

A.S.(MD)No.165 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 10.12.2024

PRONOUNCED ON:21.02.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

A.S.(MD)No.165 of 2024

and

C.M.P.(MD)Nos.8402, 8403 and 11804 of 2024

1.E.Ramkumar Raja

2.S.Murugan

:Appellants/Defendants

Vs.

1.Thangasamy(died)

2.M.Chandra Chaitanya

3.E.Jayaraman

4.E.Mohanram

: Respondents/Plaintiffs

PRAYER:- Appeal Suit filed under Section 96 r/w Order 41 Rule 1 and 2 of the Code of Civil Procedure against the Judgment and Decree passed in O.S.No.60 of 2016, dated 23.02.2024, on the file of II Additional District Court, Tuticorin.



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For Appellants : Mr.N.Sundaresan

For Respondents :R.1 Died

: Mr.S.Parthasarathy
Senior Counsel
for Mr.T.Selvan
for R.2 to R.4

JUDGMENT

The Appeal Suit is directed against the order passed in O.S.No.60 of 2016, dated 23.02.2024, on the file of II Additional District and Sessions Court, Turicorin.

2. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original suit.

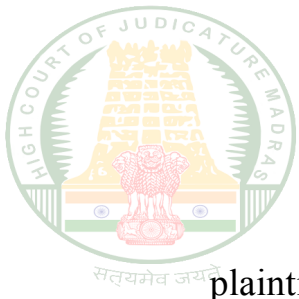
3. The suit is to declare that the suit properties are belonging to the plaintiffs and for consequential permanent injunction restraining the defendants and their men from in any manner interfering with the plaintiffs' peaceful possession and enjoyment of the suit properties.



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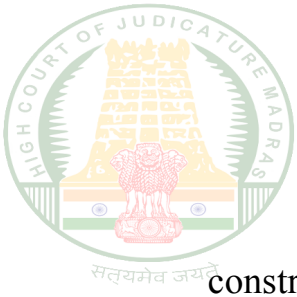
4. Pending suit, the sole plaintiff died and his legal representatives got themselves impleaded as the plaintiffs 2 to 4. The case of the plaintiff is that the suit properties were allotted to him in the partition deed, dated 02.12.1959 entered into between the plaintiff, his father and brothers, that the suit properties were allotted to the deceased first plaintiff in II Schedule as items 1 and 4 and since then, the first plaintiff had been in peaceful possession and enjoyment of the same by letting out to the various tenants, that the first defendant who is the step brother of the first plaintiff was allotted with V schedule of properties in the partition deed, that the first defendant has already alienated all the properties allotted to him in the partition, that the first defendant without any legal basis claiming that he is having rights in the items 1 and 4 of II schedule of properties in the partition deed, which were allotted to the first plaintiff, has attempted to interfere with the tenants of the suit properties, that the first defendant has applied to the Ettayapuram Town Panchayat to change the property tax assessments in respect of the suit buildings in his favour, that the first defendant has also filed a writ petition in W.P.(MD)No.9221 of 2015 and obtained orders directing the panchayat to consider his application for name transfer, that since the



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plaintiff has raised objections, the panchayat has refused to effect name changes and directed the parties to approach the competent civil Court, that even thereafter, the first defendant has attempted to alienate the suit properties, the plaintiff was constrained to issue a public notice in Dinamalar daily on 09.12.2015, for which the first defendant has issued a reply notice with false and untenable allegations, that the plaintiff has also issued rejoinder notice disputing the contentions in the reply notice, that the first defendant in order to grab the properties, has then lodged a complaint before the Ettayapuram Police, that thereafter the first defendant sold the shops Nos.32, 34 and 36 to the second defendant claiming that the properties allotted to him under the third item of IV schedule, that the properties allotted to the first defendant in the third item of V schedule were already sold in the years 1989 and 1981 and as such, no other properties were available to him to alienate the same to the second defendant, that the properties allotted to the first defendant was situated in the Melaratha Veethi which is running North South, that the properties allotted to the first plaintiff are located on the Aranmanai Vasal / Mela Vasal street which is running on East West, that since the first defendant has absolutely no right over the suit properties, alienations made by him are void and that therefore, the first plaintiff was



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constrained to file the above suit for declaration and permanent injunction.

5. The defence of the defendants is that the plaintiff has got building properties, as per the partition deed are at Mela Vasal street and Aranmanai Vasal Street, Ettayapuram only and the first defendant has got buildings only in Mela Ratha Veethi at Ettayapuram, that as per the partition deed, the first defendant has got so many buildings and out of the said buildings, the buildings bearing present door Nos.32, 34 and 36 and its vacant site were sold to one Murugan, vide sale deed dated 19.10.2016 and two other documents dated 24.10.2016, that many of the buildings are remaining unsold, that the first defendant is having buildings with door Nos.238 to 246 totally 9 buildings at Mela Ratha Veethi, Ettayapuram as given in third item of V schedule in the partition deed, that since the panchayat assessments stands in the name of other co-sharers in respect of the said buildings, the first defendant applied before the Ettayapuram Town Panchayat Executive Officer, that since the Executive Officer has not taken any steps for more than 6 months, the first defendant filed a writ petition in W.P.(MD)No.9221 of 2015 and obtained orders, directing the Executive Officer to dispose of the first



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defendant's petition within 6 weeks, that the Executive Officer, Ettayapuram Town Panchayat conducted an enquiry by issuing notice to the concerned parties, that the Executive Officer issued notice to the concerned co-sharers on 13.07.2015 for filing their objections to the first defendant's application dated 08.01.2015, that after receiving the objections, the Executive Officer disposed of the first defendant's petition by stating that since there were several objections received, the first defendant was directed to seek remedy through civil Court, that the buildings mentioned in the sale deeds dated 19.10.2016, 24.10.2016 and 24.10.2016 are situated in Mela Ratha Veethi, Ettayapuram Village and the same belonged to first defendant, that the first defendant's share as per the partition deed is having more than 50 buildings in Melaratha Veethi, but he sold only 10 buildings as on date, that the plaintiff, as per the partition deed, is not having single item of property in Melaratha Veethi, but he is having buildings only at Melavasal and Aranmanai Vasal street, that the buildings bearing Door Nos.34, 35, 36 and 37 were changed in the year 1970 to 1980 as Door Nos.1, 1-1, 2, 3 and 4 and the same were already sold to Subbiah, E.S.Subramanian, Shenbaganathan, Kannan Pattar and Sankara Pattar and till now they are living and enjoying the properties in the capacity of owners, that the plaintiff has

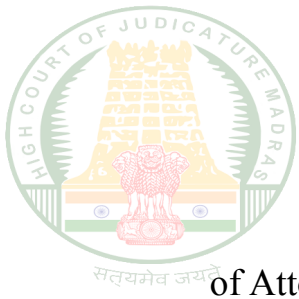


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already sold the buildings having Door Nos.34 to 37 to the third parties and now the plaintiff, after getting false assessments, has come forward with the present suit, that the second defendant after thorough verification of the records, purchased the properties from the first defendant and that the first defendant lodged a police complaint before the Ettayapuram Police Station and F.I.R., came to be registered in Cr.No. 49 of 2016 for the offences under Sections 147, 420, 465, 294(b) and 406 I.P.C., and the same is pending before the Judicial Magistrate Court No.II, Kovilpatti.

6. The defendants have filed an additional written statement taking a defence that the plaintiff and the first defendant belonged to Ettayapuram Jamin heredity and they are having lot of movable and immovable properties in several villages in Ettayapuram Jamin, that as per the family arrangement, all the legal heirs of T.M.K.Ettappa Naicker including the first defendant executed a registered General Power of Attorney deed vide document No.127/1988 in favour of the plaintiff and as per the registered power of attorney, the plaintiff has administered and managed all kinds of movables, accounts and including collecting the rent for the buildings, that the plaintiff as per the terms of General Power



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of Attorney collected the rent for schedule buildings from the tenants and issued receipts in his name to the tenants, that there was subsequently some misunderstanding between them and hence, the first defendant cancelled the General Power of Attorney deed, that the Town Panchayat has subsequently come to a conclusion that the suit properties were allotted to the share of the first defendant and hence, cancelled their earlier order in proceedings dated 27.09.2016, vide proceedings dated 03.07.2017, that the buildings owner's name changed to the first defendant and that the first defendant prior to the filing of the suit sold the buildings bearing Nos.32, 34 and 36 to the second defendant and as such, the building assessment changed to the name of the second defendant.

7. After remand by this Court, the first defendant has filed an additional written statement taking a stand that the plaintiffs 2 to 4 are not the legal representatives of the deceased first plaintiff, that they have cheated the Madurai Bench of Madras High Court and obtained orders for their impleadment, that the plaintiffs without proving that they are the legal representatives of the deceased first plaintiff, are not entitled to prosecute the suit, that since the deceased first plaintiff has no direct



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legal heirs, nor he executed any Will in favour of anyone and in the absence of any testamentary instrument executed by the first plaintiff, the plaintiffs without getting letters of administration cannot proceed with the suit.

8. The second defendant has filed an additional written statement reiterating the earlier contentions and further stated that the plaintiffs 2 to 4, after the expiry of the limitation period for filing the appeal by the first plaintiff, have filed the appeal alleging that they are Class II legal heirs, that the plaintiffs without impleading all the II Class legal heirs, have filed the appeal, that the second defendant after purchasing the suit properties from the first defendant, sold the same to the third parties and the third parties have been in possession and enjoyment of the suit properties, that they came to know that the first plaintiff without referring to any of the properties, without following the legal formalities, has executed a Will in the year 2006 and after the death of her father Thangasamy, the said Will came to be registered as document No. 23/2021, that the plaintiffs without proving the genuineness of the Will cannot proceed with the case, that the plaintiffs are duty bound to prove the Will and that therefore, the suit is liable to be dismissed.



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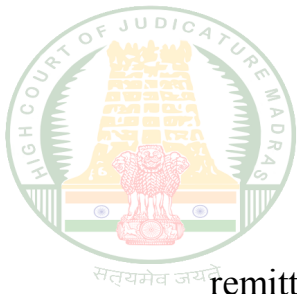
9. The learned trial Judge, upon considering the pleadings of both parties, has framed the following issues:

(1) Whether the plaintiff is entitled for the declaration that he is the absolute owner of the suit properties?

(2) Whether the plaintiff is entitled for consequential permanent injunction as prayed for?

(3) To what other reliefs?

10. During trial, the sole plaintiff has examined himself as P.W.1 and exhibited 36 documents as Exs.A.1 to A.36. The defendants have examined 3 witnesses as D.W.1 to D.W.3 and exhibited 6 documents as Exs.B.1 to B.6 and 14 witness documents as Exs.X.1 to X.14. The learned trial Judge, upon considering the evidence available on record and also hearing the arguments of both sides, has passed the judgment and decree dated 24.01.2020 dismissed the suit. Challenging the dismissal of the suit, after the death of the first plaintiff, the plaintiffs 2 to 4 have preferred an appeal in A.S.(MD)No.229 of 2021 before this Court and this Court, vide judgment dated 29.03.2022, allowed the appeal by setting aside the judgment and decree made by the trial Court and



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remitted the case back to the trial Court for fresh disposal by appreciating the evidence on record within a period of three months from the date of receipt of a copy of that judgment.

11. In pursuance of the remand order, the suit was restored to file. After filing of the additional written statement, the trial Court has framed the following additional issues:

(1) Whether the plaintiffs 2 to 4 are the legal representatives of the deceased Thangasamy?

(2) Whether the plaintiffs 2 to 4 are entitled to the relief?

12. Thereafter, the second plaintiff has examined himself as P.W.2 and the fourth plaintiff as P.W.3 and exhibited 8 documents as Exs.A.37 to A.44. The defendants have not adduced any further evidence. The learned trial Judge, upon considering the material available on record and on hearing the arguments of both sides, has passed the impugned judgment and decree dated 23.02.2024, granting the reliefs of declaration and permanent injunction as sought for. Challenging the impugned judgment and decree, the present appeal came to be filed.



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13. The learned Counsel appearing for the appellants/defendants would submit that the partition deed under Ex.A.1 clearly stated about the four boundaries of the properties of each and every member share within which the respective properties are situated, but the plaintiff did not prosecute his suit based on the four boundaries to identify the properties, instead he proceeded to lead the case based on the house tax receipt numbers and Door numbers, that the Ward Numbers, street names, Door numbers have been changed three times from 1959 till the filing of the suit in the year 2016, that a comparative analysis of the properties in documents under Exs.A.8 and A.20 to A.22 sold to Murugan are entire different, that P.W.1 would admit that the properties in the partition deed are based on the boundaries, that since misunderstanding arose between the parties in the year 2015, the first defendant wanted to know the present status of the properties as per the partition deed, that the Executive Officer has issued proceedings dated 14.08.2015 under Ex.A.13 whereunder the Executive Officer states that in respect of the first defendant's properties, the name still stands in the name of Samasthanam and Jeyaram Pandian, that Ex.A.13 would go to show that the buildings in Door Nos.238-246 are converted as Door Nos.



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32 to 37, that the first defendant alone has approached the Executive Officer for change of name for the properties as provided in the partition deed, but no such attempt was made by the plaintiff, that the evidence of D.W.2 – Executive Officer was based on four boundaries and the name change has been made to the appellant is a statutory evidence, but the trial Court did not accept the evidence of the Executive Officer, that the Executive Officer has issued the proceedings under Exs.X.2 to X.12 for name transfer which has been issued referring to the partition deed and on verification of the four boundaries, that the trial Court, without examining the properties and four boundaries has wrongly concluded that the first defendant has indulged in fraudulent activities, that the Encumbrance Certificate under Ex.A.29 taken for the period from 1980 to 1986 would reveal 7 transactions, that those documents relating to item 2 of V schedule and not in respect of the item 3 of Schedule V of the partition deed, that the properties sold in the year 1980 to 1986 belonged to the first defendant, that out of 7 properties 5 properties are within item 2 of Schedule V and 2 properties in item 3 of Schedule V, that there are several other items retained by the first defendant, that the first defendant either in the sale deed executed in the year 1980, 1981 or in the year 2016, nowhere in the boundary “நடராஜா மிள்ளை வீட்டிற்கும் தெற்கு” is



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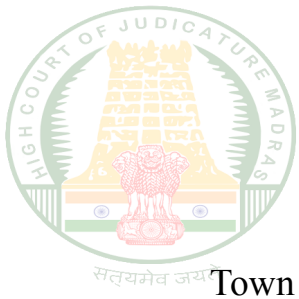
written and as such, the same would go to show that the plaintiff's properties as per the partition deed is different from the first defendant's properties, that the plaintiff never let in evidence or documentary proof that the suit properties mentioned old numbers and new numbers are only for the property in dispute situated within the four boundaries that he has mentioned viz., melavasal, that the plaintiff's property is entirely different with that of the first defendant's property, that the first defendant being younger, with the trust and belief executed a General Power of Attorney in favour of the plaintiff, that the first defendant wanted to sell some of the properties as described in Schedule V and wanted to find out the correct door numbers and hence he applied to the Executive Officer in the year 2015 and came to know the high handedness of the plaintiff and hence, immediately cancelled the power of attorney deed and took all the steps to change the assessment of the properties to his name, that the trial Court ought to have directed the plaintiff to prove the properties stated in the suit lies within the four boundaries as mentioned in the partition deed and that therefore, the judgment of the trial Court is liable to be interfered with.



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14. The learned Counsel for the respondents/plaintiffs would submit that the only issue to be decided is whether the suit properties were allotted to the first plaintiff under items 1 and 4 of II Schedule or allotted to the first defendant under the third item of V Schedule in Ex.A. 1 partition, that the description of the properties given in the partition deed would clinch the issue, that the properties allotted to the first defendant are situated in the Mela Ratha Veethi, which is running North to South, whereas the properties allotted to the first plaintiff are situated in the Aranmanai Vassal Street and Mela Vasal Street, which are running East to West, that if the location of the properties situated on the North South street, it will belong to the first defendant or if the properties situated on the East West street, then it will belong to the first plaintiff, that the first defendant in his evidence as D.W.1 would admit that Mela Ratha Veethi is running North to South and he has executed a sale deed in respect of the second defendant in respect of the properties situated on the East West road, that the boundary recitals in the sale deeds executed by the first defendant to the second defendant under Exs.A.21 to A.23 would clearly prove what was sold is the property situated on the East West street and not on the North South street, that the correlation certificate under Ex.A.23 issued by the Executive Officer, Ettayapuram



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Town Panchayat would prove that the door numbers for the properties allotted to the first defendant are different from the suit properties and as such, the claim of the first defendant that the suit door numbers absolutely belonged to him is false and untenable, that the X series documents exhibited through D.W.2 – Executive Officer by the first defendant claiming that the suit properties belonged to him are all after the suit documents and they have no probative value and the same were created by the first defendant for the purpose of the above case, that the plaintiffs have proved the fact that the properties allotted to the first defendant under the third item of IV Schedule were already sold by him, that there is no discrepancies in the identification of the properties allotted to the parties and any such wrong description is only a “Falsa demonstratio non nocet”, which means “a wrong description of an item in a legal document will not necessarily void the same if it can be determined from other facts”, that when the property mentioned in the schedule to the partition deed is clear and identifiable, the wrong description of the boundary will not affect the outcome of the suit and that therefore, there is nothing to interfere with the reasoned findings of the learned trial Judge.

15. The points for consideration are:



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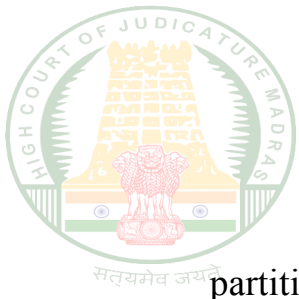
(1) Whether the trial Court erred in rejecting the evidence of D.W.2 and the documents exhibited as Exs.X.1 to X.14, which were based on the partition deed (Ex.A.1) and the actual inspection of the suit properties solely on the ground that they were created after the suit was filed, when in fact the proceedings were initiated prior to the filing of the suit?

(2) Whether the trial Court's finding that the suit properties were allotted to the first plaintiff in the partition deed (Ex.A.1) is sustainable, in view of the evidence demonstrating that the first plaintiff had disposed of his allotted properties and the suit properties were actually retained and sold by the first defendant to the second defendant?

(3) Whether the judgment and decree of the learned trial Judge are liable to be interfered with?

(4) What other reliefs the parties are entitled to?

16. Pending appeal, the appellants/defendants have filed an application under Order 26 Rule 9 C.P.C., seeking appointment of Commissioner. The case of the petitioner in C.M.P.(MD)No.8402 of 2024 is that the door numbers and the ward numbers of the suit properties have been changed more than three times from the date of



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partition deed which was executed in the year 1959 and the same was based on four boundaries, that the boundaries have not changed till now, that the property allotted to the first plaintiff in the partition deed is in II Schedule, whereas the property allotted to the first defendant is situated in Mela Ratha Veethi, that the plaintiffs 2 to 4 never knew about the properties, that the plaintiffs never took interest to identify the suit properties by four boundaries and by Town Survey Inspectors or by the Advocate Commissioner, that the first plaintiff even during his life time has given letters to change certain properties to his name without knowing its topography which was rejected by the Ettayapuram Town Panchayat Executive Officer, that the evidence of the Executive Officer – D.W.2 based on records would prove that the plaintiff's property is different, that the trial Court went rely on the discrepancies based on tax receipt numbers, door numbers and ward numbers which got changed several times, that though door numbers and ward numbers will change, the four boundaries to the properties never change and that therefore, an Advocate Commissioner has to be appointed to identify the suit properties as per the four boundaries as described in the partition deed under Ex.A.1



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17. The respondents/plaintiffs have filed a counter affidavit raising serious objections and further stated that the first defendant is also one of the parties to Ex.A.1 partition deed, that the first defendant sold certain properties which were allotted to him in Ex.A.1 partition deed and the same was admitted by the first defendant in his cross-examination. Moreover from the date of partition deed, the first plaintiff had been in actual and constructive possession of the properties which were allotted to him, that there is absolutely no dispute with regard to the lie and location of the schedule properties, that the defendants in order to collect evidence through the Commissioner's report filed the present petition, that there is absolutely no necessity to appoint Advocate Commissioner in the present suit, as there is no dispute with regard to the door number or extent or lie and location of the schedule properties, that the defendants have not stated any reason as to why they have not taken steps before the trial Court and the above petition is belated one and that therefore, the petition is liable to be dismissed with exemplary costs.

18. Whether an Advocate Commissioner is to be appointed to identify the suit properties is the point for consideration.

19. As rightly contended by the learned Counsel for the plaintiffs,



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the main dispute to be decided is as to whether the suit properties were allotted to the first plaintiff or to the first defendant under the partition deed. It is not in dispute that the properties allotted to both parties in Ex.A.1 partition deed were described with the four boundaries and with door numbers. Even according to the first defendant, the properties allotted to him in Ex.A.1 partition deed were situated in Mela Ratha Veethi, which is running North South. According to the plaintiffs, the properties allotted to the first plaintiff were situated in Aranmanai Vasal Theru and Melavasal Veethi, which are running East West.

20. As rightly contended by the learned Counsel for the plaintiffs, the first defendant has nowhere raised any issue about the identification of the properties. As rightly pointed out by the learned Counsel for the plaintiffs, the first defendant as D.W.1 would admit that the suit properties situated within the four boundaries, are belonging to him and as such, the above evidence would go to show that there is no discrepancies in the identification of the properties allotted to the parties. The defendants have not offered any reason or explanation for not taking any steps for appoint of Commissioner before the trial Court.



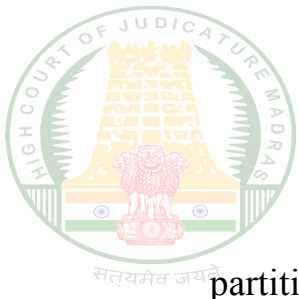
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21. As rightly contended by the learned Counsel for the plaintiffs, the defendants through the appointment of Commissioner are only attempting to gether evidence and as such the same cannot entertained. Considering the above facts and circumstances of the case, the issues came to be decided by the trial Court and the points to be decided in the present appeal, does not warrant appointment of Commissioner and that too at the present stage. Hence, this Court concludes that the above petition is absolutely devoid of merits and the same is liable to be dismissed.

The Points 1 to 3:

22. The relationship not in dispute is that one Ettappan had 3 wives, that the plaintiffs 1 to 3 are the sons of the said Ettappan through his first wife Ramu Ammal, that the first defendant is the son through his third wife and that the fourth plaintiff is the son of the third plaintiff. It is not in dispute that the plaintiffs 1 to 3 and the first defendant belonged to Ettayapuram Jamin family, that when their father Ettappan was alive, all of them have entered into a registered partition deed dated 02.12.1959, vide document No.27/1960 (Ex.A.1) and that subsequently, the said Ettappan died on 12.10.1985. It is also not in dispute that under Ex.A.1



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partition, the first plaintiff was allotted with II Schedule of properties and the first defendant with V Schedule of properties. It is the specific case of the plaintiffs that items 1 and 4 in II Schedule to Ex.A.1 partition which were allotted to the share of the first plaintiff are the suit properties. But according to the defendants, third item in V schedule to the partition deed which was allotted to the share of the first defendant are the suit properties.

23. It is admitted by both parties that the first defendant and his brothers have executed a General Power Attorney deed dated 24.1.1988 under Ex.B.4 in favour of the first plaintiff. The case of the first defendant is that the first plaintiff in pursuance of the power given to him, has managed the properties of the first defendant and was receiving the rents therefor and subsequently with fraudulent intention, he had paid taxes in his name and obtained receipts so as to make a claim over the first defendant's properties. But admittedly, power under Ex.B.4 was given only with respect to the movable properties and not with respect to any of the immovable properties. Since the power was given only with respect to the movable properties, the learned trial Judge has rightly observed that the complaint of the first defendant that the first plaintiff



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has obtained tax receipts fraudulently, cannot be sustained.

24. Before entering into further discussion, it is necessary to refer the properties allotted to the first plaintiff in items 1 and 4 of Schedule II and to the first defendant under third item of V Schedule in Ex.A.1 – partition deed:

II Schedule items 1 and 4:

2 வது லக்கதார் சொத்து விபரம்

(1) பாளையங்காட்டை ரிடி ஁காவில்பட்டி தாலுகா எட்டயபுரம் சப்ரி சரகம். எட்டயபுரம் க!பாவிலிருக்கும் 6 வது வார்டு ஁மலவாசலில் 1இ 2 நம்பர் கட்டிடத்துக்கு நான்கு மால் ஁மலவாசல் கிழமல் பாதைக்கும் தெற்குஇ 3/6ம் கட்டிடத்திற்கு ஁மற்குஇ ஁கா஁மரட்டிவ் ஁டார் பண்ணைக்கட்டிடத்துக்கும் வடக்கு & கிழக்கு.

(4) : கிராமத்தில் 6 – வது வார்டு அரண்மனை வாசல் தெரு 34 முதல் 37 முடிய உள்ள கட்டிடங்களுக்கு நான்கு மால்இ நடராஜ பிள்ளை வீட்டுக்கும் தெற்குஇ தென்வடல் பாதைக்கும் ஁மற்குஇ கிழமல் பாதைக்கும் வடக்குஇ பண்ணை கட்டிடத்திற்கும் கிழக்கு.

II Schedule item 3:

5 வது லக்கதார் சொத்து விபரம்



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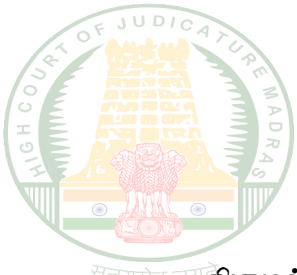
(3) ? ? ? கிராமத்தில் வது வார்டு ுமல ரதவீதியில் 238 வடி 246 முடிய உள்ள கட்டிடங்களுக்கு நான்கு மால்இ டாக்டர் ஸ்ரீனிவாச ஜயட்கார் வீட்டுக்கும் தெற்குஇ ுகாட்டை ுமலத்தெருவுக்கும் ுமற்குஇ ுமல ரத வீதிக்கும் கிழக்குஇ கிழமல் பாதைக்கும் வடக்கு.””

25. Considering the above description of the properties, it is clearly evident that the first item in II Schedule properties allotted to the first plaintiff is situated in Melavasal Theru and the fourth item of II Schedule in Aranmanai Vasal Theru. But at the same time, the third item of V Schedule allotted to the first defendant is shown to be situated in Melaratha Veethi. The main contention of the plaintiffs is that Melavasal Theru and Aranmanai Vasal Thenu are running East West, but Melaratha Veethi is running North South. Admittedly, the plaintiffs have shown that the suit properties are situated on the East West street. D.W.1 in his evidence would say

“மலரத வீதி என்பது தென்வடல் ுராடு என்றால் சரிதான். ுமலரதவீதியில்தான் கதவு எண்238 முதல் 246 அமைந்துள்ளது.”

He would further say

“2ம் பிரதிவாதிக்கு நான் கிரையம் கொடுத்தது ுமலரதவீதி சொத்தா அல்லது



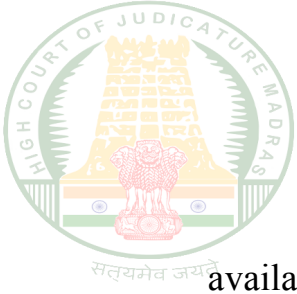
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கிழமல் ஁ராடா என்றால் கிழமல் ஁ராடாகும். அந்த ஆவணத்தில் ஁மலரதவீதி
கதவு எண்.32 என்றுதான் குறிப்பிட்டுள்ளன் என்றால் சரியாக ஙாபகமில்லை.”

26. It is the admitted case of the defendants that the first defendant sold the properties under Exs.A.21 to A.23 as if the said properties were allotted to the first defendant in Ex.A.1 partition. It is evident from Exs.A.21 to A.23 sale deeds, the first defendant has allegedly sold the properties situated on the North of the East West street. In all the three sale deeds, a boundary recital as “கிழமல் பாதைக்கு வடக்கு” finds place in the description of the properties. As already pointed out, admittedly Melaratha Veethi is running North South and as rightly contended by the learned Counsel for the plaintiffs, if the property allotted to the first defendant was sold, then the street should be on the western side, but on the contrary, the street is shown on the southern side.

27. It is not in dispute that in Ex.A.1 partition deed, the properties are mentioned with door numbers. It is also not in dispute that the door numbers and the ward numbers came to be changed subsequently thrice. It is pertinent to note that the buildings available in Aranmanai Vasal Theru are having door numbers 34 to 37 and the buildings available in Melavasal Theru are having door numbers 1 and 2, whereas the buildings



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available in Melaratha Veethi allotted to the first defendant are having door numbers 238 to 246.

28. The first defendant in his written statement has specifically averred that as per the partition deed, in third item in V Schedule at Melaratha Veethi, Ettayapuram, the first defendant is having buildings properties in door numbers 238 to 246 totally nine buildings. D.W.1 in his cross-examination would admit “என்னுடைய எதிர் உரையில் கடை எண்.238 முதல் 246 வரை உள்ள கடைகளில் எனக்கு 9 கடைகள் பாத்தியப்பட்டது என்று சொல்லியுள்ளன் என்றால் சரிதான்.”

29. It is evident from Ex.A.23 that the Executive Officer, Ettayapuram Town Panchayat has given a correlation report with regard to the door numbers and the same would go to show that the door numbers given for the properties allotted to the first defendant in Melaratha Veethi are entirely different from the suit properties.

30. The learned Counsel for the defendants would mainly rely on the evidence of D.W.2 and Exs.X.1 to X.14 and according to him, D.W.2 was summoned as witness through Court. D.W.2 would categorically say



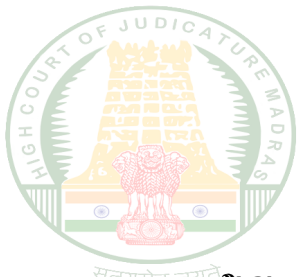
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that the name change has been made only on the basis of the boundaries given in Ex.A.1 partition deed and on the basis of the spot inspection. But the trial Court has discarded the said evidence as after suit. He would further submit that a perusal of Ex.B.1 proceedings would show that the issue has started in the year 2015 even before filing of the suit and as such, the evidence of D.W.2 and Exs.X.1 to X.14 cannot be discarded as after suit and that D.W.2 being the statutory authority, cannot have any motive to support one party or the other.

31. As rightly observed by the learned trial Judge, Exs.X.1 to X.12 came into existence only during the pendency of the above suit. Admittedly, the Executive Officer of Ettayapuram Panchayat has alone given Ex.A.23 – correlation report and when the same was enquired, D.W.2 would say that the particulars given in Ex.A.23 are incorrect and without considering the correct particulars, there occurred typographical errors, which would reads as follows:

“எனது அலுவலகத்தில் 3.11.16ல் வா.சா.ஆ.23 – ல் கொடுத்துள்ள விபரம் சரியா? என்று தாக்கல் செய்துள்ள ஆவணத்தில் விபரம் சரியா என்றால் வா.சா.ஆ.23 தவறானதாகும். நேத ஆவணத்தை நான்தான் வழங்கியுள்ளேன். ஆனால் அந்த



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ஆவணம் தவறு. நான் ஆவணங்களை சரியாக பரிசீலிக்காமல் வழக்கின்
என்றால் தட்டச்சு செய்வதில் ஏற்பட்ட தவறு ஆகும். இந்த ஆவணம் முழுவதும்
தவறாக தட்டச்சு செய்யப்பட்டுள்ளது.”

32. But, as rightly contended by the learned Counsel for the plaintiffs, neither the first defendant nor D.W.2 has produced any materials to show that the particulars furnished in Ex.X.1 are correct. They have not enclosed the copies of the Tax Demand Register or any other document containing the said particulars. It is the specific case of the defendants that D.W.2, in pursuance of the application submitted by the first defendant, after conducting necessary enquiry, has passed an order dated 03.07.2017 cancelling the earlier Ex.A.10 proceedings dated 27.09.2016.

33. It is pertinent to note that when the first defendant has earlier submitted an application before the Executive Officer and when the same was not processed, the first defendant has filed a writ petition and obtained orders directing the Executive Officer to consider his application within a period of six weeks and in pursuance of the said directions, the Executive Officer, after issuing notice to the first plaintiff

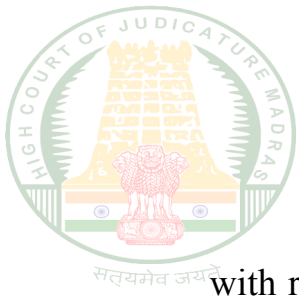


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and after conducting enquiry, has passed an order directing the first defendant to approach the competent civil Court. But as rightly contended by the learned Counsel for the plaintiffs, when the suit was very much pending before the competent civil Court, this Court is also at loss to understand how the Executive Officer has proceeded to conduct enquiry and passed an order cancelling the earlier order passed by the erstwhile Executive Officer. Considering the above, the learned trial Judge has rightly come to a decision that Ex.X.2 order passed by D.W.2 is against law and all other proceedings / orders issued under Exs.X.2 to X.14 subsequently are also invalid.

34. It is the specific case of the plaintiffs that the properties allotted to the first defendant has been already sold by him under Exs.A.2 to A.8. The first defendant in his chief examination affidavit would say that he never sold the buildings bearing Door Nos.238 to 248 shown under third item of V Schedule properties in partition deed and the allegation that he sold the said properties is false and untenable. It is the contention of the 1st defendant that he did not sell the said properties under Exs.A.2 to A.8 and that he has not even visited the Register Office



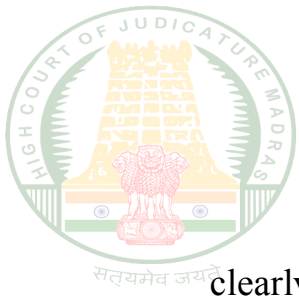
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with regard to the said documents and that he sold the buildings bearing Door nos.238 to 246 to the second defendant under Exs.A.21 to A.23.

Considering the above version of the first defendant, it is very much clear that the first defendant is claiming that the buildings bearing Door Nos. 238 to 246 allotted to him under the partition deed are the suit properties.

35. It is pertinent to note that the first defendant, vide sale deed dated 16.10.1980 under Ex.A.7 sold the building bearing Door No.237, old Ward No.6 [(new Ward No.9), Door No.24] to one Mookkammal and the building bearing Door No.238 to one Ponnusamy Thevar under Ex.A.8, vide sale deed dated 16.10.1980, the building bear Door No.235 in favour of Karuppasamy Thevar under Ex.A.6 vide sale deed dated 23.02.1981, the building bearing Door No.240 in favour of one Seethai Ammal under Ex.A.4, vide sale deed dated 31.03.1981, the building bearing Door No.238, in favour of Thangapandian Nadar under Ex.A.2, vide sale deed dated 24.04.1981, the building bearing Door No.242 in favour of Indrani Ammal under Ex.A.5 vide sale deed dated 30.04.1981 and the building bearing Door No.239 in favour of Subbiah under Ex.A.3, vide sale deed dated 30.04.1981. As rightly contended by the learned Counsel for the plaintiffs, considering the above documents, it is



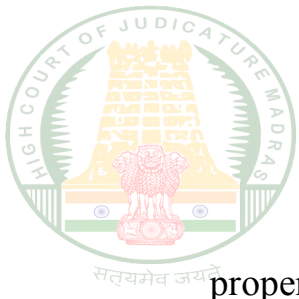
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clearly evident that the first defendant has sold the buildings bearing Nos.237 to 242 under Exs.A.2 to A.8 in the year 1980 and 1981 itself. As already pointed out, though the first defendant has disputed the execution of the said sale deeds, in cross-examination would admit the contents of Ex.A.29 – Encumbrance Certificate which is as follows:

“என்னிடம் காட்டப்படும் ஆவணம் 1.1.1980 முதல் 31.12.1986 வரை உள்ள வில்லட்கு சான்றிதழ் என்றால் சரிதான். அதில் எனக்கு பாத்தியப்பட்ட 5 வது தபசில் 3 – வது அபிட்டத்தை பொறுத்து நான் ஏற்படுத்திக்கொடுத்த கிரையம் துல்ட்கும் என்றால் சரிதான்.”

36. The defendants have taken a stand that the first plaintiff has already sold all the properties allotted to him in the partition deed. Though the first defendant has alleged that he has produced necessary documents, admittedly the defendants have not produced any iota of evidence to substantiate the same. Moreover as per Ex.A.35, 1948 Settlement Register and the patta with respect to the property purchased from the first plaintiff stood in the name of the purchasers namely Subramanian and Kannan Pattar, the same would go to show that the first plaintiff sold the said properties even prior to Ex.A.1 partition deed. No doubt, the first defendant in Exs.A.20 to A.22 sale deeds referred that the



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properties are situated in Melaratha Veethi, but as already pointed out, has given the southern boundary as East West street. At the risk of repetition, it can be stated that Melaratha Veethi is only running North South.

37. As rightly observed by the learned trial Judge, by alleging that the properties sold under Exs.A.20 to A.22 is situated in Melaratha Veethi, the first defendant and after the sale, the second defendant are attempting to claim the suit properties as the properties covered under Exs.A.20 to A.22 and that necessitated the first plaintiff to file the present suit. The learned trial Judge, after elaborately considering the pleadings and evidence available on records, has come to a decision that the suit properties came to be allotted to the first plaintiff as items 1 and 4 of II Schedule in Ex.A.1 partiton deed and that therefore, they are entitled to get the relief of declaration and the consequent permanent injunction. This Court in its entire agreement with the findings recorded by the learned trial Judge and as such, nothing is liable to be interfered with. Consequently, this Court concludes that the Appeal Suit is devoid of merits and the same is liable to be dismissed.



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38. In the result, the Appeal Suit is dismissed, by confirming the judgment and decree passed in O.S.No.60 of 2016, dated 23.02.2024, on the file of II Additional District Court, Tuticorin and the Civil Miscellaneous Petition in C.M.P.(MD)No.8402 of 2024 is also dismissed. Consequently, the connected Miscellaneous Petitions are also dismissed. There shall be no order as to costs.

21.02.2025

NCC : Yes : No
Index : Yes : No
Internet : Yes : No
SSL

To

1. II Additional District Court, Tuticorin.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

A.S.(MD)No.165 of 2024

21.02.2025