



S.A.(MD)Nos.391 of 2023 & 158 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.06.2025

CORAM

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

S.A.(MD)Nos.391 of 2023 and 158 of 2025

and

C.M.P.(MD)No.8339 of 2023 & 5947 of 2025

S.A.(MD)No.391 of 2023

K.K.M.Balakrishnan

... Appellant

-vs-

K.K.M.Muthaiah Kone

..Respondent

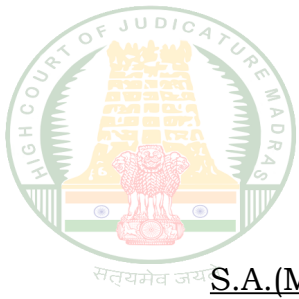
PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure, against the Judgment and Decree dated 23.08.2022 made in A.S.No.19 of 2019 on the file of the III Additional Subordinate Court, Madurai, confirming the Judgment and decree dated 14.12.2018 made in O.S.No.1182/2011 on the file of the Additional District Munsif Court, Madurai.

For Appellant

... Mr.PT.S.Narendravasan

For Respondent

... Mr.B.Moorthikannan



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S.A.(MD)No.158 of 2025

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K.K.M.Balakrishnan

... Appellant

-vs-

1.The Agricultural Marketing Committee,
Chennai through its Commissioner,
Cipet Road, Guindy, Chennai.

2.The Agricultural Marketing Committee,
Through its Secretary,
145A, Anna Nagar,
Madurai.

3.K.K.M.Muthaiah Konar

..Respondents

PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure, against the Judgment and Decree dated 19.11.2024 made in A.S.No.41 of 2022 on the file of the I Additional Subordinate Court, Madurai, confirming the Judgment and decree dated 01.04.2022 made in O.S.No.159 of 2016 on the file of the Principal District Munsif, Madurai Town.

For Appellant

... Mr.PT.S.Narendravasan

For Respondent

... Mr.B.Saravanan
Addl. Govt. Pleader (for R1 and R2)

Mr.T.K.Gopalan (for R1)



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COMMON JUDGMENT

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S.A(MD)No.158 of 2025 is filed by the plaintiff challenging the judgment and decree dated 19.11.2024 in A.S.No.41 of 2022 on the file of the I Additional Sub Judge, Madurai, confirming the judgment and decree dated 01.04.2022 in O.S.No.159 of 2016 on the file of the Principal District Munsif, Madurai Town. The relief sought in the suit was for a permanent injunction to restrain the defendants 1 and 2 from executing any sale deed in favour of the third defendant and for the further relief of a mandatory injunction directing the defendants 1 and 2 to execute the sale deed jointly in the name of the plaintiff and the third defendant in respect of shop No.J239 at Mattuthavani.

2. S.A(MD)No.391 of 2023 is filed by the defendant challenging the judgment and decree dated 23.08.2022 in A.S.No.19 of 2019 confirming the judgment and decree dated 14.12.2018 in O.S.No.1182 of 2011. The suit for permanent injunction was decreed in favour of the plaintiff in respect of shop No.J239 at Mattuthavani. Since the dispute is between the plaintiff and the third defendant, who are alone the party in the other suit in O.S.No.159 of 2016, and the dispute is also in respect of the same suit property, both the appeals are heard together and disposed of by this common judgment.



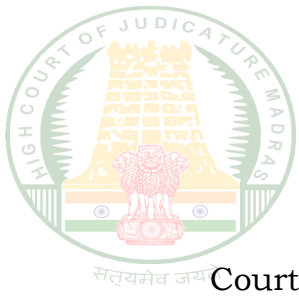
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3. The parties are referred to as per the ranking before the trial Court in O.S.No.159 of 2016, which relates to S.A.No.158 of 2025.

4. According to the plaintiff, he and the third defendant are sons of one K.K.Muthiah Konar, and his father was conducting a business in shop No.21 in the old flower market near Meenakshi Amman Temple as a licence holder. His father, K.K.Muthiah Konar died in the year 1991. After his death, the plaintiff and the third defendant had entered into a partnership business through a partnership deed dated 01.04.1998, and thereafter, they carried on the partnership business jointly. In the meantime, the Madurai Corporation proposed to shift the flower market to Mattuthavani. The first defendant had allotted a new shop in the name of the father of the plaintiff, K.K.Muthiah Konar, through proceedings dated 06.10.2006.

5. It is the further case of the plaintiff that since the third defendant is the eldest son of K.K.Muthiah Konar, the first defendant had handed over the possession of the shop in his favour. According to him, since there was a misunderstanding in respect of the business transactions, the third defendant had filed a suit against the plaintiff, in O.S.No.1182 of 2011 on the file of the Additional District Munsif



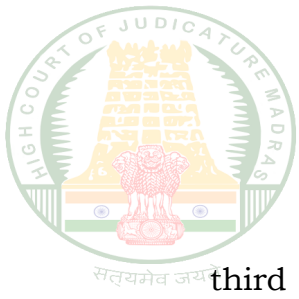
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Court, Madurai, seeking a permanent injunction. Thereafter, the plaintiff came to know that the defendants 1 and 2 are intending to execute a sale deed in favour of the third defendant, and hence, he has come up with the above suit in O.S.No.159 of 2016 on the file of the Principal District Munsif, Madurai Town.

6. The first defendant alone filed a written statement resisting the suit. According to the defendant, after the defendants 1 and 2 proposed to shift the flower market to the Mattuthvani, the third defendant had made an independent application, and the application was considered on its own merits, and the allotment had been made in favour of the third defendant. Pursuant to which, the third defendant had made the payments, and the plaintiff has no claim over the allotment made in favour of the third defendant and sought for dismissal of the suit.

7. During the trial in O.S.No.159 of 2016, the plaintiff examined himself as P.W.1 and marked Exs.A1 to A16. On the side of the defendants, the third defendant himself examined as D.W.1 and examined one Mercy Jayarani, who is the Officer from the second respondent, as D.W.2, and marked Exs.B1 to B24. Besides, Exs.C1. to C4 were marked through witnesses. In O.S.No.1182 of 2011, the



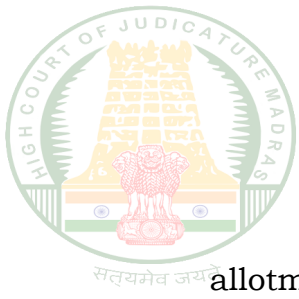
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third defendant/plaintiff therein examined himself as P.W.1 and examined one Thavsu Muthu as P.W.2 and marked Exs.A1 to A21. On the side of the plaintiff/defendant therein, he examined himself as D.W.1 and marked Exs.B1 to B19.

8. The trial Court, after analyzing the evidence and documents, came to the conclusion that the shop No.J239 was independently allotted to the third defendant. The trial Court also considered the evidence given by D.W.2 to the effect that the plaintiff's father's name was K.K.Muthiah Konar, and his son, namely, the third defendant's name is K.K.M.Muthaiah Konanr. While giving the allotment order, instead of mentioning the name as K.K.M.Muthaiah Konar, it has been wrongly mentioned as K.K.Muthiah Konar. Since both the third defendant's father and the third defendant had the same name, taking advantage of the same, the plaintiff had come with the present suit. In view of the same, the suit came to be dismissed, and on appeal, the lower appellate Court also confirmed the findings of the trial Court and dismissed the appeal. Assailing the same, the plaintiff preferred the above second appeal in S.A(MD)No.158 of 2019.

9. In respect of the other claim made in O.S.No.1182 of 2011, the suit has been preferred by the third defendant, based on the

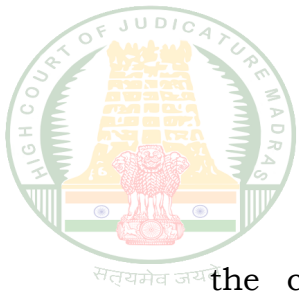


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allotment made in his favour for shop No.J239. In view of the above narrated facts, considering the arguments, the suit came to be decreed in favour of the third defendant, who was the plaintiff therein. On appeal, the lower appellate Court in A.S.No.19 of 2019 confirmed the judgment and decree of the trial Court. Assailing the concurrent findings, the plaintiff, who was the defendant in the suit in O.S.No. 1182 of 2011, had preferred the separate second appeal in S.A(MD)No. 391 of 2023.

10. The learned counsel for the appellant/plaintiff submitted that originally, a shop was allotted in favour of the plaintiff's father, K.K.Muthiah Konar. He was running the business, and he died in the year 1991. The defendants 1 and 2 proposed to shift the shop to Mattuthavani. It is the claim of the plaintiff that he made an independent application, and based on his application, a shop was allotted to him bearing shop No.K268. However, as far as shop No.J239 is concerned, the same was allotted only as a transfer from the name of the deceased father, K.K.Muthiah Konar, as such, according to the learned counsel, the plaintiff is entitled to hold half share in shop No.J239 along with the brother, the third defendant, and he is entitled independently to hold shop No.K268, which is an independent allotment. The learned counsel further contended that



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the courts below had not considered the aspects in a proper perspective and had dismissed the suit filed by them and decreed the suit in favour of the third defendant, which is perverse, and sought for interference in these two second appeals.

11. The learned Standing Counsel appearing for the defendants 1 and 2, by producing the sale deed executed in favour of the third defendant dated 05.03.2025, submitted that already a sale deed has been executed in favour of the third defendant, and therefore, the relief sought by the plaintiff is no longer valid. He further contended that the shop No.J239 had not been allotted as a transfer. However, it is an independent allotment on the application made by the third defendant, and the third defendant having made payments, the sale deed came to be executed in his favour. He further submitted that the plaintiff, already having an allotment of shop No.K268, is not entitled to seek the present claim in respect of shop No.J239, as no person is entitled to two shops in the same scheme. He further submitted that the defendants 1 and 2 are ready to execute a sale deed in favour of the plaintiff in respect of shop No.K268 and since the appeals are pending, they have not executed the same. However, notice has been issued to the plaintiff to appear with necessary documents, for which he has also appeared and submitted the documents, and the sale



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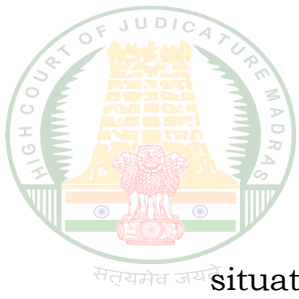
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deed will be executed immediately on the above appeals being disposed of.

12. The learned counsel for the third defendant submitted that the allotment made in favour of the third defendant was considered on its own merits based on the application submitted by him, and the plaintiff cannot have any right in respect of shop No.J239. He further submitted that while examining D.W.2, who is the officer from the second respondent, the plaintiff had established the fact that it is an independent allotment, for which the sale process has also been completed, and hence, the learned counsel sought for dismissal of the appeal.

13. Heard the learned counsel appearing on either side and perused the materials available on records.

14. Admittedly, the father of the plaintiff and the third defendant, namely, K.K.Muthiah Konar was originally allotted a shop in the flower market situated near Meenakshi Amman Temple. He ran the shop, and he died in the year 1991. Pursuant to which, the shop was run by the legal heirs of the said K.K.Muthiah Konar. Further, the defendants 1 and 2 decided to abolish the flower market



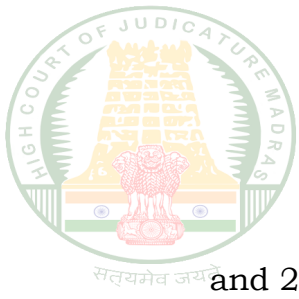
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situated near Meenakshi Amman Temple, and they proposed to shift the shops to the Mattuthavani.

15. Admittedly, earlier, allotments were made by the Madurai Corporation, and after shifting the shops to the Mattuthavani, the allotments are made and controlled by the first and second defendants. After the defendants 1 and 2 have taken over the administration and maintenance of the flower market near the Mattuthavani Bus Stand, an individual application has been called for. Pursuant to the same, the plaintiff had applied, and the third defendant has also applied for the allotment of the shop. Based on the application made by the third defendant, the first and second defendants had issued an allotment order in favour of the third defendant, considering his claim on its own merits.

16. It is to be noted here that when the allotment order was issued in the year 2006, instead of mentioning the name of the third defendant as K.K.M.Muthaiah Konar, the name was mentioned as K.K.Muthiah Konar. It is also to be seen that when K.K.Muthiah Konar died in the year 1990, no such allotment could have been made in the name of the dead person in the year 2006. These facts make evident the fact that the allotments were made by the defendants 1



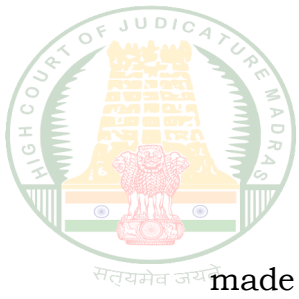
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and 2 based on the application submitted, and an allotment order was issued in the name of the third defendant in the year 2006. Further, D.W.2 had clearly stated in her evidence in respect of the mistake that crept in the allotment order, and to substantiate the same, records had been produced before the trial Court, which were marked as Exs.C1 to C4.

17. Further, it is to be noted that the plaintiff had admitted that he made an application, and an individual allotment has been made in his favour for shop No.K268. It is only his claim that the other shop in shop No.J239 has been allotted only in view of the transfer of the shop, which originally stood in the name of his father. As such, the learned counsel reiterated the claim of the plaintiff that he is also entitled to hold a half share in shop No.J239. However, the submission and the claim of the plaintiff cannot be accepted for the simple reason that under the scheme, an individual is entitled to hold only one shop in his name. In this regard, the learned standing counsel, by producing the necessary rules and regulations, submitted that each person is entitled to hold only one allotment.

18. Admittedly, the plaintiff has an allotment for shop No.K268, for which a sale deed is yet to be executed in his favour. The claim



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made by him to make a joint allotment and execute a sale deed jointly along with the third defendant for shop No.J239 will only go detriment to his interest, as if the claim of the plaintiff is to be allowed for executing the joint sale deed along with the third defendant for shop No.J239, then as per the scheme, it will end up in cancellation of allotment made for shop No.K268.

19. At this juncture, in view of the advice of the learned counsel for the appellant, a better sense prevailed, and the plaintiff has also now agreed that he will give up his claim and be satisfied if the defendants 1 and 2 come forward to execute the sale deed in his favour also within the time frame in respect of the shop No.K268, for which allotment was made in his favour. To this aspect, the learned standing counsel for the defendants 1 and 2, on instructions from the officers who are present before this court, submits that immediately within four weeks from the date of disposal of these second appeals, they will execute the sale deed in favour of the plaintiff in respect of shop No.K268.

20. In view of the above submission made during the arguments, this Court is not able to find any perversity or illegality in the decision arrived at by the Courts below. However, while



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confirming the judgment and decree of the Courts below, this Court records the submission made by the respondents to the effect that the sale deed in respect of shop No.K268 will be executed in favour of the plaintiff, namely, K.K.M.Balakrishnan, within a period of four weeks from the date of receipt of a copy of this judgment.

21. In the result, with the above observations, both the Second Appeals stand dismissed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

20.06.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes
skn

To:

- 1.The I Additional Subordinate Judge, Madurai.
- 2.The III Additional Subordinate Judge, Madurai.
- 3.The Principal District Munsif, Madurai Town.
- 4.The Additional District Munsif, Madurai.
- 5.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ARUL MURUGAN, J.

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Common Judgment made in

S.A.(MD)Nos.391 of 2023 and 158 of 2025
and
C.M.P.(MD)No.8339 of 2023 & 5947 of 2025

20.06.2025