, then the transaction cannot be a mortgage. In the case of agreement of repurchase, the conditions of repurchase must be construed strictly against the original vendor and the stipulation with regard to time of performance of the agreement must be strictly complied with as the time must be treated as being of the essence of the contract in the case of agreement of reconveyance”.

77. The facts of the case in hand, put to test in the light of the judgments referred above, this Court finds that the recital in Ex.A-1 and Ex.A-2 does not indicate that it was intended to be a mortgage by conditional sale. The conditions not embodied in the same document. The vendor namely, Sidhan not only attested the sale by Palanisamy, but also had received a sum of Rs.2500/- in addition beside clearing his loan of Rs.2000/- with Palanisamy. As far as Ex.A-3 concerned, it is a sale simplicitor. It is not the case of the appellants or the other respondents, who sail



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with the appellants, that Siddan wanted to enforce the agreement of reconveyance within the period prescribed.

78. The appellants no doubt in occupation of portion of the suit property, however the occupation is not based on the title as pleaded. Evidence shows Sidhan put in occupation, as Manager in the property and others entered into the property slowly after 2006, when Dharmalingam fell ill and unable to look after the property. All the exhibits relied by the appellants and other respondents barring Gnansekaran, only indicate their occupation in the part of the property after 2006. The suit is filed for recovery of possession along with declaration of title on 04.04.2012 well within the period of 12 years.

79. The appellants case is specifically based on title and not based on long possession on permission or adverse possession ousting the real owner openly and hostile. In the said circumstance, this Court hold that, the plaintiff in O.S.No.69 of 2012 has proved his title through Ex.A-3 and Ex.A-5. The possession of the property is proved through Ex.A6 and Ex.A-8 to Ex.A17. The appellants and her siblings were able to prove their possession only in respect of portion of the



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property, where they have put up construction, without permission of the land owner. Sidhan had lost his right to seek for repurchase implicitly by consent on the date when he knowingly attested Ex.A-3 and explicitly, after lapse of the 5 years period fixed to enforce the right of repurchase.

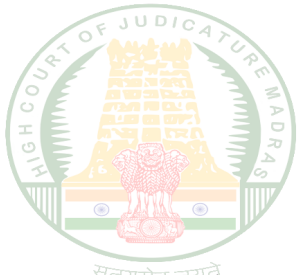
80. As a result, **A.S.No.84/2023 and A.S.No.86/2023** stands dismissed. The C.M.P filed under Order 41 Rule 27 of C.P.C., to receive the genealogy tree of the Palaniammal family and the 'A' Register are of no relevancy for deciding the points for consideration, since they do not throw any new information or evidence for arriving at a decision. Hence, the petitions stand dismissed as devoid of merit to entertain at the appellate stage. Accordingly, the common judgment and decree passed by the Trial Court in O.S.No. 69 of 2012 and O.S.No.164 of 2012 dated 23.11.2018 stands confirmed. No order as to costs. Consequently, connected Miscellaneous Petitions are closed.

08.08.2025

Index :Yes.
Neutral citation :Yes/No.
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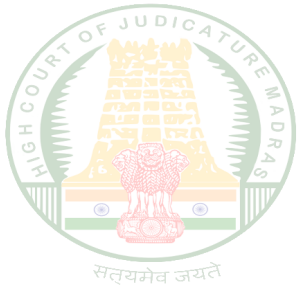
To

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- 1.The I Additional District Court, Tiruvallur.
- 2.The Tahsildar, Tahsildar Office, Omalur Taluk, Salem District.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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A.S.Nos.84 & 86 of 2023

Dr.G.JAYACHANDRAN,J.

bsm/ari

Pre-delivery judgment made in

A.S.Nos.84 & 86 of 2023

and

C.M.P.Nos.3851, 8296, 8911 & 16655 of 2023

08.08.2025