



S.A.(MD)No.100 of 2018

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.06.2025

CORAM

THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

S.A.(MD)No.100 of 2018
and
C.M.P.(MD)No.2353 of 2018

Jeyarani ... Appellant/1st Respondent/Plaintiff
Vs.
1.Gunaseelan ... 1st Respondent/Appellant / 5th Defendant
2. A.David Kurusu Micheal
3.Baby
4.K.Sureshkumar
5.Suseela ... Respondents 2-5/ Respondent2-5/Defendants 1-4

PRAYER : Second Appeal filed under Section 100 Cr.P.C., against the judgment and decree dated 15.04.2013 made in A.S.No.48 of 2012 on the file of the II Additional Sub Court, Nagercoil, partly allowing the judgment and decree dated 12.03.2012 made in O.S.No.309 of 2008 on the file of the II Additional District Munsif Court, Nagercoil.

For Appellant :Mr.S.Meenakshi Sundaram,
Senior Counsel for Mr.R.Manimaran
For Respondents :Mr.N.Dilipkumar for R1
:No appearance for R2 and R3
:R4 & R5 – Batta due



S.A.(MD)No.100 of 2018

WEB COPY

JUDGMENT

This Second Appeal has been filed challenging the judgment and decree dated 15.04.2013 made in A.S.No.48 of 2012 on the file of the II Additional Sub Court, Nagercoil, partly allowing the judgment and decree dated 12.03.2012 made in O.S.No.309 of 2008 on the file of the II Additional District Munsif Court, Nagercoil.

2. The plaintiff is before this Court on Appeal. The parties are referred to, as per the litigative status before the trial Court.

3. It is the case of the plaintiff that she is the absolute owner and is in possession and enjoyment of the suit schedule property measuring an extent of 15 cents in R.S.No.N4/11-13 of Nagercoil village. The suit property was settled in her favour by her mother, viz., Sulochana, through a registered settlement deed dated 06.02.2004 vide document No.412/2004. It is the further case of the plaintiff that her mother had acquired title to the suit property through a registered sale deed in document No.5582/1982. According to the plaintiff, the first defendant, who is one of her brother, was attempting to interfere and disturb the



S.A.(MD)No.100 of 2018

WEB COPY

enjoyment of the plaintiff over the suit property and as such, she earlier filed a suit for permanent injunction as against the first defendant and also another brother Xavier Kumar, in O.S.No.818 of 2004 on the file of the II Additional District Munsif Court, Nagercoil. In view of the same, her brothers got agitated and the first defendant went ahead and executed sale deeds in respect of the portion of the property, which was settled by her mother in her favour on the northern side, which is the suit property. Since the first defendant had deliberately executed sale deeds in favour of the defendants 2 and 3, in respect of the property belonging to the plaintiff, the plaintiff had come up with the suit seeking to declare the sale deed dated 06.04.2006 executed by the first defendant in favour of the second defendant, sale deed dated 12.04.2006 executed by the first defendant in favour of the third defendant, the settlement deed dated 07.03.2008 executed by the third defendant in favour of the fourth defendant are all as null and void and not binding on the plaintiff and also for prohibitory injunction, restraining the defendants from further alienating or encumbering the suit schedule property or from interfering the peaceful enjoyment of the plaintiff.



S.A.(MD)No.100 of 2018

WEB COPY

4. The defendants 1 and 2 did not contest the suit and they were set *ex-parte* and the defendants 3 and 4 filed a written statement, but, however, they did not proceed to contest the suit and they were also set *ex-parte*.

5. The fifth defendant, being a subsequent purchaser, who was impleaded in the suit, had filed a written statement, resisting the claim of the plaintiff. The fifth defendant disputed the settlement deed in favour of the plaintiff as a fraudulent document and the suit is bad for non-joinder of necessary parties and also on knowing the sale deed executed in their favour, he was not added as a party and further as per the Will executed in favour of the first defendant and Xavier Kumar, the properties had already been partitioned.

6. During trial, the plaintiff examined herself as P.W.1, and one Manikandan as P.W.2 and marked Ex.A1 to Ex.A19. On the side of the defendants, the fifth defendant examined himself as D.W.1 and marked Ex.B1 to Ex.B16.



S.A.(MD)No.100 of 2018

WEB COPY

7.1. The trial Court, after analyzing the documents and evidences, decreed the suit as prayed for. The trial Court on finding that already the plaintiff had filed a suit as against the defendants 1 and 2 in O.S.No.818 of 2004 and had obtained a decree for injunction in respect of the suit property and further had filed a suit in O.S.No.105 of 2006 as against her mother and defendants 1 and 2, seeking for partition in respect of the other portion of the property measuring 15 cents, in the southern side, came to the conclusion that the first defendant was not having any right to execute the sale deeds in Ex.A3 and Ex.A4, when the suit property has been settled in favour of the plaintiff by her mother in Ex.A1. The trial Court also found that the fifth defendant, having purchased the suit property for valuable consideration, sought to contend that he was a *bona fide* purchaser, but, however, when already the suit property has been settled in favour of the plaintiff, and also civil proceedings pending between the parties and suits also came to be decreed and further by taking note of the fact that the other purchasers even the vendors have not come forward to support the case of the fifth defendant, rejected the defence of the fifth defendant and decreed the suit. The second



S.A.(MD)No.100 of 2018

WEB COPY

defendant, who was also a purchaser of a portion of the property in Ex.A3 has not filed any appeal and neither vendor of the fifth defendant, who purchased 10 cents of the suit property from the first defendant had preferred an appeal. The first defendant having remained *exparte* has not filed any appeal and has also not chosen to appear and contest in this appeal also.

7.2. On the appeal preferred by the fifth defendant, purchaser, the lower Appellate Court on coming to the conclusion that the finding of the trial Court in respect of the First Information Report lodged by the fifth defendant in Ex.B12 is erroneous, had arrived at a finding that the fifth defendant is a *bonafide* purchaser and when admittedly, the first defendant – David Kurusu Micheal was having a portion of the property left in his hands that was inherited from his father Antony Michael along with other co-sharers, to that extent, the purchase made by the fifth defendant would stand saved. In arriving at such a conclusion, the lower Appellate Court had interfered with the judgment and decree of the trial Court to the extent that the plaintiff will be entitled to declaration of the sale deed as null and void to the extent of 2/3 share, but, however, the



S.A.(MD)No.100 of 2018

WEB COPY

decree of the trial court was set aside partly in respect of 1/3 share. The lower Appellate Court had also arrived at a finding that the fifth defendant is entitled for 3.333 cents in the suit property being the share, that belongs to the first defendant David Kurusu Micheal and had given liberty to the fifth defendant to file a suit for partition and separate possession for his 2/9 share in the suit and also for recovery of 2/3 consideration and other consequential reliefs from the first defendant. The relief in respect of permanent injunction was dismissed. Assailing the judgment and decree of the lower Appellate Court in partly allowing the appeal and reversing the decree of the trial Court, the plaintiff is before this Court on Second Appeal.

8. The Second Appeal has been admitted on the following substantial question of law:

“(a) Whether the lower Appellate Court was right in granting a share in favour of the fifth respondent / fifth defendant in the suit by modifying the decree in the suit for declaration, particularly, when the Appellate Court had also relegated the fifth defendant to file a suit for partition and separate possession?”



S.A.(MD)No.100 of 2018

WEB COPY

9. The learned Senior Counsel appearing for the appellant by placing reliance on the documents filed by the plaintiff contended that the suit property came to be settled in favour of the plaintiff, through the settlement deed in Ex.A1. Since the defendants 1 and 2 earlier interfered in the suit property, a suit came to be filed and an *exparte* decree was passed. It is his further contention that in respect of the balance extent of the property also a suit for partition was filed by the plaintiff, where a preliminary decree has already been passed. The first defendant, who had no right over the suit schedule property, went ahead and executed two sale deeds in Ex.A3 and Ex.A4, conveying an extent of 3 ½ and 10 cents respectively to the defendants 2 and 3. The ten cents of suit property was further settled in favour of the fourth defendant, who is his wife and when the suit came to be filed and an interim order was in force, the fifth defendant proceeded to purchase the suit property in breach of the interim orders passed in the suit and is a *pende lite* purchaser. It is the vehement contention of the learned Senior Counsel for the appellant that when the defendants 2 and 3, who are the purchasers from the first defendant, had not chosen to contest the suit and further the first

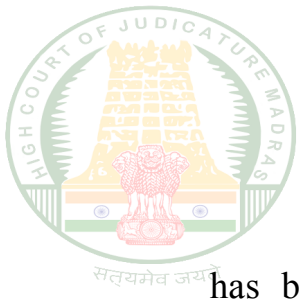


S.A.(MD)No.100 of 2018

WEB COPY

defendant himself has not come forward to contest the suit, the fifth defendant, who is the only *pende lite* purchaser that too, who purchased the property in breach of the interim orders, that was in force, is not a *bona fide* purchaser and he was not entitled for any relief. The learned Senior Counsel further submitted that the fifth defendant cannot go ahead and contest the title of the plaintiff and as a purchaser, he can only step into the shoes of the vendor and he is entitled to only defend his purchase. It is also further contended that the fifth defendant had not chosen to examine any other witnesses, including his vendors, to support his contentions. The trial Court, on analyzing all these evidences and documents, had rightly decreed the suit, but, however, the lower Appellate Court while arriving at a finding that the Will sought to be put forward to deny the title of the plaintiff cannot be accepted, while arriving at a conclusion that the fifth defendant is a *bona fide* purchaser had went ahead and granted the relief in the suit property, where the first defendant was not having any right or share.

10. The learned Senior Counsel further submitted that when the suit filed by the plaintiff for declaration of the sale deed as null and void

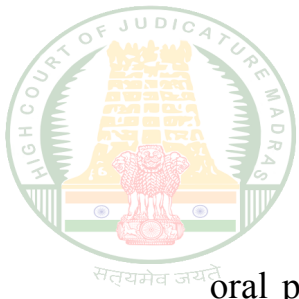


S.A.(MD)No.100 of 2018

WEB COPY

has been decreed and further when the lower Appellate Court had relegated the fifth defendant to file a suit for partition and separate possession, however, had erroneously held that he is entitled for 3/9 share in the suit property, which is beyond the relief and scope of the suit. The learned Senior Counsel contended that to this extent, the findings and the judgment and decree of the lower Appellate Court is perverse and sought for interference of this Court.

11. Mr.N.Dilipkumar, learned counsel for the first respondent / fifth defendant contended that the plaintiff has no absolute right or title over the suit property. The learned counsel by placing reliance on the document submitted that even as per the settlement deed executed in her favour, when her mother and father purchased 30 cents of property, 15 cents alone came to be settled in her favour. In the absence of any partition and even in the absence of any recital in the settlement referring to any oral partition between her mother Sulochana and father Antony Micheal, the claim made by the plaintiff in respect of the suit property is not sustainable. It is his further contention that even in the plaint, it has not been pleaded that there had been an oral partition and based on the

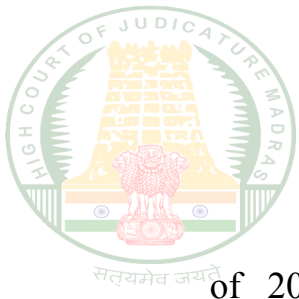


S.A.(MD)No.100 of 2018

WEB COPY

oral partition, the suit property came to the share of her mother, which was eventually settled in her favour in Ex.A1. The learned counsel further contended that the plaintiff has filed successive suits and almost 5 suits came to be filed. He also further submitted that the defendants 1 and 2 had now colluded with the plaintiff and her mother in order to defeat his rights and he being a *bonafide* purchaser having purchased the portion of by the suit property for valuable consideration was rightly taken note of the lower Appellate Court and the lower Appellate Court had only saved the purchase of the fifth defendant to the extent of the property available in the hands of the first defendant and had further only relegated the fifth defendant to file a suit for partition seeking separate share on meets and bounds.

12. It is his further contention that actually the property was bequeathed by the father of the first defendant and Xavier Kumar in their favour through the Will in Ex.B4 and their father acquired right over the property through Will executed in his favour by his father in Ex.B13. Based on those documents, already a suit for partition came to be filed between the first defendant and his brother Xavier Kumar in O.S.No.36



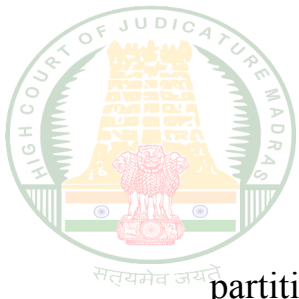
S.A.(MD)No.100 of 2018

WEB COPY

of 2004, wherein a preliminary decree had already been passed. Therefore, the claim of the plaintiff for an exclusive right over the suit schedule property cannot be sustained, but, however, in the absence of an appeal by the fifth defendant in respect of the findings arrived at by the lower Appellate Court, he submits that he confines his argument to the extent that the judgment and decree of the lower Appellate Court in preserving the rights of the fifth defendant to the extent of the property that was left in the hands of the first defendant need not be disturbed. It is submitted that the findings arrived at by the lower Appellate Court is based on the documents and evidences filed and needs no interference and sought for dismissal of the second appeal.

13. Heard the rival submissions and perused the materials available on record.

14. According to the plaintiff, the plaintiff's father - Antony Michael and her mother - Sulochana had purchased an extent of 30 cents of property through sale deed dated 30.09.1982 in Ex.A14 from one Thanga Nadar. It is the claim of the plaintiff that there was an oral

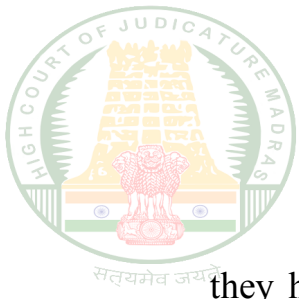


S.A.(MD)No.100 of 2018

WEB COPY

partition between the husband and wife and in the partition, 15 cents of land on the northern side, which is the suit property was allotted in favour of the plaintiff's mother -Sulochana and the balance 15 cents of land on the southern side was allotted in favour of the plaintiff's father Antony Michael. As such, the plaintiff's mother -Sulochana is having a valid title in respect of the suit property, which is the 15cents on the northern side through the purchase in Ex.A14 and the oral partition, had settled the suit property in favour of the plaintiff through settlement deed dated 06.02.2004 in Ex.A1. Pursuant to the settlement, the suit property got vested with her and she has been in peaceful possession and enjoyment.

15. On the contrary, it is the case of the defendants that originally the suit property belonged to the father of Antony Michael, who had executed a Will in favour of the father of the defendants 1 and 2, in Ex.B13. Thereafter, Antony Michael had bequeathed the property to the entire extent of 30 cents in favour of the defendants 1 and 2 through a Will in Ex.B14. As such, according to the defendants 1 and 2, they are the absolute owners of the entire extent of 30 cents of land. However,



S.A.(MD)No.100 of 2018

WEB COPY

they have not chosen to file any written statement in the suit and they have not contested the suit and remained *exparte*.

16. Based on the above claim, the first defendant David Kurusu Micheal had went ahead and executed two sale deeds, one in favour of the second defendant conveying 3 ½ cents through sale deed dated 06.04.2006 in Ex.A3, further an extent of 10 cents of land was sold by the first defendant in favour of the third defendant through sale deed dated 12.04.2006 in Ex.A4. The third defendant, in turn, settled the said 10 cents purchased by him in favour of his wife, who is the fourth defendant, through settlement deed dated 07.03.2008 in Ex.A6. Thereafter, the fourth defendant had executed a sale deed in favour of the fifth defendant conveying the 10 cents of the property that was purchased and settled in her favour by her husband/third defendant.

17. Since the first defendant had went ahead and executed a sale deeds in and out of 15 cents of land that was settled in favour of the plaintiff, by her mother – Sulochana, the plaintiff had come up with the suit with the prayer to declare the three deeds, one executed in favour of



S.A.(MD)No.100 of 2018

WEB COPY

the third defendant, another executed in favour of the third defendant and the subsequent settlement executed by the third defendant in favour of the fourth defendant as null and void and also for further permanent injunction. In the suit, an interim order came to be passed and pending suit, in breach of interim order, a sale deed came to be executed in favour of the fifth defendant, who is a pendente lite purchaser.

18. Now, in the absence of the defendants 1 to 4 contesting the suit, the fifth defendant had come forward and filed a written statement contending and disputing the title over the suit property and also defending the sale executed in his favour by the fourth defendant.

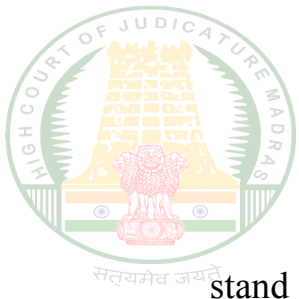
19. It is to be noted that after the suit property was settled in favour of the plaintiff in Ex.A1, since the first defendant and his brother Xavier Kumar had interfered with the peaceful possession and enjoyment of the suit property, the plaintiff had filed a suit as against her brothers, i.e., first defendant and Xavier Kumar in O.S. No. 818 of 2004, on 29.04.2004. An *exparte* decree came to be passed on 16.11.2009, granting permanent injunction in favour of the plaintiff as against the



S.A.(MD)No.100 of 2018

WEB COPY

first defendant and Xavier Kumar. Copy of the plaint, judgment and decree in the suit has been marked as Ex.A2, Ex.A11 and Ex.A12 respectively in the present suit. The perusal of the plaint documents would reveal that already the plaintiff had come up with the suit in respect of the suit property as against the first defendant and his brother Xavier Kumar, where the decree has been granted in favour of the plaintiff in respect of the suit property, i.e., 15 cents measuring on the northern side, which was settled by the mother in favour of the plaintiff. It is to be further seen that in respect of the balance extent of 15 cents, the plaintiff filed another suit in O.S.No.105 of 2006 as against his brothers, viz., first defendant' and Xavier Kumar and her mother. In the suit, the first defendant and Xavier Kumar have filed a written statement and resisted the claim. It is more relevant to be noted at this juncture that, the first defendant originally filed a written statement disputing the plaintiff's relationship as his sister. The first defendant went to the extent of stating that Sulochana was not the wife of Antony Michael, nor the mother of the first defendant. Several allegations were made, but, however, later an amended written statement came to be filed and even in the amended written statement, the first defendant has maintained the

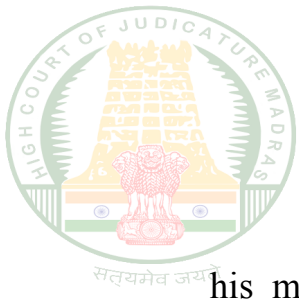


S.A.(MD)No.100 of 2018

WEB COPY

stand that the plaintiff is noway related to the first defendant and Xavier Kumar. In the suit, the first defendant specifically sought for exclusive title over the suit property, based on the Will in Ex.B4, which is claimed to have been executed by the father Antony Micheal in favour of the first defendant and Xavier Kumar. The brothers have contested the partition suit and after trial, the trial Court by rejecting the claim of the first defendant and Xavier Kumar, that was advanced through the Will in Ex.B14 came to the conclusion that the plaintiff is the daughter of Antony Micheal and a preliminary decree came to be passed decreeing 2/9 share in favour of the plaintiff. The plaint, written statement filed by the first defendant, judgment and decree are filed as Ex.A5, Ex.B10, Ex.A9 and Ex.A10 respectively. Further, the amended written statement filed in the suit is also filed as Ex.B11.

20. The perusal of the plaint reveals that the suit came to be filed on 25.08.2006 and the preliminary decree has been passed on 19.01.2009. In the comprehensive suit for partition, where the plaintiff has come up with the suit for the balance extent of 15 cents of southern side as against his brothers, viz., the first defendant, Xavier Kumar and



S.A.(MD)No.100 of 2018

WEB COPY

his mother and the brothers contested the suit, denying not only the relationship of the plaintiff but also claiming exclusive title over the property based on the Will. After taking such stand by filing a written statement, had however later admitted the relationship of the parties during evidence and the preliminary decree came to be passed in respect of the balance extent of 15 cents on the southern side, which went to the share of Antony Micheal. Preliminary decree was passed in view of the fact that Antony Micheal died intestate and the plaintiff (daughter) and the first defendant and Xavier Kumar (sons) and Sulochana (wife) are his legal heirs.

21. When the Will had already been relied on by the first defendant in the suit in O.S.No.105 of 2006 and a preliminary decree came to be passed on 19.01.2009, the first defendant and Xavier Kumar had not filed any appeal and the preliminary decree passed has attained finality.

22. The fifth defendant *pendente lite* purchaser in the present appeal is only contending that he is a *bona fide* purchaser and in the



S.A.(MD)No.100 of 2018

WEB COPY

absence of any appeal by the fifth defendant or any counter claim in the appeal, the fifth defendant cannot further agitate, disputing the title over the suit property. Further, it is to be noted that, the second defendant, who has purchased a portion of the suit property, has not contested the suit and in respect of the decree declaring the sale deed executed in Ex.A3 as null and void, no appeal has been preferred. The defendants 3 and 4 also, who purchased 10 cents from the first defendant that was settled to the fourth defendant, though filed a written statement have not contested the suit and even after the sale deed was declared as null and void, have not preferred any further appeal. When the sale deeds executed by the first defendant in Ex.B2 and Ex.B3 have been declared as null and void and the parties have not contested and there are no further appeal from the decree, the fifth defendant, who is a purchaser from the fourth defendant alone preferred the first Appeal. In fact, the fifth defendant, who claims to be the *bona fide* purchaser was not able to even examine his vendor Suseela or the third defendant – Sureshkumar in the suit. It is also to be noted that the fifth defendant himself has not chosen to enter into witness box to give evidence or even to make a claim that he is a *bonafide* purchaser. The fifth defendant – Premkumar



S.A.(MD)No.100 of 2018

WEB COPY

had only examined power of attorney holder Gunaseelan, as D.W.1. When in the absence of letting in evidence on the part of his vendors and further defence taken by the first defendant had already been rejected and the preliminary decree came to be passed allotting shares in the other extent of 15 cents, which was available in the name of Antony Micheal, the claim made by the fifth defendant in the suit property cannot be sustained. The lower Appellate Court in fact had analyzed these aspects and found that the earlier proceeding has been initiated by the plaintiff in respect of the suit property, but however, by finding that the fifth defendant had lodged an F.I.R in Ex.B12 on 26.03.2009 that he has been cheated by the defendants, had come to the conclusion that the fifth defendant is a *bonafide* purchaser. Further, the lower Appellate Court had observed that the plaintiff has not substantiated exclusive possession over the suit property. Holding so, the lower Appellate Court had come to the conclusion that in respect of 15 cents of land that was available in the hands of Antony Micheal, the legal heirs are entitled to the share. The lower Appellate Court had also given a categorical finding that 15 cents settled by the mother Sulochana in favour of the plaintiff need not be disturbed. However, the lower Appellate Court misdirected itself



S.A.(MD)No.100 of 2018

WEB COPY

in concluding that the remaining 15 cents that was available in the hands of Antony Micheal has to be divided among the legal heirs and therefore, the fifth defendant purchaser would be entitled to save that portion of the lands that will come to the hands of the first defendant David Kurus Micheal from and out of the suit property. The lower Appellate Court had analyzed that Sulochana, mother of the plaintiff is entitled to 1/3 share of Antony Micheal, which is 5 cents, the plaintiff, the first defendant and Xavier Kumar, the two sons and daughter are entitled 2/3 shares, wherein 2/3 out of 10 cents or 3.333 cents each. Therefore, the lower Appellate Court came to the conclusion that the fifth defendant, who is a *bonafide* purchaser is entitled to the share of the first defendant, namely, 3.333 cents and he is at liberty to file a suit for partition and separate possession.

23. The lower Appellate Court from the available documents and evidence had arrived at a conclusion that out of 30 cents of lands, 15 cents of property, which came to the share of Sulochana that was settled in favour of the plaintiff in Ex.A1 need not be disturbed, but, however, when the fifth defendant was found to be a *bona fide* purchaser and the

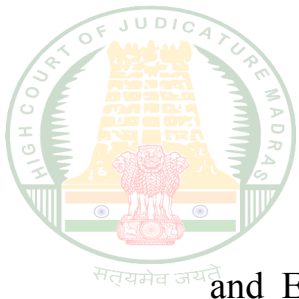


S.A.(MD)No.100 of 2018

WEB COPY

purchase made by him to the extent of 3.333 cents, which would come to the share of the first defendant Davuid Kurusu Micheal was sought to be saved, the lower Appellate Court has given the relief to the fifth defendant in the suit property by interfering in the decree passed by the trial Court, declaring the sale deeds in Ex.A3, Ex.A4 and the settlement deed in Ex.A6 as null and void. In the considered opinion of this Court, the decree of the lower Appellate Court in partly allowing the appeal and modifying the decree of the trial Court by holding that the plaintiff is entitled to a decree only to the extent of 2/9 share in the suit property in respect of sale deed in Ex.A2, Ex.A3 and Ex.A6 as null and void and not entitled for declaration for the entire 10 cents and also not entitled for the relief of permanent injunction are perverse and not based on the materials available on record.

24. The plaintiff had established the title and right over the suit schedule property and further already there is a decree and injunction operating against the first defendant and Xavier Kumar in respect of the suit property, based on the documents Ex.A11 and Ex.A12. Further, when there is also a preliminary judgment and decree passed in Ex.A9



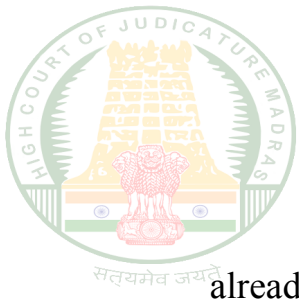
S.A.(MD)No.100 of 2018

WEB COPY

and Ex.A10 in respect of the properties that was retained by Antony Micheal, in which the legal heirs, including the plaintiff, the first defendant, Xavier Kumar and mother-Sulochana are having a share, the decree of the lower Appellate Court in interfering and allowing the appeal partly by giving relief to the fifth defendant in the suit property cannot be sustained.

25. In view of the above deliberations, the substantial question of law is answered in favour of the appellant/plaintiff and the judgment and decree of the lower Appellate Court, in partly modifying the decree of the trial Court, is set aside and the judgment and decree of the trial Court is restored.

26. However, insofar as the relief granted by the lower Appellate Court by holding that the fifth defendant is entitled for the extent of 3.333 cents of land, which is 2/9 share out of 15 cents of land, which would be entitled to the first defendant – David Kurusu Micheal as one of the legal heirs of Antony Micheal is concerned, this Court is not disturbing the said findings and since the lower Appellate Court has



S.A.(MD)No.100 of 2018

WEB COPY

already relegated the fifth defendant to file a suit for partition and separate possession, in respect of the property as a joint owner or co-owner in the place of the first defendant. It is made clear that the first defendant can make such a claim only in the property measuring 15 cents on the southern side, which was retained by Antony Micheal. In respect of that property, admittedly, already a suit has been filed by the plaintiff in O.S.No.105 of 2006, wherein the first defendant, Xavier Kumar and the mother-Sulochana are parties in the suit and already preliminary decree has been passed in Ex.A9 and Ex.A10. In the facts and circumstances of the present case, where, even though the relief to this extent had been given to the fifth defendant by the lower Appellate Court and the first defendant has not chosen to challenge or agitate the same, it is for the fifth defendant to either file a suit as against the first defendant or to approach the Court, where a preliminary decree has already been passed in favour of the first defendant, granting him a share in the preliminary decree and work out his remedies by filing necessary applications claiming the share that was allotted to the first defendant.



S.A.(MD)No.100 of 2018

WEB COPY

27. As such, while setting aside the judgment and decree of the lower Appellate Court and restoring the judgment and decree of the trial Court in respect of the suit property, with the above observations, this Second Appeal stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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

24.06.2025

LS

To

- 1.The II Additional Sub Court,
Nagercoil,
- 2.The II Additional District Munsif Court,
Nagercoil
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.(MD)No.100 of 2018

G.ARUL MURUGAN,J.

LS

SA.(MD)No.100 of 2018

24.06.2025