



A.S.No.539 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :17.07.2025

Pronounced on :30.07.2025

Coram:

THE HONOURABLE DR.JUSTICE G. JAYACHANDRAN

Appeal Suit No.539 of 2022 and
C.M.P.Nos.20089 & 20092 of 2022

Ms.Daisy Dorathy
D/o Late Mr.K.C.Moses
Old No.3, New No.6, Adhisesan Nagar,
Main Street, Perambur,
Chennai 600 012.

.. Appellant/5th defendant

/versus/

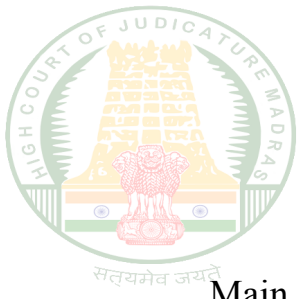
1.Mrs.Metilda Gunamani
W/o Mr.John Santhoshkumar
Old No.3, New No.6, Adhisesan Nagar,
Main Street, Perambur,
Chennai 600 012.

.. 1st Respondent/Plaintiff

2.Mr.W.Paul Windfred Moses

3.Ms.W.Bernice Dorcas

4.Ms.W.Sharon Junitha
(Respondents 2 to 4 are residing at
Old No.3, New No.6, Adhisesan Nagar,



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Main Street, Perambur,
Chennai 600 012)

5.Mr.Wesley,
S/o late Mr.K.C.Moses,
Old No.3, New No.6, Adhisesan Nagar,
Main Street, Permbur,
Chennai 600 012.

..Respondents 2 to 4/Defendants 2 to 4

Appeal Suit has been filed under Section 96 of C.P.C., to set aside the judgment and decree dated 01.07.2022 in O.S.No.2267 of 2019 on the file of the II Additional Judge, City Civil Court, Chennai and allow the above appeal.

For Appellant :Mr.T.Murugamanickam,
Senior Counsel for
Mr.R.Bharath Kumar

For Respondents :Mr.A.Praveen Alexander for R1
No appearance for R4 and R5
Exparte for R2 and R3

JUDGMENT

The suit for partition and declaration, allowed by the Trial Court. The appeal is by the aggrieved 5th defendant.



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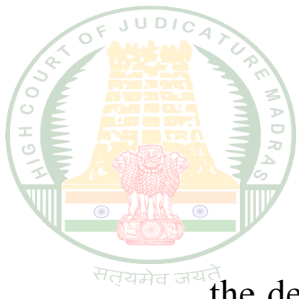
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2. For sake of convenience, parties are referred as per their rank and status in the plaint.

3. The case of the plaintiff.

The suit property was purchased by her father late K.C.Moses on 20.04.1963 from one Jesudoss and four others by way of unregistered sale deed, since then he had been in possession and enjoyment of the property. His children were born and grew in the suit property. On 16.11.1976, K.C.Moses died leaving behind his wife Glory Moses, Metilda Gnanamani (Plaintiff), Elizabeth (deceased), Wesley(4th Defendant) and Daisy Dorathy (5th Defendant). All of them with their family were dwelling in the schedule property for over past 50 years.

4. After the death of K.C.Moses, for the sake of convenience, all the children of Moses gave consent by way of affidavit to their mother Glory to apply and get patta in her name. However, by virtue of inheritance, they all were jointly in possession and enjoyment of the suit property till date. After

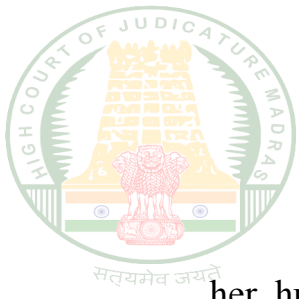


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the demise of Glory, W/o Moses on 20.02.1999, the suit property devolved upon the four children of Moses-Glory. Later, Elezabath died on 05.08.2014, leaving behind three children. By virtue of inheritance, the plaintiff, the legal heirs of Elizabeth (who are the defendants 1 to 3), Wesley (4th defendant) and Daisy Dorathy (5th Defendant) each entitled for 1/4th share in the suit property.

5. All of the sudden, the fifth defendant based on fabricated bogus documents is attempting to dispossess the plaintiff by unlawful means. The fifth defendant with the connivance of other defendants are trying to mortgage/alienate the suit property to the third parties. When the plaintiff applied for encumbrance certificate on 08.03.2019, to her shock and surprise she found a fictitious settlement Deed dated 14.07.1996, registered as document No:2344 of 1996 before the SRO, Purasaiwalkkam as though the mother Glory had settled the entire property in favour of the 5th defendant excluding the other children. Even if the said settlement deed is genuine, Glory can settle only her share in the property which she has inherited from



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her husband Moses and not the entire property. The property tax levied jointly in the name of all the legal heirs of Moses until 2016 which shows joint possession and title. Hence, the settlement deed in favour of 5th defendant is void *abinitio*.

6. Therefore, pray for:-

(a) A Preliminary decree for partitioning and dividing the suit property into 4 share and allot 1/4th shares to the plaintiff and put her in possession of the same.

(b) A final decree by appointing a Commissioner and dividing the suit property by metes and bounds in accordance with the preliminary decree and to allot the plaintiffs share so divided and to put the plaintiff in possession of the property so allotted through Court.

(c) To declare that the settlement deed dated 15.07.1996 registered as document No.2344/1996 before the SRO at Purasaiwakkam executed by the now deceased plaintiffs mother Mrs.Glory Moses, in favour of the 5th defendant as null and void.



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(d) For a Permanent Injunction restraining the 5th defendant her men, and anybody acting on behalf of her from in any manner dealing with the suit property pending disposal of the suit.

(e) To award cost of the suit and to grant such other reliefs as this Hon'ble Court deems fit under the circumstances of the case.

7. Defendants 1 to 4 remind absent and set exparte. The 5th defendant alone filed written statement.

8. According to the 5th defendant, her father Moses purchased the suit property on instalment basis. He died on 16.11.1976 without paying the entire instalments. Her mother Glory, who was a teacher, paid the instalments and became its owner absolutely. She brought up her children and solemnized the marriage of two daughters and one son. The plaintiff, Elizabeth (the mother of defendants 1 to 3) and Wesley the fourth defendant after their marriage, left the suit property and settled in different towns. The 5th defendant a Nun dedicated herself to Christianity was living with her



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mother Glory. They two alone were living in the suit property and enjoying it absolutely. After complete payment of the instalments, sale deed was executed by the Perambur Harijan Welfare Co-operative House Site Society, represented by its Special Officer in favour of Glory Moses w/o K.C.Moses and it was registered as document No:2041 of 1999 before SRO, Purasaiwalkkam, Chennai. Based on the sale deed, the patta was issued in the name of Glory Moses.

9. Due to natural love and affection her mother Glory Moses settled the suit property in her favour vide registered document No:2344 of 1996, dated 15.07.1996. Patta also mutated in the name of the fifth defendant on 15.03.2000. The Electricity service and revenue records are in the name of the 5th defendant. The property tax is paid by the 5th defendant. The suit for partition without declaration of title is hit by Order II, Rule 2 of C.P.C. In addition, the 5th defendant alone is in possession of the property since 1963 undisturbed and had prescribed titled over it. Hence, the suit is also barred by limitation.



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10. Based on the pleadings, the Trial Court framed the following

Issues:-

1. Whether the suit is barred by limitation?
2. Whether the plaintiff is in joint possession of the suit schedule property?
3. Whether the plaintiff is entitled for declaration that Settlement Deed dated 15.07.1996 is null and void?
4. Whether the plaintiff is entitled for permanent injunction as prayed for?
5. Whether the plaintiff is entitled for preliminary decree of partition as prayed for?
6. To what other relief?

11. Two witnesses for the plaintiff and 19 documents in support relied. One witness and 20 documents for the 5th defendant relied.



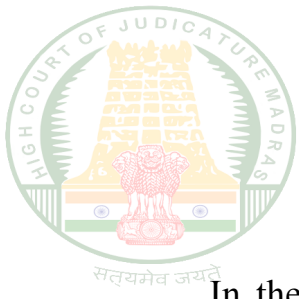
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12. The Trial Court held that the suit for partition is recurring cause of action, hence, the suit is not barred by limitation. The suit property belongs to Moses, hence, the plaintiff being his legal heir, entitle for 1/4th share in the suit property. Glory Moses has no absolute right in the suit property. Her settlement deed Ex.B-5 in favour of 5th defendant is not proved as per law. Hence, declared as null and void and not binding on the plaintiff.

13. The Learned Senior Counsel for the appellate submitted that the judgment and decree suffer infirmities in appreciation of law and facts.

14. Ex.A-1, an insufficient stamped and unregistered document taken as a sale deed for conveyance of immovable property even without description of the property conveyed. The Trial Court erred in ignoring Ex.B-2 a valid registered sale deed in favour of Mrs.Glory Moses by the Special Officer of the Co-operative Society, the true owner of the property.



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In the absence of proof for joint enjoyment, the Trial Court ought not to have granted the preliminary decree of partition. The settlement deed Ex.A-9, is a valid registered document by the title holder. The burden to disprove its validity is on the plaintiff, who is the dominus litis. The learned Trial Judge erred in shifting the burden on the defendants to prove the contrary. The misinterpretation of the pleadings and evidence has lead to serious miscarriage of justice.

15. The Trial Court erred in relying self serving statements of the plaintiff in her notice Ex.A-10 without considering the reply notice Exs.A-12 and 13. The documents produced by plaintiff to prove joint possession are subsequent to the suit. The legal heir certificate of K.C.Moses marked as Ex.A-19, cannot be a document for proof of title. The trial Court has taken into consideration that Ex.A-19 is issued for transfer of property, hence K.C.Moses is the owner of the suit property.



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16. Contrary to the documentary evidence Ex.B-2 a registered sale deed, Ex.B-3 Permanent Land Register, Ex.B8 property tax receipt, the trial Court by pick and choose some averments in the pleadings and oral evidence had declared a valid registered settlement deed Ex.B5 = Ex.A-9 as null and void against the mandate of law. Despite the fact that, the settler Glory, even otherwise as legal heir of Moses, is entitled for 1/4th share and she can convey her share as per her wish. Therefore, the said settlement deed cannot be a void document.

17. Per contra, the learned Counsel for the first Respondent submitted that, the appellant in her written statement had admitted that the suit property absolutely belongs to Mr.S.Jesudoss and four others. Her father Moses purchased it in instalment basis through a unregistered sale deed. In the cross examination, the appellant had agreed that at the time of purchase there was superstructure in the suit property and her father died in the suit property during the year 1976. After conceding that the suit property was purchased by their father Moses, she is stopped to plead contrarily.



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18. All the children of Moses including the 5th defendant had given a consent affidavit Ex.A-2 in which they have unanimously said that the property belongs to Moses and they have no objection to issue patta in the name of their mother Glory. Therefore, even if any records are in the name of Glory, it is only for sake of convenience. The consent affidavit Ex.A-2, will not diminish the right of the shares in the property. The Trial Court has rightly declared the settlement deed Ex.B-5 as null and void since, the 5th defendant failed to prove it in the manner known to law. Hence, there is no infirmity or perversity in the trial Court judgment and decree.

19. Point for determination:

To determine the title of the suit property, whether Ex.A-1 unregistered and insufficient stamped document and Ex.A-2 the joint consent affidavit will prevail over a registered sale deed Ex.B-2.



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20. Examination of Ex.A-1, the unregistered sale deed dated 20.04.1963, it is an hand written on a one rupee fifty paise stamp paper. The value of the property is mentioned as Rs.2600/-. The address of the vendors and the buyer is mentioned, but the property, which is conveyed, is not mentioned. The suit mentioned property is the address of the vendors, but nowhere in the said document, the conveyance of that property is mentioned. The document besides not being stamped sufficiently and not registered, it also suffers ambiguity and vagueness. This document does not even disclose, how the vendors have derived title over the property, which they intended to convey. The trial Court ought to have impounded the document Ex.A1, as per law. It is a document inadmissible in evidence. The Trial Court erred in admitting it and relying on it to decide title.

21. The Trial Court further erred in selectively choosing the pleading and oral evidence of the appellant to overlook and ignore the registered sale deed dated 22.07.1994. This document is a clear proof that the title to the suit property conveyed to Glory Moses by the Co-operative Housing



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Society. Prior to that, no doubt certain documents show, Moses and his family were residing in the suit property. Nonetheless, occupying the property is not proof of title. Till Moses died in the year 1976, the title of the property has not been conveyed by the owners. Only in the year 1994, the Harijan Welfare Society, which own the property, had conveyed it to Glory.

22. In the settlement deed Ex.A-9 = Ex.B-5, Glory had clearly mentioned that she got the property under sale deed Ex.B-2, and she put up construction from her own fund and enjoying it absolutely. She out of love and affection settled it to her daughter the 5th defendant. The recital in the settlement deed explains that she had given enough to all other three children, who are married and well off. Whereas, the 5th defendant is a spinster, taking care of her and living with her.

23. In the said circumstances, Ex.A-2, which is dated 12th April, 1993, a joint affidavit by the children of Moses giving permission to their mother



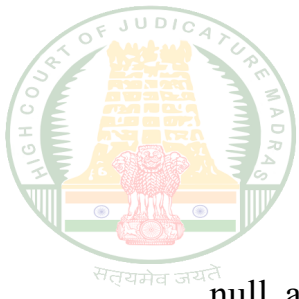
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Glory to apply for issuance of patta on the assertion that the property stands in the name of Moses, is absolutely contrary to the documents. The property never been in the name of Moses. Even Glory did not get the title till 22.07.1994. Whiles, the need to apply for patta in the name of Glory even before getting the sale deed will not arise. If any such document is created, it has to be ignored.

24. Certain admission in the pleadings and in the cross examination is put against the appellant. Those admission if contrary to the content of the document, then it has to clear the embargo under Sections 94 and 95 of BSA (Sections 91 and 92 of the Indian Evidence Act) No ambiguity is found in the sale deed Ex.B-2 unlike Ex.A-1 relied by the plaintiff.

25. The settlement deed Ex.A-9 = Ex.B-5 dated 15.07.1996 is declared as null and void by the trial Court, primarily on the ground that the 5th defendant had not proved the deed as per law. This document is introduced by the plaintiff and she wants this document to be declared as



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null and void, so that she will get right in the property. As pointed out earlier in the recital of Ex.B-5, it is clearly stated, how Glory got the property and why she wants to settle it to her daughter the 5th defendant/appellant. Therefore, when the first respondent filed the suit in the year 2019 for partition and declaration, she know that there is a registered sale deed dated 22.07.1994, in favour of her mother Glory through while Glory claims absolute ownership. However, in the plaint, there is no whisper about Ex.B-2, the registered sale deed in the name of Glory, No plea challenging the said sale deed. Contrarily, an unregistered document Ex.A-1 called as sale deed is relied by the plaintiff. The said deed not even contain the description of property conveyed under the said deed. Thus, suppression of known fact and the malicious intention of the plaintiff is well found. The Trial Court had completely failed ignored to verify these documents and failed to assess the pleading and evidence properly.

26. Unless the title of Glory as per Ex.B-2, dated 22.07.1994 is found defective, the subsequent settlement deed dated 15.07.1996 executed by her



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in favour of her daughter, the appellant herein cannot be declared as null and void. By picking holes in the case of the defendants, the trial Court has overlooked the inherent defect in the plaintiff case .

27. In view of this Court, the plaintiff had come to the Court with unclean hands and belatedly, with false plea of joint possession by suppressing known facts which are vital. These factors necessitate to reverse the finding of the Trial Court.

28. As a result, **the Appeal Suit No:539 of 2022 is allowed.** The judgment and decree of the Trial Court is set aside and the Original Suit No:2267 of 2019 is dismissed with costs throughout. Consequently, connected Miscellaneous Petitions are closed.

30.07.2025

Index:yes/no

Internet:yes/no

Speaking order/non speaking order

Neutral citation:yes/no

17/19



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To

1.II Additional Judge, City Civil Court, Chennai.

2.The Section Officer, V.R.Section, High Court, Madras.



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DR.G.JAYACHANDRAN,J.

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