



WEB COPY

AS No. 593 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-04-2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

AS No. 593 of 2023

The Authorised Officer,
IDBI BANK LIMITED

..Appellant(s)

Vs

1. Edward Selvakumar
2. Gunavathy
3. Violet
4. Annapoorani
5. Elizabeth
6. J.Rajasekaran
7. Minor Sharmila
8. Minor Jusinder

Respondents 7 & 8 are represented by
their mother and natural guardian Anandhi.

..Respondent(s)

Appeal against the Judgment and Decree dated 19.10.2016 passed in
OS.No. 95 of 2012 on the file of Principal District and Sessions Judge at
Tiruvallur.



For Appellant(s): M/s.R.Imayavaremban
for M/S.Ramalingam and Associates

For Respondent(s): M/s.Akshay Ram
for M/s.VAT Legal For R1 & R2

R3 TO R8 – No Appearance

JUDGMENT

(Judgment of the Court was delivered by C.V.Karthikeyan J.)

The eighth defendant in O.S.No.95 of 2012 is in appeal questioning the judgment and decree, dated 19.10.2016, passed by the Principal District Judge, Tiruvallur,

2. Even before entering into the discussion on the merits of the suit filed, we extract the judgment impugned herein in its entirety for better appreciation :

Suit for (i) declare that the settlement deed dated 17.02.2003 registered as Document No.820 on the file of the Sub Registrar, Kundrathur, executed in favour of the 5th Defendant by the settlor Jaymary S.K.John, as null and void with regard to the 1/7th share of the plaintiff in the suit schedule (ii) for permanent injunction restraining the 8th defendant his men, agents or any person claiming through them from dealing with the suit schedule mentioned properties (iii) for preliminary decree for partition and separate possession of the plaintiff's 1/7th share and to partition the suit properties morefully described in the schedule hereunder and allot 1/7th share by metes and bounds in favour of the plaintiff and directing the defendants to pay the costs of the suit.



PW's proof affidavit filed. Ex.A1 to Ex.A8 are marked. Claim proved. Preliminary decree is passed as prayed for with costs.

A perusal of the extracted portion above would show that the learned District Judge had failed to consider whether in the evidence recorded the claim of the plaintiff had been proved in the manner known to law and also had failed to consider whether the documents marked as Exs.A-1 to A-8 were admissible, relevant and proved in the manner known to law.

3. It is trite law that even if defendants remain *ex parte*, the burden is on the plaintiff to prove every averment stated in the plaint through oral and documentary evidence and, in the absence of such proof, a decree can never follow. There must be a discussion on the nature of averments in the plaint, there must be a discussion on the nature of evidence adduced, and there must be a discussion on each and every document filed on their admissibility, of their relevancy, and whether they had been proved in the manner known to law. In the absence of any such discussion, any judgment rendered is a nullity.

4. The judgment extracted above is a classic example of a judgment, which should be declared as a nullity and we are dismayed at the nature of judgment passed by the Principal District Judge, Tiruvallur, in the aforementioned Original Suit.



5. In *Ramesh Chand Ardawatiya v. Anil Panjwani*, AIR 2003 SC 2508, the Hon'ble Supreme Court held as follows :

“33.... But there is substance in the other limb of this submission made by the learned senior counsel for the defendant-appellant. Even if the suit proceeds ex-parte and in the absence of a written statement, unless the applicability of Order VIII Rule 10 of the CPC is attracted and the Court acts thereunder, the necessity of proof by the plaintiff of his case to the satisfaction of the Court cannot be dispensed with. In the absence of denial of plaint averments the burden of proof on the plaintiff is not very heavy. A prima facie proof of the relevant facts constituting the cause of action would suffice and the Court would grant the plaintiff such relief as to which he may in law be found entitled. In a case which has proceeded ex-parte the Court is not bound to frame issues under Order XIV and deliver the judgment on every issue as required by Order XX Rule 5. Yet the trial Court would scrutinize the available pleadings and documents, consider the evidence adduced, and would do well to frame the 'point for determination' and proceed to construct the ex-parte judgment dealing with the points at issue one by one. Merely because the defendant is absent the Court shall not admit evidence the admissibility whereof is excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence.”

6. Therefore, we have no hesitation in setting aside the judgment and decree impugned herein. O.S.No.95 of 2012 is remanded back to the file of Principal District Judge, Tiruvallur, for fresh consideration in the manner



known to law, which is accordingly ordered. On receipt of records, the Principal District Judge may issue notice to the plaintiff and the defendants by fixing a date for hearing.

7. Appeal Suit is allowed. No order as to costs.

(C.V.K.,J.) (K.R.S.,J.)
20-04-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

DIXIT

To

Principal District Judge,
Tiruvallur.



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**C.V.KARTHIKEYAN, J.
AND
K.RAJASEKAR, J.**

DIXIT

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