



A.S.Nos.14 and 15 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.07.2025

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit Nos.14 and 15 of 2019

and

C.M.P.No. 887 of 2019

A.S.No.14 of 2019

A.Augustin

... Appellant

Versus

1. Mari @ Maria Susai
Tmt.Sowriammal @ Anthoniammal
2. A.Prakash (Died)
Mrs. Terasa
3. R.Balraj
4. D.Jayaseely
5. S.Selvi
6. P.Ezhibeath
7. P. Bharathi
8. P. Lalitha

... Respondents

(R2- Died. R7 and R8 are brought on record as LR's of deceased R2, vide order of Court dated 27.02.2024 made in C.M.P.No.2221 of 2022 in A.S.No.14 of 2019).

A.S.No.15 of 2019

Augustin

... Appellant

Versus

Maria Soosai @ Mari

... Respondent

Prayer in A.S.No.14 of 2019:- Appeal Suit is filed under Order XLI, Rule 1



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r/w. Section 96 of Civil Procedure Code against common judgment and decree passed by learned XVI Additional Judge, City Civil Court, Chennai made in O.S.No.7469 of 2010 on 22.03.2018.

Prayer in A.S.No.15 of 2019:- Appeal Suit is filed under Order XLI, Rule 1 r/w. Section 96 of Civil Procedure Code against common judgment and decree passed by learned XVI Additional Judge, City Civil Court, Chennai made in O.S.No.6200 of 2008 on 22.03.2018.

For Appellant : Mr.S.Shanmugasundaram
(in both A.S)

For R1 in A.S.No.14 of 2019
and
for Sole Respondent in
A.S.No.15 of 2019 : Mr.R.Ramanlaal

For R4 to 8 : Mr.V.Karthikeyan
(in A.S.14 of 2019)

COMMON JUDGMENT

The Appeal Suit No.14 of 2019 had been filed against the common judgment and decree passed by learned XVI Additional Judge, City Civil Court, Chennai made in O.S.No.7469 of 2010, dated 22.03.2018.

2. The Appeal Suit No.15 of 2019 had been filed against the common judgment and decree passed by learned XVI Additional Judge, City Civil Court, Chennai made in O.S.No.6200 of 2008, dated 22.03.2018.

3. **The brief facts which are essential to decide the Appeals are as**



WEB COPY 3.1. The suit schedule properties were allotted to one Munusamy, the father of the Plaintiff and the Defendant in O.S.No.6200 of 2008 and father of the Plaintiff and the Defendants 2 to 4 in O.S.No.7469 of 2010. The Defendant in O.S.No.6200 of 2008 is the Plaintiff in O.S.No.7469 of 2010. O.S.No.7469 of 2010 had been filed for relief of declaration that the settlement deed dated 18.03.2005 executed by the mother of the Plaintiff and the Defendants in O.S.No.7469 of 2010 in favour of Defendant-2 in O.S.No.7469 of 2010 as null and void, bearing Document No.1244 of 2005 on the file of the Sub-Registrar, Kodambakkam and for consequential relief of partition and separate possession of 'A' Schedule property.

3.2. The suit contained two properties, Schedule 'A' and Schedule 'B'. Partition was sought only against Schedule 'A' property. As per the plaint averments, Schedule 'B' property was orally agreed to be given to Defendant-4 and Schedule 'A' property was orally agreed to be divided between the Plaintiff and the Defendant in O.S.No.6200 of 2008. O.S.No.6200 of 2008 was filed by the Plaintiff, Augustine against the Defendant, Mari @ Mariasusai seeking the relief of eviction against the Defendant and also for permanent injunction restraining the Defendant from executing any lease Deed. The Plaintiff in O.S.No.6200 of 2008 claimed that the mother of the Plaintiff, the first



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Defendant in O.S.No.7469 of 2010 had executed a settlement deed dated 18.03.2005 which is registered with the Sub-Registrar, Kodambakkam as Document No.1244 of 2005, therefore, the Plaintiff, Augustine in O.S.No.6200 of 2008, claimed ownership of the 'A' schedule property in O.S.No.7469 of 2010.

3.3. The suit in O.S.No.7469 of 2010 was filed by the Defendant in O.S.No.6200 of 2008 wherein they disputed the fact that the mother of the Plaintiff and the Defendants had executed a settlement deed in favour of the Plaintiff in O.S.No.6200 of 2008. The claim of the Defendants was that even if the settlement deed was executed, their mother did not have a valid title over the property in order to execute the settlement deed. Therefore, the suit was filed in order to declare the same as null and void.

3.4. The contention of the both the Plaintiffs in O.S.No.6200 of 2008 and O.S.No.7469 of 2010 is that the properties were allotted by the Tamil Nadu Housing Board in favour of Munusamy, the father of the Plaintiff and the Defendants in O.S.No.7469 of 2010 dated 21.08.1979. The said property is a house site with an extent of 429 Sq.ft at No.I-101-A-Type, Block No.22, Arumbakkam.

3.5. On 17.11.1979, the Allottee, the father of the Plaintiff and the Defendants, Munusamy died. Therefore, the legal heirs of Munusamy, the



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Defendants 2 to 4 in O.S.No.7469 of 2010 had to execute a '*No objection letter*'

to the Tamil Nadu Housing Board, based on which the site was allotted in the name of the Defendant-1 in O.S.No.7469 of 2010, she being the mother of the Plaintiff and Defendants 2 to 4 in O.S.No.7469 of 2010. Accordingly, the same was registered in the name of Defendant-1/Sowriammal, mother of the Plaintiff and Defendants 2 to 4 in O.S.No.7469 of 2010. She had mortgaged the property with Theyagarayar Nagar Co-operative Bank and put up construction. The mortgage loan was repaid by the Plaintiff in O.S.No.6200 of 2008, as per the claim of the Plaintiff. Subsequently, the mother of the Plaintiff and Defendants 2 to 4 in O.S.No.7469 of 2010, obtained a loan for the purpose of performing the marriage of the son of Defendant-4 in O.S.No.7469 of 2010 for which she had again mortgaged the property. This loan was also settled by the Plaintiff in O.S.No.6200 of 2008, as per the claim of the Plaintiff in O.S.No.6200 of 2008. That is why, the mother of the Plaintiff and the Defendants in O.S.No.6200 of 2008 executed a settlement deed dated 18.03.2005 in favour of the Plaintiff, which was registered at the office of the Sub-Registrar, Kodambakkam. This claim of the Plaintiff in O.S.No.6200 of 2008 is disputed by the Defendant in the same suit. Therefore the Defendant in O.S.No.6200 of 2008 had filed the suit in O.S.No.7469 of 2010 in which: Defendant-1 is the mother, Defendant-2 is the Plaintiff in O.S.No.6200 of 2008, and other Defendants are the brother and sister of the Plaintiff in



O.S.No.7469 of 2010 and O.S.No.6200 of 2008.

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3.6. The entire family members were impleaded as Defendants in O.S.No.7469 of 2010 as it was a partition suit. Both the suits were hotly contested. Since the suit in O.S.No.6200 of 2008 was the earlier suit, the Plaintiff in O.S.No.6200 of 2008 was examined as P.W-1. Sugumar, Assistant Inspector, TNHB was examined as P.W-2. The Defendant in O.S.No.6200 of 2008, Maari @ Maria Susai was examined as D.W-1, One A.Prakash, Defendant-3 in O.S.No.7469 of 2010 was examined as D.W-2, Ms.S.Selvi, Defendant-7 in O.S.No.7469 of 2010, who was one of the legal heirs of the deceased Defendant-4 was examined as D.W-3.

3.7. On the side of the Plaintiff, the documents were marked as Ex.A-1 to Ex.A-19. On the side of the Defendants in O.S.No.6200 of 2008 (Plaintiff in O.S.No.7469 of 2010) the documents were marked as Ex.B-1 to Ex.B-22. As per the claim of the D.W-2, he was employed in I.I.T and therefore, he had paid the dues to the Tamil Nadu Housing Board as well as to the Theyagarayar Nagar Co-operative Bank for the mortgage loan.

4. **The brief averments in the Complaint in O.S.6200/2008 are as follows:-**

4.1. The Defendant is his younger brother. The house site with an



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extent of 429 sq.ft. including separate toilet bearing Plot No.1-101-A-Type.

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Block No.22, Arumbakkam was allotted by Tamil Nadu Housing Board on 21.08.1979 in favour of the father of both the Plaintiff and the Defendants. When their father expired on 17.11.1979. the mother of both the Plaintiff and the Defendants took possession of the house site and paid entire instalments as per the order of allotment. Even though (1) Sowriammal (2) Prakash (3) Terasa (4) Mariasoosai (defendant) and (5) A.Augustin (plaintiff) are legal heirs of the said allottee, Munusamy, the Tamil Nadu Housing Board transferred the allotment in favour of the mother namely Sowrammal as per the order dated 11, based on the consent given by all other legal heirs (including the Defendant). The Plaintiff further submitted that subsequently their mother, obtained a loan of Rs.2 lakhs from Theyagarayar Nagar Co-operative Bank in the year 1999 and constructed ground floor, first floor, and second floor on the said house site. The mother paid entire instalments to the Tamil Nadu Housing Board and obtained the sale deed in her favour under the Registered sale deed vide document No 142/99 on the file of Sub Registrar. Kodambakkam. Further the property tax, electricity connection, drainage connection were obtained in her name. Hence, the mother of both the Plaintiff and the Defendants became the absolute owner of the said house site and the constructed building therein.

4.2. The Plaintiff further submitted that the mother obtained another



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loan of Rs 2 lakhs from the City West Benefit Fund for the purpose to meet out the expenses of her daughter's marriage as well as to settle certain loans. Since the Plaintiff paid Rs.1 lakh to settle the dues obtained from the Theyagaraya Co-operative Bank, regularly paying monthly instalments towards the loan amount of Rs.2 lakhs obtained from the City West Benefit Fund and having spent a huge amount towards Terasa's son's marriage, the mother of the Plaintiff and the Defendants settled the said land and house in favour of the Plaintiff under the registered settlement deed No.1244/05, on the file of SRO Kodambakkam. The Plaintiff then took possession of the said land and house, and transferred the electricity connection, metro water and drainage connection, and property tax to his name. Now the Plaintiff is the absolute owner of the said house and land, and has been enjoying the same without any hindrance.

4.3. The Plaintiff further submitted that the Defendant has been residing in the second floor of the said premises (which is more fully described in the schedule) from 1996 onwards with the permission of their mother. During execution of the settlement deed executed by their mother in favour of the Plaintiff, the Defendant had agreed to vacate the premises within 3 months. Since the Defendant is the brother of the Plaintiff, the Plaintiff permitted the Defendant to reside in the said premise even after a lapse of 3 months. After a



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lapse of 3 months, the Plaintiff approached the Defendant several times and requested him to hand over the vacant possession, but the Defendant had evaded the Plaintiff's requests. Subsequently, the Defendant had misused the electricity connection which is in the name of the Plaintiff. Moreover, the Defendant had deliberately and wantonly caused nuisance to the tenant as well as interfered with the possession of the Plaintiff in several methods. Further, the Defendant deliberately used filthy language against the Plaintiff and his family members, and quarreled with him. Several times, the Defendant assaulted the Plaintiff and his wife. Consequently, the Plaintiff complained against the Defendant to the police, who conducted enquiries and advised the Defendant to not to disturb the Plaintiff's enjoyment of the said property, but the Defendant had not changed his attitude. On 24.04.07, the Defendant deliberately damaged the mirror in the premises, and consequently, the Plaintiff lodged police complaint before the K.8, M.M.D.A. Police Station and the police again warned the Defendant. However, the Defendant again assaulted the wife of the Plaintiff, and she consequently lodged a police complaint, and the same was registered against the Defendant. The Defendant defrauded one Pandurangan by pretending to be the owner of the premise, let out a portion of it, and received Rs.80,000/- as advance from him prior to the settlement in favour of the Plaintiff. When the Plaintiff approached the said Pandurangan and objected to this, and requested that he vacate the portion, he refused to do



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so. After the settlement deed, the Plaintiff requested him to pay the rent, he agreed to pay the same. However, when he failed to pay the rent, the Plaintiff filed an eviction case in R.C.O.P. No.1272/05 against him, and obtained a decree in his favour. When an appeal was preferred in R.C.A. No.1060 of 2006, a compromise was arrived between the parties during the pendency of the appeal. Pursuant to this compromise, the Plaintiff returned the advance amount of Rs.80,000/- to Pandurangan, which was not received by the Plaintiff from the Defendant. Subsequently, the said Pandurangan handed over the possession to the Plaintiff, and the Plaintiff is now in possession of the said portion. For the above said reasons, the Defendant is liable to pay a sum Rs.80,000/- to the Plaintiff and a sum of Rs.45,000/- towards arrears of rent. In total, the Defendant is liable to pay a sum of Rs.1.25,000/- to the Plaintiff.

4.4. The Plaintiff is the owner of the entire premises including the schedule property and he holds a perfect title over the property. The Defendant has no *locus standi* to reside there. Further, the Defendant has no share over the said premises. There is no tenancy relationship or lessor - lessee relationship between the Plaintiff and the Defendant. Hence, the occupation of the second floor by the Defendant is illegal, and the Defendant is liable to pay damages. The Defendant had neither challenged the settlement deed in favour of the Plaintiff nor the sale deed in favour of the mother of the Plaintiff. It clearly



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reveals that he admits the title of the Plaintiff. But he refused to deliberately hand over the possession to the Plaintiff. Hence, the Plaintiff has no other option but to initiate legal proceedings against the Defendant for the delivery of possession.

4.5. The Plaintiff issued mandatory legal notice dated 30.04.2007 against the Defendant for the delivery of possession, but the same was returned by the Defendant on 05.05.2007. Even after a lapse of one year, the Defendant did not send any reply nor did he hand over the vacant possession of the schedule property to the Plaintiff. Hence, this suit for recovery of possession and for damages for use and occupation.

5. **The brief averments in the written statement filed by the Defendant in O.S.6200/2008 are as follows:-**

5.1. The Plaintiff deliberately suppressed the date of allotment and the allotment in favour of the father of the parties to the suit. Immediately after the allotment, the father of the Plaintiff and the Defendant died on 17.11.1979. Since the original allottee died, their mother being the eldest member of the family, the Tamil Nadu Housing Board had asked the mother of the Plaintiff and the Defendant to come in the place of the original allottee and hold the property for the benefit of all the legal heirs of the deceased allottee ie. the father of the Plaintiff and the Defendant. It is contended that neither did this



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Defendant nor any other family members gave such a consent. The mother does not have any independent right over the suit property. Immediately after the allotment of the property to their mother by the Tamil Nadu Housing Board, a tiled house was constructed and the entire family lived in the tiled house. The old tiled house was demolished and the ground floor portion was constructed. The Plaintiff occupied the first floor and the Defendant resided in the 2nd floor. The ground floor is reserved for commercial purpose. The Defendant is the only earning member of the family. The mother was also not earning anything. It was from the income of this Defendant that the monthly dues were paid to Tamil Nadu Housing Board. This Defendant was instrumental in getting the loan. The Plaintiff, the Defendant and other members of the family are parties to the mortgage. The Plaintiff was neither involved in obtaining of the loan nor in the discharge of the loan, so the Plaintiff was not able to give the correct particulars. The mortgage was discharged on 23.08.2004 by the Defendant. The Defendant is a party to the mortgage deed as well as the deed of discharge of mortgage; so it is clear that the suit property is not the absolute property of the mother and that the mother cannot deal with the property. The Defendant is a party to the loan as well as the discharge of the loan, as the property is a joint family property, the mother of the Plaintiff and the Defendant held the property in trust of the entire family, and thereby, the Defendant has a share in the suit property The Defendant paid



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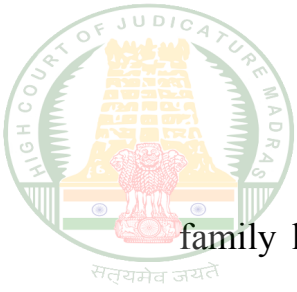
arrears to the Tamil Nadu Housing Board and saved them from being evicted by the Tamil Nadu Housing Board. This Defendant is residing in the suit property as a share holder, which is his right. Therefore, the permission of the mother is not required. Right from the date of allotment and subsequent reconstruction to till date, this Defendant along with his family has been residing in the suit property. This Defendant had never been asked by anyone to vacate the house and no one had asked this Defendant to vacate the house within 3 months. When the mother was alive, there was an oral partition among all the family members, including the Defendant and the Plaintiff. In the oral partition, it was agreed that the Defendant and the Plaintiff will have equal share in the suit property, and the Plaintiff was to reside in the first floor and the Defendant to reside in the 2nd floor. It was further agreed that the Plaintiff and the Defendant were to share the rental income obtained from renting out the ground floor. The Plaintiff had cut off power supply and consequently, this Defendant filed W.P. 30406 of 2007. In view of the order passed in the above said Writ Petition, the Defendant obtained electricity connection in his name. The Defendant let out the property as the Co-owner of the property. The Plaintiff and their mother were aware of the same and the Plaintiff also shared the rental income with the Defendant. This Defendant was not aware of the R.C.O.P. No. 1272 of 2005 and R.C.A. No. 1060 of 2006. The Plaintiff by colluding with the above said Pandurangan had created certain documents.



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Such documents are not binding on this Defendant. The advance amount was returned by both the Plaintiff and the Defendant to Pandurangan, and the said Pandurangan vacated the premises on the consent of the Plaintiff and the Defendant. This Defendant's father when alive applied for another allotment of flat before the Tamil Nadu Housing Board, and subsequently the father was allotted Flat No.82, 'e' Block, Ground Floor, Osankulam, Kilpauk, Chennai-10. This property is now occupied by the Plaintiff's and the Defendant's sister. There was an oral partition in the family and as per the oral partition the Plaintiff and the Defendant were entitled to live in the suit property and share the rental income. The sister of the Plaintiff and the Defendant was to take the house at Osankulam, and their other brother viz., Prakash was not given any share as he is a Government Servant. As per the oral partition, this Defendant and the Plaintiff shared the total rental income from the suit property, and the Defendant resided the second floor and the Plaintiff resided in the first floor. The alleged settlement was not known to the Defendant till the filing of the suit. The alleged settlement deed is void and is not binding on any one and hence, the alleged settlement does not confer any right upon the Plaintiff. There is no need to challenge the sale deed in favour of the mother because the mother was holding the suit property in trust of the entire family members as the father of the Plaintiff and Defendant was the original allottee, and it was only because the original allottee died, the mother as a senior member of the



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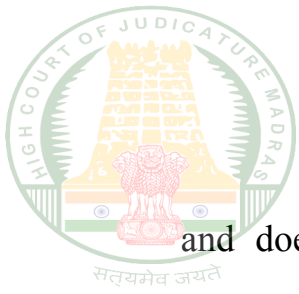
family held the property. On the own admission of the Plaintiff, the suit is liable to be dismissed.

6. The brief averments in the additional written statement filed by the Defendant in O.S.6200/2008 are as follows:-

6.1. This Defendant denied the description in the plaint of him being Christian. This Defendant and his family are Hindu and practice Hinduism. The Plaintiff had deliberately attributed wrong religion to this Defendant with an ulterior motive to overcome the disqualification attached to the rule of succession. The Plaintiff also added an alias named as Maria Soosai to this Defendant, whereas in all the records, this Defendant's name stands as Mari. The Plaintiff is scheming in order grab the property. The court fee arrived by the Plaintiff is not correct. The court fees is to be computed on the basis of the market value of the suit property and not on the basis of the annual rental value.

7. The brief averments in the plaint in O.S. No. 7469/2010 are as follows:-

7.1. The 1st Defendant is the mother of the Plaintiff and the Defendants 2 to 4 are the brothers and sisters of the Plaintiff. The 4th Defendant is the Plaintiff's elder brothers and one sister. The last brother by name Mr. Arokiadoss died in the year 1984. Mr. Arokiadoss died as a bachelor



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and does not have any issues. The Plaintiff stated that the name of the Plaintiff's father is Munusamy and he was working as a Plumber at Madras Metro Water and Sewerage Board. The Plaintiff's and the Defendants 2 to 4's father and the first Defendant's husband died on 17.11.1979, leaving behind the Plaintiff and Defendants as his legal heirs.

7.2. The Plaintiff and the Defendants were living together as one family. The Plaintiff started working as an office boy in the shop of Turakhia for about 4 years from the age of 16 years in order to help the family, as the Plaintiff's father was earning only a meagre income and the said income was not sufficient to run the family. Subsequently, the Plaintiff started working with one E.S. Moorthy, who was dealing with spectacles. The Plaintiff helped the family consisting of the Defendant and Plaintiff with his entire earnings. The entire income of the Plaintiff was given to the Plaintiff's parents, and the income of the Plaintiff was brought into the hotchpot and used for the development of the entire family.

7.3. The Plaintiff's father applied to Tamil Nadu Housing Board for allotment of a plot and the property at No.101, I Block was allotted to the Plaintiff and the Defendants 2 and 3's father and the first Defendant's husband. The property is more fully described in Schedule 'A' to the plaint. The Schedule 'A' property was allotted in the year 1979. Immediately after the



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allotment of Schedule A' property the 1st Defendant's husband and the Plaintiff and Defendants 2 to 4's father died on 17.11.1979. Since the original allottee died and the 1st Defendant being the eldest member of the family, the Tamil Nadu Housing Board asked the first Defendant to come in the place of the original allottee and hold the property for the benefit of all the legal heirs of the deceased allottee i.e.. the Plaintiff's father. The 1st Defendant held the property for the benefit of the family, and thus the first Defendant does not have any independent right over the 'A' Schedule Property. After the death of the Plaintiff and the Defendants 2 to 4's father and the 1st Defendant's husband, the Plaintiff being the only earning member of the family paid installments due to the Tamil Nadu Housing Board. The earning of the Plaintiff was brought into the hotchpot and was used for the benefit of the entire family. There exists a joint family nucleus. The Plaintiff has got right in the schedule mentioned properties. Neither the 1st Defendant nor the other Defendants have any independent right in the schedule mentioned properties. The 1st Defendant has got no means to purchase the schedule mentioned properties. The earnings of the Plaintiff was used for the development of the Schedule 'A' mentioned property. There was default in payment of the monthly dues to the Tamil Nadu Housing Board. The Tamil Nadu Housing Board tried to evict the Plaintiff from the 'A' schedule property. The Plaintiff paid the arrears to the Tamil Nadu



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Housing Board. The 'A' schedule mentioned property was purchased purely out of the income of the Plaintiff. The 1st Defendant does not have any independent means of income to purchase and develop the schedule mentioned properties.

7.4. After allotment of the Plot i.e, the 'A' schedule property, a small Bangalore tiled house was already there in the said property. It was decided that the Bangalore tiled structure be demolished and a new house be constructed. The Plaintiff stated that the Bangalore tiled house was demolished and a new house was constructed out of the earnings of the Plaintiff, and the family of the Plaintiff and the Defendants were living in the 'A' schedule mentioned property. The housing warming ceremony was done on 05.03.2001 by the Plaintiff and the Defendants. After the entire construction of the house, there was an oral understanding between the Plaintiff and the Defendants that the Plaintiff would occupy the 2nd Floor of the 'A' schedule property and the 2nd Defendant to occupy the first floor, and the Plaintiff and the 2nd Defendant would share the rental income of the non residential portion in the ground floor. The 1st Defendant and the 4th Defendant were to have the 'B' schedule property. The 3rd Defendant agreed not to take any share as the 3rd Defendant is employed in a Government organization. A mortgage loan was obtained from Thiagaraya Nagar Co-operative Bank Ltd. on 31.07.1999. By



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obtaining the loan, the ground floor portion was constructed. Subsequently, another loan of Rs.2,00,000/- was taken for further improvement of the property and the present structure of the first and second floor was constructed. The ground floor was made as a commercial area and let out to tenants. Various tenants occupied the let out portions, and the present tenants are (1) K. Marimuthu. (2) Mr. Kannan, and (3) Ashraff. The Plaintiff contributed to the settlement of mortgage debt and the mortgage was discharged on 23.08.2004. The Plaintiff is a party to the deed of mortgage as well as the discharge of the mortgage. This would clearly reveal that the property is a joint family property.

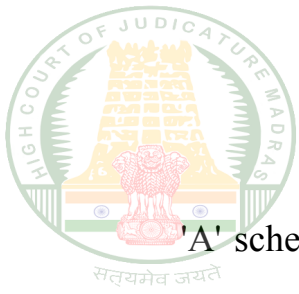
7.5. The Plaintiff stated that while the Plaintiff and the Defendants 2 to 4's father was alive, he applied for another allotment for flat before the Tamil Nadu Slum Clearance Board. The Plaintiff's and the 1 Defendant's husband and the Defendants 2 to 4th defendant is living in the 'B' schedule property. It was orally agreed between the Plaintiff and the Defendants that the Plaintiff and the second Defendant were to reside in the 'A' schedule property. The Plaintiff was to occupy the second floor and the second Defendant to occupy the first floor. There are 3 shops in the ground floor, and the Plaintiff and the second Defendant were to share the rental income from the 'A' schedule property. The Plaintiff and the 2nd Defendant are in joint possession of the 'A' schedule property and the Plaintiff has got a share in the 'B' schedule property. The 1



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Defendant and 4th Defendant are residing in the 'B' schedule property will be given to the defendant. Since the 3rd Defendant is employed in Government service, the 3rd Defendant did not claim any share in the schedule mentioned properties. This oral partition is binding on the Plaintiff and the Defendants.

7.6. The Plaintiff stated that in the 'A' schedule property there are three tenants. One Mr. Mari Muthu occupied one of the three portion and running a shop in the name and style of "Sangeetha Oil Store" and he is paying a monthly rent of Rs.3,000/- and paid an advance amount of Rs.30,000/- The second tenant is Mr. Kannan and is running a commercial establishment in the name and style of "Thai Pharmacy" and paying a rent of Rs.3,000/- and paid an advance of Rs.30,000/- The third tenant is paying a monthly rent of Rs.11,000/- In September 2007, the 2nd Defendant cut off power supply to the portion occupied by the Plaintiff in the 'A' schedule property. The Plaintiff stated that the Plaintiff filed W.P. No.30406 of 2007 for electricity connection in which the 2nd Defendant was also a party and that he filed a counter. The Hon'ble High Court by an order dated 17.12.2007 allowed the Writ Petition and now the Plaintiff has a separate electricity connection. The 2nd Defendant also gave a police complaint. The 2nd Defendant wanted to grab the 'A' schedule property for himself. The Plaintiff occupied the 'A' schedule mentioned properties as a share holder. The Plaintiff cannot be divested of the



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'A' schedule property. The schedule mentioned properties were allotted to the Plaintiff's and Defendants 2 to 4's father. The 1st Defendant was holding the schedule mentioned property for the benefit of the family and does not have any independent right over the schedule mentioned properties. The 1st Defendant does not have any independent income to pay for the cost of the schedule mentioned properties.

7.7. The Plaintiff stated that as per the oral understanding between the Plaintiff and the Defendants, the 3rd Defendant agreed not to take any share in the joint family properties. The 'B' schedule property is agreed to be given to the 4th Defendant. The 4th defendant was married prior to 1989 and cannot claim any share in the schedule mentioned properties, but to honour the family understanding, the 4th Defendant is added as a party, and as per the family understanding, the 4th Defendant is entitled to the 'B' schedule property. Since the 2nd Defendant has now started to act adverse to the family arrangement, the Plaintiff is forced to claim share in the 'A' and 'B' schedule mentioned properties. The 'A' Schedule property was mortgaged by a Deed of Mortgage to the Chennai Theagaraya Nagar Co-operative Society by the Plaintiff and the Defendants and the said mortgage was discharged by means of a receipt dated 23.06.2004 executed by the Plaintiff and the Defendants. Since the 2nd Defendant wanted to throw the Plaintiff out of the 'A' schedule property



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without any reason, the Plaintiff is put to the necessity of filing this suit. The

Plaintiff is entitled to share 1/2 in the schedule mentioned properties. The 3rd

Defendant cannot claim any share as per the oral understanding between the

Plaintiff and the Defendants. At the time of filing of the suit, the Plaintiff

received a summon in O.S. No.6200 of 2008 filed by the 2nd defendant herein.

The deceased first defendant does not have absolute title over the 'A' schedule

property. The second Defendant herein exercised undue influence and took

advantage of the old age and lured our mother to sign some documents without

disclosing the true character of the document. The Plaintiff and Defendant's

mother wanted the 'A' schedule property to be partitioned among the Plaintiff

and other Defendants. The purported settlement deed is not a document in

present. The Plaintiff's and the Defendant's mother does not have power to

settle the property on anyone, as the property at Plot. No.1-101, Block No.22,

Gnana VinayakarKoil Street, M.M.D.A. Colony, Arumbakkam, Chennai-600

106 (Schedule 'A' to the plaint) is a joint family property. The property is a

Hindu Undivided Joint Family property. The deceased first Defendant was

holding the property on behalf of the entire family. Without prejudice to the

contention that the alleged settlement deed is a void document, the Plaintiff

may permitted to point out that. The Plaintiff came to know about the alleged

settlement only at the time of preparing of the written statement in O.S.

No.6200 of 2008 and the same is the stand taken by the 2nd and 4th



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Defendants in the present suit and so the prayer for revoking the alleged settlement deed is within time.

8. The brief averments in the written statement filed by the 2nd Defendant in O.S. No. 7469/2010 are as follows:-

8.1. The Plaintiff was well aware of the facts about the above settlement deed, prior to the suit. Hence, the Plaintiff should have included the prayer to declare the said settlement deed as null and void, at the initial stage when he presented the plaint in the court, and not subsequently. The prayer for declaration to declare the settlement deed as null and void cannot be included after raising such plea by second defendant through his written statement. Further the Plaintiff was well aware of the execution of settlement deed by the first Defendant to the second Defendant, on 18.03.2005 itself. The Plaintiff also agreed to vacate the portion within three months, but he failed to vacate. Hence, the second Defendant filed the suit in O.S.No.6200/2008 for delivery of possession. Further the Plaintiff filed a writ petition in 2007 in W.P.No.30406 of 2007 seeking direction to TNEB to provide electricity connection to him, in which he clearly included the second Defendant herein as the owner of the 'A' suit property. It shows that the Plaintiff was well aware of the settlement deed in 2007 itself. Further, the Plaintiff issued legal notice dated 10.05.2005, through one advocate, Mr.C.Regurajan to the Defendants 1 to 3 to safeguard the rights of one Pandurangan, the tenant in 'A' schedule property, The portion

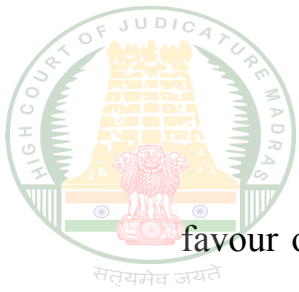


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was let out by the Plaintiff. Subsequently, the second Defendant filed eviction petition against the said Pandurangan in R.C.O.P. No.1272/2005, in which the same advocate, Mr.C.Regurajan appeared for Pandurangan. The second Defendant filed certified copy of the said settlement deed as Exhibit P-2 in the said R.C.O.P. No.1272/2005 and got decree in his favour and finally evicted him through due process of law. The above facts clearly reveals that both the Plaintiff and the said Pandurangan colluded together and initiated the legal proceedings through the same Advocate, Mr.C.Regurajan. It reveals that, in 2005 itself, the Plaintiff was aware of the said settlement deed. Therefore, according to the Limitation Act, the Plaintiff herein ought to have challenged the settlement deed before 2008. The relief of declaration to declare the settlement deed is null and void, and is barred by limitation.

8.2. As per the above sale deed, the first Defendant became the absolute owner and she had every right to execute the settlement deed in favour of the second Defendant. It is absolutely false that the Schedule 'A' suit property comes under the purview of Hindu Joint Family property. Unless the sale deed in favour of the first Defendant is declared null and void, the settlement deed executed by first Defendant to the second Defendant cannot be declared as null and void because it is contrary to the statutory rights of the first Defendant acquired through the said sale deed. Since the sale deed in

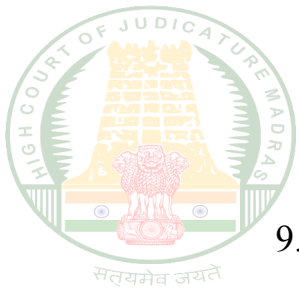


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favour of the first Defendant was clearly admitted by the Plaintiff herein, the relief of declaration to declare the settlement deed as null and void is not maintainable and is liable to be dismissed. Unless the Plaintiff proves the fact that the Schedule A property comes under the purview of Hindu Joint Family, through proper documentary evidence, he cannot claim any relief under the pretext of Hindu Joint Family property. The Plaintiff herein and the Defendants are Christians, but the Plaintiff claiming his right as a Hindu, shows the character of the plaintiff. The second Defendant has denied that the A-schedule property comes under the purview of Hindu Joint Family Property.

8.3. The Second Defendant further submitted that the Plaintiff has no right over both the schedule properties. The second Defendant is the absolute owner of the schedule A property vide documents No.142/1999 and 1244/2005, both on the file of SRO. Kodambakkam. Under the ill-advice of his wife and his in-laws, the Plaintiff is trying to grab the schedule A property by filing false and vexatious suit against the second Defendant. For the reasons stated above, the suit is not maintainable either in law or on facts, and is liable to be dismissed.

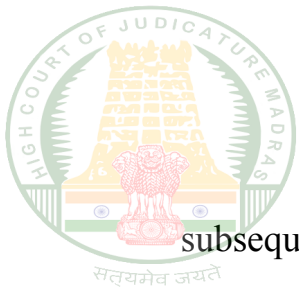
9. The brief averments in the Additional Written Statement filed by the 2nd Defendant and adopted by 4th defendant in O.S. No. 7469/2010 are as follows:-



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9.1. The Plaintiff is the younger brother of the second Defendant and the first Defendant is the mother of the Plaintiff and other Defendants and the third and fourth Defendants are the elder brother and sister of the second Defendant. Even though the first Defendant expired on 25.03.2009 and necessary memo was filed by the second Defendant long back, the Plaintiff has not taken necessary steps to that effect. The second Defendant specifically denied the averments made in paras 2 to 10 of the plaint and puts the Plaintiff to prove the same through documentary evidence.

9.2. The second Defendant submits that the schedule 'A' property/house site with an extent of 429 sq.ft. including separate Toilet bearing Plot No.1-101-A-Type, Block No.22, Arumbakkam was allotted by the Tamil Nadu Housing Board on 21.08.1979 in favour of father of both the Plaintiff and the Defendants 2 to 4. Since the said father expired on 17.11.1979, the first Defendant/the mother of both the Plaintiff and Defendants 2 to 4 took possession of the house site and paid entire instalments as per the order of allotment out of her earnings. Even though the Plaintiff and Defendants 1 to 4 are the legal heirs of said allottee Munusamy, on the basis of the consent given by all other legal heirs including the Plaintiff, The Tamil Nadu Housing Board transferred the allotment in favour of the first Defendant as per order dated 11.08.1980. The second Defendant further submitted that



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subsequently, the first Defendant obtained a loan of Rs.2 lakhs from Theyagaraya Nagar Co-operative Bank in 1999 and constructed the ground floor, first floor, and second floor in the said house site. The first Defendant paid the entire instalments to the Tamil Nadu Housing Board and obtained sale deed in her favour under Registered Sale Deed vide document No.142/99 on the file of Sub-Registrar, Kodambakkam,. Further, the property tax, electricity connection, and drainage connection were also obtained in her name. Hence the first Defendant/mother of both Plaintiff and other Defendants became absolute owner of the said house site and the building therein and has perfect title over the schedule 'A' property.

9.3. The first Defendant obtained another loan of Rs.2 lakhs from City West Benefit Fund, for the purpose to meet out the expenses of her grand daughter's marriage as well as to settle certain private loans. Since the second Defendant paid Rs.1 lakh to settle the dues obtained from Theyagarayar Nagar Co-operative Bank, paid regular monthly instalments towards the loan of Rs.2 lakhs obtained from City West Benefit Fund, and spent a huge amount towards Terasa's son's marriage, the first Defendant settled the schedule 'A' property in favour of the second Defendant under the registered settlement deed No.1244/05, on the file of S.R.O.Kodambakkam and the second Defendant took possession over the said property and transferred the electricity service connection, metro water and drainage connection, and property tax in his



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favour. Accordingly, now the second Defendant is the absolute owner of the suit property and he has been enjoying the same without any hindrance for the past 6 years.

9.4. The Plaintiff was well aware of the settlement deed executed by first Defendant in favour of the second Defendant. However, he suppressed the above fact and filed the above suit without challenging the above settlement deed. Actually, the Plaintiff had agreed to vacate the premises/portion of Schedule 'A' suit property which was occupied by him, within 3 months from the date of settlement deed. However, it was the second Defendant, who is the brother of the Plaintiff who permitted him to reside in the suit property. After a lapse of 3 months, the second Defendant approached the Plaintiff several times and requested him to hand over the vacant possession, but the Plaintiff gave evasive reply. Subsequently, the Plaintiff had misused the electricity connection which stands in the name of the second Defendant. Several times, the Plaintiff had assaulted the second Defendant and his wife, and they consequently lodged complaint against the Plaintiff and subsequently, the police conducted enquiries and advised him not to disturb with the enjoyment of the property of the second Defendant, but the Plaintiff had not changed his attitude. On 24.04.2007, the Plaintiff deliberately damaged the mirror in the premises of the second Defendant and he lodged a police complaint before K-8, M.M.D.A. Police Station, and the police also warned the Plaintiff. Further,



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the Plaintiff assaulted the wife of the second Defendant to which she lodged a complaint and the same was registered against him and the above complaints are still pending. The Plaintiff had defrauded one Pandurangam by pretending that he was the owner of the suit property and let out a portion in the said property and received a sum of Rs.80,000/- as advance from him prior to the settlement in favour of the second Defendant. The second Defendant had approached him and objected the same and requested him to vacate the portion ,but he refused to do so. After the settlement deed in favour of the second Defendant, he requested him to pay the rent and he agreed to pay the same. But since he failed to pay the rent, the second Defendant filed eviction petition in R.C.O.P. No.1272/05 against him and obtained a decree in his favour and the tenant preferred an appeal in R.C.A. No.1060 of 2006 and pending appeal a compromise was arrived between them, wherein the second Defendant returned the advance amount of Rs.80,000/- to him, which was later not received by the second Defendant from the Plaintiff. The said Pandurangan handed over the vacant possession to the second Defendant and the second Defendant is now in possession of the said portion. For the above said reason, the Plaintiff is liable to pay a sum of Rs.80,000/- to the second Defendant. Since the Plaintiff failed to pay the same, the second Defendant filed the suit for recovery of Rs.80,000/- against the Plaintiff and the said suit is pending. Further the second Defendant filed a suit for recovery of possession against the Plaintiff in O.S.No.6200/08



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by disclosing the above facts, including the settlement deed and after the receipt of summon and plaint copy, he filed a written statement.

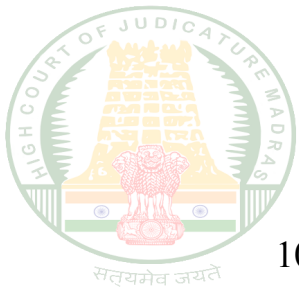
9.5. It is false that the Plaintiff was working as office boy, from the age of 16 years to help the family and therefore the question of giving income to the family does not arise. Further it is false that after the death of the father, he alone earned income and paid the same to the family. Therefore the question of payment of instalments to the Housing Board is absolutely false. Moreover, the allotment was transferred in favour of the first Defendant/ the mother, only on the basis of consent letters given by the other legal heirs. The Plaintiff had deliberately suppressed the facts that the first Defendant obtained loan and constructed building in A-Schedule property and obtained Corporation property tax assessment in her name and the first and second Defendants were repaid the loan amounts. The 'B' schedule property also allotted to the father of the Plaintiff and Defendants 2 to 4, after his death the allotment was transferred in favour of the first Defendant. Therefore the first Defendant is the absolute owner of the 'B' schedule property. Further it is absolutely false that the rental income of 'A' schedule property should be shared among the Plaintiff and second Defendant. The Plaintiff does not have any right over both 'A' and 'B' schedule properties. No oral partition was effected between Plaintiff and Defendants regarding suit properties. In the order of W.P.No.30406/2007, it is clearly disclosed that the second Defendant is the absolute owner of the 'A'



schedule property. The Plaintiff does not have any right or share of the 'A' schedule property. At any point of time, the rental income has not been shared between Plaintiff and second Defendant. Since the Plaintiff misused the electricity service connection, the second Defendant had no other option except to disconnect the service connection. Unless the transfer of allotment order in favour of the first Defendant and settlement deed in favour of the second Defendant is challenged, the Plaintiff has no right over the 'A' suit property. Since the Plaintiff has no right over the suit property, the question of mesne profit does not arise.

10. The brief averments in the Written Statement filed by the 3rd Defendant in O.S. No. 7469/2010 are as follows:-

10.1. The first Defendant is the mother and she died on 25.03.2009. The Plaintiff and Defendants 2 to 4 are this Defendant's brother and sister. After the death of their mother on 25.03.2009, the cause of action survived on the Plaintiff and all the Defendants. It is submitted that the plot schedule 'A' property was allotted to the Plaintiff and Defendant's father by Tamil Nadu Housing board. Immediately after allotment the Plaintiff's and Defendant's father died. Since their father died, their mother being the eldest member of the family was substituted to hold the property on behalf of the entire family. For such a course the entire family members agreed. The deceased first Defendant did not have exclusive title to the suit property.



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10.2. Since this Defendant is employed and allotted quarters, this Defendant has chosen to reside in the quarters. This Defendant is also entitled to a share in the plaint "A" and "B" schedule properties because the plaint schedule properties was allotted to the father of the parties to the suit and after the death of the father of the parties to suit the plaint mentioned properties belongs to the joint family in which this Defendant is also entitled for a share. Since the deceased first Defendant was in the care and custody of the 2nd Defendant it is agreed that the suit properties will be partitioned after the life time of the deceased first Defendant. The 2nd Defendant's claim that the deceased first Defendant executed a settlement deed dated 18.03.2005 in respect of the plaint "A" schedule property, is not correct. This Defendant is not aware of any such settlement. This Defendant was not consulted. The deceased first Defendant does not have any power to settle the plaint "A" schedule property on any one. This Defendant is also entitled for a share in the suit properties. The deceased first Defendant was holding the suit properties on behalf of the entire family being the eldest member of the family. The suit properties are treated as joint family properties. Since the deceased first Defendant was under the control of the 2nd Defendant, the 2nd Defendant exercised undue influence and might have obtained some document, but the same is not valid and binding on any one. The deceased first Defendant does



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not have any title to convey.

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11. The brief averments in the Written Statement filed by the 4th Defendant in O.S. No. 7469/2010:-

11.1. The A' suit property/house site with an extent of 429 sq.ft. including separate toilet bearing Plot No.1-101-A-Type, Block No.22, Arumpakkam was allotted by Tamil Nadu Housing Board on 21.08.1979 in favour of father of both the Plaintiff and Defendants 2 to 4. Since the said father expired on 17.11.1979, the 1st Defendant/the mother of both Plaintiff and Defendants 2 to 4 took possession of the house site and paid entire instalments as per the order of allotment out of her earnings. Even though the Plaintiff and Defendants 1 to 4 are the legal heirs of said allottee Munusamy, on the basis of consent given by all other legal heirs including the Plaintiff, "The Tamil Nadu Housing Board". transferred the allotment in favour of the 1st Defendant by its order dated 11.08.1980. The 4th Defendant further submits that the 1st Defendant obtained loan of Rs.2 lakhs from Theyagarayar Nagar Co-operative Bank during 1999 and constructed the ground floor and first floor and second floor in the said House site and the 1 Defendant paid entire instalments to the Tamil Nadu Housing Board and obtained sale deed in her favour under Registered Sale Deed vide Document No.142/1999 on the file of the Sub-Registrar, Kodambakkam. Further the property tax, electricity



connection, drainage connection were also obtained in her name. Hence the 1st Defendant/mother of both Plaintiff and other Defendants became absolute owner of the said house site with building therein and having perfect title over the 'A' schedule suit property. Hence, it is absolutely false that the Plaintiff purchased the 'A' schedule property out of his income and constructed the house after demolishing the Bangalore tiled house, out of his income.

11.2. The 1st Defendant obtained another loan of Rs.2 Lakhs from City West Benefit Fund, for the purpose to meet out the expenses of her granddaughter's marriage as well as to settle certain private loans. Since, the 2nd Defendant paid Rs.1 Lakh to settle the dues before Theyagarayar Nagar Co-operative Bank and has been paying monthly instalments regularly to the loan of Rs.2 Lakhs before the City West Benefit Fund and spent huge amount to Thearesa's son's marriage, the 1 Defendant settled the 'A' Schedule suit property in favour of 2nd Defendant under the registered Settlement Deed No.1244/2005, on the file of S.R.O. Kodambakkam and the 2nd Defendant took possession and transferred the Electricity Service Connection, Metro Water and drainage connection and property tax in his favour. Accordingly now the 2nd Defendant is the absolute owner of the suit property and he has been enjoying the same without any hindrance for the past 6 years.

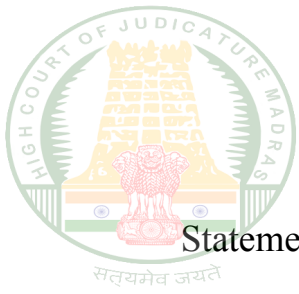
11.3. The Plaintiff is well aware of the Settlement Deed executed by 1st



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Defendant in favour of 2nd Defendant, but he suppressed the above facts and filed the above suit without challenging the above settlement deed. Actually, the Plaintiff had agreed to vacate the premises/portion of 'A' Schedule suit property which was occupied by him, within 3 months from the date of Settlement Deed. After a lapse of 3 months the 2nd Defendant approached the Plaintiff several times and requested him to hand over the vacant possession but the Plaintiff had given evasive reply. Further the Plaintiff has defrauded one Pandurangan by pretending to be the owner of suit property and let out a portion to him and received Rs.80,000/- as advance from him.

11.4. The 2nd Defendant filed eviction petition in R.C.O.P. No.1272/2005 against said Pandurangan and obtained decree in his favour and the tenant preferred an appeal in R.C.A.No.1060 of 2006 and pending appeal a compromise was arrived between them, the 2nd Defendant returned advance amount of Rs.80,000/- to him which was not received by 2nd Defendant. The said Pandurangan handed over the vacant possession to the 2nd Defendant and the 2nd Defendant is in possession of the said portion. The 2nd Defendant filed the suit for recovery of Rs.80,000/- against Pandurangan and is pending. Further the 2nd defendant filed suit for recovery of possession against the Plaintiff in O.S.No.6200 of 2008 by disclosing the above facts including the settlement deed and after receipt of summon and plaint copy, he filed Written



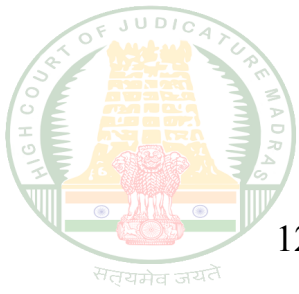
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Statement. But without challenging the said Settlement Deed he filed this suit and is not maintainable and liable to be dismissed. The 4th Defendant is well aware about the R.C.O.P. proceedings against Pandurangan and the suit in O.S.No.6200/2008 against the Plaintiff and the suit filed for recovery of amount against Pandurangan.

11.5. The Plaintiff does not have any right or share over the 'A' schedule property. At no point of time the rental Income was shared between the Plaintiff and the 2nd Defendant. Therefore, the suit itself is not maintainable and is liable to be dismissed.

12. The brief averments in the Written Statement filed by the 5th to 8th Defendants in O.S. No. 7469/2010 are as follows:-

12.1. The deceased first Defendant did not get any exclusive and absolute right over the 'A' schedule or 'B' schedule property because on death of Munuswamy, the said properties devolved on the legal heirs namely the Plaintiff and Defendants 1 to 4. The consent letters given by the other heirs to the statutory authority for name change, will not at any stretch imagination, confer absolute right on the first Defendant to become owner of the said property, whereby, the deceased first Defendant would have legal right to settle the 'A' schedule property in favour of second Defendant.

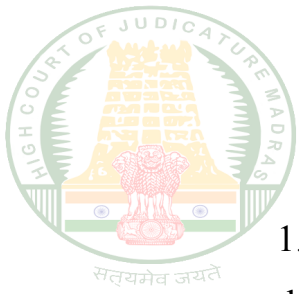


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12.2. These defendants have been brought on record because their mother, the fourth Defendant herein, died and she had 1/4th share in both the properties, which they are entitled to. The written statement filed by these defendants' mother is almost similar to that of second Defendant and the contents of the same will not withstand the scrutiny of law. The said written statement will not bind these defendants because the same was filed for another defendant. Each of these defendants are entitled to 1/16th share in both the schedule properties.

12.3. These defendants state that Plaintiff, second Defendant and third Defendant are entitled to 1/4th share in both the schedule properties and these defendants are entitled to 1/16th share each in the plaint properties. The second Defendant cannot claim any exclusive or absolute right over the 'A' schedule property by virtue of the settlement deed because the settlor, the deceased first Defendant did not have lawful and legal right to settle the property in favour of the second Defendant and she was holding the 'A' Schedule Property for and on behalf of the heirs of the deceased Munuswamy. Hence prays to pass preliminary decree that each of these defendants are entitled to 1/16th share in the suit schedule properties.

13. The Trial Court on the basis of the above said pleadings in O.S. No. 6200/2008, framed the following issues:-



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1. Whether the Plaintiff is entitled that the defendant to quit and deliver the vacant possession of suit property and handed over the same to plaintiff as prayed for?
2. Whether the plaintiff is entitled to get permanent injunction against defendant as prayed for?
3. To what other relief the plaintiff is entitled to?

13.1. Additional Issues in OS No. 6209/2008

1. Whether the 1st defendant is a Christian as averred in the plaint?

14. The Trial Court on the basis of the above said pleadings in O.S.

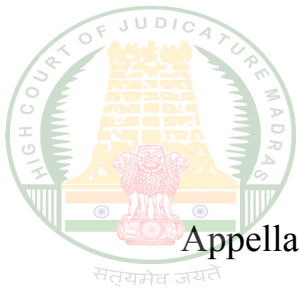
No. 7469/2010 framed the following issues:-

- i. Whether the suits 'A' & 'B' schedule properties are joint family properties of the plaintiff and defendants?
- ii. Whether the 1st defendant had right to execute settlement deed in respect of the suit property?
- iii. Whether the 2nd defendant is the absolute owner of the suit 'A' schedule property?
- iv. Whether the plaintiff is entitled to the relief of partition?
- v. Whether the plaintiff is entitled to mesne profits?

14.1. Additional Issues in OS No. 7469/2010

- i. Whether the defendants 5 to 8 are entitled to 1/16th share each in the suit schedule property?

15. The learned Counsel for the Appellant submitted that the



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Appellant, Augustine is the Plaintiff in O.S.No.6200 of 2008. The brother of the Appellant, Augustine, filed a Suit in C.S.No.176/2009 on the Original Side of the High Court which was subsequently re-numbered as O.S.No. 7469/2010. The Suit preferred by the brother of the Appellant herein, Maria Soosai @ Mari was seeking relief of declaration that the Settlement Deed executed by the mother of the Plaintiff and defendant in favour of Augustin, the Plaintiff in O.S.No.6200/2008, be declared as null and void and also seeking a relief of partition.

16. It is the contention of the learned counsel for the Appellant that the Suit preferred by MariyaSoosai @Mari in O.S.No. 7469/2010 is barred by limitation. The learned XVI Additional Judge, City Civil Court, Chennai by a Common Judgment dated 22.03.2018, rejected the contention of the Plaintiff in O.S.No.6200/2008 who is the Defendant in OS.No. 7469/2010 that the Suit filed by the Mariya Soosai @ Mari in OS.No. 7469/2010 is barred by limitation.

17. The learned counsel for the Appellant invited the attention of this Court to the admission in cross examination by Mariya Soosai @ Mari as DW.1 in the witness box that he had knowledge of the Settlement Deed, on the date of the execution of the Settlement Deed i.e. in the year 2005. If that be so, the claim by the Plaintiff, MariyaSoosai @ Mari in OS.No. 7469/2010 is

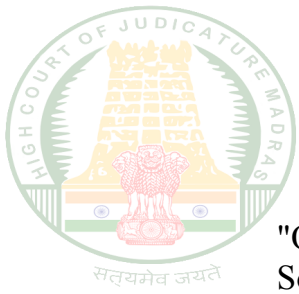


barred by limitation.

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18. Further, it is submitted that the suit property was originally allotted in the name of Munusamy, the father of the Plaintiff and defendant in O.S.No.6200/2008. By the time it was allotted, he died. Therefore, the same was allotted in the name of the mother of the Plaintiff and the Defendant. Subsequently, the mother of the Plaintiff and the Defendant mortgaged the property with T-Nagar Cooperative Housing Society, to obtain a loan, and for putting up construction. The loan was settled by her. Subsequently, again, she had availed a loan from a different financial establishment. This time, it was settled by the Plaintiff, Augustin. Subsequently, Augustin himself had obtained a loan and put up construction.

19. The Plaintiff in O.S.No. 7469/2010 had been living on the second floor of the building. He sought time to vacate and hand over the possession, but he did not vacate. Therefore, the Plaintiff had filed a Suit in OS.No.6200/2008 seeking recovery of possession of the second floor portion. Both the suits were taken up for trial, and after assessment of the evidence, the learned XVI Additional Judge, City Civil Court had decreed the Suit for partition. O.S.No. 7469/2010 (Suit filed by MariyaSoosai @ Mari) was partly decreed. O.S.No.6200/2008 also was partly decreed. On the issue No.3 in O.S.No.6200/2008, the learned judge observed that:



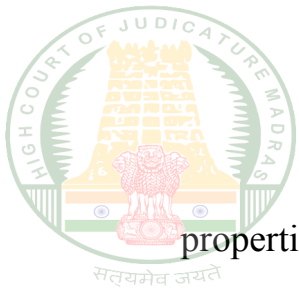
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"On 7.8.1998 a notice Ex. B13 was issued from Revenue authorities to Sowriammal that she had not paid the installment amount and stated that if the amount was not paid she will be evicted from the premises. The Plaintiff stated in his evidence that the amount was paid by him and the defendant stated that the amount was paid by him, but both of them has not filed any document to that effect. But the amount paid and the sole deed dated 31.12.1998 was executed in the name of Seeriammal which is marked as EX A6. There is no document on both sides as to who paid the due amount to the TNHB"

20. Against which, the Appeals had been preferred by the Plaintiff in O.S.No.6200/2008 and the Defendant-22 in O.S.No.7469/2010. Therefore, the learned counsel for the Appellant seeks to allow the Appeals in A.S.No.14/2019 & 15/2019 and set-aside the judgment in O.S.No. 7469/2010 and to modify the Judgment and Decree in O.S.No.6200/2008 thereby ordering eviction.

21. There are two suits filed by the 1st Respondent before this Hon'ble Court in C.S.No.176 of 2009 which was subsequently transferred to the Learned XVI Additional City Civil Court, Chennai when the pecuniary jurisdiction was enhanced, the original side of this Hon'ble Court on transfer the suit was renumbered as O.S.No.7469 of 2010. The above suit is a suit for partition and for separate possession of plaint 'A' Schedule and 'B' Schedule properties and seeking to set aside the Settlement Deed dated 18.03.2005 registered as Document No.1244/2005 in the SRO, Kodambakkam in respect of 'A' Schedule property alone as null and void and consequential right of partition and separate possession of half share in 'A' Schedule and 'B' Schedule



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properties.

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22. The suit in O.S.No.6200/2008 was filed by the Appellant with prayer to recover possession of the property at Door No.1-101, Gnana Vinayakar Koil Street, M.M.D.A. Colony, Arumbakkam, Chennai 600 106 and also for a permanent injunction restraining the 1 Respondent in the above appeals to let out the schedule mentioned property for rent to third party. The above property is the 'A' Schedule Property in O.S.No. 7469 of 2010. On the basis of the pleadings, the Learned Trial Judge has framed the following issues. The issues are at page No.82 of the typed set filed by the Appellant. A joint trial was ordered by the Principal City Civil Court, Chennai on 28.03.2012 to try both the suits in O.S.No.6200/2008 and O.S.No. 7469/2010.

23. On the side of the Appellant namely two witnesses were examined as P.W.1 and P.W.2. P.W.1 is the Plaintiff in O.S.No.6200/2008 and P.W2 is an official from Tamil Nadu Housing Board. The Appellant marked Ex. A1 to Ex.A19. On the side of this Respondent, this Respondent was examined as D.W.1. His brother Prakash was examined as D.W.2 and this Respondent's sister's daughter Selvi was examined as D.W.3. and Ex.B1 to Ex.B15 were marked.

24. The 'A' Schedule Property was allotted by Tamil Nadu Housing Board on 21.08.1979 in favour of the father of the Respondent, the Appellant



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and others. On 17.11.1979 the father died. Since the father died and the allotment was in the name of the father, as per the rules of the Tamil Nadu Housing Board all the legal heirs authorized the Tamil Nadu Housing Board to execute a Sale Deed in favour of the their mother on behalf of the entire family and so the Sale Deed was executed in the name of the mother Mrs.Sowriammal. It is to be seen that the Sale Deed was executed on behalf of the entire family in the name of Mrs. Sowriammal the mother. The legal heirs of Munusamy have not given up their right in the property. The same is admitted by the Appellant as P.W.1 in his evidence as follows:

வா.சா.ஆ.11 மற்றும் வா.சா.15 ஆவணத்தில் முனுசாமியின்
வாரிசுதாரர்கள் உரிமை

25. The above said evidence which is available in pages 86 & 87 of the typed set filed by the Appellant. It is accepted that the allotment is in favour of the father and the Sale Deed is taken in the name of the mother Mrs. Sowriammal at the instance of all the legal heirs and the Respondents/Defendants are entitled to have a share in the property. The Appellant has summoned the official P.W.2 a staff of the Tamil Nadu Housing Board and his evidence also supports the case of the Respondent which is extracted hereunder for reference

26. The claim of this Respondent as a Plaintiff is that he was

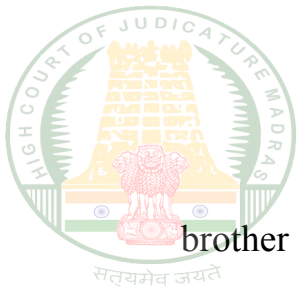


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employed from the age of 16 and he alone was paying the dues to the Tamil Nadu Housing Board. From the evidence, it is to be seen that the Appellant has not done anything to settle the dues to the Tamil Nadu Housing Board. By mortgaging the properties, two loans were taken from Thyagaraya Nagar Co-operative bank. In the loan transaction the entire family members have signed in the relevant document. The mortgaging of the property was accepted by the Appellant in his evidence as P.W.1.

27. Ex.B-7 was filed by the 1st Respondent to show that he has paid the amount. D.W.2 Prakash also filed a series of documents Ex.B-21. The lease amount is paid by Prakash.

28. To show that the property is a joint family property, the following exhibits also prove the same. Ex.B-11 is the invitation for the housewarming ceremony held on 05.03.2001 in which the names of all the legal heirs of Munusamy were mentioned including the name of the mother Sowriammal. Ex. B-3 dated 07.08.1998 was issued to Mrs. Sowriammal by the revenue authorities stating that the installment amount to Tamil Nadu Housing Board was not paid. Failure of payment will result in eviction from the premises. After paying the amount, the Sale Deed was executed in the name of the mother Sowriammal. In the Sale Deed Ex.A-6 which is found at page 100 of the typed set filed by the Appellant, it is only this Respondent D.W.1 and his



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brother Prakash D.W.2 witnessed to the Sale Deed. In the document Ex.A-1, the mother authorized Prakash D.W.2 who is the 3rd defendant in O.S.No. 7469/2010 to handover the relevant documents which is admitted by Appellant as P.W.1.

29. The above said evidence is also relied on by the Learned Trial Judge at page 88 of the typed set. The documents produced and the admissions made by P.W.1 clearly show that the property is joint family property liable for partition. On that basis the Learned Judge decreed the suit for partition. Since the Appellant has not produced any evidence to show that the property is his absolute property, the appeal is liable to be dismissed.

30. Another strange defence put up by the Appellant is that the 'A' Schedule Property was settled in his name by the mother Sowriammal when she was alive through Ex.A-1 dated 18.03.2005. Since the Appellant has taken a defence that the property has been settled in his name, the burden is on the Appellant to prove that the settlement deed is validly executed. The Respondents had taken up a defence that Sowriammal was not in a proper frame of mind. The Appellant had influenced his mother, got the Settlement Deed in his favour which the mother is not entitled to settle because the property is a joint family property. The Appellant has not produced any evidence to show that the document Ex. A-1 the Settlement Deed has been



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validly executed. The finding of the Learned Judge is that since the property is a joint family property allotted in the name of the father on behalf of the entire family as evidenced by P.W.2, the mother does not have any right to settle the property and so the Learned Judge rightly rejected the Settlement Deed and decreed the suit for partition,

31. Another defence taken up by the Appellant is that this Respondent is a Christian which is not correct. The following evidence extracted by the Learned Trial Judge will prove the same. D.W.3 who is the sister's daughter of the Appellant and this Respondent has stated in her evidence as follows:

“என் தாத்தா பாட்டி இந்து மதத்தை சார்ந்தவர்கள். என் மாமா 3 பேரும் இந்து மதத்தை சார்ந்தவர்கள். என் அம்மா இந்து மதத்தை சார்ந்தவர்கள். என் அப்பா கிறிஸ்துவ மதத்தைச் சார்ந்தவர்.”

P.W.1 in his evidence stated that

“முனுசாமி என்பது இந்து பெயர் என்றால் சரி. என் தகப்பனார் இந்துவாகத்தான் இருந்து இறந்தார் என்றால் சரி தான். என் மனைவி பெயர் குப்பம்மாள்.”

32. Since the Appellant has taken up a defence that this Respondent is a Christian, the burden is on the Appellant to prove the same. He has not filed any document to show that this Respondent is a Christian and so the Appellant miserably failed in establishing any of the defence raised by him. The Appellant was receiving rent from the property which is admitted by him in his evidence.

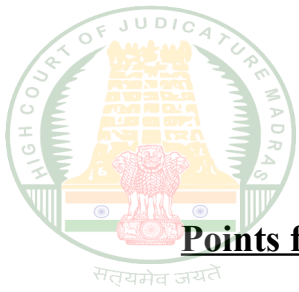
33. The Respondent has taken up a defence stating that when the



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mother was alive there was an arrangement in the family as per which this Respondent is put in the second floor portion of the plaint 'A' Schedule Property. The 'B' Schedule Property was under the possession and custody of Terasa who is the sister of the Appellant and this Respondent. The filing of O.S.No.6200/2008 is an admission that there was an earlier family arrangement as per which this Respondent was put in possession. The possession of 'B' Schedule Property also vouches the above said fact and the claim of the Appellant of the settlement and his exclusive right cannot be believed. The amount due to the Tamil Nadu Housing Board has been paid by these Respondents and the Appellant has not filed any document to show that he had discharged the amount to Tamil Nadu Housing Board. The evidence of P.W.2 is relevant in this context. P.W.2 has produced 29 receipts (Ex.B22 series) evidencing the amount paid to Tamil Nadu Housing Board from the year 1978 to 1983.

34. In the Ex.A-11 to Ex.A-A15, all the legal heirs gave no objection to transfer the allotment in favour of their mother in view of the death of the father who was the main allottee and they have not given up their right in the property. In view of the facts and circumstances, it is therefore prayed that this Hon'ble Court may be pleased to dismiss the appeals and thus render justice.



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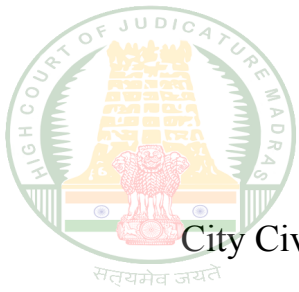
Points for Consideration:

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1. Whether the judgment of the learned XVI Additional Judge, City Civil Court dated 22.03.2018 by common judgment in O.S.No.6200 of 2008 and O.S.No.7469 of 2010 by which the relief claimed by the Plaintiff in O.S.No.6200 of 2008 seeking eviction of the Defendant in O.S.No.6200 of 2008 was rejected, and seeking permanent injunction not to let out the suit property for lease alone was decreed regarding 1/4 share of the Plaintiff and the main relief of eviction of the Defendant was rejected is perverse and is to be set aside?

2. Whether the judgment of the learned XVI Additional Judge City Civil Court declaring the suit in O.S.No.7469 of 2010 declaring the settlement deed dated 18.03.2005 bearing Document No.1244 of 2005 on the file of the Sub-Registrar, Kodambakkam in respect of 'A' schedule property as null and void and granting preliminary decree of 1/4 share in favour of the Plaintiff in O.S.No.7469 of 2010 is perverse and is to be set aside?

35. Heard the learned Counsel for the Appellant in both the Appeals Mr.S.Shanmugasundaram, the learned Counsel for the sole Respondent in A.S.No.15 of 2019 Mr.R.Ramanlal and the learned Counsel for the Respondents 4 to 8 in A.S.No.14 of 2019 Mr.V.Karthikeyan. Perused the documents and the common judgment dated 22.03.2018 passed in O.S.Nos.6200 of 2008 and 7469 of 2010 by the learned XVI Additional Judge,



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36. On appreciation of evidence, the learned XVI Additional Judge, City Civil Court by common judgment in O.S.No.6200 of 2008 and O.S.No.7469 of 2010 dated 22.03.2018, partially granted the relief in O.S.No.6200 of 2008 rejecting the relief of eviction of the sole Defendant from the suit property in O.S.No.6200 of 2008, which is the 'A' schedule property in O.S.No.7469 of 2010 and granted partial decree regarding permanent injunction with regard to 1/4 share of the Plaintiff in O.S.No.6200 of 2008. Thereby, granting injunction against sole Defendant in O.S.No.6200 of 2008 not to create lease with regard to 1/4 share of the Plaintiff in the suit schedule property in O.S.No.6200 of 2008.

37. The suit in O.S.No.7469 of 2010 filed by the Defendant in O.S.No.6200 of 2008 was granted the relief regarding declaration that the settlement deed executed in favour of the Plaintiff in O.S.No.6200 of 2008 by the Defendant-1 in O.S.No.7469 of 2010 in favour of the Defendant-2 (Plaintiff in O.S.No.6200 of 2008) dated 18.03.2005 registered as Document Number 1244 of 2005 on the file of the Sub-Registrar, Kodambakkam in respect of 'A' schedule property and consequently, granting relief of preliminary decree for partition of 1/4 share in schedule 'A' and 'B' of the properties in O.S.No.7469 of 2010. Aggrieved by the same, the Plaintiff in O.S.No.7469 of 2010 and



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Defendant-2 in O.S.No.7469 of 2010 had preferred both the Appeals.

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38. The claim of the Plaintiff in O.S.No.6200 of 2008, who is the Appellant in both Appeals that the suit filed by the Defendant in O.S.No.6200 of 2008 as Plaintiff in O.S.No.7469 of 2010 seeking declaration that the settlement deed executed by the Defendant-1 in O.S.No.7469 of 2010 dated 18.03.2005 and registered as Document No.1244 of 2005 on the file of the Sub-Registrar, Kodambakkam in respect of 'A' Schedule property as null and void and perverse cannot be accepted. The claim of the Plaintiff in O.S.No.6200 of 2008 is that the properties were the self-acquired property of Sowriammal, the mother of the Plaintiff and Defendant in O.S.No.6200 of 2008. Therefore, she is entitled to execute a settlement deed as she is the owner of the property and it is her self-acquired property also was rejected by the learned XVI Additional Judge, City Civil Court on the basis of the evidence available before the trial Court recorded in O.S.No.6200 of 2008.

39. The Defendant, Mari @ Mariasusai was examined as D.W-1. As per his pleadings in the written statement and as per his evidence, the mother of the Plaintiff and Defendant in O.S.No.6200 of 2008, Sowriammal did not have independent income. In the evidence, the Plaintiff claimed that she worked as a daily wager, which may be true. It is in evidence that the father of the Plaintiff and Defendant, Munusamy was employed in the Corporation as a Plumber.



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Therefore, even after his death, it is presumed that Sowriammal ought to have been receiving pension or such other benefits. There is no proof that the installments to the Tamil Nadu Housing Board for the housing site was paid by the Plaintiff as per his evidence in cross examination.

40. The Defendant in O.S.No.7469 of 2010 was supported by the Defendant-3 in O.S.No.7469 of 2010. Prakash as D.W-2 in O.S.No.6200 of 2008. As per his evidence, he had repaid the mortgage loan. The document in support of such claim was marked as Ex.B-22 series for payment in the name of Munusamy. But it did not contain the name of either the Defendant in O.S.No.6200 of 2008, Mari @ Mariasusai or Prakash, the Defendant-3 in O.S.No.7469 of 2010. The same was admitted in cross examination by D.W-3, Prakash. As per the evidence of Defendant in O.S.No.6200 of 2008, the Plaintiff in O.S.No.7469 of 2010, he was supported by the Defendants in O.S.No.7469 of 2010 A. Prakash and the daughter of the Defendant-4/Defendant-7/Selvi that the property was originally allotted in the name of Munusamy. Subsequently on the date of handing over possession, Munusamy was not alive. Therefore, after getting *no objection letter* from the legal heirs of Munusamy, that they did not have any objection in allotting and handing over the possession of the property in the name of their mother, Sowriammal, the property was allotted and possession was handed over to Sowriammal, the

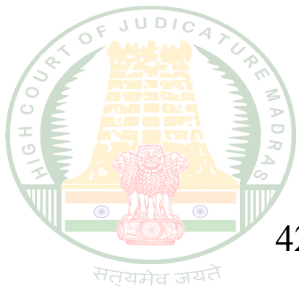


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Defendant-1 in O.S.No.7469 of 2010. By the time, the trial commenced, the

Defendant-1, Sowriammal was also died. Therefore, on proper appreciation of evidence, the learned Judge had arrived at a conclusion that the suit schedule property as per O.S.No.6200 of 2008 and schedule 'A' and 'B' property in O.S.No.7469 of 2010 was allotted to Munusamy, father of the Plaintiff and Defendants in O.S.No. 7469 of 2010 and the husband of the Defendant-1.

41. While so, to protect the property, it is presumed that the sons would have paid the dues to the Tamil Nadu Housing Board and also they might have paid the outstanding loan to Theyagarayar Nagar Co-operative Bank. As per Ex.A-16 to Ex.A-18, in all these documents, the names of the sons of deceased Munusamy were found, which was flatly refused in cross examination by the Plaintiff in O.S.No.6200 of 2008 as P.W-1/Augustine. He had flatly denied the suggestion of the Defendant that they had executed No objection letters. Also, he had denied the suggestion that the mortgage loan was settled and for granting the mortgage loan, also they had executed no objection letter. There is specific admission by P.W-1/Augustine that he had not marked original settlement deed and claimed it to have been executed by Defendant-1 in O.S.No.7469 of 2010, Sowriammal in favour of the Defendant-2 in O.S.No.7469 of 2010 (Plaintiff in O.S.No.6200 of 2008). He had marked only certified copies as Ex.A-1.



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42. The suggestion of the learned Counsel for the Defendant that if the original is produced, true facts will come to light was denied by him. He had admitted that the fact of execution of the settlement deed was not conveyed to the other legal heirs of Munusamy either by him or by his mother. He had denied the suggestion that taking advantage of the poor health and advanced age of the mother of Plaintiff and Defendants, Sowriammal and by using pressure tactics on the mother and due to age related disabilities, she was forced to execute the settlement deed only to satisfy the Plaintiff in O.S.No.6200 of 2008 and the Defendant-2 in O.S.No.7469 of 2010/Augustine. That is why he had not informed the execution of such settlement deed to other legal heirs of Munusamy. This suggestion was also denied by him. Mere denial will not help the case of the Plaintiff in O.S.No.6200 of 2008 and the Defendant-2 in O.S.No.7469 of 2010. In the course of the evidence in cross examination, P.W-1 admits that there was another property in his name which was sold by him and he had shifted the schedule mentioned property in O.S.No.6200 of 2008. Also he was confronted regarding his resources to support his claim that he had cleared the mortgage loans obtained by his mother after mortgaging the schedule 'A' property in O.S.No.7469 of 2010 and the only suit property in O.S.No.6200 of 2008 for putting up construction and also subsequently mortgaging the property for Rs.2,00,000/- with a private Bank to meet out the marriage expenses of the son of the deceased Defendant-



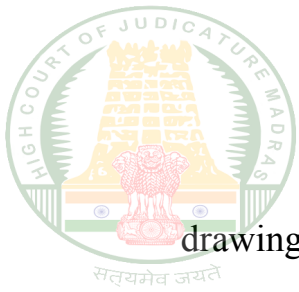
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4, who is the sister of the Plaintiff and Defendants. Therefore, the mother of the Plaintiff and Defendants, the Defendant-1 in O.S.No.7469 of 2010, Sowriammal had voluntarily executed a settlement deed in favour of the Plaintiff in O.S.No.6200 of 2008 and the Defendant-2 in O.S.No.7469 of 2010.

43. The claim of the said Plaintiff in O.S.No.6200 of 2008 was challenged in cross examination by the learned Counsel for the Defendant and the learned Counsel for the Plaintiff in O.S.No.7469 of 2010. He was questioned whether he was an income tax assessee, and what was his income for the past several years. He claimed that he was working as a Plumber but he does not have any certificate or other proof for the claim that he was a Plumber. He claimed that he had also worked as an electrician. He admits that he had not furnished any document to such claim to show that he is a trained electrician. He also admits that he is an autorickshaw driver for the past 10 years from the date of filing of the suit. With that income whether he was able to settle the dues to the Tamil Nadu Housing Board and whether with that income he was able to settle the mortgage loan availed by his mother to put up construction and to settle the loan obtained by the mother to perform the marriage of the grandson of the mother, the nephew of the Plaintiff. There is no proof of any of these through documents.

44. The following three circumstances was considered by the Court in



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drawing adverse inference against the claim of the Plaintiff:

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(i) settlement deed was not informed to other siblings

(ii) The claim of settling dues to the Tamil Nadu Housing Board and settling the dues to the Theyagarayar Nagar Co-operative Bank were not proved through documentary evidence

(iii) Settling dues to another private Bank was not proved through documentary evidence.

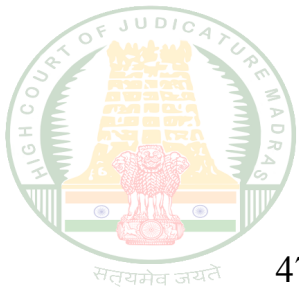
45. Under those circumstances, the Court is within its discretion to reject the claim of the Plaintiff regarding settlement of the suit property in favour of the Plaintiff in O.S.No.6200 of 2008 by the mother of the Plaintiff in O.S.No.6200 of 2008 and the Defendant-1 in O.S.No.7469 of 2010. Therefore, the learned XVI Assistant Judge had rejected the claim of the Plaintiff in O.S.No.6200 of 2008 for the relief of eviction of the sole Defendant in O.S.No.6200 of 2008. As per the evidence available before the Court, the properties were originally allotted to Munusamy. In the place of Munusamy, Mother Sowriammal took possession after producing letter signed by legal heirs of Munusamy that they did not have any objection to hand over possession to their mother. Therefore, naturally it is to be treated as Munusamy's properties. Munusamy died intestate. When Munusamy died intestate, Sowriammal also has a share in the property. If, Sowriammal had settled the property with the knowledge of other sharers, then the settlement



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deed under Ex.A-1 has validity in the eyes of law. Settlement Deed was not proved through witnesses who had seen her executing it. It was not proved before the Court. Merely because it was registered, it does not have validity in the eyes of law. Based on such settlement deed, even if the records for the suit property had been transferred in the name of the Plaintiff in O.S.No.6200 of 2008, the transfer title to the Plaintiff may not hold good. All these documents are put to test during this trial and the same was challenged by the Defendants 3 to 8 in O.S.No.7469 of 2010 and the Plaintiff in O.S.No.7469 of 2010. Naturally, it has to be declared as null and void. Therefore, the reasoning given by the learned XVI Additional Judge declaring that the settlement deed executed by the mother of the Plaintiff and Defendant in O.S.No.6200 of 2008 as null and void and refusing the relief of eviction of the Defendant is found to be a well reasoned judgment that does not warrant any interference by this Court.

46. The claim of the Plaintiff in O.S.No.6200 of 2008 is that the Defendant in O.S.No.6200 of 2008 and the Plaintiff in O.S.No.7469 of 2010 is a Christian, Mari @ Mariasusai. Therefore, he cannot claim partition under the Hindu Succession Act is found reasonable. At the same time, the Plaintiff is also a Christian, Augustine. The Plaintiff in O.S.No.7469 of 2010 had given his name as Mari @ Mariasusai. He himself had stated in the plaint that the name of the mother, the first Defendant is Sowriammal @ Anthonyammal.

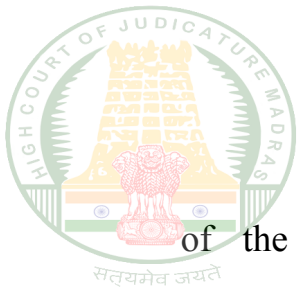


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47. The evidence of D.W-3 Selvi, D/o.Therasa, Defendant-4 in the suit claiming that all the three maternal uncles are Hindus and her mother, the Defendant-4 in the suit was also a Hindu. The father of D.W-3/Selvi, the Husband of Defendant-4 in the suit is a Christian. Also, the learned Judge had relied on the evidence of P.W-1 in his cross examination admitting the suggestion that Munusamy, the name of the father of the Plaintiff refers to Hindu name and his father died as a Hindu. The said suggestion was admitted by him. P.W-1, the Plaintiff in O.S.No.6200 of 2008, Augustine also admitted that the name of his wife was Kuppammal.

48. The learned Judge also relied on the evidence of the Sole Defendant in O.S.No.6200 of 2008, Mari @ Mariasusai. It is the Plaintiff in O.S.No.7469 of 2010 claiming that he is Hindu. He had filed the suit for partition as per Hindu law. Ex.B-17 was put to him in cross examination that in Ex.B-17, the writ petition, he had filed for separate electricity connection, in that relevant document, his name was referred as Mari @ Mariasusai S/o.Munusamy @ Anthony. When he was confronted with the fact in cross examination, he had denied such suggestion and asserted that he is a Hindu. He admitted in his cross examination that in the notice sent to the Plaintiff in O.S.No.6200 of 2008, he had referred to the Defendant-3 in O.S.No.7469 of 2010 as Prakash @ Sebastin. Therefore, in such circumstances, by the names



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of the parties, Augustine, Mari @ Mariasusai, Prakash @ Sebastin,
Sowriammal @ Anthonyammal, Mother of the Plaintiff and Defendants,

Terasa, the Defendant-4, the learned Judge had in paragraph 50 stated,

" 50. They all stated that they are Hindus. Nothing is evident from the House Warming Invitation to show that they are Christians. Further no proof was filed by the Plaintiff with regard to baptism or that the marriage was conducted in Christian way. Further no document was filed to establish that the Defendant is a Christian. School certificate or the membership of the Defendant in any Church records were not filed. In order to prove that Mari @ Maria soosai is following Christianity, no document was filed on the side of the Plaintiff. Based on the name alone the Court cannot come to a conclusion that they are the followers of Christianity and so the allegations made by the plaintiff that the Defendant is a follower of Christianity. So the claim made by the Plaintiff is not proved and as stated by the Plaintiff that the Defendant is not entitled to claim petition under Hindu Succession Act is not accepted and this issue is answered accordingly. "

49. The learned Counsel for the Appellant invited the attention of this Court to those portion of the evidence where the learned Judge failed to consider the affidavit filed before the Hon'ble High Court in Writ Petition where on solemn pleading, the Plaintiff Mari @ Mariasusai as Revision Petitioner had affirmed solemnly in affidavit in the Writ Petition whereby he had identified himself as Christian, identified his father also as a Christian. He had specifically stated his religion as Christianity. Whereas in the plaint in O.S. which was originally numbered as C.S.No.176, in the first paragraph he claimed as a Hindu.

50. Also the learned Counsel for the Appellant invited the attention of



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this Court to the cross examination of Selvi, D.W-3, She had admitted the suggestion in cross examination that she is practicing Christianity. Her marriage was performed by Christian rites. She admitted in her cross examination that her name is Arogya Selvi and she is practicing Christianity.

51. It is the contention of the learned Counsel for the Appellant that the learned Judge in paragraph 50 of the judgment did not consider this part of the admission of D.W-3 in her cross examination that they are Christian. From that it can be construed that the entire family members are Christians and not Hindus. Whereas the Plaintiff had filed seeking partition claiming to be Hindu with false averments that he is a Hindu. The Plaintiff in O.S.No.7469 of 2010 had not approached the Court with clean hands and therefore the suit for partition had to be prolonged.

52. Also, it is the contention of the learned Counsel for the Appellant that the Plaintiff in O.S.No.7469 of 2010 had knowledge of the execution of settlement deed by their mother, in favour of the Plaintiff in O.S.No.6200 of 2008, Augustine, the Defendant-2 in the suit in O.S.No.7469 of 2010. The suit was filed with false averments as though he came to know about the execution of the settlement deed only when the Plaintiff in O.S.No.6200 of 2008 had filed the suit for eviction in O.S.No.6200 of 2008 in which summons were served on him. The Plaintiff in O.S.No.7469 of 2010 had deposed evidence as D.W-1 in



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O.S.No.6200 of 2008. He was cross examined by the learned Counsel for the Plaintiff in O.S.No.6200 of 2008 in which he was confronted regarding his knowledge of the execution of the settlement deed by the mother of the Plaintiff and Defendants. He admitted in cross examination that in the year 2005, he came to know about the settlement deed. Therefore, under such admission, the suit for declaration to declare that the settlement deed executed by the mother of the Plaintiff and Defendants on 18.03.2005 was belated and beyond the limitation period. Therefore, the Court ought not to have granted him the relief of declaration of title. Only if the settlement is declared as null and void, the Plaintiff is entitled to partition. When the settlement deed is not declared as null and void, the partition cannot be granted by the Court. Therefore, the suit filed by the Plaintiff in O.S.No.7469 of 2010 had to fail and the suit in O.S.No.6200 of 2008 had to be decreed.

53. The argument of the learned Counsel for the Plaintiff in O.S.No.6200 of 2008 that the Defendant is a Christian and he cannot seek partition under the Hindu law is found reasonable. If accepting the argument of the Plaintiff in O.S.No.6200 of 2008, the Plaintiff also is a Christian. He had filed the suit in O.S.No.6200 of 2008 and had identified himself as A. Augustine. But he had suppressed the fact that his father is a Christian. He had in this evidence as P.W-1 in cross examination admitted the suggestion that



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Munusamy was a Hindu. Munusamy died as a Hindu. If that part of the evidence of the Plaintiff in O.S.No.6200 of 2008 is to be considered, then he had taken oath before the learned XVI Additional Judge, City Civil Court in the witness box had deposed falsehood. All the parties to the suit had been identified as S/o.Munusamy. All their initials were A, that indicates Munusamy was a Christian by name Antony. The name Sowriammal also indicates Christian, Sowriammal @ Anthonyamml. Therefore, practically all are Christians. The Tamil Nadu Housing Board house site was allotted to Munusamy and not to Anthony and therefore, they are forced to claim as Hindus.

54. Invariably, many of the castes and communities which were considered as backward and most backward, SC and ST had in the course of their lifetime converted to Christianity, because of the discrimination in the Hindu society prior to independence. After independence, human rights were enshrined in the Constitution whereby, no discrimination shall be based on caste, colour, religion and religious practices. Also in the Constitution, the right to protect religion is guaranteed. Therefore, people who are frustrated with Hindu practice convert themselves either to Christianity or to Islam. It is their personal choice. The State cannot control them and there is always controversy regarding conversion in the Hindu society. Also by affirmative action, the



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Constitution guarantees those Castes and Communities that were discriminated under Hindu society to be granted reservation for education and employment in Government Services. Therefore, even if they convert to Christianity, because of the present state of affairs, they claim to be Hindus.

55. This Court based on the judicial experience, having shared with Division Bench with the senior Judge in Writ Court, where Writ Petitions are filed by people who were refused caste certificate on the ground that they were not BC or MBC or SC or ST and that they are Christians based on enquiry conducted by the respective Department dealing with issuing caste certificates. When those Writ Petitions come up for hearing, based on the enquiry report, the Writ petitions are either allowed or dismissed. One of such Writ Petitions was dismissed where the Petitioner in that Writ Petition, had given her name as Anthonyammal. The content of the Writ Petition was that even though her name is Antonyammal, she is practicing Hinduism. Therefore, she had to be issued with caste certificate to entitle her to compete for examination for Government jobs on reservation. When this Writ Petition came up before the Division Bench, in which I was sharing the Bench with senior Judge of this Court, the report from the Anthropology Department based on the relatives of the Petitioner in the native village reported that all their entire relatives converted to Christianity. Therefore, she cannot claim as a Hindu to claim



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reservation. Based on the Anthropology report, the Writ Petition was dismissed. Therefore, here also, it is the case. Under what circumstances, the Tamil Nadu Housing Board granted Munusamy, the flat for the economically weaker sections is not placed before the Court. The Court has to draw only presumption from the previous judicial experience.

56. Also, in my tenure in the District Judiciary from 1994 till 2018, I had come across the staffs at the Magisterial level claiming to be Christians, but in their service records, they fill the column as Hindu to avail reservation. It occurs invariably among people, who claim reservation under the category of most backward, backward, Schedule Caste and Schedule Tribes. Also to overcome these difficulties, they manage to give their names without any reference to any religion. This is not applicable to those who convert to Islam. There, they cannot claim to be Hindus once they convert to Islam as the religion does not allow such things. But, Christians themselves proclaimed to be Christians and therefore, there cannot be any proof as claimed by the learned Judge in the course of the discussion.

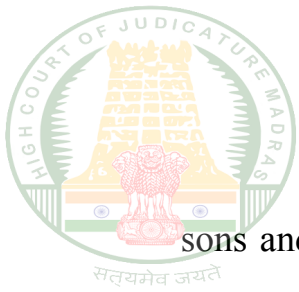
57. If accepting the argument of the learned Counsel for the Plaintiff in O.S.No.6200 of 2008, the suit filed by Mari @ Mariasusai is to be thrown out, as he had given contradictory statement, affirmation, solemn statement, affirmed affidavit, contrary to the plaint, the plaint is also a sworn statement



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where in the “verification column”, they claim that what are all stated is true to the best of this belief, what was confronted with Ex.B-17, affidavit and petition filed in W.P.No.30406 of 2007. In the light of such affidavit, he claims that he is a Hindu. For the falsehood, the suit has to be failed. Considering the fact that in the course of the evidence, it was found that the brothers have come to fisticuff quarrel resulting in registering a police case seeking control of the property. It is in the larger interest of the entire family and in the larger interest of society that quietus is given to the dispute.

58. The mother, as Petitioner in R.C.O.P had given deposition before the R.C.O.P Court that she had executed settlement deed in favour of her son, Augustine, referring to Plaintiff in O.S.No.6200 of 2008, and the Defendant-2 in O.S.No.7469 of 2010. The said deposition of the mother of the Plaintiff in O.S.No.6200 of 2008 and the Defendant-1 in O.S.No.7469 of 2010 was marked as Ex.A-9, that will not grant the Plaintiff in O.S.No.6200 of 2008, the exclusive right over the property. In the course of the evidence before the learned XVI Additional Judge, No Objection Certificate was given by the Defendant in O.S.No.7469 of 2010 which were marked as Ex.A-11 to Ex.A-15. Therefore, the property was allotted by Tamil Nadu Housing Board in favour of Munusamy, but by the time the property was allotted, Munusamy died. Therefore, after getting the certificate from the legal heirs of Munusamy, the



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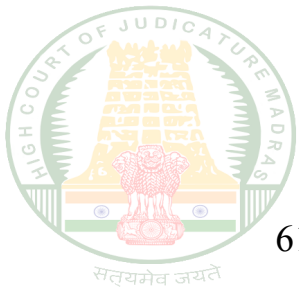
sons and daughter of Munusamy, the property was handed over in possession to Sowriammal, the mother of Plaintiff and Defendants in both the suit.

59. The claim of the learned Counsel for the Appellant that the suit for partition is not maintainable since the Plaintiff had filed the suit after three years for seeking declaration that the settlement executed by the mother on 18.03.2005 to be null and void. This argument of the learned Counsel for the Plaintiff in O.S.No.6200 of 2008 cannot be sustained since the suit was filed on the Original side of High Court immediately after receiving of summons in O.S.No.6200 of 2008, the suit was repeatedly returned and after so many returns, it was numbered in the year 2009 as C.S.No.176 of 2009. Since it is taken on file after verification. Therefore, it was repeatedly returned and based on the same limitation, only after allowing petition to condone delay, it ought to have been numbered in 2009 with reasons satisfying the Court. Therefore, within three years there is delay for some months and that was condoned. Even otherwise, the Plaintiff in O.S.No.7469 of 2010 can ignore the settlement deed and seek partition on the ground that the settlement deed does not bind the other legal heirs of Munusamy. In evidence in O.S.No.6200 of 2008, Augustine had admitted in cross examination that he had not conveyed to other heirs of Munusamy regarding execution of the settlement deed by the mother. Therefore, the settlement deed was executed behind the back of the other legal



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60. The settlement deed was challenged by the other siblings, the Defendant 3 and 4. By the time, the trial commenced before the trial Court, and the Defendant-4 died. Therefore, the legal heirs were impleaded. Later, Defendant-3 also died and his legal heirs were also impleaded. Therefore, the claim that the other legal heir were not aware of the settlement is true. In the plaint averments in O.S.No.7469 of 2010, the Plaintiff, Mari @ Mariasusai who is the Defendant in O.S.No.6200 of 2008 claimed that among the family members it was agreed that the suit schedule 'A' property for which the suit in O.S.No.6200 of 2008 was filed by the Plaintiff Augustine was allotted to Plaintiff and Defendant in O.S.No.6200 of 2008. The other sibling Prakash who was employed in government service was not given any share as he was in Government service. The property was allotted to the only daughter, the sister of the Plaintiff in O.S.No.6200 of 2008 and O.S.No.7469 of 2010, who is the Defendant-4 in O.S.No.7469 of 2010. In the same plaint, she stated that she was already married and she cannot claim any share in the immovable properties. Still in the light of the family arrangement, she was granted 'B' schedule property. The said averments is against the principles governing partition. When they had already decided to partition in the suit, the suit for partition itself is not maintainable.



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61. After having instituted the suit, the Plaintiff in O.S.No.7469 of 2010 expect the Court to grant a decree whereby the property 'A' schedule is equally divided between the Plaintiff and Defendant in O.S.No.6200 of 2008 as half share in 'A' Schedule property and regarding 'B' schedule property, it should be handed over to Defendant-4. In the same breath, he claimed that she cannot claim partition as she was already married and other brother Prakash does not have right as he was already in a Government job. In the course of the evidence, Prakash as D.W-2 had deposed that he was employed in I.I.T Chennai and he had retired from Service. Also he had in his evidence marked Ex.B-22, a series that they had paid the dues to the Tamil Nadu Housing Board for the property allotted to their father which was subsequently granted to their mother, Sowriammal. When Ex.B-22, under his custody shows that for every month, they had to pay Rs.1606/-, he had paid in the monthly installments regularly to the Tamil Nadu Housing Board.

62. In the cross examination, D.W-2 admitted that the receipts did not indicate the name of the Defendant-3, D.W-2/Prakash. In all probabilities, it is he who had paid the dues to the Housing Board. When P.W-1 in O.S.No.6200 of 2008, Augustine was cross examined regarding the proof of repayment of the mortgage loan with the Theyagaraya Nagar Co-operative society for the mortgage loan obtained by the mother Sowriammal, he had stated that there is



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no proof. Also Augustine/P.W-1 claimed that he was earlier employed as Plumber. Subsequently, he was earning his livelihood as autorickshaw driver for the first 10 years as on the date of the suit. Therefore, he had sufficient means and it can only be presumed that the sons of Munusamy may have contributed, but a person in Government job has a better chance of paying it regularly without difficulty. That is why he had produced the receipts under Ex.B-22 series and the person who had paid or presumed to have paid, denied share by the Plaintiff in O.S.No.7469 of 2010 cannot be accepted as reasonable under the principles of equity, fairness and good conscience. If all the parties are Christians, the property cannot be partitioned under the Hindu Succession Act. Still the parties to the dispute can avail the relief of partition invoking the Indian Succession Act by which equal shares are to be granted to the parties for their shares. For the Defendant-4, it is to be allotted to their children who are the Defendants 5 to 8 who are entitled to 1/4 share allotted to their mother, each getting 1/16 share.

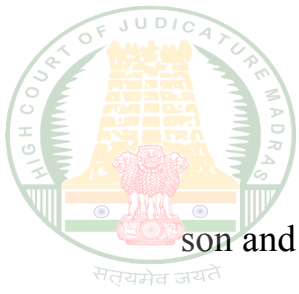
63. The arguments of the learned Counsel for the Plaintiff in O.S.No.6200 of 2008 and the Defendant in O.S.No.7468 of 2000 is accepted in the light of the principles of equity, fairness and good conscience, which governs the Civil Court in granting relief. Both the suits has to be thrown out. The parties will be attacking each other for claiming share in the property. To



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give quietus and for the peace in the society, the preliminary decree granted by the trial Court is to be upheld.

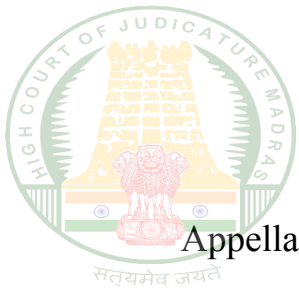
64. If the Plaintiff in O.S.No.6200 of 2008 had marked Ex.A-1, the original settlement deed along with witnesses to the settlement deed, the conduct of the Plaintiff can be considered to be fair before the Court and the opponent parties. He had wantonly suppressed the original settlement deed. It is the contention of the Defendant in O.S.No.6200 of 2008 and the Plaintiff in O.S.No.7469 of 2010, that due to poor health and advanced age of their mother, she had succumb to the pressure of the Plaintiff in O.S.No.6200 of 2008 and had executed settlement deed in his favour which will not bind the Defendant and other siblings of the Defendant is found justified from the conduct of the Plaintiff. He had wantonly suppressed the original settlement deed as per the evidence before the trial Court (Originally the allotment was in the name of Munusamy and not in the name of Munusamy (@ Anthony)). By the time it was allotted, Munusamy died therefore, the possession had to be handed over to the legal heirs and accordingly, under Ex.A11 to Ex.A-15, the Defendant 2 to 4 and the Plaintiff had executed no objection letter to the Tamil Nadu Housing Board Authorities whereby possession was handed over to the legal heirs of Munusamy. As the wife of Munusamy, she cannot execute a settlement deed of the property that belongs to Munusamy favouring only one



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son and ignoring other sons which is also not acceptable under the principles of fairness, equity and conscience or under the principles of Hindu Succession Act.

65. If the Hindu Succession Act is invoked, she gets a share as one of the legal heirs of Munusamy, in which case she will be getting 1/5th of the share along with her three sons and one daughter. For that 1/5th share alone, it can be restricted. But for that also, the Plaintiff should have approached the Court with clean hands by fairly producing the original settlement deed. He had not done so. The deposition of the mother of the Plaintiff and Defendant in Ex.A-9 indicates that she had executed the settlement deed in favour of her son, therefore, as a landlady she had filed R.C.O.P.No.1272 of 2005, seeking eviction of the tenant Pandurangan from the property. In the very same deposition, she stated that she directed the tenant to pay the rent to her son, the Plaintiff in O.S.No.6200 of 2008. Based on the deposition, R.C.O.P can be ordered. The Rent controller Court does not have the powers of the Civil Court to grant a decree declaring title to the property. Therefore, the deposition and order in R.C.O.P.No.1272 of 2005 cannot be pressed into service against the Defendant in O.S.No.6200 of 2008 and the Plaintiff in O.S.No.7469 of 2010. By using the power of this Court under Section 151 C.P.C and the inherent powers of the High Court, even though the grounds raised in the Appeal by the



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Appellant Augustine is found reasonable; however, by setting aside the judgment of the Trial Court, injustice would be meted out to Mari @ Mariasusai, the legal heirs of Prakash, and the legal heirs of the Terasa who also have a claim in property of Munusamy. Therefore, instead of Hindu Succession Act, this Court invokes Indian Succession Act.

66. The Plaintiff in O.S.No.7469 of 2010, Mari @ Mariasusai had sought partition under Hindu Succession Act. In the plaint in O.S.No.7469 of 2010, Mari @ Mariasusai had suppressed the fact that he is a Christian. He himself had filed written statement which was marked during trial in O.S.No.6200 of 2008 (suit filed by Augustine). In the suit filed by Augustine, he claimed that he is the son of Munusamy @ Anthony, a Christian whereas the Plaintiff in O.S.No.7469 of 2010, Mari @ Mariasusai claimed that he is a Hindu in the plaint and in the verification clause in the plaint he gives an undertaking to the Court that what are all stated in the plaint averments are true to the best of his knowledge and belief. During evidence, the Plaintiff in O.S.No.6200 of 2008, Augustine was examined as P.W-1, the Defendant in O.S.No.7469 of 2010, the suit for partition in which he claimed partition under the Hindu Succession Act. When Plaintiff Mari @ Mariasusai was examined as D.W-1 in which the suit filed by Augustine, he was confronted regarding the Writ Petition filed by him in which the affidavit sworn before the High Court,



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he claimed Christianity. When he was confronted with the copy of the Writ Petition, he denied claiming that he is a Hindu. This part of the demeanour of the Plaintiff in O.S.No.7469 of 2010, Mari @ Mariasusai is not accepted. It is a wanton suppression. Therefore the suit in O.S.No.7469 of 2010, filed by Mari @ Mariasusai has to be thrown out as it is filed with false averments. Still, the Court has the duty, when the Plaintiff in both suits are attacking each other in succeeding to the estate left behind by their parents to give a quietus, the Court has to pass appropriate judgment. If the suit of Mari @ Mariasusai is rejected outright on the ground that he has not approached the Court with clean hands, it directly enables the Plaintiff in O.S.No.6200 of 2008 (A.Augustin) to seek to dismissal of the suit filed by Mari @ Mariasusai.

67. On appreciation of evidence, the claim of the Defendant for partition, by filing separate suit, Mari @ Mariasusai is justified. Therefore, after the death of the Mother, who is alleged to have settled the dues by executing a settlement deed in favour of her son, Augustine is found unacceptable, as Augustine in cross examination had denied the suggestion that he had not informed the other sharers about the execution of settlement deed by the mother of the Plaintiff. Also, the Augustine as Plaintiff is duty bound to mark the original documents, but he had wantonly avoided marking the original documents because of his apprehension that if the original is produced



then the Appellants in the Appeal as Defendant in the suit may get to the truth.

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Therefore, he had avoided it. That is the only presumption available to the facts and circumstances of the case as gathered from the records based on the records in both suits. Since Plaintiff's father died even prior to granting possession of vacant property on behalf of the father of the Plaintiff and Defendants, the same was allotted to him. The mother being the eldest among the legal heirs succeeded to the estate left behind by the father of the Plaintiff and Defendants Munusamy and therefore, she cannot execute a settlement deed in favour of her son Augustine. Had she executed a settlement deed for her share alone, as she is a sharer along with her sons and daughter, then it would be justified. However, she had executed settlement deed for the entirety of the suit property, as though, the vacant house site was allotted to her, but that is not the case. The Plaintiff Augustine had not proved the settlement deed as he did not mark the original settlement deed and had not examined the witnesses who were present at the time of execution of the settlement deed in favour of one of her son and leaving out other children which ought to have been explained before the Court. However, it is absent and merely marking settlement deed in favour of the Plaintiff Augustine is found to be unacceptable. Therefore, it is to be considered that the properties were left intestate by the Appellant.

68. As per Section 37 of Indian Succession Act, 1925, on the death of



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the owner of the property, the property devolved upon the legal heirs. The major share is given to the mother. Since the mother died, only the children of Munusamy viz., sons Augustine, Mari @ Mariasusai, Prakash and daughter Terasa were alive on the date of filing of the suit. Therefore, they are equally entitled to 1/4 share in the property.

69. In the light of the above discussion from paragraphs 36 to 68, the judgment of the learned XVI Additional Judge, City Civil Court dated 22.03.2018 by common judgment in O.S.No.6200 of 2008 and O.S.No.7469 of 2010 by which the relief claimed by the Plaintiff in O.S.No.6200 of 2008 seeking eviction of the Defendant in O.S.No.6200 of 2008 was rejected, and seeking permanent injunction not to let out the suit property for lease alone was decreed regarding 1/4 share of the Plaintiff and the main relief of eviction of the Defendant was rejected is found proper which does not warrant any interference by this Court. **Accordingly, the point for consideration-1 is answered against the Plaintiff and in favour of the Defendant in O.S.No.6200 of 2008.**

70. In the light of the above discussion from paragraphs 36 to 68, the judgment of the learned XVI Additional Judge City Civil Court in the suit in O.S.No.7469 of 2010 declaring the settlement deed dated 18.03.2005 bearing Document No.1244 of 2005 on the file of the Sub-Registrar, Kodambakkam in



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respect of 'A' schedule property as null and void and granting preliminary decree of 1/4 share in favour of the Plaintiff in O.S.No.7469 of 2010 is found proper which does not warrant any interference by this Court. **Accordingly, the point for determination-2 is answered in favour of the Plaintiff in O.S.No.7469 of 2010.**

In the result, **both the Appeal Suits are dismissed.** The common judgment and decree passed by the learned XVI Additional Judge, City Civil Court, Chennai made in O.S.No.7469 of 2010 and O.S.No.6200 of 2008 on 22.03.2018 is confirmed. Since the mother died, only the children of Munusamy viz., sons Augustine, Mari @ Mariasusai, Prakash and daughter Terasa were alive on the date of filing of the suit. Therefore, they are equally entitled to 1/4 share in the property. No costs.

03.07.2025

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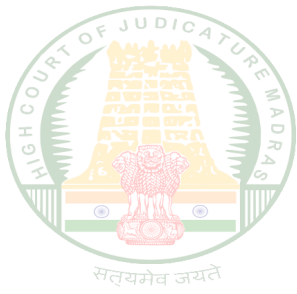
Internet : Yes/No

Index : Yes/No

Speaking/Non-speaking order

SATHI KUMAR SUKUMARA KURUP, J.,

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To

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

Judgment in
A.S.Nos.14 and 15 of 2019

03.07.2025