



S.A.Nos.966 of 2021
and 947 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 02.06.2026

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A.Nos.966 of 2021
and 947 of 2022

S.A.No.966 of 2021

1.Myil Mark Nilayam
Having office at No.431,
Thiruvotriyur High Road
Washermanpet, Chennai-21.

2.M.N.Venkatachalam (died)

3.Meyammal

4.V.Muthiah

5.V.Nagappan

6. V.Gomathi
[A-6 LR of A-2]

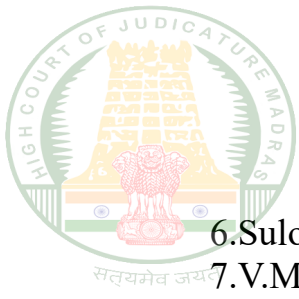
Appellants 4 and 5 declared as major
and they discharged from guardianship of A2
vide order date 29.08.2025

... Appellants
/ Defendants 9 to 13.
/ Respondents 8 to 12

Vs.

1.M.Bhanumathi
2.T.Kumari
3.T.R.Selvarajan (died)
4.T.R.Sucheendra Babu
5.Saradambal

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- 6.Sulochana
- 7.V.Muthu Srinivasan
- 8.Kunchithapatham
- 9.Saraswathy
- 10.Geetha
- 11.Latha
12. Sudha
- 13.T.S.Kumar
- 14.Valliammai
- 15.Meyammai
- 16.Meenakshi
- 17.V.N.Venkatesan
- 18.S.Saraswathy
- 19.Jeeva
20. Sathya
- 21.Shanthi
22. V.N.V.Ravi
- 23.Mallika
- 24.V.Ramesh
- 25.V.Vijayan
- 26.V.Usharani

R5 died. RR 17 to 26 are brought on record as LR's of the deceased R5 vide Court Order dated 25.11.2025 made in CMP.Nos.28220, 28221 & 28222 of 2025 in S.A.No.966 of 2021

RR9 to 13 brought on record as LR's of the deceased R3 viz., T.R.Selvarajan vide court order dated 30.09.2021 made in M.P.No.1 to 3 / 2014 in S.A.SR.No.81261 of 2017.

... Respondents

PRAYER in S.A.966 of 2021: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 22.12.2006 passed by the learned I Additional City Civil Judge, Chennai, in A.S.No.79 of 1997 reversing the judgment and decree dated 23.08.1996 passed by the learned II Assistant City Civil Judge, Chennai, in O.S.No.1421 of 1991.



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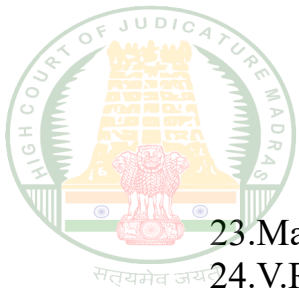
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S.A.No.947 of 2012

- 1.Myil Mark Nilayam
- 2.M.N.Venkatachalam (died)
- 3.Meyammal
- 4.V.Muthiah
- 5.V.Nagappan
- 6.V.Gomathi

VS

- 1.T.Kumari
- 2.M.Bhanumathi
- 3.T.R.Selvarajan (deceased)
- 4.T.R.Suchindra Babu.
- 5.Saradambal
- 6.Sulochana
- 7.V.Muthu Srinivasan
- 8.Kunchithapatham
- 9.Saraswathy
- 10.Geetha
- 11.Latha
12. Sudha
- 13.T.S.Kumar
- 14.Valliammai
- 15.Meyammai
- 16.Meenakshi
- 17.V.N.Venkatesan
- 18.S.Saraswathy
- 19.Jeeva
20. Sathya
- 21.Shanthi
22. V.N.V.Ravi



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23.Mallika
24.V.Ramesh
25.V.Vijayan
26.V.Usharani

..Respondents

R5 died. RR 17 to 26 are brought on record as LR's of the deceased R5
vide Court Order dated 25.11.2025

PRAYER in S.A.No.947 of 2012 : Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 14.02.2012 passed in A.S.No.201 of 2011 on the file of III Additional City Civil Court, at Chennai, confirming the judgment and decree dated 01.04.2010 passed in I.A.No.8080 of 2008 in O.S.No.1421 of 1991 on the file of II Assistant City Civil Judge, Chennai.

In both Second Appeals:-

For Appellants	: Mr.T.S.Baskaran
For Respondents	: Mr.R.Sathiyaamurthy for R1 and R2. R3, R5 died. R14, R18 left R15, R16 and R 25- No appearance R17 – deceased. R 19, R 20, R24 – unclaimed R12 and R22 – No such person R23 – insufficient address R26 – door locked.

COMMON JUDGMENT

Since the parties and the issues in both the Second Appeals are one and the same, both Second Appeals are taken up together for hearing and the matters are disposed of by the Common Judgment.



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2. In S.A.No.966 of 2021, the appellants herein are the defendants 9 to 13 in O.S.No.1421 of 1991 on the file of II Assistant Judge, City Civil Court, Chennai. Challenging the reversal findings in A.S.No.79 of 1997, the defendants 9 to 13 preferred this Second Appeal.

3. Originally the plaintiff filed O.S.2001 of 1982 before Sub Court, Chengalpet against the defendants for the relief of partition claiming 1/7th share in the suit properties as described in the plaint A and B Schedule properties; later it was transferred on the point of jurisdiction before the Sub Judge, Poonamallee as O.S.182 of 2006 and thereafter the suit was again transferred and renumbered as O.S.No.1421 of 1991. Pending suit proceedings, defendants 9 to 13 purchased the properties as purchasers. They have been subsequently impleaded. Before the trial court, defendants 1 to 6 contested the case.

4. On considering both oral and documentary evidence, the trial Judge has dismissed the suit holding that the plaintiff is not entitled for the share in the suit properties. Aggrieved by the said findings, the plaintiff and Defendant No.6 transposed as 2nd plaintiff filed A.S.No.79 of 1997 before the I Additional Judge, City Civil Court, Chennai, wherein, the 1st Appellate



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Judge, after considering the oral and documentary evidence and framing

separate points for consideration, finally held that the appellants/plaintiffs are entitled to get the share in the suit property and the 1st appeal was allowed by the First Appellate Judge, thereby, the decree and judgment of the trial court was set aside.

5. Aggrieved by the said reversal finding, the subsequent purchasers defendants 9 to 13 preferred S.A.No.966 of 2021.

6. The brief facts of the case are as follows:-

The plaintiff and the defendants 1 to 6 are the legal heirs of the deceased T.C.Rajagopala Mudaliar . Originally A and B schedule properties are the separate properties of Rajagopala Mudaliar. He died intestate leaving behind defendants 1 to 6 as legal heirs. Admittedly he had two wives. After the death of the 1st wife, Rajagopala Mudaliar got married to 2nd wife Baby Ammal and through both wives, he begotten children. The 1st defendant in the O.S.No.1421 of 1991 is the 2nd wife of Rajagopala Mudaliar and Baby Ammal died on 30.04.1998.

7. The plaintiff in O.S.No.1421 of 1991 states that the entire suit



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properties are separate properties of his father Rajagopala Mudaliar. Besides

the said properties, her mother also purchased some house site in T.V.K. 3rd street, by selling her jewels. The plaintiff stated on 05.09.1979 there was partition deed between plaintiff and defendants 1 to 6. But the said document was not executed in the manner known to law. The male members viz., 2nd and 3rd defendants took all the valuable immovable properties and the plaintiff was given with meagre share of Rs.8000/- which is very much unequal, but the 2nd and 3rd defendants/her brothers undertook that they compensate for the said disparity but they have not done so. On 01.10.1982 plaintiff came to know that defendants 2 and 3 purposely undervalued the suit properties more particularly Item Nos.1 and 2 of B Schedule properties and played fraud on the plaintiff; defendants 7 to 13 are the pendente lite purchasers of the partitioned suit properties and thereby stated that the entire partition is done with fraud and therefore, the partition deed was not registered nor it was acted upon. Therefore, she claimed that on the death of their mother, she claimed 1/7th share in the entire suit properties by metes and bounds.

8. It is the further case of the plaintiff that pending suit proceedings, the 1st defendant died and her share was modified and the plaintiff claimed 4/21 share of the suit property.

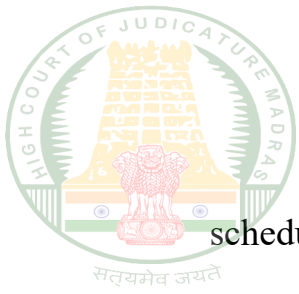


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9. The Plaintiff submits that the alleged partition deed dated 05.09.1979 was not acted upon and defendants 2 and 3 defrauded them particularly against female members of the family; also they were not permitted to ascertain the real market value of the suit properties allotted to the 2nd and 3rd defendants. However, they entrusted the plaintiff for agreeable partition and only in the year 1982, she came to know that the properties were undervalued as per the alleged partition deed dated 05.09.1979. Thereby, contended that the defendants 2 and 3 committed fraud upon them.

10. The 1st defendant states that she purchased the house site at her own savings and settled it in favour of her daughter/plaintiff and two sons viz., Muthuvelu and Thangavelu in the year 1974. In the year 1959 also, 1st defendant also purchased two house sites and put up construction by selling her jewels. The share allotted on her was not bonafide and fair manner. She also raised objections in respect of the claims made by defendants 2 to 5 in respect of the properties mentioned in their written statement shown as A, B and C Annexures. Thereby, she contended that each of the legal heirs are entitled to equal shares in the suit property and the unfair partition deed dated 05.09.1979 may be reopened and allotted 1/7th share in the plaint



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schedule property. To that effect, she paid court fee.

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11. As per the written statement of the defendants 2 to 5, 2nd and 3rd defendants are the brothers/male members of the family. They submitted that at the time of marriage, the plaintiff was given jewels worth more than Rs.50,000/- and marriage was also celebrated in a grand manner. Therefore, at the time of partition of the property, she was given share accordingly since the defendants 2 and 3 took other liabilities including debts of the family, therefore, the property was allotted to defendants 2 and 3 in a fair manner and one of the sisters viz., D4 has relinquished her share as per the family arrangement and the other defendants and plaintiff also were agreeable for division of the immovable properties in respect of the partition deed and accordingly partition deed dated 05.09.1979 was acted upon but the suit was filed on 1.10.1982 as such is barred by limitation as the suit is to be filed within three years. Since the prior Partition Deed dated 05.09.1979 was not cancelled, the suit for fresh partition is not sustainable. Therefore, the plaintiff is not entitled to seek for partition ignoring the said prior partition in which she is also one of the beneficiaries. Therefore, the suit as such is not maintainable. Along with written statement, they made Annexures 'A' 'B' 'C' with regard to the properties which were given by Rajagopala Mudaliar to the 1st defendant, plaintiff and 2nd defendant. That is Annexure 'A' list of

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properties are given by Rajagopala Mudaliar to his wife/1st defendant.

Annexure B properties are given to plaintiff by her father; C schedule properties are given to 2nd defendant by his father. Therefore debts and liabilities were handled by defendants 2 and 3 and accordingly they derived benefits. About the annexures claimed in the written statement of the 2nd defendant, the 1st defendant denied those allegations and contended that some of the properties were purchased by her by selling her jewels and claiming right over those properties.

12. Before the trial court, the plaintiff and D1 to D6 contested the case by adducing oral and documentary evidence. On the side of the plaintiff, she was examined as P.W.1 and marked Ex.A.1 and Ex.A.2 documents. On the side of defendants, D.W.1 to D.W.4 were examined and Exhibits B.1 to B.13 were marked. On considering the oral and documentary evidence, trial Judge framed 8 issues for consideration.

13. As per the evidence, the property belongs to Rajagopala Mudaliar which was admitted by all the parties and they also admit that Rajagopala Mudaliar had two wives. After the death of the 1st wife, he married 2nd wife Baby Ammal and also begotten children. Plaintiff and defendants 1 to 6 are



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the legal heirs of Rajagopala Mudaliar. The above facts are undisputed.

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14. Considering the evidence, the trial Judge held that the plaintiff approached the court stating that the alleged partition deed was executed for ulterior purpose and not acted upon. Therefore, burden is on her to discharge that partition deed was obtained by fraud, coercion, misrepresentation and by using undue influence. But to prove the same, except P.W.1 no other independent witness was examined. Further the alleged assurance to give more amount in future was also not been proved. Besides the suit also not filed within 3 years after the date of the alleged partition. Therefore, the suit also not filed within 3 years and the suit is barred by limitation and the partition deed was executed on 05.09.1979. Further, considering the evidence of the defendants 1 and 6 and on considering the document Ex.B.12 and considering the defendants' evidence D.W.1 and D.W.2, the trial Judge observed that O.S.No.201 of 1982 was filed before the Sub Court, Chengalpet. Before the filing of the suit, the plaintiff has not issued any notice to the defendants claiming share nor alleging that partition deed was not proper nor made any demand to comply with the agreed terms said to be made by the defendants 2 and 3 and the suit has not been filed within 3 years from the date of the said partition. Also held that the



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plaintiff failed to establish that the document was prepared by

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exercising undue influence, under which circumstances, the plaintiff ought to have sought for the relief of cancellation of the partition deed but failed to ask, as such, the suit is not maintainable on all the aforesaid findings and the suit was dismissed.

15. Aggrieved by the above said findings of the trial Judge, the plaintiff and the 4th defendant transposed herself as 2nd appellant/2nd plaintiff filed A.S.No.79 of 1997 on the file of the II Additional Judge, City Civil Court, Chennai.

16. Before the 1st appellate court, the purchasers 6th and 7th respondent contested the appeal. The other respondents remained absent. The 1st appellate court framed separate points for consideration.

17. Before the 1st appellate court, 2 applications in CMP.1464 of 2003 and 1785 of 2003 was filed along with appeal. The two CMPs were filed by the appellants/plaintiffs to receive the certified copy of the letter dated 20.05.1995 issued by the 2nd and 3rd defendant and outpatient chit issued by KMC Hospital and registration copy of the sale



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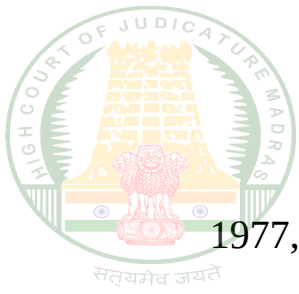
deed dated 21.01.1988 executed by 3rd defendant in favour of the 7th

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defendant and notice dated 30.08.2003 for production of original of Ex.B.12, registration copy of the partition deed and postal acknowledgement of the said notice in the latter. Reception of those documents were objected by the contesting respondents stating that those documents were not relevant.

18. On hearing both sides, the 1st appellate Judge held that those documents are relevant and marked as Exhibits A-3 to A-7.

19. Considering the evidence on record, the 1st appellate Judge has held that suit properties are self acquired properties of Rajagopala Mudaliar and he died by leaving behind his wife and sons and daughters as legal heirs and thereby legal heirs are entitled to 1/7th share. The 1st defendant, wife of Rajagopal Mudaliar died pending proceedings leaving behind her legal heirs and they are entitled to 4/21 share each. The 1st appellate Judge had observed that original partition deed Ex.B.12 was not produced inspite of notice issued and the said document was produced for registration only after 2 years of the execution ie. in the year 1979. It is also noted that even as early as on



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1977, it was executed after correction of the year, since it was presented

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for registration after two years later, as such, it is void. Further, there was assurance by the 2nd and 3rd defendants that family properties will be satisfied in future. So they allotted meagre share of Rs.8000/- to the plaintiff. By misrepresentation, the 2nd and 3rd defendants obtained signatures in the said partition deed and the allotment of the share was also unequal and therefore, held that the partition was not valid and the partition is to be reopened and fresh partition should be ordered as prayed for.

20. Further the 1st appellate Judge observed that the original partition deed Ex.B.12 was not produced. If at all the original is not with the brothers, they ought to have submitted the reason for non production of the original document and also adduced secondary evidence under Section 65 of the Evidence Act by complying with the other condition to invoke the same. But in the case on hand, they have assigned no reasons nor taken any attempts to produce Ex.B.12 original document. But only certified copy was marked as Ex.B.12. In spite of the direction to cause production of the document, it was not produced.



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Therefore, the certified copy produced on the side of defendants 2 and

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3 which is marked as Ex.B.12, as such is liable to be rejected. The 1st

appellate Judge accordingly held that the certified copy of the partition deed is not valuable one and as much as it was not primarily registered as contemplated under law. Further, the 1st appellate Judge also held that even as per Ex.B.12, it was mentioned as 05.09.1979 but the stamp papers were purchased in the year 1977. D.W.2 also stated that the document was prepared on 05.09.1977 and it was not registered immediately. There was material alteration in respect of the year of the document. As per Section 23 and 25 of the Registration Act, 1908, document is void. As per Section 23 of the Registration Act, the 1st appellate Judge thereby held that the partition deed is not binding on the appellants/plaintiffs. Further the 1st appellate Judge held that the said partition deed created is nullity as the original partition deed was not produced nor it is registered. According to the plaintiff, the document is void. The plaintiffs are entitled to ignore the said partition. There is no separate relief sought for by the plaintiffs. Therefore, to cancel the said document, setting aside the partition deed need not be required and the points were answered on the above reasonings.



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WEB COPY 21. The purchaser / 7th defendant submitted that he had no notice about the proceedings and the 7th defendant filed written statement stating that he was one of the sharers of the suit properties. However, the purchaser contended that the appellants and the defendants 2 and 3 are colluding and filed the suit against the bonafide purchaser. But there is no such collusion between the appellants and the vendor of the 7th defendant. At the most, they are entitled for equal share of the allotment of the property of the sharers of their vendors. Thus, the issue was answered holding defendants 7 to 13 have no right to resist the partition and allotted 4/21 share in favour of the appellants each and the 1st appellate Judge set aside the findings of the trial Judge.

22. The 1st appellate Judge disposed of the 1st appeal in the year 2006 by allowing the appeal filed by the plaintiffs. Aggrieved by the reversal findings of the 1st appellate Judge, the defendants filed S.A.No.966 of 2021.

23. Based on the 1st appellate court findings, the 2nd appellant therein filed I.A.8080 of 2008 in O.S.No.1421 of 1991 and prayed for



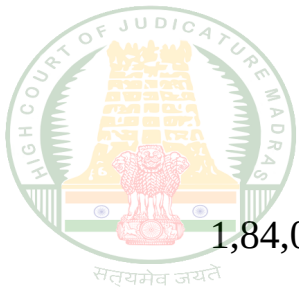
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passing of the final decree based upon the preliminary decree. This

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application was objected by the 2nd and 4th defendants viz., Selvarajan and Saradambal stating that challenging the 1st appellate court findings, they have taken steps to prefer Second Appeal. Besides some of the portion also sold to 3rd parties based upon partition deed. In such circumstances, appointment of the Advocate Commissioner for division of the property is not sustainable. One of the purchasers raised objection stating that as against the findings of the 1st appellate court, they filed Second Appeal and Diary No.81261/2007 was assigned but no stay with regard to final decree proceedings. In the mean while, Advocate Commissioner was appointed and he visited the property with the help of Surveyor. During his visit, some of the respondents appeared; some of the respondents not appeared.

24. On considering the Commissioner's report, the trial Judge held that there is no stay with regard to the final decree proceedings based on the valuation report submitted by the Advocate Commissioner with regard to the value of the A schedule property. But considering the valuation, the trial Judge held that the plaintiff was allotted with



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1,84,00,880/- and in respect of the 2nd plaintiff-Kumari, considering the

fact that the plaintiff was allotted 1,84,00,880/- was allotted.

Considering that she was residing in 3rd item of the A schedule property, in respect of 2nd plaintiff Kumari 1,36,23,920/- amount was awarded considering the fact that she was residing in 1st item of A schedule property. Based on the Commissioner's report, the petitioner in I.A.No.8080 of 2008 - Kumari was allotted with share. Accordingly final decree was passed. Commissioner report was marked as Ex.C.1 to Ex.C.3.

25. Aggrieved by the final decree proceedings, defendants 9 to 13 filed A.S.201 of 2011 before the IV Additioanl Judge, City Civil Court, Chennai. Along with the said first appeal, 3 CMPs were filed. These CMPs were filed by the plaintiffs in CMP.Nos.970, 2320 and 73 of 2011 to receive the documents as listed in the petition affidavit and to receive the additional documents as listed in the petition affidavit as additional evidence.

26. The petitioners in the CMP prayed to receive the additional documents related to the valuation made by one of her brothers made



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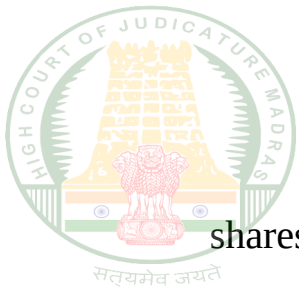
alienation which took place on 18.12.1991 pending suit along with

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encumbrance certificate and another document viz., deed of conveyance executed by her brother and sisters including the 3rd party purchasers pending suit. Those documents were objected by the respondents in that application stating that at the appellate stage, those documents are not relevant nor any reason assigned for not filing at the initial stage. Thus the documents are not necessary.

27. Considering both sides submission, the 1st appellate Judge has held that the document sought to receive as additional document dated 17.12.2004 is prior to the date of the disposal of suit in O.S.No.1421 of 1991. In spite of ample opportunity was available with them, they have not produced the said documents and only at the stage of the appeal, filed the said applications to produce those documents, as such is unacceptable and accordingly, dismissed the CMPs.

28. The appeal preferred by the purchaser in respect of passing of the final decree in A.S.No.201 of 2011 is concerned, the 1st Appellate Judge has held that though the suit was dismissed by the trial Judge, A.S.No.79 of 1997 was filed and the same was allowed allotting 4/21



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shares to the appellants/plaintiffs and directed the parties to file

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separate petition for appointment of Advocate Commissioner and to file report. Hence the petitioner filed separate application. Based on that, the Commissioner visited the property and measured and submitted the report. Even at that period, the Second Appeal was not taken on file. The Advocate Commissioner also given valuation of the suit property. The report of the Advocate Commissioner was objected by the purchasers stating that the Commissioner report referred about the ownership of the property which was beyond the scope of the warrant. Therefore, without any basis, receiving the Advocate Commissioner report who made division of the property and valued the same without proper identification is not acceptable. Therefore the mode of division suggested by the Commissioner is illegal and not acceptable one and no share was allotted to the 3rd party purchasers nor to their vendors. Once division was equitable in law and the Advocate Commissioner filed report dividing the suit property to all the sharers, the 1st appellate court held that in respect of the reception of the documents, no proper reason was assigned. Therefore the findings of the appellate Judge is accepted in respect of the passing of the final decree.



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29. The 1st appellate Judge has held that the trial court after due enquiry, appointed the Advocate Commissioner and some of the respondents appeared before the trial court and filed the detailed counter affidavit where they have stated that they have preferred Second Appeal but only Diary Number was furnished nor any stay was granted in respect of the passing of the final decree. Besides, some purchasers purchased part of the suit property pending original suit for partition preferred in O.S.No.2001 of 1982 before the Sub Court, Chengalpet. Later it was transferred on the point of jurisdiction before Sub Court, Poonamallee in O.S.No.182 of 2006 and thereafter it was transferred to City Civil Court and renumbered as O.S.No.1421 of 1991 and the final decree application was duly considered by the trial Judge. The Advocate Commissioner inspected the property in the presence of the parties by giving due notice and the Commissioner also valued the suit property by due notification from the concerned Sub Registrars Offices, the guideline as well as the market value of the properties. The interim report of the Commissioner in Ex.C.1 clearly indicate that the Commissioner identified the suit property and located the suit properties with relevant records. Even purchasers as well as aggrieved



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respondents have not agitated in their counter that they have not received notice. Apart from that, after filing report of the Advocate Commissioner viz., Ex.C.1, Ex.C.2 and Ex.C.3, the trial court adjudicated the matter on various dates. The aggrieved party has not filed any objections.

30. On considering and verification of the records, the 1st Appellate Judge has held that the purchasers who are the pendente lite purchasers who purchased a portion of the share of the suit property from other owners, are not entitled to claim their entitlement of equity in respect of the suit property as they are subsequent purchasers. As such the appeal was dismissed on the ground of lis pendens.

31. The Commissioner warrant as well as the report of the Commissioner was duly placed before the trial court. It was not agitated by the contesting respondents at that time. Therefore, after careful analysis of the Commissioner report as well as hearing the parties, the trial Judge has rightly passed the final decree. Therefore the passing of the final decree in I.A.No.8080 of 2008 is confirmed and accordingly, the appeal in A.S.No.201 of 2011 was dismissed.



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32. Aggrieved by the said findings rendered in A.S.No.201 of 2011, Second Appeal No.947 of 2022 has been preferred by the 6th defendant T.Kumari by raising the following grounds :-

1. The Court below ought to have dismissed the final decree as the appellants had preferred a second appeal against the preliminary decree.

2. The Addl City Civil Judge failed to consider that the 1st respondent had filed three petitions to receive additional documents in the appeal against the final decree only to support the statements made in the Advocate Commissioner report and the same will clearly prove that the report of the Advocate Commissioner is not supported by material evidence. The Learned Addl. City Civil Judge dismissed the petitions for receiving additional documents and thus the Advocate Commissioner report is not supported by any data or documents regarding his conclusion. Hence, the report of the Advocate commissioner to be scrapped.

3. The courts below failed to consider that the description of the suit properties and its physical features stated in the advocate Commissioner Report are incorrect.

4. The courts below failed to consider that the Advocate Commissioner had in his report referred about the possession of the property and the ownership of the property, which was beyond the scope of his warrant.

5. The courts below ought to have rejected the report of the advocate commissioner on the sole ground that the commissioner without any basis or reasoning had made division of properties and valued the same.

6. The courts below failed to consider that the Advocate



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Commissioner identifying that suit items 2,5,6 and 7 are alone is divisible is incorrect and the divisions suggested by the Advocate commissioner are also inequitable and unjust.

7. The courts below failed to consider the possession of the appellants in the suit schedule property and also the improvements made by them in the suit property while passing the final decree.

8. The Additional City Civil Judge failed to consider that other respondents filed their counter after the filing of preliminary report by the Advocate Commissioner raised various objections but the same was conveniently omitted to be considered by the courts below.

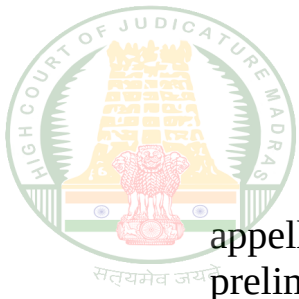
9. The Additional City Civil Judge failed to consider that even in the preliminary report the Advocate commissioner has not stated anything about the issuance of notice to the parties for the inspection of properties.

10. The Addl City Civil erred in holding that the Advocate Commissioner arrived at the value of the properties by due notification from the Sub registrar office, the guideline value and market value is made without any basis. The Addl City Civil Judge findings are made without perusing the documents properly, hence the same is erroneous and liable to be set aside.

11. The Addl City Civil Judge finding that the non filing of objections to the Advocate commissioner disentitles the appellants to question the same is unsustainable as the appellants counsel raised all the objection at the time of enquiry, but the same was not considered by the trial court, hence the Addl City Civil Judge ought to have considered the objections.

12. The Addl City Civil Judge finding that the appellants are not the bonafide purchasers as they had purchased the property pending the suit is perverse and unwarranted.

13. The Addl City Civil Judge failed to consider that the



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appellants are the defendants in the suit and they are contesting the preliminary decree proceedings. As the appellants were the purchasers of one of the suit schedule properties from the sharer, they are stepping into the shoes of the sharer and they have all the rights as the sharers and hence they are entitled to raise all objections.

14. The Addl City Civil Judge finding that the appellants who are the pendent lite purchasers and they have to work out their remedy separately against their vendor is highly erroneous and against the well settled principles of law.

15. The Addl City Civil Judge finding that the claim of the appellants are hit by the principles of lis pendens and they are not entitled to claim equity as they purchased the suit property pending suit is unsustainable in law and liable to be set aside.

33. The Second Appeal No.947 of 2022 was admitted on the following substantial questions of law:-

1. Whether the Courts below have failed to adhere to the principles of natural justice and fair play in considering the correctness of the valuation furnished in the commissioner's report for allotment of shares in accordance with the preliminary decree?

2. Whether the First Appellate Court, being the final court of appeal on facts has failed to exercise its jurisdiction to consider the objections raised by the appellants on the ground that they were not given



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reasonable opportunity to file their objections and raise their objections

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Commissioner in his report?”

34. Second Appeal No.966 of 2021 has been filed as against the findings of the 1st Appellate Judge passed in A.S.No.79 of 1997. The defendants 9 to 13 preferred appeal on the following grounds:-

1. The Learned First Additional Judge erred in granting a decree for partition when admittedly the parties had already stood divided as evidenced by the registered deed of partition marked as Ex.B12 and the plaintiffs had admitted the due execution and registration of the said deed of partition, and the plaintiffs had not sought to set aside the same and reopen the partition.

2. The Learned First Additional Judge failed to appreciate that the plaintiffs only contention was that the defendants 2 to 5 had agreed to compensate them by way of owelty to equalize their shares and that the sum agreed was Rs.50,000/- each to the daughters and that the defendants failed to pay the said sum and hence sued for partition. The learned First Additional Judge did not note that the only remedy of the plaintiffs was only to sue for the owelty amount and having admitted the execution and registration of the deed of partition it cannot be reopened unless the plaintiffs seek to set it aside the same in accordance with law.

3. The Learned First Additional Judge reasoning that the shares were unequal on the face of the document and that the suit for partition was maintainable as the deed of partition was vitiated by fraud is highly perverse as it goes beyond the pleadings of the plaintiffs in the suit.

4. The learned First Additional Judge failed to see that the plaintiffs had



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never alleged that they are forced to sign the deed of partition or that they had not appeared before the Sub-Registrar for admitting execution of the document and admittedly the document was registered only in the presence of the plaintiffs. In such circumstances, it was not open to the plaintiffs to file another suit for partition without reopening the earlier one in accordance with law.

5. The Learned First Additional Judge committed a grave error in holding that the partition deed was registered contrary to the provisions of the Registration Act and hence void.

6. The Learned First Additional Judge had not appreciated the fact that the plaintiffs had nowhere alleged in the plaint that they had not signed the document and that they were not party to the document presented to the registrar for registration on 3.9.79, even if the date of the document had been corrected as alleged it is always open to the parties to the document to alter the date of execution by mutual consent and present it for registration. The plaintiffs having admitted the execution of the document on the date mentioned in the said document before the Sub-Registrar, the plaintiffs are estopped from disputing the date of execution of the said document.

7. The Learned First Additional Judge ought to have rejected the petition for additional evidence as the documents produced by the plaintiffs cannot be accepted for its face value and it had to be proved by oral evidence and for which there had been no pleading or oral evidence let in at the time of trial.

8. The Learned First Additional Judge reasoning that the deed of partition need not be set aside as the original document was not produced before court is unknown to law and precedents.

9. The plaintiffs having come forward with a plea that there was an earlier partition evidence by a registered document ought to have filed atleast a certified copy of the same to prove their case. On the contrary the plaintiffs relied only on the certified copy of the document filed by the defendants as Ex.B.12. The Learned First Additional Judge had shifted the burden of proof wrongly on the defendants on the ground



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that in a suit for partition all are plaintiffs and all are defendants.

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10. The conclusion of the Learned First Additional Judge that the deed of partition though was presented for registration on 3.9.79 was registered only after the institution of the suit by the plaintiffs and since no document was available for cancellation the plaintiffs need seek for cancellation of the same is fallacious.

The Second Appeal No.966 of 2021 was admitted on the following substantial questions of law:-

1. Whether the learned First Additional Judge was right in decreeing the suit for partition when the plaintiffs had not sought for any relief to set aside the earlier registered deed of partition dated 03.09.1979 and when the plaintiffs hence stood admitted divided?
2. Whether the learned First Additional Judge was right in declaring the deed of partition dated 03.09.1979 void for the reason that the same was presented in violation of Section 23 and 25 of the Registration Act when the plaintiffs were themselves party to the registration of the said document?
3. Whether the learned First Additional Judge was right in allowing the application for additional evidence without being satisfied of the requirements under law for the same and when there was no pleading or evidence in support of the additional documents?

35. By way of reply, the learned counsel for the respondents 1 and 2 submits that the plaintiff and the defendants 1 to 6 are entitled to 1/7th share in the suit properties which belong to Rajagopala Mudaliar as the legal heir of the property, but the defendants 2 and 3 who are the male members of the family ignoring all the other family members executed the partition deed in



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the year 1977. Subsequently material alterations were made as if it was

executed in the year 1979. Meagre share was given worth about Rs.8000/-

and property was received in a remote place. However, in respect of the

defendants 2 and 3 , their properties are situated in the heart of the City and

it was partitioned and the family members were not permitted to assess the

property value. At that time, having done the valuation in the year 1982, one

of the sisters filed suit for partition who alleged the ulterior motive of D2

and D3; that apart, they also undervalued the property. On the other hand,

they sold the property to the 2nd wife and given share to her daughter and

two sons and and her brother family also colluded with other members by

way of partition. The trial Judge, without considering all the facts,

erroneously dismissed the suit as if the partition deed was acted upon. But

the 1st appellate Judge has rightly held that partition deed itself is void one

and it was not properly executed and registered by the contesting defendants

and the shares allotted to the plaintiff is also unequal in nature. The

defendants 2 and 3 also not established that the partition was held with

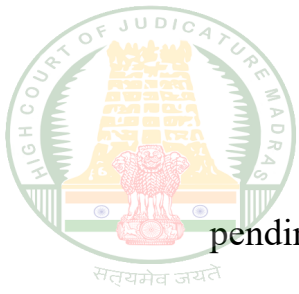
consent of all the parties and as such, rightly held that the document is void

and non-est in law. Accordingly, directed for equal partition of suit

properties, however dismissed the prayer for reopening of the partition deed

and set aside the findings of the trial Judge by allowing the appeal in part in

granting the decree by allotting 4/21 share on the death of the 1st defendant



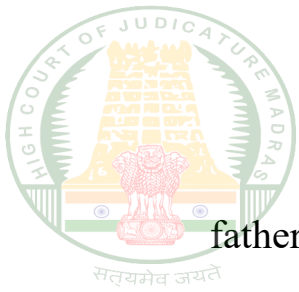
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pending proceedings. Accordingly, the preliminary decree was passed and

also held that the purchase made by the third party purchasers pending suit proceedings would not bind the plaintiffs as they purchased the portion of the suit property. The defendants 7 to 9 are purchasers and it would not bind the plaintiff. The learned counsel submitted that the order passed by the 1st appellate Judge is sustainable and the appeal was rightly allowed and there is no substantial question of law merit acceptance. The learned counsel for the plaintiff/respondents 1 and 2 in S.A.No.966 of 2021 prayed to dismiss both the second appeals as devoid of merits.

36. Considering both side submissions, it is an admitted fact that the original plaintiff and the defendants for the sake of convenience, the parties are denoted as per the ranking before the trial court.

37. Defendants 1 to 6 and the plaintiff are the legal heirs of Rajagopala Mudaliar who died in the year 1977 leaving behind those legal heirs in respect of the self acquired properties suit schedule A and B properties. According to the plaintiff, the male members of the family D2 and D3 ignoring the other family members arranged a partition but it is very much unequal in nature. Immediately after the death of the



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father, the document was altered materially altered as 1979. In that

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partition deed, equal share was not allotted to the plaintiff. But when she demanded her share, it was assured by the defendants 2 and 3 that she will be given due amounts in future. She raised objections. The brothers assurance that she will be compensated in future. But they have not done so. On the other hand, they grabbed the property having more value and allotted lesser value property to her. So the plaintiff prayed for reopening of the allotment and sought 1/7th share in the property by way of passing preliminary decree.

38. On the side of the defendants, defendants 2 to 5 filed written statement stating that 1st defendant is the mother of the plaintiff as well as the 2nd wife of Rajagopala Mudaliar and claiming that by selling her jewels she purchased some of the house sites and settled the same in favour of her daughter and two sons. The 1st defendant also purchased some property which is her absolute property and in respect of which other defendants has no right and title and she settled such properties in respect of other brothers. In respect of the property purchased by the 1st defendant, the same is not under dispute. Though the 2nd and 3rd



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defendants contended that during the life time of Rajagopala Mudaliar

the 1st defendant was given with other properties but all those properties were absolute properties of the 1st defendant and there is no dispute and those properties were absolute properties of the 1st defendant. The defendants 2 and 3 contested the case stating that the plaintiff was given in marriage in a grand manner during the life time of the father. Further it is stated that loan was taken by the father for family purpose and they settled it and the plaintiff is no way connected with the said family property.

39. Admittedly, the property belongs to Rajagopala Mudaliar and it is a valuable immovable property; the partition deed relied on by the defendants 2 and 3 was marked as Ex.B.12 as only certified copy of the document and not only original partition deed. On a bare perusal of the said document, it would show that equal share was not allotted to the plaintiff and other female members.

40. On a bare perusal of Ex.B.12, it reflects that valuable property were allotted to male members of the family viz., D2 and D3



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and only very meagre extent of amount Rs.8000/- was given to the

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plaintiff and one of the sisters Sarathambal who is also sailing with that of the plaintiff. She has not raised any objection for the said division of properties. Therefore, even assuming that partition deed was executed on the face of it, it reflects that the properties are divided in unequal manner. However, the 2nd and 3rd defendant contended that it was due to liability was incurred by them due to the business from the business conducted by the deceased father Rajagopala Mudaliar. However, certain items of the property were allotted to them I.e, factory was sold and after satisfying the liability it was given and thereby they convinced the plaintiff that she given in marriage in a grand manner and to that effect the objection raised was subdued and settled the issues. Further the 2nd defendant was allotted with more property because he was not well settled and he was economically and educationally backward when compared to other sharers who settled in their life. But the fact is all the valuable properties are taken away by male members and female members were allotted less in share and it is disproportionate and that they also very much well settled. No evidence was produced before the trial court that they are economically



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backward. Though the defendants 2 and 3 contended that other liability

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of the family that in respect of factory and the workers retrenchment, the workers were paid to the extent of Rs.21,000/- and thereafter the factory was assigned to them and the female members of the family was not at all not concerned with the burden of liability. Considering the fact that they took the business along with liability so that cannot be equated with the plaintiff's share in the property.

41. Above all, defendants 2 and 3 were not able to submit any evidence to prove the liability and no evidence whatsoever produced before the trial court. Even as per their submission, even before the Panchayat, property was divided already; however no individual Panchayatdar was examined to prove the same. When the plaintiff alleged that under misrepresentation, consent was obtained and assurance was given that in the future she will be compensated and in this regard burden is heavily on the defendant to prove the family arrangement as well as the registered partition about the division of the property, but no individual witness was examined on their side. Therefore, the defendants miserably failed to establish that the family



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arrangement was held before the division of the property in the

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presence of Panchayat as stated in the written statement. On the other hand, the plaintiff proved that the alleged partition said to be of the year 1979 was an unequal partition. It is also relevant that the said partition deed was registered only in the month of November 1982, but the suit was filed on October 1982. Therefore, on the date of filing of the suit, there is no partition deed as alleged by the defendants 2 and 3. Therefore, necessity not arose for the plaintiff to declare the partition deed as null and void since no document was registered on the date of the filing of the suit. Moreover the facts also reveals that the partition deed was registered inspite of the notice, however, original partition deed was not produced by the defendants 1 to 3 but a copy of the said partition deed was only produced which shows that with malafide intention, the document was not produced. Moreover the document was registered only on 24.11.1982, however, there is a correction with regard to the date of the execution i.e. 03.09.1977. With regard to the execution also, there is contrary views that is it is mentioned as 03.09.1979 but in one place, it is shown as 1977 which reflects the alleged partition deed was not properly executed. Therefore, it is seen



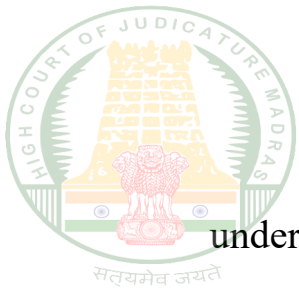
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that the partition deed was not properly executed as per the Registration

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Act. It is seen that the alleged partition deed has not been registered on 03.09.1979 and also it was not registered within 4 months from the date of the presentation indeed it was only during the year 1982 near about 3 years later, that after filing of the suit which itself shows that with malafide intention of the male members to grab the entire share of the property, ignoring share of the plaintiff. Therefore, the said document is a void document. To that effect, the 1st appellate Judge rightly concluded and this court is not inclined to interfere with the said findings.

42. Learned counsel appearing for the appellants submits that though Section 4 of the Registration Act provides for four months for presentation, but no time limit is fixed for registration and mere bar in registration will not make the document ineffective. In this connection, it is useful to refer the authority relied on by the learned Senior counsel appearing for the plaintiff in the decision reported in 2011 (2) MWN (civil) 65 G.Muthalu Reddiar Vs. 1. Srinivasan Padayatchi (died) 2. Lakshmiammal and others, wherein, in the Headnote, it is held as



under:-



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Deed executed in 1981 – Presented for registration on same day – Document registered in 1986 – Though Section provides four months’ time for presentation, it does not fix time limit for actual registration – Mere delay in registration does not make document ineffective – sale, held, valid. “

43. The above said proposition will not apply to the facts of the present case for the reason that the original document was not produced by the defendants 2 and 3; even the certified copy itself revealed the year 1977 as well as 1979 and the same was only material alteration. According to the plaintiff, it was subsequently registered by defendants 2 and 3. Even assuming that it was executed on 1979, it was presented for registration only after filing of the suit; there is delay of 3 years for registration of the document and that the document was not presented for registration immediately nor assigned any reason why it was registered after filing of the suit and there is inordinate delay which



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reflects that there was malafide intention in defeating the lawful claim

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and rights of the plaintiff. Therefore, the authority cited will not apply to the facts of the present case. Hence the finding of the 1st appellate Judge that Ex.B.12 is valid in law is well reasoned one and require no interference. Accordingly, Substantial question of law No.2 is answered accordingly.

44. Since the document itself is void in nature and also not registered on the date of the filing of the suit, there is no necessity to cancel the partition deed as it was void and non est in nature and not binding the plaintiff. Therefore, the 1st Appellate Judge rightly held that the alleged partition deed dated 03.09.1979 would not bind the plaintiff nor it requires the cancellation. No interference to that effect is called for in this Second Appeal. The substantial question of law is answered accordingly.

45. Pending First Appeal, the plaintiff/appellant filed CMP to receive the additional document which shows that exchange of deliberations between the parties as well the sale deed executed in



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favour of the 7th defendant and exchange of notice for production of

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original partition deed Ex.B.12 and for admission of copy of the letter dated 20.05.1995 issued by D2 to D3 suggesting payment of compensation to the appellants/plaintiffs were found necessary as it covers the facts of the case and the said documents were received by the 1st appellate Judge as the 1st appellate court is continuity of the suit proceedings and the said finding of the First Appellate Judge does not require any interference. Accordingly, Substantial question of Law No.3 is answered accordingly.

46. Therefore, S.A.No.966 of 2021 is dismissed. The finding of the 1st appellate Judge is confirmed.

47. In respect of the findings of the final decree passed in I.A.8080 of 2008 in O.S.No.1421 of 1991 , it reveals that some of the respondents have not accompanied the Advocate Commissioner at the time of the visit. The contention of the learned counsel for the appellants is that as on date, the value of the property is increased. It would reveal that some portion of the property was also purchased by

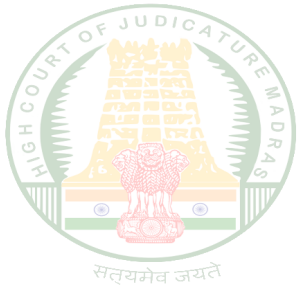


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the purchasers. In the share allotment to the vendor, purchasers entitle

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48. Considering the fact that the nature of the suit is one of partition, parties are directed to approach the trial court for passing of the final decree. Since some of the respondents accompanied the Advocate Commissioner and the plaintiff and her sister filed application for passing of the final decree application, the final decree was passed on 01.04.2010. Therefore, the final decree passed by the trial Judge in I.A.No.8080 of 2008 in O.S.No.1421 of 1991 needs no interference. S.A.No.947 of 2012 is dismissed. The other sharers are concerned, they shall work out their remedy before the trial court by paying necessary court fee. Pendente lite purchasers shall work out their remedy with their vendors under law and on equity in the remaining share of the properties.



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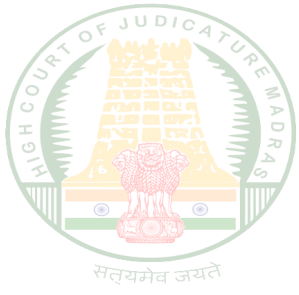
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49. Accordingly, both Second Appeals are dismissed. The findings of the First Appellate Court is confirmed. Considering the relationship between the parties, the parties shall bear their own costs.

02.06.2026

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

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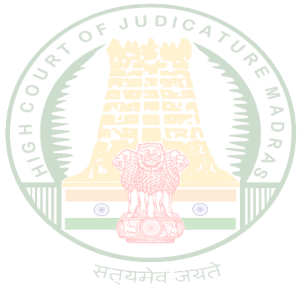


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To

1. The IV Additional Judge, City Civil Judge, Chennai.
2. The II Assistant Judge, City Civil Judge, Chennai.
3. The I Additional Judge, City Civil Court, Chennai.
3. The Section Officer, V.R. Section, High Court, Madras.



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T.V.THAMILSELVI, J.

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