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A.S.NOS.2 & 4 OF 2024 &
CROSS OBJ. NO.23 OF 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 25 / 02 / 2026

JUDGMENT PRONOUNCED ON : 30 / 4 / 2026

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

A.S. NOS.2 AND 4 OF 2024ANDCROSS OBJ. NO.23 OF 2026ANDC.M.P. NO.97 OF 2024IN A.S. NO.2 OF 2024ANDC.M.P. NOS.354 AND 357 OF 2024IN A.S. NO.4 OF 2024A.S.NO.2 OF 2024

Muthulakshmi (Died)

W/o.Chandrasekar

Residing at No.31/182,

Rajammal Thottam, Opposite to Perumal Koil,

Chinnathiruppathi Post, Komarasamypatti Village,

Salem Town, Salem Taluk & District.

... Appellant /
2nd Defendant

2.C.Pradeep Dharshan

S/o. K.Chandrasekar

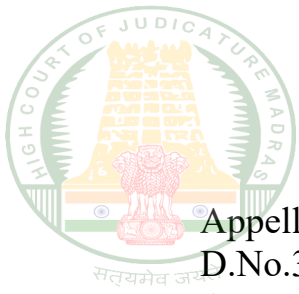
3.C.Priyadharshini

D/o. K.Chandrasekar

4.Chandrasekar

S/o. Kuppusamy

... Appellants 2 to 4



A.S.NOS.2 & 4 OF 2024 &
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Appellants 2 to 4 residing at
D.No.31, Rajammal Thottam,
Opposite to Perumal Koil,
Chinnathiruppathi Post,
Komarasamypatti Village,
Salem – 7.

Note: Respondents 6, 5 and 3
being the legal representatives
of the deceased sole appellant
are transposed as appellants 2 to
4 *vide* Order of this Court dated
February 21, 2025 made in
C.M.P. No.27787 of 2024 in
A.S. No.2 of 2024

Versus

1.Murugan @ Murugesan
S/o. Periyasamy
No.31/182, Rajammal Thottam,
Opposite to Perumal Koil,
Chinnathiruppathi Post, Komarasamypatty Village,
Salem Town, Salem Taluk & District.

Now residing at
SST High School backside
Sion Koliwada, Mumbai – 400 037.

... 1st Respondent /
plaintiff

Periyasamy (Died)
S/o. Ramasamy

... 1st Defendant

2.Mohammed Iliyas
S/o.Abdul Hakkeem
D.No.3/58, Moolapillaiyar Koil Street,
Salem – 5. Salem Town,
Salem Taluk & District.

3.Chandrasekar
S/o. Kuppusamy



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D.No.31, Rajammal Thottam,
Opp. To Perumal Koil,
Chinnathirupathi Post,
Komarasamypatti Village, Salem.
(Transposed as Appellant – 4)

Mohammed Chikkandar (Died)

4.Ashrab Ali

S/o.Mohammed Meera
D.No.22, Ponnappa Mudhali Street,
Purasaivakkam, Chennai – 84.

Note: Cause title accepted vide
Order of this Court dated
December 12, 2023 made in
C.M.P. No.28157 of 2023 in
A.S.SR. No.106146 of 2023.

5.C.Priyadharshini

D/o. K.Chandrasekar

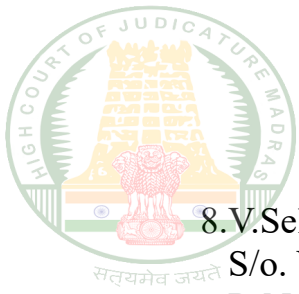
6.C.Pradheep Dharshan

S/o. K.Chandrasekar
Respondent Nos.5 and 6 are residing at
D.No.31/188, Rajammal Thottam,
Opp. To Perumal Koil, Chinnathirupathi Post,
Komarasamipatti Village, Salem – 7.
(Transposed as Appellants 2&3)

Note: Legal representatives of first
appellant transposed as appellants
2 & 3 *vide* Order of this Court
dated February 21, 2025 made in
C.M.P. No.27787 of 2024 in A.S.
No.2 of 2024

7.S.Alagesan

S/o. Sevigounder
D.No.663/15, Mannarpalayampirivu Road,
Allikuttai Post, Salem – 3.



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8.V.Sellappan
S/o. Vaithyalingam
D.No.6/87A, Mannarpalayampirivu Road,
Allikuttai Post, Salem – 636 003.

9.K.Palanisamy
S/o. Krishnan
D.No.6/121-B, Mannarpalayampirivu Road,
Allikuttai Post, Salem – 636 003.

10.R.Thamaraiselvan
S/o. Rajarathinam
D.No.82/103, Valmeegi Street,
Chinnakadai Street, Salem – 636 001.

11.A.Rajamani
W/o. Alagesan
D.No.144/1, Mannarpalayampirivu Road,
Allikuttai Post, Salem – 3.

12.Syed Fathima
W/o. Late Mohammed Chikkandar

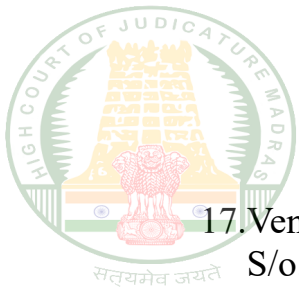
13.Sultan Arif
S/o. Late Mohammed Chikkandar

14.Sajitha Banu
D/o. Late Mohammed Chikkandar

15.Yasar Arafath
S/o. Late Mohammed Chikkandar

16.Rizwana Parveen
D/o. Late Mohammed Chikkandar

All are residing at Door No.61,
Ponnappa Madhali Street,
Purasaivakkam, Chennai – 84.



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17.Venkatachalapathy
S/o. Kandasamy
D.No.1/45, Old Street,
Vembadithalam Village and Post,
Sankari Taluk, Salem District.

... Respondents 2 to 17 /
Defendants 3 to 19

PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of Code of Civil Procedure, 1908, praying to set aside the Common Judgment and Decree dated April 27, 2023 made in O.S. No.85 of 2007 on the file of II Additional District Court, Salem and allow the First Appeal with costs.

For Appellants : Mr.B.Arvind Srevatsa

For Respondent-1 : Mr.N.Sridhar
for Mr.T.Balaji

For Respondents
2, 4 and 12 to 16 : Mr.A.Abdul Rahman
for M/s.Marks Attorney

For Respondents
7 to 9 : No appearance

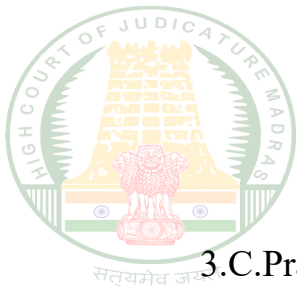
For Respondents
10 and 11 : Mr.K.Anbarasan

For Respondent-17: Mr.M.Guruprasad

A.S.NO.4 OF 2024

1.Muthulakshmi (Died)
W/o.Chandrasekaran
No.31/183, Rajammal Thottam,
Opposite to Perumal Koil,
Chinnathiruppathi Post, Salem – 8.

2.C.Priyadharshini



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3.C.Pradeep Dharshan

... Appellants /
plaintiffs

Both are children of K.Chandrasekar
No.2 and 3 are residing at
D.No.31/188, Rajammal Thottam,
Opposite to Perumal Koil,
Chinnathiruppathi Post,
Komarasamipatti Village,
Salem – 7.

4.Chandrasekar
S/o. Kuppusamy
D.No.31, Rajammal Thottam,
Opp. To Perumal Koil,
Chinnathirupathi Post,
Komarasamypatti Village,
Salem – 7.

... Appellant No.4

Note: First appellant passed away. Fourth appellant is brought on record as legal representative of deceased first appellant vide Order of this Court dated February 21, 2025 made in C.M.P. No.27791 of 2024 in A.S. No.4 of 2024

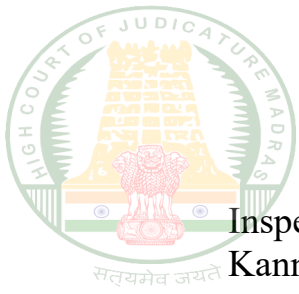
Versus

1.C.Murugan @ Murugesan
S/o. Chinnapaiyan
are now residing at Vellappan Koil,
Kakkapalayam, Vembadithalam Post,
Sankari Main Road, Sankari Taluk,
Salem District.

... 1st Respondent /
2nd Defendant

Periyasamy (Died)
S/o. Ramasamy
2.Rajendran

.. 1st Defendant



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Inspector of Police
Kannankurichi, Salem – 636 008.

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- 3.R.Thamaraiselvan
S/o. Rajarathinam
Door No.82/103, Valmegi Street,
Chinnakadai Street, Salem – 1.
- 4.A.Rajamani
W/o. Alagesan
144/1, Mannarpalayam Pirivu Road,
Allikuttai Post, Salem – 3.
- 5.S.Alagesan
S/o. Sevigounder
663/15, Mannarpalayam Pirivu Road,
Allikuttai Post, Salem – 636 003.
- 6.V.Sellappan
S/o. Vaithyalingam
D.No.6/87A, Mannarpalayam Pirivu Road,
Allikuttai Post, Salem – 636 003.
- 7.K.Palanisamy
S/o. Krishnan
D.No.6/121 B, Mannarpalayam Pirivu Road,
Allikuttai Post, Salem – 3.

... Respondents 2 to 7 /
Defendants 3 to 8

PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of Code of Civil Procedure, 1908, praying to set aside the Common Judgment and Decree dated April 27, 2023 made in O.S. No.16 of 2010 on the file of II Additional District Court, Salem and allow the First Appeal with costs.

For Appellants : Mr.B.Arvind Srevatsa
For Respondent-1 : Mr.N.Sridhar



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for Mr.T.Balaji

For Respondents

3 and 4 : Mr.K.Anbarasan

For Respondents

5, 6 and 7 : No appearance

CROSS OBJECTION NO.23 OF 2026

Murugan @ Murugesan

S/o. Periyasamy

Presently residing at

31/182, Rajammal Thottam,

Opposite to Perumal Koil,

Chinnathiruppathi Post, Komarasampatty Village,

Salem Town, Salem Taluk & District.

... Cross Objector /
1st Respondent

Versus

1.Muthulakshmi (died)

W/o.Chandrasekaran

31/182, Rajammal Thottam,

Opposite to Perumal Koil, Komarasampatti Village,

Chinnathiruppathi Post, Salem Town,

Salem – 8.

2.C.Priyadharshini

3.C.Pradeep Dharshan

... Respondents 1-3/
Appellants

Both are children of K.Chandrasekar

D.No.31/188, Rajammal Thottam,

Opposite to Perumal Koil,

Chinnathiruppathi Post,

Komarasampatti Village,

Salem – 7.

Periyasamy (Died)

... 1st Defendant



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S/o. Ramasamy

4.Mohammed Iliyas

Son of Abdul Hakkeem

D.No.3/58, Moolapillaiyar Koil Street,
Salem – 5. Salem Town,
Salem Taluk & District.

5.Chandrasekar

Son of Kuppusamy

D.No.31, Rajammal Thottam,
Opp. To Perumal Koil,
Chinnathirupathi Post,
Komarasamypatti Village, Salem.

Mohammed Chikkandar (Died)

6.Ashrab Ali

Son of Mohammed Meers

D.No.22, Ponnappa Mudhali Street,
Purasaivakkam, Chennai – 84.

7.S.Alagesan

Son of Sevigounder

663/15, Mannarpalayam Pirivu Road,
Allikuttai Post, Salem – 3.

8.V.Sellappan

Son of Vaithyalingam

D.No.6/87A, Mannarpalayam Pirivu Road,
Allikuttai Post, Salem – 636 003.

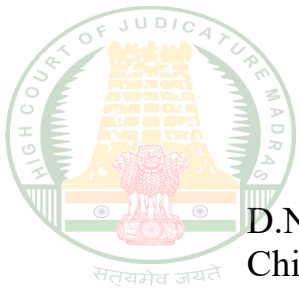
9.K.Palanisamy

Son of Krishnan

D.No.6/121-B, Mannarpalayam Pirivu Road,
Allikuttai Post, Salem – 636 003.

10.R.Thamaraiselvan

Son of Rajarathinam



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D.No.82/103, Valmeegi Street,
Chinnakadai Street, Salem – 636 001.

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11.A.Rajamani
Wife of Alagesan
D.No.144/1, Mannarpalayam Pirivu Road,
Allikuttai Post, Salem – 3.

12.Syed Fathima
Wife of Late Mohammed Chikkandar

13.Sultan Arif
Son of Late Mohammed Chikkandar

14.Sajitha Banu
Daughter of Late Mohammed Chikkandar

15.Yasar Arafath
Son of Late Mohammed Chikkandar

16.Rizwana Parveen
Daughter of Late Mohammed Chikkandar

All are residing at D.No.61,
Ponnappa Mudhali Street,
Purasaivakkam, Chennai – 84.

17.Venkatachalapathy
Son of Kandasamy
D.No.1/45, Old Street,
Vemabadaithalam Village and Post,
Sankari Taluk, Salem District.

... Respondents 4 – 17 /
Respondents

PRAYER: Cross Appeal filed under Order XLI Rule 22 of the Code of Civil Procedure, 1908, praying to set aside the common Judgment and Decree dated April 27, 2023 made in O.S. No.85 of 2007 on the file of II Additional District Court, Salem and allow the above Cross Appeal.

For Cross Objector : Mr.N.Sridhar
for Mr.T.Balaji



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For Respondent - 1 : Passed away
For Respondent- 2, 3 & 5: Mr.B.Arvind Srevatsa
For Respondents
4, 6 and 12 to 16 : Mr.A.Abdul Rahman
for M/s.Marks Attorney
For Respondents
7 to 9 : No appearance
For Respondents
10 and 11 : Mr.K.Anbarasan

COMMON JUDGMENT

R.SAKTHIVEL, J.

Three Suits viz., O.S. No.85 of 2007, O.S. No.16 of 2010 and O.S. No.268 of 2015 were disposed of by the 'the II Additional District Court, Salem' ['Trial Court' for short] vide Separate Decrees and Common Judgment even dated April 27, 2023. Feeling aggrieved by the Common Judgment and Decree passed in O.S. No.85 of 2007, the second defendant therein (Muthulakshmi) has filed the Appeal Suit in A.S.No.2 of 2024 under Section 96 read with Order XLI Rule 1 of 'the Code of Civil Procedure, 1908' ['C.P.C.' for short] praying to set aside the Common Judgment and Decree passed therein. While so, the plaintiff in O.S. No.85 of 2007 namely Murugan alias Murugesan has filed a Cross Objection under Order XLI Rule 22 of C.P.C. in Cross Obj. No.23 of 2026 in A.S. No.2 of 2024 praying to set aside a portion of the Common Judgment and



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Decree passed in O.S. No.85 of 2007 and declare that he is entitled to 45.5

Cents in the suit properties, instead of 12.5 Cents as held by the Trial Court.

2. Further, feeling aggrieved by the Common Judgment and Decree passed in O.S. No.16 of 2010, the plaintiffs therein (Said Muthulakshmi and her children) have filed the Appeal Suit in A.S. No.4 of 2024 under Section 96 read with Order XLI Rule 1 of C.P.C., praying to set aside the Common Judgment and Decree passed therein.

3. For the sake of convenience, henceforth, the parties herein will be referred to as per their array in the Original Suit in O.S. No.85 of 2007.

PLAINTIFF'S CASE

4. Case of the plaintiff is that the first defendant and one Rajammal are husband and wife and that they had no children. An extent of 67 Cents in Survey No.188/2 and an extent of 1 Acre 69 Cents in Survey No.188/3, totally 2 Acre 36 Cents Nanja land (now in Survey No.188/6) was owned by Rajammal by way of Sale Deed dated August 10, 1965, registered as Document No.5280 of 1965 on the file of Salem West Registrar's Office.



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The same is the suit property in O.S. No.85 of 2007. Hereinafter, said property shall refer to the suit property unless otherwise mentioned.

4.1. The plaintiff is the biological son of the first defendant's brother, while the second defendant is the biological daughter of Rajammal's sister. The plaintiff and the second defendant were adopted by the first defendant and Rajammal. First defendant and Rajammal solemnized the marriage of the second defendant on a grand scale. At the time of her marriage, necessary *Sridhana*, including 35 sovereigns of gold jewels and household articles worth about Rs.3,00,000/-, were given to the second defendant. The plaintiff secured employment in a Bank at Mumbai and has been working there. Rajammal passed away intestate on August 24, 1996. The plaintiff as an adopted son performed the funeral rites of the deceased Rajammal.

4.2. Therefore, the plaintiff and defendants 1 and 2 are each entitled to 1/3 share in the suit properties. Taking advantage of the absence of the plaintiff from the locality, defendants 1, 2 and 4 colluded together and alienated an extent of 1 Acre in the suit property in favour of defendants 3, 5 and 6 on July 18, 2005, without the plaintiff's knowledge.



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4.3. Subsequently, on November 15, 2005, the first defendant allegedly executed a Gift Settlement Deed in favour of the second defendant in respect of 1/2 share in 1 Acre 33 Cents of suit property. It is a fabricated, sham and nominal document executed suppressing the true facts without the knowledge or consent of the plaintiff and liable to be cancelled.

4.4. Hence, the plaintiff has filed the present Suit in O.S. No.85 of 2007 seeking cancellation of the said Gift Settlement Deed dated November 15, 2005 and the Sale Deed dated December 15, 2006 executed by the second defendant in favour of the third defendant pursuant to the said Settlement Deed; and also the Sale Deed dated September 30, 2009 executed by second defendant in favour of defendants 12 and 13 during the pendency of the Suit. Further, he sought the relief of partition, permanent injunction, and other consequential reliefs against the defendants.

FIRST DEFENDANT'S CASE

5. The first defendant admits the plaint pleadings contained in brief in Paragraph No.4.1 hereinabove. According to the first defendant, while the plaintiff was residing at Mumbai, defendants 1 and 2 were living in the Suit house. The second defendant, in the absence of the plaintiff, by



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playing fraud, obtained the first defendant's signature under the pretext of availing a loan at the Registrar Office, Salem, and subsequently fabricated a Sale Deed and a Settlement Deed. The first defendant, upon coming to know of the said fact, caused a legal notice for amicable partition on June 22, 2007. In the written statement, the first defendant has prayed for division of the Suit landed property and the Suit house property, and for allotment of 29 Cents in the Suit land and 1/3rd share in the Suit house property. The first defendant has also prayed to set aside the Settlement Deed dated November 15, 2005.

SECOND DEFENDANT'S CASE

6. The second defendant has filed a separate Suit in O.S. No.16 of 2010 seeking permanent injunction in respect of a portion of the suit property described in O.S. No.85 of 2007 and the same was tried jointly with O.S. No.85 of 2007.

6.1. Case of the second defendant is that she alone is the adopted child of the first defendant and his wife - Rajammal. According to the second defendant, she was adopted by the couple at the age of 5 years from her biological parents in accordance with Hindu customs and rites. From the date of adoption, she was brought up by them in all respects, including the



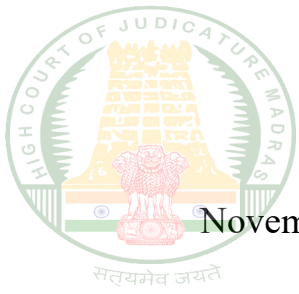
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performance of her marriage with one Chandrasekaran on February 10, 1995 at Salem.

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6.2. The plaintiff is not the adopted son of the first defendant and Rajammal; he was never adopted by them at any point of time. Rajammal passed away intestate on August 24, 1996, leaving behind defendants 1 and 2 as her only legal heirs. After the demise of Rajammal, the defendants 1 and 2 exercised their rights over the suit property and executed a Sale Deed in respect of a portion thereof in favour of defendants 3, 5 and 6 on July 18, 2005. Remaining extent after the sale is 1 Acre 33 Cents and the same is the suit property in the Suit filed by the second defendant *viz.*, O.S. No.16 of 2010.

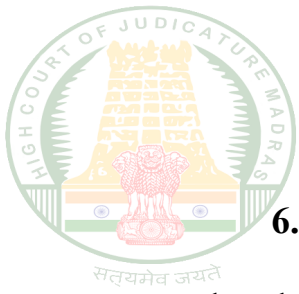
6.3. After the sale, the first defendant executed a Gift Settlement Deed dated November 15, 2005 in favour of the second defendant out of love and affection in respect of his $\frac{1}{2}$ share in the suit property in O.S. No.16 of 2010 *i.e.*, 63 Cents. On and after the execution of the Gift Settlement Deed, the second defendant became the absolute owner of the portion of the suit property described in O.S. No.85 of 2007 remaining after the aforesaid sale, which is the suit property in O.S. No.16 of 2010. Pursuant to the Settlement Deed, the second defendant executed a Sale Deed dated



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November 15, 2005 in favour of third defendant - Mohammed Illiyas, in respect of 25 Cents thereof.

6.4. The second defendant has been paying land revenue to the Government. Patta in respect of the suit property in O.S. No.16 of 2010 stands in her name. The second defendant had constructed a house therein by availing a loan from HDFC Bank, Salem. At the instigation of the plaintiff, the first defendant executed a Settlement Deed dated February 28, 2008 in favour of the plaintiff, purporting to revoke the earlier Settlement Deed dated November 15, 2005, which is invalid. The first defendant has no right to cancel or revoke the Settlement Deed dated November 15, 2005 executed in favour of the second defendant, and the subsequent Settlement Deed dated February 27, 2008 in favour of the plaintiff is not valid in law. On the strength of the said Settlement Deed dated February 27, 2008, the plaintiff and the first defendant are attempting to interfere with the second defendant's peaceful possession and enjoyment of the suit property in O.S. No.16 of 2010. Hence, the second defendant has filed the suit in O.S. No.16 of 2010 seeking the relief of permanent injunction against the plaintiff and other defendants.



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6.5. The second defendant filed an additional written statement stating that the Gift Settlement Deed dated November 15, 2005 is acted upon and the alleged Will dated March 31, 2008 (pending Suit) said to have been executed by the first defendant in favour of the plaintiff is a self-serving and also a collusive instrument created by the plaintiff with the collusive aid of the first defendant. Upon execution of the Gift Settlement Deed, the first defendant has no right, title and possession over the suit property in O.S. No.16 of 2010 and hence, he has no right to execute the aforesaid Will. The Will is hit by the doctrine of *lis pendens*. Stating so, she sought for dismissal of the Suit in O.S. No.85 of 2007.

6.6. Second defendant filed yet another additional written statement contending that the General Power of Attorney Deed dated December 6, 2007 was executed in favour of defendants 9 and 10 only to stand as a security and not for sale. No title was passed *vide* the pursuant Sale Deed dated September 30, 2009. The second defendant is alone in possession and enjoyment of the property covered thereunder.

CASE OF DEFENDANTS 3, 5 AND 6

7. Defendants 3, 5 and 6 are the joint purchasers of 1 Acre of the suit property described in O.S. No.85 of 2007 from defendants 1 and 2 *vide* the



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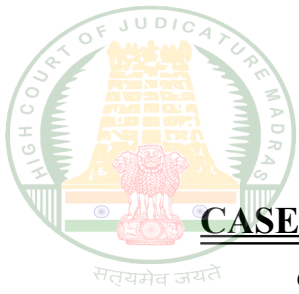
aforesaid Sale Deed dated July 18, 2005. Third defendant - Mohammed Illiyas has subsequently purchased 25 Cents *vide* Sale Deed dated December 15, 2006 from second defendant.

7.1. Case of defendants 3, 5 and 6 is that the second defendant is the adopted daughter of the first defendant and his wife. According to them, it is false to assert that the plaintiff was adopted by the couple. The plaintiff has no right in the suit property. As second defendant is the only adopted child, they entered into the sale and purchased portions of the suit property. They claim to be *bona fide* purchasers.

7.2. Further, the third defendant - Mohammed Illiyas filed the Suit in O.S. No.268 of 2015 in respect of the property purchased by him *vide* the aforesaid two Sale Deeds, seeking declaration of title and permanent injunction.

CASE OF FOURTH DEFENDANT

8. Fourth defendant is none other than the husband of the second defendant. He claims that he is an unnecessary party to the proceedings.



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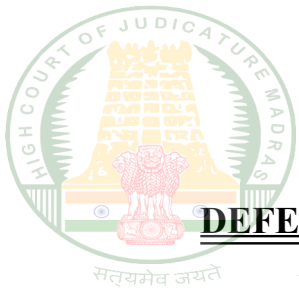
CASE OF DEFENDANTS 7 AND 8

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9. Defendants 7 and 8 are none other than the children of the defendants 2 and 4. They adopt the averments made in the two additional written statements filed by their mother / second defendant.

CASE OF DEFENDANTS 9 TO 13

10. Case of defendants 9 to 13 is that during pendency of O.S. No.85 of 2007, the second defendant executed a General Power of Attorney Deed dated December 6, 2007 in favour of defendants 9 and 10 in respect of 25 Cents / 10900 sq. ft. of the suit property in O.S. No.16 of 2010. Pursuant to the Power Deed, defendants 9 and 10 entered into a Sale Agreement with eleventh defendant on February 4, 2008. Thereafter, defendants 12 and 13 approached the eleventh defendant and offered to purchase the property. Hence, defendants 9 to 11 executed a Sale Deed in favour of defendants 12 and 13 on September 30, 2009 in respect of the aforesaid property. Thereafter, defendants 12 and 13 are the absolute owners of the same. Hence, the Sale Deed of the defendants 12 and 13 are valid and not liable to be set aside.



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DEFENDANTS 14 TO 18

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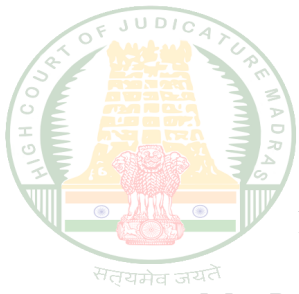
11. During the pendency of the Suit in O.S. No.85 of 2007, the sixth defendant - Ashraf Ali passed away. Hence, his legal heirs were brought on record as defendants 14 to 18.

CASE OF NINETEENTH DEFENDANT

12. Case of nineteenth defendant is that the second defendant is not the adopted daughter of first defendant and his wife - Rajammal. The plaintiff is alone the couple's adopted son. Hence, the plaintiff has $\frac{1}{2}$ share in the suit property. Alienations made by the second defendant behind the back of plaintiff are totally void. First defendant executed a Gift Settlement Deed dated February 27, 2008 whereby bequeathed 1 Acre 37 Cents of the suit property to the plaintiff. Pursuant to the Gift Settlement Deed, the nineteenth defendant purchased 66 Cents *vide* Sale Deed dated December 13, 2010. Accordingly, he prayed to pass any order without prejudice to his title.

TRIAL COURT

13. Since the subject matters of all the three Suits are interlinked and interconnected, the Trial Court conducted a joint trial, and the evidence was recorded and documents were marked in O.S. No.85 of 2007.



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14. On the side of the plaintiff, the plaintiff was examined as P.W.1;

Mrs.Paavayee was examined as P.W.2; Mr.Chinnannan was examined as P.W.3; Mr.Perumal was examined as P.W.4; and Mr.Ravisankar was examined as P.W.5 and Ex-A.1 to Ex-A.21 were marked.

15. On the side of the defendants, first defendant was examined as D.W.1 and one Mr.D.K.Subramaniam was examined as D.W.2; the second defendant in O.S.No.85 of 2007 - Ms.Muthulakshmi was examined as D.W.3; one Mr.Rajkumar was examined as D.W.4; Mr.Chellappan, tenth defendant in O.S. No.85 of 2007 was examined as D.W.5; Mr.Thamaraiselvan, twelfth defendant in O.S. No.85 of 2007 was examined as D.W.6; Mr.Chandrasekaran, husband of the second defendant in O.S. No.85 of 2007 was examined as D.W.7; Mr.Mohamed Iliyaz, third defendant in O.S. No.85 of 2007 was examined as D.W.8 and one Venkatachalapathy, nineteenth defendant in O.S. No.85 of 2007 was examined as D.W.9 and Ex-B.1 to Ex-B.56 were marked.

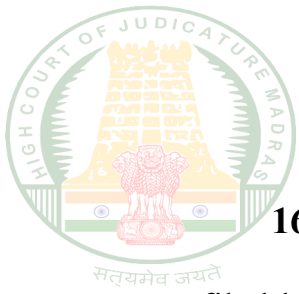
16. Upon hearing either side and upon consideration of the oral and documentary evidence, the Trial Court came to the conclusion that Ex.A.3 - Gift Settlement Deed dated November 15, 2005 executed by the first defendant in favour of the second defendant is true and valid. The Trial



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Court further held that Ex-A.3 - Gift Settlement Deed dated November 15, 2005 and Ex-A.4 - Sale Deed dated December 15, 2006, both are valid but not binding on the share of the plaintiff. Furthermore, the Trial Court held that the first defendant had already alienated his share prior to the institution of the Suit. Therefore, the Will dated March 31, 2008 executed by the first defendant in favour of the plaintiff was held to be invalid, as the first defendant had no right, title, or possession over the suit properties in O.S. No.85 of 2007 on the date of Will. Accordingly, the Trial Court held that the plaintiff is entitled to 12.5 Cents of land, excluding the house property, in the suit properties in O.S. No.85 of 2007, and is also entitled to the relief of permanent injunction restraining the second defendant from interfering with his peaceful possession and enjoyment of the said portion. In fine, the Trial Court partly decreed the Suit in O.S. No.85 of 2007.

16.1. The Trial Court further dismissed the permanent injunction Suit filed by the second defendant in O.S. No.16 of 2010 on the ground that such a Suit cannot be entertained against co-owners and further on the ground that the second defendant had right over only 8 Cents after executing Ex-A.2 - Sale Deed dated July 18, 2005, Ex-A.4 - Sale Deed dated December 15, 2006, and Ex-B.43 - Sale Deed dated September 30, 2009 pending the Suit.



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16.2. Further, the Trial Court decreed the Suit in O.S. No.268 of 2015 filed by the third defendant on the ground that Ex-A.2 and Ex-A.4 - Sale Deeds dated July 18, 2005 and December 15, 2006 respectively are valid.

17. Feeling aggrieved by the Common Judgment and Decree dated April 27, 2023 passed in O.S. No.85 of 2007, the second defendant therein has filed the Appeal Suit in A.S. No.2 of 2024, and the plaintiff in O.S. No.85 of 2007 has filed the Cross Objection in Cross Obj. No.23 of 2026.

18. Similarly, feeling aggrieved by the Common Judgment and Decree dated April 27, 2023 passed in O.S. No.16 of 2010, the plaintiffs therein have filed the Appeal Suit in A.S. No.4 of 2024.

19. To be noted, neither the plaintiff nor the second defendant has preferred an appeal over the Common Judgment and Decree passed by the Trial Court in O.S. No.268 of 2015. Hence, the same has reached finality.

ARGUMENTS

20. Mr.B.Arvind Srevatsa, learned Counsel appearing for the appellants in both the Appeal Suits, would submit that the second defendant in O.S. No.85 of 2007 alone is the adopted daughter of the first

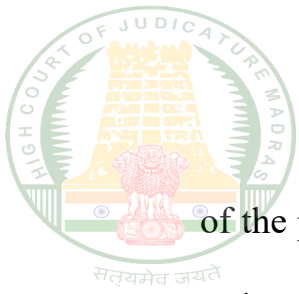


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defendant - Periyasamy and his wife - Rajammal and that the adoption took place when she was five years old. He would further submit that the plaintiff has categorically admitted the adoption of the second defendant in the pleadings and therefore, the same does not require any further corroboration. He would draw attention to Ex-B.14 to Ex-B.17 and submit that the oral adoption was later confirmed by Court decree in O.S.No.278 of 1997 on the file of the District Munsif, Salem.

20.1. The learned Counsel would further submit that after the demise of Rajammal, defendants 1 and 2 alone are her legal heirs each entitled to 1/2 share in the estate left by her. The first defendant, out of love and affection, executed Ex-A.3 - Gift Settlement Deed dated November 15, 2005 in favour of the second defendant. Thereafter, the second defendant exercised her rights over the suit property and executed Sale Deeds in favour of defendants 3, 5 and 6.

20.2. The learned Counsel would further submit that once Ex-A.3 - Gift Settlement Deed dated November 15, 2005 was acted upon and came into existence, the same could not be revoked or cancelled by the first defendant unilaterally. Hence, Ex-B.5 - Cancellation of Gift Settlement Deed and Ex-B.6 - Gift Settlement Deed dated February 27, 2008 in favour

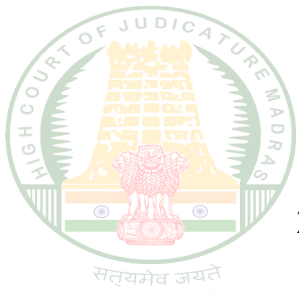


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of the plaintiff, both created during the pendency of the Suit are invalid. In

order to defeat and defraud the second defendant, the first defendant in collusion with the plaintiff executed Ex-A.21 - Will dated March 31, 2008 in favour of the plaintiff without having any right over the suit property and hence, it is not binding on the second defendant.

20.3. The learned Counsel would draw attention to Ex-B.1 - Voter List and Ex-B.2 - Family Card and submit that the plaintiff's biological parents' name has been mentioned in place of his father's and mother's name in Ex-B.1 and Ex-B.2. Further, the plaintiff is working in an insurance company after graduating college. His school and other educational certificates would reveal his true parents' name and thus, prove the adoption as false. Hence, he has withheld and suppressed the material documents. Ex-A.10 to Ex-A.14 let in by the plaintiff in support of his plea of adoption are not proved as per law. Hence, the plaintiff is not the adopted son of the first defendant and Rajammal. Therefore, the Trial Court erred in granting the relief of partition in favour of the plaintiff. Accordingly, he would pray that the Appeal Suits be allowed, the Common Judgment decree passed in O.S. No.85 of 2007 and O.S. No.16 of 2010 be set aside, the Suit in O.S. No.85 of 2007 be dismissed and the Suit in O.S. No.16 of 2010 be decreed.



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21. In response to the above submissions, Mr.N.Sridhar, learned

Counsel appearing for the first respondent / plaintiff in O.S. No.85 of 2007 would contend that the plaintiff is the son of the first defendant's elder brother, while the second defendant is the daughter of Rajammal's sister. According to him, both the plaintiff and the second defendant were adopted as son and daughter respectively by the first defendant and his wife - Rajammal.

21.1. The learned Counsel would further contend that as per the provisions of the Hindu Adoptions and Maintenance Act, 1956 the adoptions of both the plaintiff and the second defendant are valid in law. After the demise of Rajammal, the plaintiff and defendants 1 & 2 became her legal heirs, each entitled to a 1/3 share in her estate. Hence, the first defendant had no right to execute Ex-A.3 - Settlement Deed in favour of the second defendant in respect of 1/2 share in the suit property. Nor was he entitled to execute Ex-A.2 - Sale Deed in respect of a portion of suit property.

21.2. It is further contended that the first defendant himself has pleaded that Ex-A.3 - Gift Settlement Deed dated November 15, 2005 was obtained by misrepresentation and fraud on the side of second defendant.



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Hence, it is *void ab initio* and further he cancelled the same *vide* Ex-B.5 -

Cancellation Deed and executed another Settlement Deed dated February 27, 2008 (Ex-B.6) in favour of the plaintiff. The Trial Court's findings with regard to Ex-B.6 - Gift Settlement Deed dated February 27, 2008 that the executant did not have any right over any portion of the suit property to execute the document is also erroneous and liable to be interfered with.

21.3. The learned Counsel would further contend that the finding of the Trial Court that the plaintiff in O.S. No.85 of 2007 is entitled to partition is perfectly correct; however, the finding of the Trial Court that the plaintiff is entitled to only 12.5 Cents is not right and needs to be interfered with by this Court.

21.4. He would further submit that the total extent of the suit property is 2 Acre 36 Cents. After the demise of Rajammal, the plaintiff and defendants 1 & 2 are each entitled to 1/3 share in it under Section 15 of the Hindu Succession Act, 1956. In other words, each of them are entitled to 79 Cents in it. In Ex-A.2, the defendants 1 and 2 jointly sold 1 Acre which means each of them sold 50 Cents from their share and only 29 Cents are remaining in their share. When second defendant has right over only 29 Cents, Ex-A.4 & Ex-B.43 - Sale Deeds executed by second



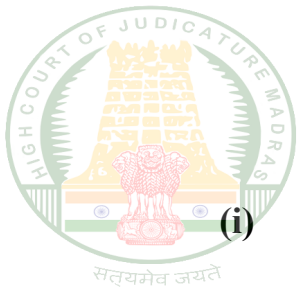
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defendant are in excess of her share and hence, not valid and binding the plaintiff's share or first defendant's share. After execution of Ex-A.4 whereby 25 Cents were sold, the second defendant would have only 4 Cents [29 - 25 Cents] remaining. In terms of Ex-B.6 - Gift Settlement Deed executed by first defendant which is valid in respect of the available 29 Cents, the plaintiff who already has 79 Cents in the suit property after the demise of Rajammal, became entitled to 108 Cents [79 + 29 Cents]. Subsequently, the plaintiff and the first defendant sold 66 Cents jointly *vide* Ex-B.54 in favour of nineteenth defendant. Hence, the plaintiff is entitled to the remaining 42 Cents in the suit property. Accordingly, he would pray for dismissal of both the Appeal Suits and for allowing the Cross Objection.

21.5. In support of his submissions, he would rely on the judgment of the Hon'ble Supreme Court in *Krishna Mohan Kul -vs- Pratima Maity* reported in *MANU/SC/0690 2003*.

POINTS FOR CONSIDERATION

22. This Court has heard the submissions made on either side and perused the evidence available on record. The points that arise for consideration in these Appeal Suits are as follows:

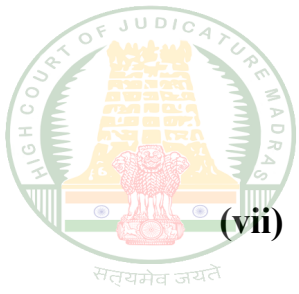


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- (i) Whether the second defendant is the sole adopted daughter of the couple, namely first defendant - Periyasamy and Rajammal and whether the plaintiff was adopted by the aforesaid couple ?
- (ii) Whether Ex-A.2 - Sale Deed dated July 18, 2005 and Ex-A.3 - Gift Settlement Deed dated November 15, 2005 are valid ?
- (iii) Whether the Sale executed by the defendants 2 and 4 in favour of the third defendant *vide* Ex-A.4 - Sale Deed dated December 15, 2006 is valid and binding on the plaintiff ?
- (iv) Whether Ex-B.43 - Sale Deed dated January 30, 2009 executed by defendants 9 to 11 in favour of defendants 12 and 13 is valid and binding on the plaintiff ?
- (v) Whether Ex-B.54 - Sale Deed dated December 13, 2010 executed by the plaintiff and the first defendant in favour of the nineteenth defendant is valid ?
- (vi) Whether Ex-B.5 : Ex-B.10 - Cancellation Deed, which was executed by first defendant cancelling his earlier Gift Settlement Deed dated November 15, 2005 (Ex-A.3) in favour of second defendant, is valid in law ?



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(vii) Whether Ex-B.6 : Ex-B.11 - Gift Settlement Deed dated February 27, 2008 executed by the first defendant in favour of the plaintiff is valid ?

(viii) Whether Ex-A.21 - Will dated March 31, 2008 executed by the first defendant in favour of the plaintiff is true and valid ?

(ix) Whether the Common Judgment and Decrees of the Trial Court are to be interfered with ?

Point No.(i) - *Whether the second defendant is the sole adopted daughter of the couple, namely first defendant - Periyasamy and Rajammal, and whether the plaintiff was adopted by the aforesaid couple ?*

23. An extent of 2 Acres 36 Cents in Survey No.188/6 was purchased by Rajammal *vide* Ex-A.1 - Sale Deed. Hence no doubt that it is her absolute property. First defendant - Periyasamy is the husband of Rajammal. The couple did not have any issue. According to the plaintiff, first defendant - Periyasamy and his wife - Rajammal adopted the plaintiff as their son. The plaintiff is none other than Periyasamy's brother's son. The plaintiff in his pleadings has categorically admitted that Periyasamy-Rajammal couple had adopted the second defendant as well, who is none



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other than Rajammal's sister's daughter. He has admitted that the second defendant is the adopted daughter of the couple.

24. Case of the second defendant is that she was born in the year 1967 and that her adoption by first defendant and his wife took place in or about the year 1972 *i.e.*, when she was 5 years old. To that effect, she relied upon Exs-B.14 to B.17 besides examining herself as D.W.3. Ex-B.14 is an Adoption Deed executed at a later point of time as a remembrance and record of the adoption of second defendant by first defendant and Rajammal. Ex-B.15 is the Suit filed by the second defendant against the first defendant seeking declaration that the second defendant is the adopted daughter of first defendant and Rajammal. Ex-B.16 is the Decree passed by the Munsif Court, Salem in the said Declaration Suit. Ex-B.17 is the memo submitted by the first defendant before the said Munsif Court admitting that the second defendant is his adopted daughter. The oral evidence of D.W.3/second defendant coupled with these documents prove her adoption by the first defendant and Rajammal. Moreover, as stated *supra*, the plaintiff himself has admitted in his pleadings that the second defendant is an adopted daughter of the couple. Needless to mention that an admission made in the pleadings is a judicial admission and no further proof is



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required for the same. In these circumstances, this Court is of the view that the adoption of second defendant is proved satisfactorily.

25. Now what has to be seen is whether the plaintiff is the adopted son of first defendant and Rajammal or not. The plaintiff with a view to prove the alleged factum of his adoption, relied upon Exs-A.10 to A.14 and also examined witnesses namely P.W.3 - Chinnanan and P.W.2 - Pavayee (biological mother of plaintiff). This Court has perused Ex-A.10 and Ex-A.11. Ex-A.10 is the affidavit dated July 16, 1982 of Chinnapaiyan and Pavayee, who are the biological parents of the plaintiff, sworn before the Special Metropolitan Magistrate, Bombay. Even dated Ex-A.11 is a similar affidavit sworn by the first defendant and Rajammal before the same Authority. The recitals contained in Ex-A.10 and Ex-A.11 show that the plaintiff was taken in adoption by the couple namely first defendant and Rajammal on July 16, 1982. Sufficient oral and documentary evidence is available on record to show that at the relevant point of time, first defendant, his wife - Rajammal and the plaintiff were residing at Bombay; the same is also evident from Ex-A.13 - Double Deposit Receipts which shows that bank deposits were made in Bombay. In the aforesaid affidavits, one Chinnanan has signed as a witness and he has been examined as P.W.3. He has deposed that on July 16, 1982 the plaintiff was given in adoption in



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the presence of relatives. Further, Pavayee, the biological mother of the plaintiff has also been examined as P.W.2. P.W.2 in her evidence has deposed that on July 16, 1982, she and her husband namely Chinnapaiyan, gave the plaintiff to first defendant - Periyasamy and his wife - Rajammal in adoption. Ex-A.12 is yet another affidavit dated June 27, 1989 sworn by Rajammal before Notary Public wherein it has been stated that Rajammal nominated the plaintiff as her nominee in respect of her movable and immovable properties. Notably, the plaintiff has been described as her son in Ex-A.12. Further, it is the plaintiff who realised the deposit amount after the demise of Rajammal as her nominee / adopted son as it could be seen from Ex-A.13 - Double Deposit Receipt. Ex-A.14 is a nomination form whereby Rajammal nominated the plaintiff as per Section 45ZA of the Banking Regulation Act, 1945 and Rule 2 (1) of the Banking Companies (Nomination) Rules 1985. In Ex-A.14, the plaintiff has been mentioned as 'son of Rajammal' and it is further mentioned that the plaintiff was a minor aged 13 years at that time.

26. Oral evidence of P.W.2 - Chinnanan and P.W.3 - Pavayee, coupled with Ex-A.10 to Ex-A.14 would prove the factum of adoption of the plaintiff by first defendant and Rajammal. Though the second defendant denied the adoption of the plaintiff, she did not specifically deny



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Rajammal's signature in these documents, nor did she take steps to send these documents for expert opinion. The stand taken by the first defendant that the plaintiff is his adopted son also gains relevance at this point and acts in favour of the plaintiff.

27. As regards Ex-B.1 - Voter List and Ex-B.2 - Family Card, merely because the biological parents' names are mentioned therein, it cannot be said that there was no adoption of the plaintiff, especially in view of the other credible evidence available on record in support of his adoption. Their names being mentioned in the said documents is natural considering the fact that the biological parents as well as the adoptive parents were residing at Bombay along with the plaintiff at the material point of time.

28. As regards the argument that the plaintiff withheld / suppressed his educational certificates, the second defendant could have very well called upon the plaintiff to produce them, but she did not take any such steps. In these circumstances, it cannot be treated as withholding / suppression of material facts and no adverse inference can be drawn.

29. Giving and taking ceremonies in adoption took place at Bombay and in support of the same Exs-A.10 to A.14 have been marked on the side



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of plaintiff. In view of the foregoing narrative, this Court is of the view

that the plaintiff has proved that he is an adopted son of Periyasamy-Rajammal couple. As discussed above, the second defendant is also an adopted child of the said couple. Taking adoption from husband side or wife side is quite natural and normal in a Hindu society; further, Hindu Adoption and Maintenance Act, 1956 does not prohibit adoption of two children. Considering the documentary evidence as well as the oral evidence available on record, this Court comes to the conclusion that the plaintiff as well as the second defendant, are both adopted children of Periyasamy-Rajammal couple. **Point No.(i) is answered accordingly.**

Point No.(ii) - *Whether Ex-A.2 - Sale Deed dated July 18, 2005 and Ex-A.3 - Gift Settlement Deed dated November 15, 2005 are valid ?*

30. It is an admitted fact that Rajammal passed away intestate on August 24, 1996 and her Death Certificate was marked as Ex-A.5 showing her as a Hindu. There is no dispute with respect to the fact that Periyasamy passed away on February 09, 2013 as a Hindu during the pendency of the Suit and his Death Certificate was marked as Ex-B.38. Hence, the applicable law of succession is the Hindu Succession Act, 1956. As held under Point No.(i) the plaintiff and the second defendant are both adopted



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children of first defendant and Rajammal. Upon the intestate demise of Rajammal on August 24, 1996 leaving behind the suit property, the plaintiff and defendants 1 & 2 *qua* her legal heirs are each entitled to her estate equally as per Section 15 (1) of the Hindu Succession Act, 1956. The suit property is an extent of 2 Acre 36 Cents in Survey No.188/6 purchased by Rajammal *vide* Ex-A.1 - Sale Deed. This means each of them are entitled to 79 Cents in the suit property in terms of the said Section 15 (1).

31. Ex-A.2 is the Sale Deed executed by the defendants 1 and 2 in favour of the defendants 3, 5 and 6 in respect of 1 Acre in the suit property. The plaintiff is not a party to the said Sale Deed. However, the Sale Deed was executed before filing of the Suit. As stated above, the defendants 1 and 2 are each entitled to 79 Cents in the suit property which means they can together execute or alienate it up to an extent of 1 Acre 58 Cents. Ex-A.2 having been executed by defendants 1 and 2 jointly in respect of 1 Acre, it is valid; they both have sold 50 Cents out of their entitlement of 79 Cents each. Post the execution of Ex-A.2 - Sale Deed, each of them have 29 Cents remaining out of their entitlement of 79 Cents each. Moreover, the third defendant in O.S. No.85 of 2007 had filed a Suit in O.S. No.268 of 2015 seeking declaration of title and permanent injunction based on Ex-A.2 and Ex-A.4 - Sale Deeds. The said Suit was jointly tried along with



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O.S. No.85 of 2007 and O.S. No.16 of 2010 and the same was decreed.

Neither the plaintiff nor the Defendants 1 and 2 have made any submission appealing over the Decree and Judgment passed in O.S.No.268 of 2015. Hence, the Judgment and Decree of the Trial Court in O.S.No.268 of 2015 has reached finality. In view of the Decree as well, Ex-A.2 - Sale Deed dated July 18, 2005 is valid.

32. As regards Ex-A.3 - Gift Settlement Deed, it was executed by first defendant in favour of second defendant in respect of his alleged $\frac{1}{2}$ share in suit property in O.S. No.16 of 2010 which is the remaining portion of the suit property left after Ex-A.2 - Sale Deed. In other words, Ex-A.2 - Sale Deed was executed in respect of his half share in the extent of 1 Acre. Admittedly, the suit property is not joint family property, it is the absolute property of Rajammal a portion of which devolved upon first defendant as per Section 15 (1) of the Hindu Succession Act, 1956, hence no bar to execute Gift Settlement Deed.

33. Though the first defendant claims that the second defendant obtained his signatures in the pre-text of securing a loan for her and later fabricated Ex-A.3 - Gift Settlement Deed, he failed to establish his case of misrepresentation and fraud. There is no satisfactory evidence available on



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record to support his case in this regard. As regards ***Krishna Mohan Kul's***

Case relied upon by the learned Counsel for the first respondent / plaintiff, while there is no quarrel with the principal laid down by the Hon'ble Supreme Court, it is not applicable to the facts of the present case. In *Krishna Mohan Kul's Case*, the settlor was a more than 100 years old illiterate. That being the decisive factor, the Hon'ble Supreme Court shifted the burden upon the beneficiary to prove the absence of fraud and misrepresentation in the execution of the Gift Settlement Deed. In the instant case, the first defendant is a worldly wise and he is not as old as in *Krishna Mohan Kul's Case* at the time of execution of Ex-A.3.

34. As discussed above, post the execution of Ex-A.2 - Sale Deed, defendants 1 and 2 have 29 Cents each remaining in the suit property. Though Ex-A.3 - Gift Settlement Deed is executed for an extent larger than what the first defendant was entitled to at the time of its execution, it is valid to the extent of first defendant's actual entitlement of 29 Cents post Ex-A.2, that is to say, Ex-A.3 - Gift Settlement Deed is valid in respect of 29 Cents instead of 66 1/2 Cents. To put it differently, Ex-A.3 is not valid in respect of the larger extent it purports to settle upon the second defendant, but it is valid to the extent of 29 Cents. Though the first defendant executed Gift Settlement Deed in respect of 66 1/2 Cents, he



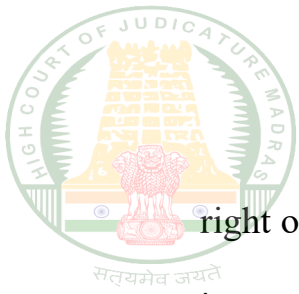
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actually had only 29 Cents. Hence, Ex-A.3 - Gift Settlement Deed is valid

in respect of 29 Cents alone. Needless to mention here the legal maxim "*Nemo Dat Quod Non Habet*", which translates to 'no one can give when he does not have'. The Trial Court rightly arrived at the said conclusion and there is no warrant to interfere with it. After Ex-A.2 - Sale Deed and Ex-A.3 - Gift Settlement Deed, the first defendant does not have property left, the second defendant is entitled to 29 Cents (Section 15) + 29 Cents (Ex-A.3) = 58 Cents, and the plaintiff's 79 Cents in the suit property devolved upon him under Section 15 of the Hindu Succession Act, 1956 remains intact. **Point No.(ii) is answered accordingly.**

Point No.(iii) - *Whether the Sale executed by the defendants 2 and 4 in favour of the third defendant vide Ex-A.4 - Sale Deed dated December 15, 2006 is valid and binding on the plaintiff?*

35. Ex-A.4 - Sale Deed dated December 15, 2006 is executed by the defendants 2 and 4 in favour of the third defendant in respect of 25 Cents in the suit property. To be noted, fourth defendant is none other than the husband of second defendant and he is a mere name lender in Ex-A.4; he does not own any property covered under it. As stated above, after Ex-A.2 - Sale Deed and Ex-A.3 - Gift Settlement Deed, the second defendant has



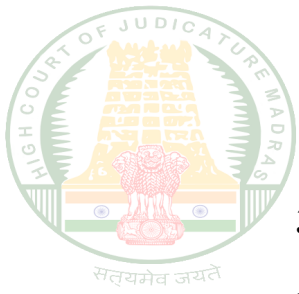
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right over 58 Cents in the suit property. While so, she has executed Ex-A.4

in respect of 25 Cents out of her 58 Cents. Hence, Ex-A.4 is valid and binding on the plaintiff in respect of the 25 Cents. Moreover, as elaborated above, third defendant obtained a Decree in his favour based on Ex-A.2 and Ex-A.4 - Sale Deeds and thereby obtained declaration of title and permanent injunction in respect of the properties covered under the said Sale Deeds. No appeal was filed over the same and hence the same has reached finality. The said Decree and Judgment is binding the plaintiff as well as the second defendant. On that ground as well, Ex-A.4 is valid and binding on the plaintiff. **Point No.(iii) is answered accordingly.**

Point No.(iv) - *Whether Ex-B.43 - Sale Deed dated January 30, 2009 executed by defendants 9 to 11 in favour of defendants 12 and 13 is valid and binding on the plaintiff?*

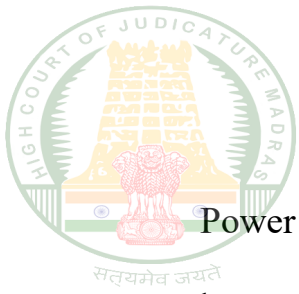
36. As stated above, after Ex-A.2 and Ex-A.3, the second defendant had 58 Cents in the suit property with her. After selling 25 Cents *vide* Ex-A.4 - Sale Deed, she has 33 Cents remaining. The first defendant was left with no share in the suit property after Ex-A.2 and Ex-A.3. The plaintiff's share of 79 Cents continues to remain intact.



37. During the pendency of the Suit in O.S. No.85 of 2007, the second defendant and her children namely defendants 7 and 8 executed Ex-B.35 - General Power of Attorney on December 06, 2007 appointing defendants 9 and 10 as their Power of Attorney holders. The said power agents executed Ex-B.42 - Sale Agreement dated February 04, 2008 in favour of one Palanisamy who is the eleventh defendant. Subsequently, the said power agents *viz.*, defendants 9 and 10 along with the sale agreement holder *viz.*, eleventh defendant, executed Ex-B.43 - Sale Deed dated September 30, 2009 conveying an extent of 25 Cents (10900 *Sq.ft*) in favour of the defendants 12 and 13.

38. To put it simply, out of the available 33 Cents after Ex-A.2 to Ex-A.4, the second defendant along with her children *viz.*, defendants 7 and 8 sold an extent of 25 Cents through her power agents in favour of defendants 12 and 13 under Ex-B.43 - Sale Deed.

39. Though the defendants 2, 7 and 8 averred in their written statement that the Ex-B.35 - General Power of Attorney Deed was executed only as a security and that it was never intended for executing sale, they did not make out a case by adducing evidence. On the other hand, the twelfth defendant has been examined as D.W.6 and Ex-B.35 -



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Power Deed, Ex-B.42 - Sale Agreement and Ex-B.43 - Sale Deed have been marked. Hence, Ex-B.43 is valid, however the defendants 1 and 2 being a *pendente lite* purchaser cannot claim equity at the time of final decree and Ex-B.43 will not bind the plaintiff or his share in the suit property. **Point No.(iv) is answered accordingly.**

Point No.(v) - *Whether Ex-B.54 - Sale Deed dated December 13, 2010 executed by the plaintiff and the first defendant in favour of the nineteenth defendant is valid ?*

40. As stated *supra*, the first defendant has no right over the suit property after the execution of Ex-A.2 - Sale Deed and Ex-A.3 -Gift Settlement Deed. The second defendant has 7.5 Cents remaining in the suit property after Ex-A.2 to Ex-A.4 and Ex-B.43. The plaintiff has 78.5 (236/3 = 78 1/2) Cents in the suit property.

41. The first defendant along with the plaintiff jointly executed Ex-B.54 - Sale Deed in favour of nineteenth defendant selling 66 Cents in the suit property. Though the sale has been executed jointly, it is the plaintiff who is actually selling his properties as the first defendant has no property left with him as stated above. Though the plaintiff denied Ex-B.54 - Sale Deed and contended that it was only executed for a loan transaction and



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nineteenth defendant is not in possession and enjoyment of the suit property, till date, the plaintiff did not challenge Ex-B.54 - Sale Deed.

Hence, Ex-B.54 is valid, however as it was made during the pendency of the Suit in O.S. No.85 of 2007, it is a *pendente lite* transaction and hence, the purchaser / nineteenth defendant is not entitled to claim equity in the final decree proceedings. **Point No.(v) is answered accordingly.**

Point No.(vi) - *Whether Ex-B.5 : Ex-B.10 - Cancellation Deed, which was executed by first defendant cancelling his earlier Gift Settlement Deed dated November 15, 2005 (Ex-A.3) in favour of second defendant, is valid in law ?;*

Point No.(vii) - *Whether Ex-B.6 : Ex-B.11 - Gift Settlement Deed dated February 27, 2008 executed by the first defendant in favour of the plaintiff is valid ?*

and

Point No.(viii) - *Whether Ex-A.21 - Will dated March 31, 2008 executed by the first defendant in favour of the plaintiff is true and valid ?*

42. It is general law that a Gift Settlement Deed can be revoked only in certain cases. This Court has perused Ex-A.3–Gift Settlement Deed dated November 15, 2005. It could be seen that the settlor / first defendant



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did not retain his power to revoke the settlement. In the absence of recitals to that effect, the settlor cannot revoke the Gift Settlement Deed unilaterally, especially when Ex-A.3 was acted upon and pursuantly Ex-A.4 - Sale Deed was executed.

43. In this regard, reference be made to the Judgment of this Court in ***Latif Estate Line India Ltd. -vs- Hadeeja Ammal***, reported in **2011-1-LW-673** wherein it has been held that a sale cannot be cancelled unilaterally by way of a Cancellation Deed. Relevant portion of the Judgment reads as follows:

'59.After giving our anxious consideration on the questions raised in the instant case, we come to the following conclusion: -

(i) A deed of cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect. Such a document does not create any encumbrance in the property already transferred. Hence such a deed of cancellation cannot be accepted for registration.

(ii) Once title to the property is vested in the transferee by the sale of the property, it cannot be divested unto the transferor by execution and registration of a deed of cancellation even with the consent of the parties. The proper course would be to re-convey the property by a deed of conveyance by the transferee in favour of the transferor.



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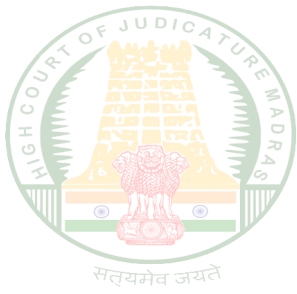
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(iii) *Where a transfer is effected by way of sale with the condition that title will pass on payment of consideration, and such intention is clear from the recital in the deed, then such instrument or sale can be cancelled by a deed of cancellation with the consent of both the parties on the ground of nonpayment of consideration. The reason is that in such a sale deed, admittedly, the title remained with the transferor.*

(iv) *In other cases, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of cancellation of sale deed on the ground inter alia of fraud or any other valid reasons.'*

44. Since Gift Settlement Deed is a bilateral document, it cannot be cancelled unilaterally. Hence, the ***Latif Estate Line's case*** (cited supra) is applicable to the present case as well. Further reference may be made to the Judgment of the Hon'ble Supreme Court in ***Satya Pal Anand -vs- State of Madhya Pradesh***, reported in (2016) 10 SCC 767 wherein it is held by the Hon'ble Supreme Court that neither the Registrar nor the Inspector General has the power to cancel a compulsorily registerable document. Relevant extract reads thus:

'34. The role of the Sub-Registrar (Registration) stands discharged, once the document is registered (see Raja Mohammad Amir Ahmad Khan (supra). Section 17 of the Act of 1908 deals with documents which require compulsory registration. Extinguishment Deed is one such document



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referred to in Section 17(1)(b). Section 18 of the same Act deals with documents, registration whereof is optional. Section 20 of the Act deals with documents containing interlineations, blanks, erasures or alterations. Section 21 provides for description of property and maps or plans and Section 22 deals with the description of houses and land by reference to Government maps and surveys. There is no express provision in the 1908 Act which empowers the Registrar to recall such registration. The fact whether the document was properly presented for registration cannot be reopened by the Registrar after its registration. The power to cancel the registration is a substantive matter. In absence of any express provision in that behalf, it is not open to assume that the Sub-Registrar (Registration) would be competent to cancel the registration of the documents in question. Similarly, the power of the Inspector General is limited to do superintendence of Registration offices and make rules in that behalf. Even the Inspector General has no power to cancel the registration of any document which has already been registered. '

45. Having due regard to the above case laws, this Court is of the view that a Gift Settlement Deed cannot also be revoked unilaterally unless there exists a revocation clause to that effect or unless it could be gathered from the facts and circumstances of the case that the parties had any mutually agreed intention to that effect. As stated above, there is no revocation clause in Ex-A.3 and nothing could be gathered from the facts and circumstances of this case to believe that the parties mutually agreed



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on revocation in any case. Moreover, there is no valid reason for the revocation of Ex-A.3. Though the first defendant claims that the second defendant obtained his signatures in the pre-text of securing a loan for her and later fabricated Ex-A.3 - Gift Settlement Deed, he failed to establish his case of misrepresentation and fraud. There is no satisfactory evidence available on record to support his case in this regard. In these circumstances, the unilateral revocation / cancellation of Ex-A.3 - Gift Settlement Deed by the settlor / first defendant by way of Ex-B.5 : Ex-B.10 - Cancellation Deed is invalid. **Point No.(vi) is answered accordingly.**

46. As regards the Ex-B.6 : Ex-B.11 - Gift Settlement Deed dated February 27, 2008, as elaborated above, upon the intestate demise of Rajammal on August 24, 1996, the plaintiff and defendants 1 & 2 are each entitled to 79 Cents in the suit property in terms of the said Section 15 (1) of the Hindu Succession Act, 1956. Thus, the first defendant was entitled to 79 Cents. The first defendant executed a joint Sale Deed along with second defendant *vide* Ex-A.2 - Sale Deed and thereby sold 50 Cents out of the said 79 Cents. Thus, after Ex-A.2, he had 29 Cents remaining. As held above, the revocation of Ex-A.3 - Gift Settlement Deed dated November 15, 2005 is invalid and the same is valid in respect of first defendant's remaining 29 Cents after Ex-A.2. Upon execution of Ex-A.2



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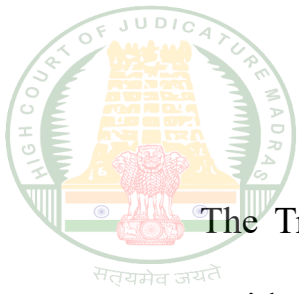
and Ex-A.3, the first defendant was left with no share in the suit property.

As per the legal maxim "*Nemo Dat Quod Non Habet*", no one can give when he does not have. Hence, Ex-B.6 : Ex-B.11 - Gift Settlement Deed is invalid and *non-est* in the eye of law. It does not confer any right in favour of the plaintiff since the donor has no transferable right in the subject property on the date of Ex-B.6 : Ex-B.11. **Point No.(vii) is answered accordingly.**

47. As elaborated above, the testator / first defendant did not have any share in the suit property post the execution of Ex-A.2 - Sale Deed and Ex-A.3 - Gift Settlement Deed and hence, Ex-A.21 - Will dated March 31, 2008 does not bequeath any right in favour of the plaintiff over the suit property. Moreover, Ex-A.21 - Will was executed during the pendency of the Suit in O.S. No.85 of 2007. Hence, regardless of its genuineness, Ex-A.21 - Will is not valid. **Point No.(viii) is answered accordingly.**

Point No.(ix) - *Whether the Common Judgment and Decrees of the Trial Court are to be interfered with ?*

48. As held above, after the execution of Ex-B.54 - Sale Deed, the plaintiff has 12.5 Cents in the suit property. After the execution of Ex-A.2 to Ex-A.4 and Ex-A.43, the first defendant is left with 7.5 Cents therein.



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The Trial Court has rightly come to the conclusion that the plaintiff is entitled to 12.5 Cents and the second defendant is entitled to 7.5 Cents and accordingly passed a preliminary decree granting the relief of partition and allotment of 12.5 Cents in the suit property in favour of the plaintiff. There is no warrant to interfere with it.

49. The Trial Court decreed the Suit for declaration of title and permanent injunction in O.S. No.268 of 2015 filed by the third defendant *qua* purchaser of a portion of the suit property *vide* Ex-A.2 and Ex-A.4 - Sale Deeds. As stated *supra*, no appeal has been preferred by plaintiff or the second defendant against the Judgment and Decree passed in O.S. No.268 of 2015. Hence, the same has reached finality and binding on the plaintiff and the second defendant. The Sale Deeds in Ex-A.2 and Ex-A.4 are valid as elaborated above. Hence, defendants 3, 5 and 6 are co-owners. Similarly, defendants 12 and 13 are *pendente lite* purchasers from the second defendant *vide* Ex-B.43 - Sale Deed and the nineteenth defendant is a *pendente lite* purchaser from the plaintiff *vide* Ex-B.54 - Sale Deed. The Sale Deeds are valid as held above. Hence, they are co-owners along with defendants 3, 5 and 6, the plaintiff and the second defendant. Law is well settled that no permanent injunction can be granted against co-owners in a



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Partition Suit. In these circumstances, the Trial Court is not right in granting injunction against second defendant.

50. Considering the facts and circumstances of this case and upon rightly appreciating the evidence available on record, the Trial Court rightly dismissed the Suit in O.S. No.16 of 2010 filed by the second defendant. **Point No.(ix) is answered accordingly.**

CONCLUSION

51. Resultantly,

- (i) The Appeal Suit in A.S.No.2 of 2024 is partly allowed and the Cross Objection in Cross Obj. No.23 of 2026 is dismissed. O.S.No.85 of 2007 is decreed in part. Plaintiff is entitled to 12.5 Cents only and not 43 Cents as claimed, in the suit property in O.S.No.85 of 2007. To that effect, a preliminary decree is passed. The said Suit is dismissed *qua* permanent injunction. In so far as the other reliefs sought for in O.S. No.85 of 2007 are concerned, the Trial Court rightly denied them and the same is confirmed.
- (ii) The Appeal Suit in A.S. No.4 of 2024 is dismissed. The Suit in O.S. No.16 of 2010 filed by the second defendant stands dismissed.



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(iii) The Suit house is said to have been built by the second defendant and there is no contra evidence to the same.

(iv) The Suit in O.S. No.85 of 2007 was filed in 2007 and the defendants 3, 5 and 6 are pre-Suit purchasers and hence, they are entitled to claim equity during the final decree proceedings. On the other hand, as stated *supra*, defendants 12, 13 and 19 being *pendente lite* purchasers are not entitled to claim equity during final decree proceedings.

(v) In view of the facts and circumstances of this case, there shall be no order as to costs.

(vi) Connect Civil Miscellaneous Petitions are closed

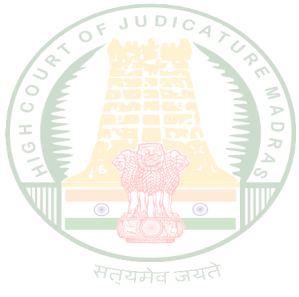
[N.S.K., J.]

[R.S.V., J.]

30 / 4 / 2026

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
TK

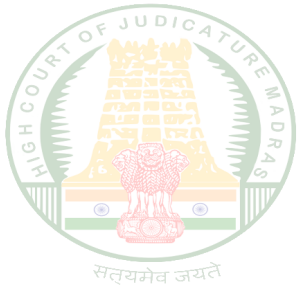
Note to Registry: First respondent in the Cross Objection passed away. Her legal heirs are already on record as respondents 2, 3 and 5. Steps taken in connected A.S. No.2 of 2024. Registry shall carry out necessary changes in the cause title to the Cross Objection.



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To

The II Additional District Court
Salem.



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CROSS OBJ. NO.23 OF 2026

N.SATHISH KUMAR, J.

AND

R.SAKTHIVEL, J.

TK

PRE-DELIVERY COMMON JUDGMENT MADE

IN

APPEAL SUIT NOS.2 AND 4 OF 2024

AND

CROSS OBJECTION NO.23 OF 2026

30 / 4 / 2026

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