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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.08.2025

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THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

A.S.No.362 and 363 of 2017

A.S.No.362 of 2017:

A. Ganesan

... Plaintiff/Appellant
Vs.

1. Mahalakshmi
2. Kalyanasundaram
3. K.Vairamuthu
4. K.Muthu Vairam
5. Vaira Prakash
6. K.Vijayalakshmi
7. Mohan Raj

... Defendants/Respondents

A.S.No.363 of 2017:

1. A. Ganesan
2. Manavalan

... 2nd and 3rd defendants/Appellants
Vs.

1. Mahalakshmi
2. Kalyanasundaram
3. K.Vairamuthu
4. K.Muthu Vairam
5. Vaira Prakash
6. K.Vijayalakshmi
7. Mohan Raj

... Defendants/Respondents



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Prayer in AS.No.362 of 2017: Appeal Suit has been filed under Section 96 read with Order XLI Rule 1 of Code of Civil Procedure, against the judgment & decree dated 28.03.2017 in O.S.No.42 of 2012 on the file of the learned Principal District Judge, Kancheepuram at Chengalpet.

Prayer in AS.No.363 of 2017: Appeal Suit has been filed under Section 96 read with Order XLI Rule 1 of Code of Civil Procedure, against the judgment & decree dated 28.03.2017 in O.S.No.51 of 2013 on the file of the learned Principal District Judge, Kancheepuram at Chengalpet.

For Appellants : Mr. R.Manickavel
In both the cases

For Respondents : Mr.G.Surya Narayanan
In both the cases

COMMON JUDGMENT

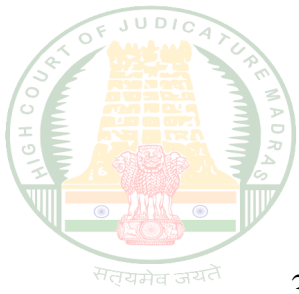
Unsuccessful plaintiff in O.S.No.42 of 2012 has filed the appeal in AS. No.362 of 2017. Meanwhile, unsuccessful defendants 2 & 3 in O.S.No.51 of 2013 have preferred the appeal in A.S.No.363 of 2017. The suit in OS.No.42 of 2012 is filed for declaration and for delivery of possession and for damages. The defendants in OS.No.42 of 2012 as the



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plaintiff's in O.S.No.51 of 2013 is filed for declaration to declare that the power of attorney deed executed by the first defendant in favour of third defendant dated 05.10.2009 as null and void, to declare that the sale agreement executed by third defendant in favour of second defendant dated 19.11.2009 as null and void, to declare that the sale deed executed by the third defendant in favour of the second defendant dated 15.02.2010 as null and void and for permanent injunction.

2. The trial Court has conducted a joint trial since the subject matter and the parties are one and the same and the issues to be decided are identical. The evidences are recorded in O.S.No.42 of 2012. The trial Court has dismissed the suit in O.S.No.42 of 2012 and decreed the suit in O.S.No.51 of 2013. Aggrieved over the same, these appeals have been filed. For the sake of convenience and clarity, the parties are referred as per ranking as suit in O.S.No.42 of 2012 in the trial Court.



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3. The brief case of the plaintiffs in O.S.No.42 of 2012 is as follows:

The suit schedule property house, ground and premises bearing Door No.5, Ponnan Nagar, Irumpuliyur, East Tambaram, Chennai-59 comprised in S.No.106/1, Irumpuliyur Village, measuring 2400 sq. ft. or 5 1/2 cents, originally belonged to one P.Chellan and he purchased the same under sale deed dated 29.08.1950.

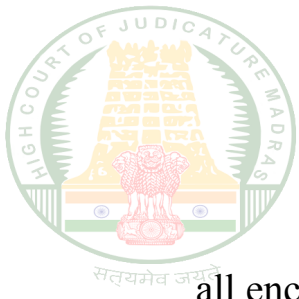
3.1 The said P.Chellan sold the schedule mentioned property to one S.Shanmugam under a deed a sale of sale dated 25.06.1982. The said Shanmugam sold the scheduled mentioned property to one M.Pavanasam Achari under a deed of sale dated 15.01.1985. The said Pavanasam Achari became the owner of the suir schedule property. On 04.03.1992, the said Pavanasam Achari died intestate and issueless leaving behind his wife Subbulakshmi as his sole legal heir to succeed his estate and she inherited the schedule mentioned property and became the absolute



owner of the same.
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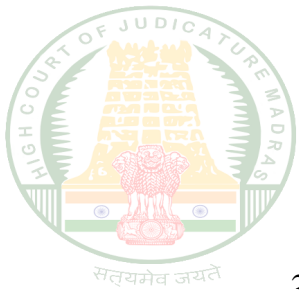
3.2 The first defendant is the brother's daughter of Pavanasam Achari as brother's daughter and therefore, after the death of the said Pavanasam Achari, the said Subbulakshmi permitted the first defendant to stay with her in the suit property to take care of and attend her needs considering her relationship with her. Originally, the first defendant used to stay intermittently but subsequently with the permission of the said Subbulakshmi she used to stay in a portion along with her husband the second defendant and her family.

3.3 In the year 2009, the said Subbulakshmi executed a Will registered as document No.67 of 2009 bequeathing the suit schedule property in favour of her husband's relative one N.Venkatraman and subsequently, she had cancelled the Will on 13.10.2009 registered as document No.163 of 2009 and she continued to enjoy the property free of



all encumbrance.
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3.4 The said Subbulakshmi has decided to sell the suit schedule property and therefore, she has appointed one Manavalan (3rd defendant in OS. No.51 of 2013) as and Agent under a registered deed of general power of attorney dated 05.10.2009 for the sale of the suit schedule property. After negotiation, the plaintiff entered into an agreement of sale with the said Subbulakshmi through her power agent on 19.11.2009. At the time of his purchase, his vendor Subbulakshmi informed him that the first defendant was permitted to occupy the portion of the said property after the death of her husband Pavanasam Achari in the year 2004 as she had become a lonely lady and without any support. From the year 2004, she permanently stayed in a portion of the said house with the owners consent. originally the first defendant was staying alone then she brought her family also with the consent of the owner Subbulakshmi.



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3.5 At that time of purchase and during negotiation, the defendants 1 & 2 were present and they have agreed to vacate the portion within a period of three months from the date of registration and deliver possession to the plaintiff peacefully. On the date of registration of the sale deed, the vendor Subbulakshmi delivered a possession of the southern portion of the said property which was under her occupation to the plaintiff and the first defendant was given three months time to vacate and deliver possession of the portion under her occupation situated on the northern side. But after the expiry of three months the first and second defendants wanted further three months time.

3.6 On 20.08.2010 when the plaintiff visited the property, he found that the first defendant and her family were in occupation of entire premises including the portion under the occupation of the said Subbulakshmi which portion possession was already delivered to the plaintiff and the plaintiff had kept the portion locked. On enquiry, the

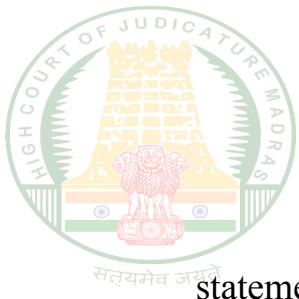


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first and second defendants were indifferent and even attempted to behave rudely and therefore, the plaintiff has lodged a complaint before the Peerkankaranai Police Station. The plaintiff is the lawful owner of the suit property and he has acquired valid title. On 07.06.2011 when the plaintiff issued a notice calling upon the defendant to vacate and deliver possession on or before 31.08.2011 and on 10.06.2011 when the first defendant who acknowledged receipt of the same, failed to send any reply and subsequently, when all the defendants failed to deliver possession and remain in unlawful occupation without any manner of right in the suit property. Hence, the suit.

4. The brief case of the defendants is as follows:

The defendants have filed a written statement and subsequently they have also filed a suit to set aside the Power of attorney dated 05.10.2009, Agreement of Sale dated 19.11.2009 and also the Sale Deed dated 15.02.2010 and also for the relief of permanent injunction. The contentions of the written



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statement and the plaint in O.S.No.51 of 2013 are identical and therefore the
plaint allegations are described in brief as follows:

a) The suit property belonged to PavanasamAchari who was the “adopted father” of the first defendant (as referred in Para 3 of the plaint). The first defendant was the daughter of one Paramasivam who was the brother of her adopted father PavanasamAchari. The first defendant has impleaded Subbulakshmi as the first defendant in their suit in O.S.No.51 of 2013 and sought the relief against her also. Late PavanasamAchari and Subbulakshmi adopted the first defendant when she was nine months old by performing dutta homum and she was brought up by PavanasamAchari and Subbulakshmi as their own daughter. PavanasamAchari performed the marriage of the first defendant secured the job to the second defendant at Standard Motor, Perungalathur. They lived as joint family. The second defendant spent more than Rs.18,000/- to purchase the suit property in the name of late PavanasamAchari as he was the Karta and elder of the Joint Family (para 4 of the plaint in O.S.No.51 of 2013). The second defendant spent more than

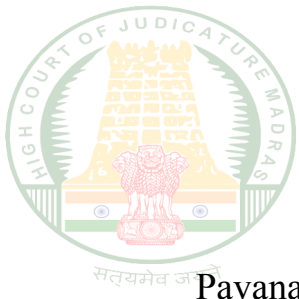


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Rs.1,33,500/- for the construction of a house in the suit property and they were all residing in the same house. After the death of PavanasamAchari the said Subbulakshmi wanted to live in a separate portion and the defendants were attending all their needs and maintaining her providing all her necessities.

b) PavanasamAchari was suffering from cancer and the defendants had spent more than Rs.35,000/- for his medical expenses and they also spent more than Rs.15,000/- towards funeral expenses for the death of Pavanasam Achari. After the death of Pavanasam Achari they continued to maintain Subbulakshmi by spending more than Rs.2,30,000/- towards her maintenance and they are paying Property Tax, MES charges etc., the second defendant also had spent Rs.15,000/- for white washing and maintenance of the building and he was treating Subbulakshmi as his own mother instead of mother-in-law (para 6 of the plaint).

c) But the said Subbulakshmi developed displeasure and difference of opinion with the defendants and she started giving trouble to the defendants by sending legal notices as if she alone is the sole legal heir of late



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PavanasamAchari and further claimed herself as if she was the landlady and categorized the defendants as her tenants and demanded them to quit and to deliver vacant possession of the suit property (para 7 of the plaint). Because of her old age Subbulakshmi was not stable in her activities, taking advantage of the original records in her hands she was playing according to the tune of some mischief mongers and it is clear that any of the documents executed by her own, will not bind the defendants and she is not in a state of healthy mind. So any documents executed by her without the knowledge of the defendants holds no good and questionable (end of para 7 of the plaint).

d) The said Subbulakshmi in the year 2005 was trying to evict the defendants from the suit property with the help of police, All Women Police Station, Neelangarai but the attempt was prevented by the defendants by filing a suit in O.S.No.61 of 2005 and **the suit was decreed in favour of the defendants on 27.09.2005 (Ex.B1)** and the decree against the said Subbulakshmi is still in force (para 8 of the plaint).

e) Subsequently the said Subbulakshmi released her right of half share



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in favour of the first defendant under a Release Deed dated 25.02.2010 (Ex.B3) and the first defendant had settled the suit property on 28.07.2010 to all other defendants namely her husband and children under a deed of settlement (Ex.B2) and they are in peaceful possession and enjoyment of the suit property ever since. The plaintiff has been interfering with the peaceful possession and threatening the defendants to vacate. Hence the defendants were obliged to file the suit in O.S.No.51 of 2013 to set aside the power of attorney dated 05.10.2009, agreement of sale dated 19.11.2009 and also the sale deed dated 15.02.2010 and also for the relief of permanent injunction.

5. Based on the above pleadings, the trial Court has framed the following issues in the above two suits:

- 1. Whether the suit property belongs to the plaintiff?*
- 2. Whether the plaintiff is entitled to the declaration of the suit property as prayed for?*
- 3. Whether the plaintiff is entitled to relief of recovery of possession as prayed for?*
- 4. Whether the defendants are liable to pay damages for*



use and occupation of the suit property as prayed for?

5. Whether the first defendant is the adopted daughter of Pavanasam Achari and his wife Subbulakshmi as stated by the defendants?

6. To what other reliefs the plaintiff is entitled?

During the trial, On the side of the plaintiff in O.S.No.42 of 2012, the plaintiff/Ganesan himself examined as PW1, the attesor/M.Pachaiappan, was examined as PW2 and one T.Vasanthakumar, Head Mistress, was examined as PW3 and Ex.A1 to Ex.A36 were marked. On the side of the defendants in O.S.No.42 of 2012, the second defendant was examined as DW1 and one Lakshmi was examined as DW2 and Exs.B1 to 30 were marked.

6. The findings of the trial Court: The legal heirship certificate in Ex.B23 and Ex.B5 appears to be genuine in which subbulakshmi and Mahalakshmi have shown as legal heirs of the said Pavanasam Achari. PW3/Head Mistress of Middle School, as per the certificate issued by



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her/Ex.A36, Mahalakshmi, D/o. Paramasivam, joined in the school in the year 1960 and her date of birth is 10.10.1995 and she has studied upto 8th standard in the said school. The relationship between the parties all would go show that there are probabilities of adoption or fostering Mahalakshmi by Pavanasam Achari. In fact, after execution of power of attorney deed in favour of Manavalan, Subbulakshmi herself admits the legalheirship of Mahalakshmi and relinquished her share in favour of Mahalakshmi under Ex.B3.

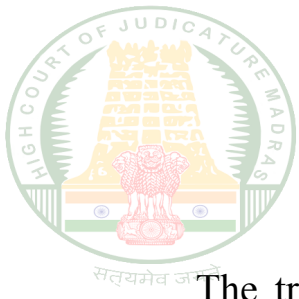
6(i). PW1 denied the payment of Subbulakshmi Ammal though he pleads payments through instruments, he has not produced any documents to prove the same. The alleged power agent is also not examined. Prior to power deed, there was creation of Wills. In both Wills one P.R.Ravichandran has signed as attesor. The said P.R.Ravichandran is also party to another suit instituted by one Mahalakshmi in OS. No.246 of 2012. Considering all these facts and circumstances, it appears that there was a plot by some unscrupulous elements to grab the property of an old lady who had no clause-I heirs on her own. Taking advantage of the dispute between her and adopted daughter, who is in possession of the property, several documents were created by misusing



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the innocence of the said Subbulakshmi. The alleged Ex.A35 notice issued by Subbulakshmi Ammal appears to be handwork of the rival parties who attempted to grab the property from Mahalakshmi so much reliance cannot be given to Ex.A35 notice. The attester in Ex.A8 sale agreement and Ex.A9 Sale deed or one and the same and it also creates a doubt over Exs.A8 & 9. There is a reason to suspect the witness as a colluding in creating documents.

7. The learned counsel appearing for the appellants/defendants submit that the procedure adopted by the Court below in a suit for declaration of title and recovery of possession without investigating into plaintiff's title, proceeds to decide the defendants case of adoption at the first instance and holding that there was valid adoption and dismissed the suit mainly on the ground is completely a wrong procedure. The trial Court reliance of the legal heir certificate, house warming ceremony invitation, photos without negatives to hold that there was a valid adoption is nothing but a myth and all the above will not prove the adoption under the provisions of Adoption and Maintenance Act, 1956.



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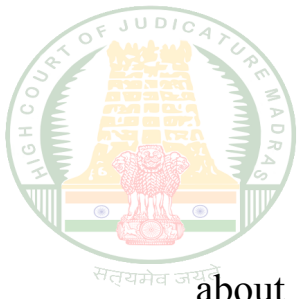
The trial Court also placed heavy reliance on the inland letter/Ex.A25 sent by Paramasivam Achari, father of the first defendant Mahalakshmi to Pavanasam Achari on 06.08.1966 in that letter Pavanasam Achari said that he was not willing to send his daughter to Pavanasam Achari's residence for further studies in Chennai. The letter also said that Subbulakshmi Wife of Pavanasam Achari was not looking after his daughter. The trial Court has relied upon the pleadings made in Plaint in O.S.No.61 of 2005 in Ex.A19 completely ignored by legal notice dated 03.08.2002 in Ex.A35 sent by Subbulakshmi to the second defendant/Kalyanasundaram, husband of Mahalakshmi even before filing the suit stating he was inducted as a tenant and he fails to pay rent causing damages to the portion, she felt insecure and lonely, she wanted to accommodate her close relative and therefore, demanded eviction of Kalyanasundaram.

8. The learned counsel would further submits that the law is well



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settled that the foster daughter is not the adopted daughter and she cannot be equated with adopted daughter and therefore, she does not inherit property of Pavanasam Achari. The findings of the Court below that the natural parents of Mahalakshmir are not at Chennai and they were at Tirunelveli is also not supported by any evidence, even then the same will not advance the case of the defendants. The trial Court failed to note that there was a lot of misunderstanding between the brothers in respect of the suit schedule property and the earlier settlement of which Paramasivam Achari demanded under Ex.A25 Notice. The consideration of Ex.B3 and the finding of the learned Judge on the basis of Ex.B3 is highly unfortunate because the same is the only registered document allegedly executed by Subbulakshmi in favour of Mahalakshmi, but even in the said document, there is no reference or recital that Mahalakshmi was adopted by Pavanasam Achari. The legal heirship certificate issued to Mahalakshmi Ex.B23 was only after issuance of legal heirship certificate to Subbulakshmi. The reliance placed before the trial Court



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about the discharge receipt (Ex.B14) allegedly executed by Subbulakshmi and Mahalakshmi in respect of a mortgage allegedly executed in favour of Pavanasam Achari on 21.12.2009 was witnessed by the very same attesting witnesses who had attested the Release deed also and even in this document also there is no reference or recital about the alleged adoption. To strengthen his argument, the learned counsel has relied upon the decision rendered by the Hon'ble Supreme Court of India reported in *AIR 1961 SC 1378 in the case of Lakshman Singh Kothari Vs. Rup Kanwar* to show that without the ceremony of adoption by giving and taking and unless the adoptive boy/girl is transferred from one family to another there cannot be a valid adoption under Section 11 of the Hindu Adoption and Maintenance Act. The another judgment reported in *2023 INSC 1004 in the case of Moturu Nalini Kanth Vs. Gainedi Kaliprasad (died through L.R.s)* to show that the compliance of Section 7 and 11 Hindu Adoption and Maintenance Act is mandated for valid adoption.



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9. The learned counsel would further submitted that the findings of the trial Court that the sale consideration was not paid without any proof and only on assumption, the trial court should have applied the law settled by the hon'ble Supreme court following Section 54 of Transfer of Properties Act, in the Judgment reported in AIR 2020 SCC 3310 in the case of Dahibe Vs. Arvindbhai Kalyanji Bhanusali (Gajira)(D) through the legal heirs. The trial Court have failed to consider there is a clear flow of title in favour of the appellant/plaintiff and he has acquired a perfect and indefeasible title over the suit property. The trial Court failed to note that it was for Subbulakshmi to question the non-payment of sale consideration if any and the defendants having filed the suit against Subbulakshmi and having made serious allegation against her and it was Subbulakshmi who has taken steps to vacate the defendants, the defendants are incompent to question about the consideration. The law is well settled that on execution and registration of the sale deed, the



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ownership title and all interests in the property pass on to the purchaser unless a different intention is either expressed or necessarily implied which has to be proved by the party asserting that the title has not passed on registration of the sale deed under Section 8 and 54 of the Transfer of Property Act. The plaintiff has every right to purchase the suit property from the said Subbulakshmi, would inherit the suit property from her late husband and Subbulakshmi has got every right to sell her property. The said Subbulakshmi executed a power of attorney, sale agreement and sale deed by way of registered documents to sale the property and the same has been effected in conformity with law. Therefore, the sale sale made infavour of Ganesan is validly made. Hence, the judgment and decree passed by the trial Court is liable to be set aside.

10. Per contra, the learned counsel for the respondents/1st and 2nd defendants in O.S.No.42 of 2012 would submit that the suit in O.S.No.246 of 2012 was filed for declaration to declare that the said



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Mahalakshmi and the Subbulakshmi Ammal are the legal heirs of the deceased Pavanasam Achari. The legal heir ship certificate of Pavanasam Achari dated 03.10.1997 was marked as Ex.A2 in that suit. Based on the legal heirship certificate, the issue for Pavanasam Achari and the Court passed decree that the said Mahalakshmi and her mother Subbulakshmi Ammal are the only legal heirs of the deceased Pavanasam Achari. Therefore, the question of validity of adoption is no longer available in view of the valid decree passed by the competent civil Court.

11. The learned counsel would further submit that the evidence of DW2/ Lakshmi and from the certificate given by Head-Master, Municipal Middle School issued by her under Ex.A36 would show that Mahalakshmi was admitted to the School on 17.06.1960 and she studied upto 8th standard and also would reveal that the natural parents are living in Tirunelveli and the said Pavanasam Achari was living in Irumbuliyur and therefore, the said Mahalakshmi was living with Pavanasama Achari



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and Subbulakshmi Ammal. Ex.B3 release deed executed by one Subbulakshmi Ammal in favour of the said Mahalakshmi dated 25.02.2010 wherein it has been mentioned that the said Mahalakshmi is a daughter of one Pavanasam Achari and the same has been accepted by the appellant/plaintiff. The appellant/plaintiff did not challenge the release deed executed by the Subbulakshmi Ammal under Ex.B3. The appellant/plaintiff has also not explained as to why he did not produce the original power of attorney deeds before the trial Court and there is no explanation from the appellant with regard to mode of consideration paid while getting sale deed. There is no specific averments is to how consideration was paid and the release deed by the Subbulakshmi Ammal were not stated.

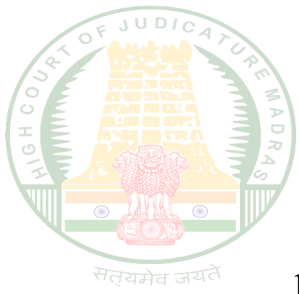
12. The learned counsel would further submits that Ex.A20/Police complaint relied upon by the appellant Subbu Lakshmi Ammal lodged a police complaint before the Inspector of Police, Neelankarai, dated 03.03.2005. Whereas in the document, the first para speaks about the



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legal heirs certificate dated 02.03.2006 whereas the complaint has been lodged on 03.03.2005 and moreover there is not signature in the document. The plaintiff has failed to prove that when a possession was handed over to him, the evidence of PW2 is not supported to the case of the plaintiff since PW2 had categorically admitted that he did not see the payment of consideration. There is no endorsement from the said Subbulakshmi Ammal with regard to the payment either Ex.A8 nor A9 and there is no reason to interfere with the impugned judgment and decree passed by the Court below. The learned counsel would further submit that the plaintiff suppressed the decree passed against their vendor in O.S.No.61 of 2005 and also suppressed the previous suit in O.S.No.144 of 2011.

13. This Court has considered the submissions made on either side and perused the materials available on record.



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14. The points for determination arises in these appeals are

- i. Whether the first respondent/Mahalakshmi is the adopted daughter of Late Pavanasam Achari and Late Subbulakshmi Ammal?
- ii. Whether the sale deed dated 15.02.2010 executed by the appellant/Manavalan as a power of attorney holder on behalf of Late Subbulakshmi Ammal in favour of the appellant/Ganesan is valid?

15. Ex.A19 is the copy of the plaint filed by the first and second defendants in O.S.No.61 of 2005 and the file of District Munsif Court, Tambaram. The suit schedule property therein mentioned as hereunder:

“All that part and parcel of house and site in these D.No.5 (Old No.4), Ponnan Nagar, Irumbuliyur, Chennai-59, comprised in S.No.106/1 (T.S.No.44) of Irumbuliyur Village to an extent of find 5½ cents, measuring about 0.2185 sq.mtr. as per town survey number.”

16. The aforesaid suit is filed against Subbulakshmi Ammal and



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Inspector of Police, All Women Police Station, Neelankarai, for the relief of permanent injunction restraining the first defence/Subbulakshmi Ammal from alienating the suit property, without signature or consent of the first plaintiff/Mahalakshmi and not to evict except under due process of law. The said suit was decreed on 27.09.2005. Ex.A33 is the copy of the judgment in O.S.No.61 of 2005. Ex.A34 is the copy of the degree in O.S.No.61 of 2005. A perusal of Ex.B24 death certificate dated 06.08.2012 stands in the name of Subbulakshmi Ammal, who died on 30.08.2011, shows that Subbulakshmi Ammal died in the same address residing with the plaintiff therein. Ex.B26 is the copy of the judgement and degree dated 20.06.2014 passed in O.S.No.246 of 2012 on the file of the District Munsif Court, Tambaram. The said suit is filed for declaration to declare the plaintiffs/Mahalakshmi as a legal heir of the deceased Subbulakshmi Ammal. In the above suit, the legal heirship certificate of the Pavanasam Achari dated 03.10.1997 was marked as Ex.A2. The said Ex.A2 legal heirship certificate has marked as Ex.A22 in the present suit in O.S.No.42 of 2012. In the judgement therein, it has been held that upon pursuing Ex.A2, the legal heir certificate issued for Pavanasam Achari, it is the



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evident that the plaintiff/Mahalakshmi and her mother Subbulakshmi Ammal are the only legal heirs to the deceased Pavanasam Achari. So, if the third defendant/A.R.Ravindran was any how related to the said Pavanasam Achari, the same would be reflected in the legal heir certificate. Further, it was held that the claim of the third defendant/A.R.Ravindran had not appeared before that Court and disproved the case of the plaintiff. So, by filing necessary documents, the plaintiff/Mahalakshmi had proved her case and the plaintiff is entitled for relief. Accordingly, the suit was decreed on 20.06.2014. To strengthen Ex.A22 legal heir certificate, plaintiff/Mahalakshmi has produced Ex.B33 certified copy of the legal heir certificate. A perusal Exs.A22 and B33 show that Exs.A22 and B33 are original legal heir certificate and its certified copy, respectively.

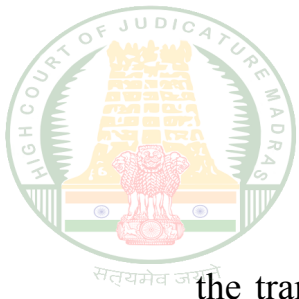
17. Ex.A25, inland letter sent by Paramasivam Achari to late Pavanasanam Achari dated 06.08.1966. Ex.A36 certificate given by the Headmaster, Municipal Middle School, Irumbuliyur, reveals that Mahalakshmi was admitted to the school on 17.6.1960 and she studied up to VIII Sstandard, which will be till 1968 or 1969 in the said school. Therefore, Ex.A25 cannot



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be true in view of Ex.A36. Because, she was admitted in that school in 1960 and studied up to 1968 or 1969. From the evidence of DW2/Lakshmi, from Ex.A36 would reveal that the natural parents lived in Tirunelveli and Papanasam reside in Irumbuliyur and therefore, it is quite natural to accept that Mahalakshmi lived with the Pavanasam Achari and Subbulakshmi Ammal and therefore, Ex.A25 relied on by the appellant/plaintiff without signature do not disprove the adoption.

18. Ex.B3 is the release deed dated 25.02.2010, executed by Subbulakshmi Ammal in favour of first defendant/Mahalakshmi. It was admitted that Ex.B22 death certificate of Pavanasam Achari was issued to both of them and in Ex.B3 released deed, it has been mentioned that Mahalakshmi is the daughter of Pavanasam Achari and it was accepted by the appellant/plaintiff. Ex.B3 executed by the Subbulakshmi Ammal. Such a document was also admitted by the appellant/plaintiff. Admittedly, the appellant/plaintiff did not want to challenge the release date executed by Subbulakshmi Ammal in Ex.B3. According to section 35 of the Transfer of Property Act, 1882, a person must choose whether to accept the benefit under

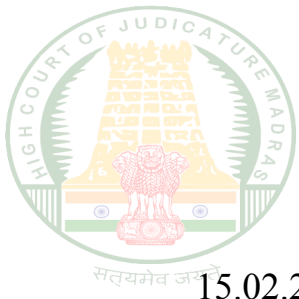


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the transaction and give up right to the property (or) retain the property and give up the benefit conferred. The term 'election' means choosing between two alternative or conflicting rights.

19. Ex.B29 Transfer Certificate of Mahalakshmi issued by Madras Seva Sadan High School shows that Mahalakshmi studied till June 1971 in Tambaram to show that she was residing with Pavanasam Achari and Subbalakshmi Ammal. Ex.A2 is the copy of the sale deed stands in the name of Pavanasam Achari to show that the second defendant/Kalyanasundaram was signed as one of the attesting witnesses and the address of Kalyanasundaram, husband of Mahalakshmi and Pavanasam Achari are one and the same.

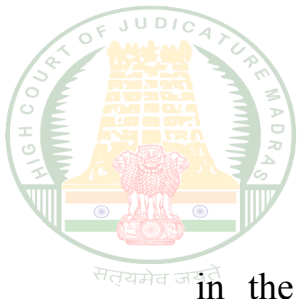
20. PW1 also admitted in his cross examination with regard to Ex.A2. PW1 admits that one P.R.Ravindran has signed as witness in Ex.A5 Will dated 30.04.2009 and Ex.A6 cancellation of Will dated 13.10.2009. PW1 also admitted that Exs.A1, A2 and A7-general power of attorney deed stands in favour of Manavalan. Ex.A8 sale agreement dated 19.11.2009 executed in favour of Ganesan and Ex.A9 sale deed executed in favour of Ganesan dated



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15.02.2010 are photocopies. The appellant/plaintiff has not explained as to why he did not produce the originals before the trial court.

21. PW1 in his cross-examination deposed that he and Manavalan, entered into the sale agreement in the Ex.A8, wherein it has been mentioned that the sale consideration is fixed at Rs.12,00,000/- and PW1 has paid an advance of Rs.1,00,000/- to Subbulakshmi Ammal and not to Manavalan. PW1 deposed that one Pachaiyappan was signed as witness in Ex.A8 sale agreement and Ex.A9 sale deed. He admits that the Ex.A9 sale deed, the sale consideration is shown as Rs.7,50,000/- and the same has been paid to Subbulakshmi Ammal through a cheque and he could not remember the cheque date. He also admits that in Ex.A8 sale agreement, it has been mentioned that PW1 has paid a sum of Rs.1,00,000/- as an advance to the power agent/Manavalan. PW1 also deposed that he has paid a sum of Rs.1,00,000/- as cash, Rs.5,00,000/- as Demand Draft and Rs.5,00,000/- as cheque, in total he has paid a sum of Rs.12,00,000/- to Subbulakshmi Ammal. A perusal of Ex.A8, sale agreement recitals shows that an amount of Rs.1,00,000/- paid as advance. Therefore, the mode of consideration as stated

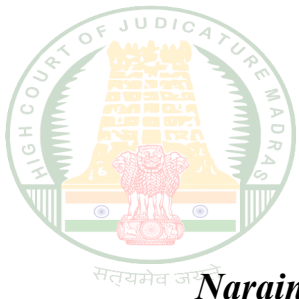


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in the document and oral evidence of PW1 are different. There is no explanation from the appellant/plaintiff. A perusal of Ex.A9 sale deed recitals shows that the amounts were paid as cash.

22. It is to be noted that in the plaint in O.S.No.42 of 2012, there is no averment as to how consideration was paid and the release deed by Subbulakshmi Ammal was consciously not stated or challenged through the suit in O.S.No.42 of 2012 filed after receipt of summons in O.S.No.144/2011.

23. A perusal of Ex.A9 sale deed dated 15.02.2010 shows that stamp duty of Rs.60,000/- has been paid, but, registration charges of Rs.2,00,000/- alone paid will show that something is played submitting the document for registration before the registering officials. Further, it shows that on 06.09.2010, they paid Rs.48,000/- and endorsed on 22.09.2010 and the balance of R.6000/- was paid on 18.10.2010 and on that date itslef, registration was completed. As rightly pointed out by the learned counsel for the respondent that, as per the ratio laid down by the Hon'ble Supreme Court of India in **Har**



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Narain Vs. Mam Chand and Others reported in (2010) 13 SCC 128, that the doctrine of relation back will not apply to sale deed and therefore, the registration is deemed to have been completed only on 18.10.2010 in Ex.A9. Further, Ex.A9 was registered in violation of the decree for injunction in O.S.No.61 of 2005 dated 27.09.2004 in Ex.A33 and Ex.A34.

24. A perusal of Ex.A20 shows that a police complaint was lodged by Subbulakshmi Ammal against the first and second defendants to the Inspector of Police at Neelankarai dated 03.03.2005, in which, the first paragraph speaks about the legal heirship certificate dated 02.03.2006. *Per contra*, the said letter date is mentioned on 03.03.2005, addressed to Inspector of Police and there is no signature in the document and therefore, Ex.A20 cannot be taken into any consideration. The plaintiff has failed to prove that when the possession was handed over to him based on Ex.A9 sale deed. It was also not specifically pleaded and proved that when there was a response into the property by the defendants herein. The plaintiff has not chosen to examine the power of attorney holder Manavalan as witness.

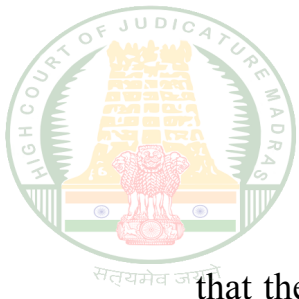


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25. PW2, in his cross examination, admits that he did not see the payment of consideration and he saw the executant lady, whose name, he does not know. Though the first appellant/plaintiff pleads that Subbulakshmi Ammal was present at the time of the registration of both documents and payments had been made to her. From the evidence of PW2 creates doubt over the presence of Subbulakshmi Ammal at the time of registration of documents. Since there is no endorsement from her for payment in Exs.A8 and A9.

26. As per Ex.A8, the sale consideration is Rs.12,00,000/- and as per Ex.A9 sale deed, sale considerations is Rs.7,50,000/-. It is not explained, as to why, there is difference in consideration. There is no document filed to prove the payment made through bank account statement or otherwise, Ex.A9 sale deed states the receipt of cash.

27. It is to be noted that the question validity of adoption is no longer available in view of valid decree passed by the Court in Exs.A33 and A34. Further as per Ex.B3 release deed, wherein, Subbulakshmi Ammal mentioned Mahalakshmi as daughter of Pavanasam Achari. A perusal of Ex.A9 shows

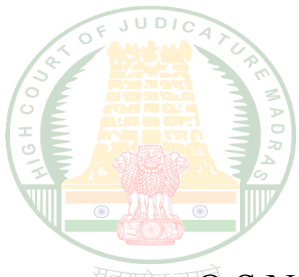


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that the power agent Manavalan is related to A.Ganesan, because, the father's name of Manavalan is A.Manickam. It also created a doubt that Manavalan can be the brother's son of A.Ganesan. A perusal of Exs.A36, A22, B29, B3 and A2 shows that Mahalakshmi had been residing with Pavanasam Achari and Subbulakshmi Ammal from 1960 till the death of Subbulakshmi Ammal and thereafter, as per Ex.A2, after marriage, the second defendant/Kalyanasundaram had been living with Pavanasam Achari and Subbulakshmi Ammal.

28. The plaintiff in O.S.No.51 of 2013 had proved that the documents in Exs.A7, A8 and A9 are void and that they have proved that the plaintiff in O.S.No.42 of 2012 is not entitled to any relief. There is no reason warrants to interfere with the impugned judgment and decree of the Court below. There is no merit in these appeals and the same is liable to be dismissed. The points are answered accordingly.

29. In the result, both the appeal suits are dismissed. The common judgment and decree passed by the Court below dated 28.03.2017 in



O.S.No.42 of 2012 and 51 of 2013 is confirmed. No costs.
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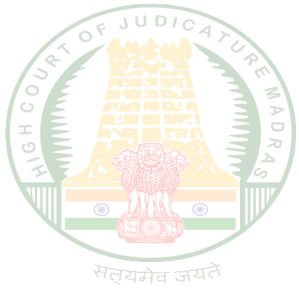
Internet;Yes/No

Index:yes/No

Speaking order/Non-speaking order

To

1. The District Judge, Kancheepuram at Chengalpet.
2. The Section Officer,
V.R.Section, High Court,
Madras.



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M.JOTHIRAMAN,J.

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A.S.No.362 and 363 of 2017

29.08.2025