



A.S.NOS.437 & 436 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18 / 08 / 2025

PRONOUNCED ON : 20 / 08 / 2025

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

Appeal Suit Nos.437 & 436 of 2022

and

C.M.P. No.20348 of 2025 in A.S. No.437 of 2022

A.S. No.437 of 2022

Mr.G.Kulasekaran

... Appellant /
3rd Defendant

Vs.

1. Smt.M.Baby

... 1st Respondent /
Plaintiff

2. Mrs.A.Parvathy (Died)

... 2nd Respondent /
1st Defendant

3. Mr.R.Muralidharan

... 3rd Respondent /
2nd Defendant

4. Mr.G.Ayyasamy

... 4th Respondent /
4th Defendant

[Second respondent passed away.
Her husband, who is already on
record as fourth respondent, is
recorded as her legal representative
vide Order of this Court dated April
24, 2024 made in A.S. Nos.436 and
437 of 2022]



A.S.NOS.437 & 436 OF 2022

PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated August 3, 2015 passed in O.S.No.952 of 2012 by the First Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.C.Johnson

For Respondent-1 : Mr.J.Kamaraj for
M/s.K.Ganesan and Nandhakumar

Respondent-2 : Passed away [recorded vide Order of this Court dated April 24, 2024 made in A.S. Nos.436 and 437 of 2022]

For Respondents -3 & 4 : Mr.P.Thiagarajan

C.M.P. No.20348 of 2025
in A.S. No.437 of 2022

Smt.M.Baby

... Petitioner /
1st Respondent

Vs.

1. Mr.G.Kulasekaran

... 1st Respondent /
Appellant

2.Mrs.A.Parvathy (Died)

3. Mr.R.Muralidharan

4. Mr.G.Ayyasamy

... Respondent Nos.2 to 4 /
Respondent Nos.2 to 4



A.S.NOS.437 & 436 OF 2022

PRAYER: Petition filed under Order XLI Rule 27 of the Code of Civil Procedure, 1908 praying to receive the Agreement dated December 16, 2009 relating to deposit of title deed, executed by petitioner / first respondent in favour of G.I.C Housing Finance Limited as additional evidence on the side of plaintiff.

A.S. No.436 of 2022

Smt.M.Baby

... Appellant /
Plaintiff

Vs.

1.Mrs.A.Parvathy (Died)

2. Mr.R.Muralidharan

3. Mr.G.Kulasekaran

4. Mr.G.Ayyasamy

... Respondent Nos.1 to 4 /
Defendants Nos.1 to 4

[First respondent passed away. Her husband, who is already on record as fourth respondent, is recorded as her legal representative vide Order of this Court dated April 24, 2024 made in A.S. Nos.436 and 437 of 2022]

PRAYER: First Appeal filed under Section 96 read with Order XLI Rules 1 and 2 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated August 3, 2015 passed in O.S.No.952 of 2012 by the First Assistant Judge, City Civil Court, Chennai.

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A.S.NOS.437 & 436 OF 2022

For Appellant : Mr.J.Kamaraj for
M/s.K.Ganesan and Nandhakumar

Respondent-1 : Passed away [recorded vide Order
of this Court dated April 24, 2024
made in A.S. Nos.436 and 437 of
2022]

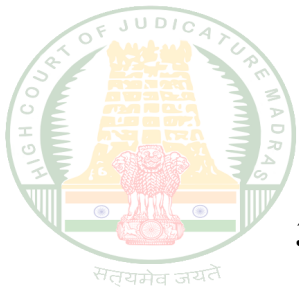
For Respondent-3 : Mr.C.Johnson

For Respondents-2&4 : Mr.P.Thiagarajan

J U D G M E N T

Feeling aggrieved by the Judgment and Decree dated August 3, 2015 passed in O.S.No.952 of 2012 by 'the First Assistant Judge, City Civil Court, Chennai' ['Trial Court' for brevity], the third defendant therein has filed the Appeal Suit in A.S. No.437 of 2022 under Section 96 read with Order XLI Rule 1 of 'the Code of Civil Procedure, 1908' ['CPC' for short].

2. Similarly, feeling aggrieved by the said Judgment and Decree of the Trial Court, the plaintiff therein has preferred the Appeal Suit in A.S. No.436 of 2022 under Section 96 read with Order XLI Rules 1 and 2 of CPC.



3. To be noted, first one G.Kulasekaran presented a plaint before this Court arraying his brother - G.Ayyasamy as sole defendant, seeking the relief of permanent injunction on January 8, 2010 and the same numbered as C.S.No.32 of 2010. Later it was transferred to the City Civil Court, Chennai on account of pecuniary jurisdiction and renumbered as O.S. No.7944 of 2010, and then made over to the Additional District and Sessions Judge, Fast Track Court – V, Chennai, which decreed the Suit. Feeling aggrieved by the same, the defendant therein - G.Ayyasamy has preferred the Appeal Suit in A.S. No.519 of 2013 on the file of this Court.

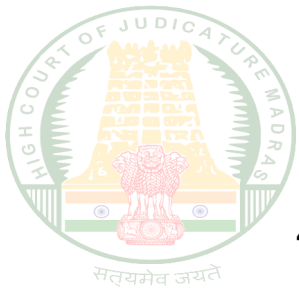
3.1. After the Trial Court's Judgment and Decree in O.S. No.7944 of 2010, on January 31, 2012, one Smt.Baby filed the Original Suit in O.S. No.952 of 2012 on the file of First Assistant Judge, City Civil Court, Chennai, against G.Ayyasami, G.Kulasekaran and two others, seeking the relief of declaration and permanent injunction. The said G.Ayyasami and G.Kulasekaran are the defendant and the plaintiff in O.S. No.7944 of 2010 respectively. In both the aforesaid Original Suits, the Suit Property is more or less the same. The Suit filed by Smt.M.Baby viz., O.S. No.952 of 2012 was partly decreed by negating the claim for declaration and granting the relief of permanent injunction. Feeling aggrieved, G.Kulasekaran, the



3rd defendant therein (O.S. No.952 of 2012), who is also the plaintiff in O.S. No.7944 of 2010, preferred the appeal in A.S.No.169 of 2016 before the XIX Additional Judge, City Civil Court, Chennai. The plaintiff therein (O.S. No.952 of 2012) namely Smt.M.Baby, filed a cross Appeal Suit in A.S. No.159 of 2017 before the same Appellate Court.

3.2. Then, at the instance of the appellant in A.S. No.519 of 2013, the Appeal Suits in A.S. No.169 No.2016 and A.S. No.159 of 2017 were withdrawn and transferred to this Court vide Common Order dated February 6, 2019 made in Tr. CMP. Nos.1004 and 1005 of 2017, and renumbered as A.S.Nos.437 and 436 of 2022 respectively, which are the appeals on hand.

3.3. Then, vide the Administrative Order dated January 7, 2023 made by the Honourable Acting Chief Justice of this Court, the said two Appeal Suits on hand were tagged with the Appeal Suit in A.S.No.519 of 2013. Separate trials were conducted and separate Judgments were pronounced in the concerned Original Suits. The parties are also different. Keeping in mind the same, the Appeal Suits were heard simultaneously and separate Judgments are being pronounced today.

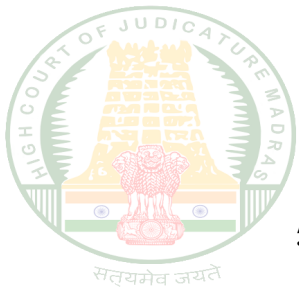


4. For the sake of convenience, hereinafter, the parties herein will be

referred to as per their array in the Original Suit in O.S. No.952 of 2012.

PLAINTIFF'S CASE

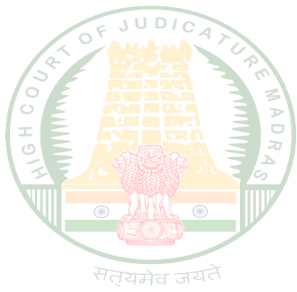
5. The Suit Property is a portion of a larger extent of land which originally belonged to the ancestor of the 3rd and 4th defendants, namely Natesa Naicker. Natesa Naicker had two sons, Ganapathy and Dharmalingam, who, after the demise of Natesa Naicker, entered into registered Partition Deed dated February 25, 1983 whereby 'A' Schedule Properties therein were allotted to Ganapathy, who is the father of the 3rd and 4th defendants. 'A' Schedule Properties comprises of land of a total extent of 4065 sq. ft. and the house thereon. 'A' Schedule Properties includes the Suit Property and other properties adjacent to it. Ganapathy was in possession and enjoyment of the 'A' Schedule Properties. He passed away on July 11, 1992 leaving behind his wife – Lakshmiammal and his two sons – 3rd and 4th defendants. Thus, each of them became entitled to 1/3 share in the 'A' Schedule Properties consisting of 4065 sq. ft. more fully described in Partition Deed dated February 25, 1983.



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5.1. Out of the total extent of 4065 sq. ft. land, 570 sq. ft. within specific four boundaries was sold to one D. Malarvizhi vide Sale Deed September 8, 1993 by mother - Lakshmiammal, 3rd and 4th defendants. Thereafter, an extent of 560 sq. ft. out of the said 4065 sq. ft. land was sold to one A.V. Simon Jayakumar vide Sale Deed dated April 13, 1994. The remaining extent of 2935 sq. ft. was in possession and enjoyment of 3rd & 4th defendants and their mother – Lakshmiammal.

5.2. Vide a registered Release Deed dated June 17, 1996, mother of 3rd and 4th defendants – Lakshmiammal, and the 4th defendant relinquished their 2/3 undivided share in 1018 sq. ft. more fully described in schedule of property therein in favour of third defendant for consideration. By virtue of the Release Deed dated June 17, 1996, the 3rd defendant acquired absolute right over the aforesaid extent of 1018 sq. ft. The 4th defendant continued to live in the old house, which comes under the remaining extent of the property exclusively, by paying property tax, water tax and electricity consumption charges. There are separate way of access for both the houses.



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5.3. In the meanwhile, mother - Lakshmiammal passed away in the year 1998 leaving behind the 3rd and 4th defendants as her legal heirs. Then the fourth defendant executed a Settlement Deed dated March 28, 2007 in favour of his wife / 1st defendant in respect of an extent of 700 sq. ft. along with the aforesaid house, which together forms the Suit Property herein. The first defendant appointed the second defendant as Power Agent on December 14, 2009. In the month of April 2010, second defendant as power holder of first defendant mortgaged the Suit Property with the plaintiff for Rs.5,00,000/-, and then the second defendant offered to sell the Suit Property to the plaintiff and Sale Deed was executed on February 7, 2011. The defendants 1 and 2 handed over possession to the plaintiff. Revenue records have been mutated in the name of plaintiff. While so on January 28, 2012, when the plaintiff visited the Suit Property, the 3rd defendant said that he owns the entire extent and that the plaintiff has to vacate the premises. Hence the plaintiff filed the sSuit for declaration and permanent injunction.

FIRST AND FOURTH DEFENDANTS' CASE

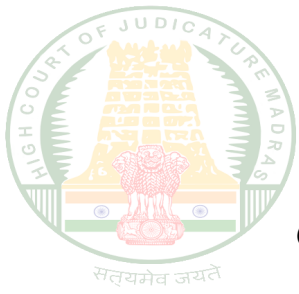
6. The first and fourth defendants filed written statement. They have no dispute with the facts set out in Paragraph Nos.5 to 5.2 *supra*. Their



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case is that, the said Release Deed dated June 17, 1996 is only in respect of an extent of 1018 sq. ft within specific four boundaries, and not in respect of the entire Suit Property measuring 700 sq. ft. as claimed by 3rd defendant. The said Release Deed was executed by the 4th defendant and mother – Lakshmiammal in order to enable the 3rd defendant to build a house in it. Accordingly, the 3rd defendant has constructed a house and residing in it, while the 4th defendant was in continuous possession and enjoyment of the Suit Property in his own right. There are separate paths for accessing the properties of 3rd and 4th defendants. The 3rd defendant has no right to claim under the Release Deed dated June 17, 1996 over and above what has been given to him thereunder, that is to say, he cannot claim any right over the Suit Property.

6.1. An extent of 1917 sq. ft. was remaining after the sale to D.Malarvizhi and A.V. Simon Jayakumar and the Release Deed dated June 17, 1996. As stated *supra*, 3rd and 4th defendants and their mother are each entitled to 1/3 share. Thus, upon the demise their mother, the 3rd and 4th defendants would be entitled to half-a-share in the said 1917 sq. ft *i.e.*, each of them are entitled 958 sq. ft.

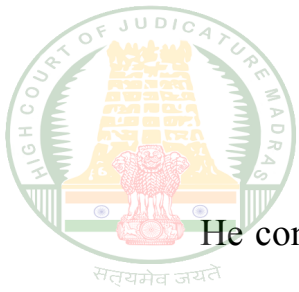


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6.2. Out of his share of 958 sq. ft., the 4th defendant executed a registered Settlement Deed dated March 28, 2007 in respect of 700 sq. ft. within four specific boundaries [Suit Property] in favour of his wife—Parvathy, the first defendant, who in turn executed a Power of Attorney Deed dated December 14, 2009 in favour of Muralidharan, who in turn executed a Sale Deed dated February 7, 2011 in respect of the Suit Property in favour of the plaintiff. An extent of 258 sq. ft. is remaining in the 4th defendant's possession and enjoyment. The 3rd defendant is entitled to only the 1018 sq. ft. released in his favour and the 958 sq. ft. that devolved upon him after the demise of the mother – Lakshmiammal, and not the Suit Property as claimed. Accordingly, they sought to dismiss the Original Suit.

SECOND DEFENDANT'S CASE

7. Second defendant filed a written statement stating that the fourth defendant settled the Suit Property, an extent of 700 sq. ft. along with the house thereon, in favour of the first defendant who appointed the second defendant as her Power Agent on December 14, 2009 in respect of Suit Property with power to sell the same. Possession was handed over to him.



He contends that the Release Deed dated June 17, 1996 was in respect of only an extent of 1018 sq. ft. and not the Suit Property. Further he contends along the lines of the written statement filed by defendants 1 and 4 about the mortgage and sale of Suit Property to the plaintiff. He sought to dismiss the Suit.

THIRD DEFENDANT'S CASE

8. In the written statement filed by the third defendant, it is contended that the plaintiff is well aware of the fact that the 3rd and 4th defendants are brothers and that the Suit Property is under litigation *viz.*, C.S. No.32 of 2010. She was also aware of the ad-interim injunction granted in favour of third defendant restraining the fourth defendant from dealing with or alienating a larger extent of property which includes the Suit Property herein. He has further contended that the plaintiff knows the trajectory of the Suit in C.S.No.32 of 2010 (narrated in Paragraph No.3 hereinabove) and also that it was decreed in favour of the plaintiff therein on December 19, 2011. Thereafter, being fully aware of the litigation, the plaintiff colluded with fourth defendant and filed the present Suit, with a view to defeat and defraud the legitimate rights of the third defendant.



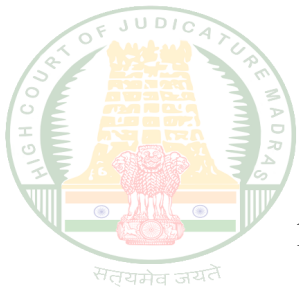
Release Deed dated June 17, 1996 was executed *qua* 2935 sq. ft. including the Suit Property and the same has been upheld in the earlier Suit in O.S.

No.7944 of 2010. Fourth defendant has no right over the Suit Property as per the Judgment and Decree in O.S. No.7944 of 2010. The plaintiff is not a *bona fide* purchaser. The Settlement Deed, pursuant Power of Attorney and the pursuant Sale Deed are in violation of the ad-interim injunction. Accordingly, he sought to dismiss the Suit.

TRIAL COURT

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

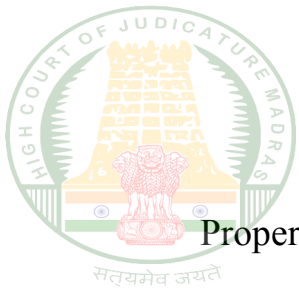
- "1) *Whether the plaintiff is entitled to get the declaration?*
- 2) *Whether the plaintiff is entitled to get the permanent injunction against the defendants regarding the peaceful possession and enjoyment of schedule property?*
- 3) *Whether the plaintiff is entitled to get the permanent injunction regarding to encumber, alienation etc of schedule property to 3rd party?*
- 4) *To what reliefs is plaintiff entitled to get?"*



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10. At trial, on the side of the plaintiff, the plaintiff was examined as P.W.1, one Dayalan was examined as P.W.2 and Ex-A.1 to Ex-A.13 were marked. On the side of defendants, the defendants 1 to 4 were respectively examined as D.W.1 to D.W.4, one Maharajan was examined as D.W.5, and Ex-B.1 to Ex-B.38 were marked.

11. After full-fledged trial, the Trial Court held that the fourth defendant effected Ex-A.10 - Settlement Deed dated March 28, 2007 in favour of first defendant pursuant to which property tax and water tax were transferred in the name of first defendant. The third defendant did not challenge Ex-A.10 – Settlement Deed. The Suit in C.S. No.32 of 2010 was dismissed for default on January 10, 2011 and later restored in April, 2011. The plaintiff purchased the Suit Property on February 7, 2011 and hence, on the date of sale, no Suit was pending. Therefore, the plaintiff is a bona fide purchaser for value and without notice and therefore, her possession should be protected. However, O.S. No.7944 of 2010 was decreed in favour of the third defendant by finding that Ex-B.7 – Release Deed dated June 17, 1996 and that any alienation made after the Ex-B.7 – Release Deed are void. The Trial Court in the present Suit held that in these circumstances, the plaintiff cannot be declared the owner of the Suit

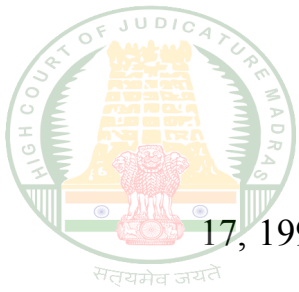


Property. Accordingly, the Suit *qua* declaration was dismissed and noting that the plaintiff is in possession and enjoyment of the Suit Property as evident from Ex-A.3 - Electricity Receipt, Ex-A.4 – Electricity Connection Name Transfer Order, Ex-A.5 – Water Tax Receipt, Ex-A.6 – Property Tax Name Transfer Order and Ex-A.7 – Water Tax Receipt, the Trial Court decreed the Suit *qua* permanent injunction.

12. The third defendant feeling aggrieved by grant of permanent injunction and the plaintiff feeling aggrieved with the dismissal of the Suit *qua* declaration are now before this Court vide A.S. Nos.437 and 436 of 2022 as elaborated above.

CIVIL MISCELLANEOUS PETITION

13. As regards the Civil Miscellaneous Petition, Mr.J.Kamaraj for M/s.K.Ganesan and Nandhakumar, learned Counsel for the petitioner in CMP No.20348 of 2025 / first respondent in A.S. No.437 of 2022 / plaintiff would argue that the third defendant executed a mortgage in favour of G.I.C. Housing Finance Limited on December 16, 2009 in respect of an extent of 1018 sq. ft. within specific four boundaries described in schedule of property under Ex-B.7 – Release Deed dated June



17, 1996. At the time of trial, the plaintiff inadvertently omitted to file the Agreement relating to deposit of title deed for the said mortgage. Hence, he prays to allow the petition, receive the said Agreement as additional evidence and mark the same.

14. In response to the same, Mr.C.Johnson, learned Counsel for the Respondent No.1 in CMP No.20348 of 2025 / appellant in A.S. No.437 of 2022 / third defendant would submit that he has no objection to the petition. To that effect, he has also made an endorsement in the case file.

15. Mr.P.Thiagarajan, learned Counsel for the Respondent Nos.3 and 4 in CMP No.20348 of 2025 / Respondent Nos.3 and 4 in A.S. No.437 of 2022 / Defendant Nos.3 and 4 would also express his no objection to the Civil Miscellaneous Petition.

16. This Court has perused the additional evidence sought to be marked. It is the certified copy of the Agreement relating to deposit of title deed dated December 16, 2009 executed in favour of G.I.C. Housing Finance Limited by third defendant before this Suit. It is a registered document and cannot be impeached or denied by the third defendant. Moreover, the respondents' (in CMP) expressed no objection to allow the

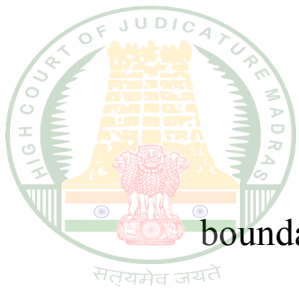


petition. Hence, in the interest of justice, this Court is inclined to allow the Civil Miscellaneous Petition. Accordingly, it is allowed and the additional evidence is received.

17. Generally, when an additional evidence is received under Order XLI Rule 27 of Code of Civil Procedure, 1908, resort has to be made to Order XLI Rule 28. But since the respondents in the Civil Miscellaneous Petition have expressed their no objection and also made endorsement to that effect in open court in the case file, this Court is of the view that resort to Order XLI Rule 28 would serve no fruitful purpose and would only waste the precious judicial time as well as the time of the parties. Hence, this Court is inclined to mark the additional evidence as Ex-A.14 without resort to Order XLI Rule 28 of Code of Civil Procedure, 1908.

ARGUMENTS:

18. Mr.C.Johnson, learned Counsel for the appellant in A.S. No.437 of 2022 / third defendant would argue that after the sales under Ex-B.5 and Ex-B.6 – Sale Deeds, the entire remaining property including the Suit Property was released in favour of the third defendant by the fourth defendant and the mother – Lakshmiammal. In Ex-B.7, the western

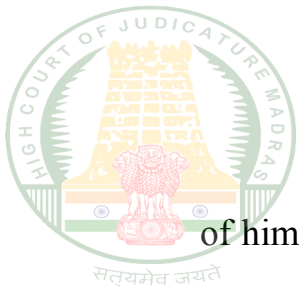


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boundary of its subject matter has been wrongly stated as belonging to the releasor and the releasee. In fact, even the eastern boundary has been wrongly described as one Dhandapani's land who is the husband of the purchaser under Ex-B.5 – Malarvizhi, instead of A.V. Simon Jayakumar's land who is the purchaser under Ex-B.6. There do not exist 1917 sq. ft. of land on the western side of the released property as claimed by the defendant. Ex-B.7 – Release Deed dated June 17, 1996 was executed for a valid consideration of Rs.2,26,675/-.

18.1. Further he would argue that, even while assuming that Ex-B.7 –Release Deed was executed only in respect of $\frac{2}{3}$ share in the 1018 sq. ft. described under the schedule of property therein, even then the fourth defendant has no rights to execute Settlement Deed in respect of any specific portion within four specific boundaries, that too without ascertaining the available portion after Ex-B.7 –Release Deed.

18.2. He would further submit that after Ex-B.7, the fourth defendant was permitted to occupy the Suit Property. The third defendant can access his residence only via the Suit Property. The fourth defendant by fraudulent means sets up title in respect of the Suit Property in favour



of him and is obstructing the third defendant from accessing his residence.

The Trial Court failed to consider the fact that in the earlier Suit in O.S.No.7944 of 2010 an order of injunction was passed in favour of third defendant and against fourth defendant. Hence, the Trial Court ought not to have granted permanent injunction in favour of the plaintiff in the Original Suit on hand. Accordingly, he would pray to allow the Appeal Suit in A.S. No.437 of 2022, dismiss that in A.S. No.436 of 2022 and dismiss the Original Suit entirely.

19. Per contra, Mr.P.Thiagarajan, learned Counsel for the third and fourth respondents in A.S.No.437 of 2022 / second and fourth defendants would invite the attention of this Court to schedule of property in Ex-B.7 – Release Deed dated June 17, 1996 and argue that the property described therein measures 38.3 feet east to west and 26.6 feet north to south; it is an extent of 1018 sq. ft., within specific four boundaries. The 4th defendant and his mother – Lakshmiammal released their 2/3 share in the schedule of property *i.e.*, 2/3 share in the 1018 sq. ft. alone which does not include the Suit Property as alleged by third defendant. This is evident from the fact that while the market value of the said 1018 sq. ft. is Rs.3,40,012.50/- even as per Ex-B.7, the fourth defendant and mother –



Lakshmiammal have received only Rs.2,26,675/- as consideration under

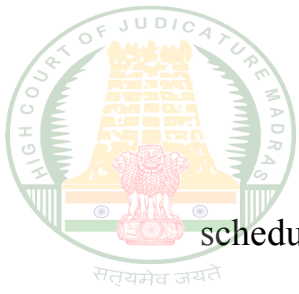
Ex-B.7, which is $\frac{2}{3}$ rd of the market value of the total extent of 1018 sq. ft.

They have received consideration for only $\frac{2}{3}$ share in the said 1018 sq. ft.

Further, in Ex-B.7 itself, the western boundary of its subject matter has been described as the remaining property of the releasors and the releasee.

The schedule of property in Ex-B.7 is very clear. A clear schedule of property prevails over anything else.

19.1. He would further argue that in the property left behind by Ganapathy, an extent of 1917 sq. ft. was remaining after the Release Deed dated June 17, 1996 and after the alienations under Ex-B.5 and Ex-B.6 – Sale Deeds dated September 8, 1993 and April 13, 1994 respectively. In the said 1917 sq. ft., the 3rd & 4th defendants and their mother are entitled to $\frac{1}{3}$ share each. After the demise of their mother, the 3rd and 4th defendants are entitled to equal share in it, *i.e.*, each of them are entitled to 958 sq. ft. For convenient enjoyment, the 3rd and 4th defendants entered into arrangement, as per which, the fourth defendant was enjoying the western portion of the said extent of 1917 sq. ft. along with the house therein, while the third defendant was enjoying the eastern portion of the said extent of 1917 sq. ft. which adjoins the 1018 sq. ft. described in the



schedule of property of Ex-B.7. Out of his entitlement of 958 sq. ft., the fourth defendant executed Ex-A.10 - Settlement Deed in respect of 700 sq. ft. within specific four boundaries in the western portion of the said 1917 sq. ft. in favour of his wife, who subsequently alienated the same through power agent.

19.2. Further he would submit that the third defendant has a path to access the Suit Property from its northern side. The Trial Court failed to consider the above aspects and erroneously concluded that the Ex-B.7 – Release Deed dated June 17, 1996 was executed *inter alia qua* Suit Property. The Judgment and Decree of the Trial Court deserves to be interfered with. Accordingly, he would pray to allow the Appeal Suit in A.S.No.436 of 2022, dismiss that in A.S.No.437 of 2022 and decree the Original Suit.

20. Mr.J.Kamaraj for M/s.K.Ganesan and Nandhakumar, learned Counsel for the first respondent in A.S. No.437 of 2022 / plaintiff would adopt the arguments of Mr.P.Thiagrajan. In addition, he would argue that the plaintiff is a bona fide purchaser with value without notice. On the date of purchase, there was no pending Suit. The Trial Court rightly



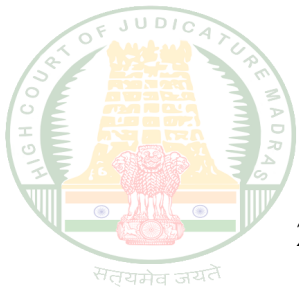
observed so, but erred in relying upon the findings in O.S.No.7944 of 2010, to which Suit the plaintiff herein is not a party, to conclude that the plaintiff is not entitled to the relief of declaration. Accordingly, he would pray to allow the Appeal Suit in A.S. No.436 of 2022, dismiss that in A.S. No.437 of 2022 and decree the Original Suit.

DISCUSSION:

21. Heard on either side. Perused the evidence available on record.

The following points arise for consideration in this Appeal Suit:

- (i) Whether the fourth defendant is entitled to execute Ex-A.10 - Settlement Deed in respect of the Suit Property ?
- (ii) Whether Ex-A.11 - Sale Deed dated February 7, 2011 executed in favour of the plaintiff by the second defendant is binding on the third defendant ?
- (iii) Whether the plaintiff is entitled to the relief of declaration and permanent injunction ?
- (iv) Whether the Judgment and Decree of the Trial Court is to be interfered with ?



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22. The relationship between the parties is admitted. An extent of 4065 sq. ft. in T. Survey No.58, Block No.3, Door No.26/1 more fully described as 'A' Schedule Properties under Ex-B.4 – Partition Deed dated February 25, 1983 was allotted to Ganapathy, who is the father of 3rd and 4th defendants. Ganapathy passed away on July 11, 1992 leaving behind his wife – Lakshmiammal and his two sons – 3rd and 4th defendants. Thus, each of them became entitled to 1/3 share in the said extent of 4065 sq. ft. Under Ex-B.5 – Sale Deed dated September 8, 1993, an extent of 570 sq. ft. on the eastern side of the said extent of 4065 sq. ft. was sold to D.Malarvizhi, wife of Dhandapani. Further, under Ex-B.6 – Sale Deed dated April 13, 1994, an extent of 560 sq. ft. on the western side of the property sold to D.Malarvizhi under Ex-B.5, was sold to A.V. Simon Jayakumar. Remaining extent in the said total extent of 4065 sq. ft. after the aforesaid sales is 2935 sq. ft. Then, the fourth defendant and mother – Lakshmiammal executed Ex-B.7 – Release Deed dated June 17, 1996 in favour of third defendant. The aforesaid facts are admitted and there are no dispute with them between the parties. It is made clear that there is no dispute with the execution of Ex-B.7.

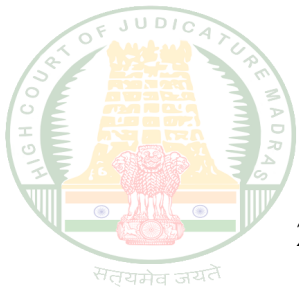


WEB COURT **Point No.(i)**

23. Case of the defendants 1, 2 and 4 is that the fourth defendant and his mother released their 2/3 share in a specific extent of 1018 sq. ft. measuring 38.3 feet east to west and 26.6 feet north to south within specific four boundaries alone, which does not include the Suit Property as claimed by the third defendant.

24. Case of the third defendant is under Ex-B.7, the fourth defendant and mother – Lakshmiammal released their 2/3 share *inter alia* in respect of the Suit Property. His further case is that, in Ex-B.7, the western boundary of the property released thereunder has been wrongly described.

25. In order to answer Point No.(i), this Court needs to delve into (a) whether the Suit Property was released in favour of the third defendant under Ex-B.7– Release Deed dated June 17, 1996, (b) whether an extent of 1917 sq. ft. was available on the ground after the transactions under Ex-B.5 to Ex-B.7 and (c) whether the fourth defendant was in exclusive possession and enjoyment of the Suit Property in his own right.



26. This Court has perused Ex-B.7 –Release Deed dated June 17,

1996. Ex-B.7 *inter alia* recites as follows:

"WHEREAS the releasors have got undivided 1/3rd share each that in all 2/3rd share and the releasee has got undivided 1/3rd share in the schedule property;

WHEREAS the releasor have decided to release their 2/3rd share in the schedule mentioned property in favour of the releasee and the releasee has also agreed have the said share released in his favour;

NOW THAT THEREFORE THIS DEED OF RELEASE WITNESSETH AS FOLLOWS.

1. That in consideration of a sum of Rs. 2,26,675/- (Rupees two lakhs twenty six thousands six hundred and seventy five only) paid by the releasee, to the releasors towards their undivided 2/3rd share in the schedule mentioned property, the receipt of which sum the releasors doth hereby agree, admit and acknowledge, the releasor do hereby absolutely release and relinquish and disown and for ever discharge all and every such of their 2/3rd share right, title interest claim or demand what so ever in the schedule mentioned property TO AND IN FAVOUR OF THE RELEASEE who shall hold the same without any let or hindrance; ..."

(emphasis supplied by this Court)

27. Schedule of property under Ex-B.7 reads thus:



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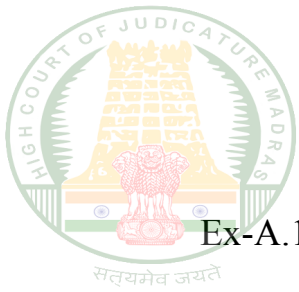
A.S.NOS.437 & 436 OF 2022

"SCHEDULE OF PROPERTY

Madras District, Mylapore Taluk, Sount Madras Registration District, Adayar Sub Registration District, at 26/1, Bajanai Koil Street, No.117, Pallipattu village, the undivided 2/3rd share of the releasors in the site measuring 38'3" east to west and 26'6" north to south admeasuring 1018 sq.ft. comprised in T.S. No.56 (old No.58) in block No.3, being bounded on the north by Channel, south by the property of Elumalai Naicker, east by the property of Thandapani and on the west by the remaining property of the releasors and the releasee. The total market value of this property is Rs. 3,40,012.50 paise. The market value of the undivided 2/3rd share of the released property is Rs. 2,26,675/- This property is coming with in the Corporation Limits of Madras."

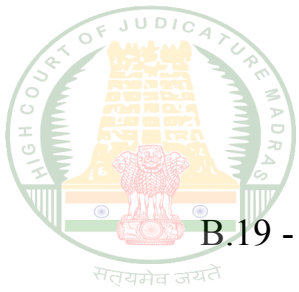
(emphasis supplied by this Court)

28. Bare reading of Ex-B.7, especially the afore-extracted portions, would make it pellucid that the fourth defendant and his mother released 2/3 share in a specific extent of 1018 sq. ft. land measuring 38.3 feet east to west and 26.6 feet north to south within specific four boundaries. Further, the western boundary of the land released under Ex-B.7 has been described as the remaining property of the releasors and the releasee. Further, the third defendant mortgaged the property described in the schedule of property in Ex-B.7 with G.I.C. Housing Limited and executed



Ex-A.14 – Agreement for deposit of title deed. In Ex-A.14, the western boundary of the mortgaged property has been described as the 'remaining property owned by G.Lakshmi and another'. In other words, the third defendant has described the western boundary of the property described in schedule of property in Ex-B.7 as the remaining property owned by his mother – Lakshmiammal and another. The recitals and description of property in Ex-B.7 coupled with Ex-A.14 clearly and unambiguously show that the releasors released only their 2/3 share in the specific extent of 1018 sq. ft. (more fully described in the schedule of property in Ex-B.7).

29. Further, the fourth defendant in his written statement as well as in his evidence as D.W.4 has stated that the purpose behind Ex-B.7 – Release Deed dated June 17, 1996 was for the third defendant to construct his house in the said extent of 1018 sq. ft. His aforesaid evidence has not been specifically denied by the third defendant. Admittedly, there exist an old house towards the western side of the property released under Ex-B.7. The fourth defendant's case is that he has *inter alia* been in possession and enjoyment of the said house property. Ex-B.16 – Water Tax Receipts, Ex-B.17 - Property Tax Demand Card, Ex-B.18- Property Tax Receipt, Ex-



B.19 - Water and Sewage Tax Card, all standing in the name of Ganapathy,

show the existence of an old house on the portion next to the western side of the released property since the year 1987. Ex-B.9 - Property Tax Receipt standing in the name of third defendant, shows that after the release, the property released under Ex-B.7 has been in third defendant's possession and enjoyment and he has constructed a house thereon. As already alluded to *supra*, the third defendant has not specifically denied the evidence of D.W.4 / fourth defendant that the release under Ex-B.7 was made to enable the third defendant to construct a house. The intention of the parties behind the execution of Ex-B.7 could be gathered from the above. As there is already a house for one of the brothers *i.e.*, the fourth defendant, the fourth defendant and his mother wanted to facilitate building a house for the another *i.e.*, the third defendant. When the intention behind Ex-B.7 is to enable the third defendant to build a house, there is no need for the releasors to release their share in the entire Suit Property when the Suit Property includes a house, that too when the house is being enjoyed by the fourth defendant. In other words, the undenied D.W.4's evidence *qua* the purpose behind Ex-B.7 and the documentary evidence in Ex-B.9 and Ex-B.16 to Ex-B.19, when seen cumulatively



through the lens of facts and circumstances of this case, probablizes the case of the fourth defendant that the release under Ex-B.7 was only in respect of a specific extent of 1018 sq. ft. for the third defendant to construct a house thereon and does not include Suit Property herein.

30. Only one error could be identified in Ex-B.7, which is that the eastern boundary to the property described in the schedule of property therein, has been mentioned as Dhandhapani's land who is the husband of the vendee under Ex-B.5 – D.Malarvizhi. As it could be gathered from the evidence available on record, more specifically Ex-B.5 and Ex-B.6 – Sale Deeds, the eastern boundary ought to be described as A.V. Simon Jayakumar's land. This however does not cause any prejudice to the fourth defendant's case. This could be an oversight. One may contend that in a similar manner, the western boundary could have also been wrongly described as the remaining portion of the releasors and releasee. In Ex-B.7, the schedule of property speaks of a specific extent of land *i.e.*, land measuring 38.3 feet (East-West) X 26.6 feet (North-South) = 1018 sq. ft. When the extent of the property has been described in such clear and unambiguous terms, the general proposition of law that boundaries must prevail over extent cannot be applied. Even while assuming that the



western boundary has been described wrongly, when the extent as well as the intention of the parties is clear in Ex-B.7, description of boundary cannot be used to contend that more extent was intended to be released in favour of third defendant. The aforesaid view of this Court gathers support from the decision of a learned Single Judge of this Court in ***Dina Malar Publications -vs- Tiruchirapalli Municipality***, reported in ***1984 (97) LW 365***. Further, As stated *supra*, the third defendant mortgaged the property covered under the schedule of property in Ex-B.7 and for that purpose, executed Ex-A.14, wherein, the western boundary has been described as the remaining property of Lakshmiammal and another. Hence, any contention that the western boundary has been described wrongly is liable to be rejected.

31. Thus, Ex-B.7 – Release Deed dated June 17, 1996 is only *qua* the releasors' 2/3 share in the specific extent of 1018 sq. ft. within specific four boundaries more fully described in schedule of property therein, and does not include the Suit Property.

32. As stated *supra* , out of the total 4065 sq. ft., 2935 sq. ft. is remaining after the sale of 570 sq. ft. and 560 sq. ft. under Ex-B.5 and Ex-B.6 – Sale Deeds respectively. Further, as stated *supra*, the fourth



defendant and the mother – Lakshmiammal released their 2/3 share in the specific extent of 1018 sq. ft. within specific four boundaries. Being one among the three legal heirs of Ganapathy, the third defendant is entitled to 1/3 share in the said extent of 1018 sq. ft. With the release of 2/3 share in 1018 sq. ft. in his favour, the third defendant becomes absolutely entitled to entire extent of 1018 sq. ft.

33. Subtracting the said 1018 sq. ft. from the area of land available after the alienations under Ex-B.5 and Ex-B.6, the available extent on paper would be 1917 sq. ft., to which the three legal heirs of Ganapathy are equally entitled. After the demise of Lakshmiammal, the third defendant and the fourth defendant would be each entitled half-a-share in the said 1917 sq. ft., which means each are entitled to 958 sq. ft.

34. Even when we add the said extent of 958 sq. ft. and the 1018 sq. ft. described under Ex-B.7 to which the third defendant is absolutely entitled as stated above, it comes to 1976 sq. ft. alone. It does not even go near to the 2935 sq. ft. described by the third defendant as his total entitlement in the Suit Schedule of property in the earlier Suit in O.S.No.7944 of 2010. It is pellucid that the third defendant has described



therein as his own entitlement, more than the extent he is legally entitled to. Hence, the description of Suit Property therein is incorrect.

35. In short, the third defendant is not entitled to the Suit Property herein under the Ex-B.7 – Release Deed dated June 17, 1996.

36. Moving on to the next aspect *viz.*, whether an extent of 1917 sq. ft. is available on the ground after the transactions under Ex-B.5 to Ex-B.7 as claimed by the fourth defendant, as stated *supra*, an extent of 1917 sq. ft. is available on paper after the alienations under Ex-B.5 & Ex-B.6 and after the release under Ex-B.7. While it is available on paper, its actual existence on the ground is doubtful. There is no proper evidence such as a Surveyor Report to show that on the ground an extent of 1917 sq. ft. is available. Neither of the parties have measured the Suit Property with the help of a surveyor. While it is usually not required to separately prove the actual existence when existence on paper is proved, this case is an exception. In this case, there arises a doubt as to whether the extent shown by the documentary evidence is available on the ground. This is because, in Ex-B.4 – Partition Deed dated February 25, 1983, the North-South and East-West measurements are not provided for 'A' Schedule Property



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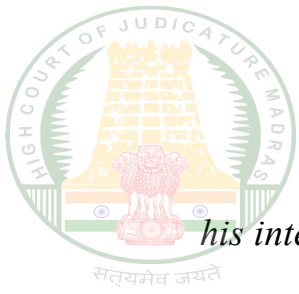
therein which was allotted to Ganapathy. Further, from the recitals and description of boundaries in Ex-B.4, it could be seen that there were larger extent of properties owned jointly by the sons of Natesa Naicker - Ganapathy and Dharmalingam, which were sold off to meet out the family expenses. So it seems like there had been multiple sales followed by a partition without ascertaining the available extent. Further, the description of property contained in Ex-B.4 speaks of a sketch annexed thereto, which is said to further describe or describe in detail the 'A' Schedule Property in Ex-B.7. The said sketch has not been presented before this Court. Hence, Ex-B.4 is an incomplete document. In this scenario, the actual existence of 4065 sq. ft. at the time allotment of 'A' Schedule Property to Ganapathy is itself doubtful. When so, the actual existence of 1917 sq. ft. after the alienations of specific extents under Ex-B.5, Ex-B.6 and after the release under Ex-B.7 is also doubtful. Hence, the averment of the fourth defendant that there exist 1917 sq. ft. after the transactions under Ex-B.5 to Ex-B.7 is not proved.

37. Another aspect is that, as stated *supra*, vide Ex-B.4 – Partition Deed dated February 25, 1983 an extent of 4065 sq. ft. was allotted to Ganapathy as 'A' Schedule Properties. In the total extent of 4065 sq. ft.,



the third defendant and the fourth defendant are equally entitled to whatever extent remaining after the transactions under Ex-B.5 to Ex-B.7.

When no actual partition has been effected, the fourth defendant cannot claim exclusive ownership in respect of a specific extent within specific four boundaries or any specific portion. Joint ownership has not been severed and continues to exist. Hence, the fourth defendant and the third defendant are co-owners equally entitled to whatever extent remaining out of 4065 sq. ft. after the transactions under Ex-B.5 to Ex-B.7. All co-owners have equal rights and co-ordinate interest in the property. Every co-owner has the right of enjoyment and possession equal to that of the other co-owners. *"Each co-owner is in theory interested in every infinitesimal portion of the subject-matter and each has the right, irrespective of the quantity of his interest, to be in possession of every part and parcel of the property, jointly with the others. Each joint owner has the right to the possession of all the property held in common equal to the right of each of his companions in interest and superior to that of all other persons. He has the same right to the use and enjoyment of the common property that he has to his sole property, except in so far as it is limited by the equal rights of his cosharers. Every co-owner is entitled to dispose of*



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his interest in the joint property, unless prevented from doing so under any

*law, e.g., a coparcener under the Mitakshara Law" [from **Mitra's Co-***

Ownership & Partition, 8th Edition (Eastern Law House), Page Nos.2 &

3]. Hence, the question of permissive occupancy is ruled out and at the same time, the fourth defendant cannot claim exclusive ownership over a specific portion measuring 958 sq. ft or any specific portion for that matter. Further, as stated above the actual existence of 1917 sq. ft. is doubtful, and on that ground also the fourth defendant cannot claim exclusive ownership over a specific extent of 958 sq. ft. The fourth defendant and the third defendant are equally entitled to whatever is remaining, no doubt with that. But when the extent in actual existence is doubtful, they cannot claim ownership over a specific extent. For the same reason, a co-owner cannot execute a Settlement Deed in respect of a specific extent of property within specific four boundaries. A co-owner may execute Settlement Deed in respect of the right of his share but not a specific portion. The fourth defendant could have executed a Settlement Deed in respect of his undivided half share but not a specific portion measuring a certain extent when the actual extent remaining is doubtful and when joint ownership has not been severed. In such a scenario, the



Settlement Deed executed by the fourth defendant in favour of the fourth defendant's wife is not binding on the third defendant. At its best, it can only be construed to have been executed in respect of the fourth defendant's right of $\frac{1}{2}$ share. **Point No.(i) is answered accordingly.**

Point Nos.(ii), (iii) and (iv)

38. As held above, Ex-A.10 - Settlement Deed dated March 28, 2007 executed by fourth defendant in favour of first defendant at its best can only be considered as valid in respect of the fourth defendant's $\frac{1}{2}$ share in the extent remaining in the total extent of 4065 sq. ft. after the transaction under Ex-B.5 to Ex-B.7. Consequently, Ex-A.1 –Power of Attorney executed by first defendant in favour of second defendant, and Ex-A.11 – Sale Deed dated February 7, 2011 executed by second defendant *qua* power agent of first defendant, are valid only in respect of fourth defendant's $\frac{1}{2}$ share and not any specific extent within specific four boundaries or specific portion.

39. In other words, now, the plaintiff, defendants 3 and 4 are all co-owners of the extent remaining in the total extent of 4065 sq. ft. after the transactions under Ex-B.5 to Ex-B.7. Their rights can be worked out



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only in a Partition Suit. Injunction cannot be granted against a co-owner and in the absence of partition, declaration in respect of a specific portion can also not be granted. Hence, the Trial Court is right in dismissing the Suit *qua* declaration but not justifiable in granting a blanket permanent injunction in favour of plaintiff. The Trial Court's finding that the plaintiff is a bona fide purchaser with value and without notice, is not relevant in a Suit for declaration and permanent injunction. Permanent injunction cannot be granted with that as the primary ground. At the same time, from the evidence available on record, it can be seen that the plaintiff is residing in a house in the Suit Property. Hence, in the interest of justice and in order to facilitate the parties to work out their rights in a Partition Suit, a limited injunction for a period of 6 months from today is granted in favour of plaintiff and against the third defendant not to disturb the plaintiff's possession and enjoyment of the Suit Property. The Judgment and Decree of the Trial Court deserves to be modified to the above extent. **Point Nos.(ii), (iii) and (iv) are answered accordingly.**

CONCLUSION:

40. Civil Miscellaneous Petition in CMP No.20348 of 2025 in



A.S.NOS.437 & 436 OF 2022

A.S.No.437 of 2022 is allowed and the additional evidence sought to be marked is marked as Ex-A.14. Both the Appeal Suits are partly-allowed.

The Judgment and Decree of the Trial Court is set aside. Limited injunction for a period of 6 months from today *i.e.*, August 20, 2025 is granted in favour of the plaintiff against the third defendant not to interfere with the plaintiff's possession and enjoyment of the Suit Property. The plaintiff is at liberty to file a Partition Suit to work out her rights in the Suit Property. It is made clear that this Judgment will not stand as a legal bar to such a Suit. The plaintiff may pray for further injunction or extension of injunction in such a Suit. Keeping in mind the facts and circumstances of the case, there shall be no order as to costs.

20.08.2025

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK

**ADDITIONAL DOCUMENTS MARKED UNDER ORDER XLI
RULE 27 OF CODE OF CIVIL PROCEDURE, 1908 VIDE ORDER
OF THIS COURT IN CMP NO.20348 OF 2025 IN A.S.NO.437 OF**

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2022

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S.No.	Exhibit	Description of Document	Remarks
1.	Ex-A.14	Agreement dated December 16, 2009 relating to deposit of title deed executed by third defendant – G.Kulasekaran in favour of G.I.C. Housing Finance Limited, Chennai	Certified Copy

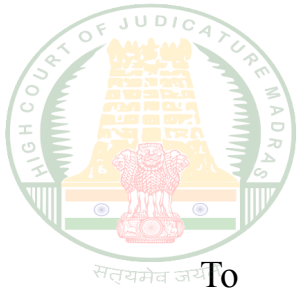
20.08.2025

Note: Second respondent in CMP, namely A.Parvathy passed away during the pendency of the Appeals. The factum of her death has been recorded in the main Appeals and her husband, already on record as fourth respondent in both the main appeals has been recorded as her legal representative. Registry is directed to carry out necessary changes / endorsements in the cause title of CMP No.20348 of 2025

R. SAKTHIVEL, J.

TK

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To
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- 1) The First Assistant Judge,
City Civil Court,
Chennai.
- 2) The Principal Judge
City Civil Court,
Chennai.

APPEAL SUIT NOS.437 AND 436 OF 2022

20 / 08 / 2025

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