

IN THE COURT OF THE I ADDITIONAL DISTRICT AND SESSIONS
AT CUDDALORE.

PRESENT:THIRU G.SENDILKUMAR, B.A.B.L.,
I ADDITIONAL DISTRICT AND SESSIONS JUDGE,
CUDDALORE

Tuesday the 7th day of July, 2020

ORIGINAL SUIT No. 51/2015

A. Dhulkar

.. Plaintiff.

Vs.

1. Mumtaz Begum

2. Neelakanthan

.. Defendants

This Suit came up on 04.07.2020 before me for hearing in the presence of Thiru. K. Venugopal, Counsel for the Plaintiff, Thiru. P.Baskar, Counsel for the 1st Defendant and Thiru. J. Vasudevan, Counsel for the 2nd Defendant, and upon perusing the entire case records, this Court delivered the following;

JUDGMENT

This Suit is filed by the Plaintiff to pass a Preliminary Decree in favour of the Plaintiff and as against the Defendants for partition and separate possession of Plaintiff's half share in the Suit "A" Schedule Property with liberty to move for division by metes and bounds and pass a decree, for Permanent Injunction restraining Defendants from entering upon the Suit "B" Schedule Property, for a Declaration that the Sale Deed dt. 17.10.2013 by 1st and 2nd Defendant is null and void with Costs of the Suit payable by Defendants and grant Plaintiff such further and other reliefs.

2. **The averments stated in the Plaint are as follows:**

The Plaintiff is one of the Sons of Late Haji Abdul Hameed Sahib. He is one of the co-owners of the legal heirs of late Abdul Hameed Sahib and is instituting the Suit in that capacity.

The 1st Defendant is the wife of late A.A.Rahman. A.A.Rahman has Sons and Daughters. The 1st Defendant herein has taken a release from the other legal heirs of A.A.Rahman by a duly Registered Release Deed dt. 03.02.2012 in respect of T.S. No.73, Block 22, Ward No.13 within Nellikuppam Muncipal Limits. As the other legal heirs of A.A.Rahman have released their interest in favour of 1st Defendant the Suit is instituted against her.

Khan Sahib Abdul Razack Sahib was possessed of considerable extent of Properties. His eldest son was Haji Abdul Hameed Sahib. Haji Abdul Hameed Sahib has also purchased decent extent of Properties. Khan Sahib Abdul Razack Sahib had three sons. Abdul Hameed Sahib (father of Plaintiff), Mohamed Ali Sahib and Abdul Rahman Sahib (husband of 1st Defendant). The three brothers decided to have a division of the Properties and appointed one N.M.Ibrahim Maricair as sole Arbitration to effect a division of the estate. The Arbitrator passed an Award on 06.05.1974. But, the Parties to the Award did not take possession as per the Award. The Parties were enjoying the Properties according to their convenience. Subsequently, they mutually agreed to have the allotment valid and executed into fresh division evidenced by Deed dt. 29.07.1974 and this was followed by a released Deed dt. 31.10.1975 executed by Abdul Rahman confirming the Deed dt. 29.07.1974. So, it happened that neither the Award nor the subsequent documents were registered.

The Plaintiff is giving two Schedule of Properties one in respect of T.S.No.73 which is Schedule "A" and T.S.No.72 which is Schedule "B". In the arbitration Award as modified by the subsequent Deed dt. 29.07.1974. Schedule "A" Property was allotted to Haji Abdul Hamid and confirmed by the Release Deed. But, under the Arbitral Award the Schedule "A" Property was allotted to A.A.Rahman. Basing his claim on the Arbitral Award A.A.Rahman filed a Suit for Declaration of title and for injunction against the legal heirs of Haji Abdul Hamed Sahib in O.S.229/88 on the file of the Subordinate Judge, Cuddalore. The Suit was decreed. There was an appeal in A.S.104/90 on the file of the Additional District Judge, Cuddalore which was allowed and the Suit filed by A.A.Rahman was dismissed. A.A.Rahman took up the matter by way of 2nd Appeal in S.A.586/1992 on the file of the High Court of Judicature at Madras and the said Appeal was dismissed with the following observation:

"The Appellant / Plaintiff cannot claim any right on the basis of Ex.A1, as it is not registered. The Defendants also cannot claim any right on the basis of Ex.B1, as the said document also is not registered. In view of the fact that the Appellant / Plaintiff cannot claim any right in the Suit Property on the basis of the alleged Partition under Ex.A1, even if he is in possession of the Suit Property, such possession has to be constructed only a behalf of co-owners, and so the Plaintiff cannot claim any adverse possession over the Suit Property. The same principle will apply to the Respondents / Defendants also, even if they are in possession of the Suit Property". So, the Suit "A" Schedule Property has to be divided between the legal heirs of Haji Abdul Hamid and the legal heirs of A.A.Rahman. With regard to other immovable Properties the Parties have disposed of the same.

The Suit "A" Schedule Property was purchased by the father A.Abdul Razack Sahib on 17.03.1945. The Property so purchased gives the measurement and also the extent. It is this Property which is the subject matter of the proceedings referred to in paragraph 7 supra. It so happened that the Award except giving the door number and street does not give the measurements or the T.S. Number. The present is now confined to the division of the "A" Schedule Property.

The Municipal Survey Department committed a grievous blunder in giving the measurement for the Suit "A" Schedule Property. The Property on the West of "A" Schedule Property is T.S. No.72 which is now described as Schedule "B". This Property is purchased by Haji Abdul Hamed Sahib on 20.03.1958 under a Registered Sale Deed. The Sale Deed gives the boundaries, measurements and extent and other details. The Municipal Survey Department behind the back of the Plaintiff has given wrong measurements. This will not take away the right of the Plaintiff and other co-owners in respect of Schedule "B" Property.

Taking advantage of the mistake committed by the Municipal Survey in giving wrong measurements, the 1st Defendant herein has sold the whole of Suit "A" Schedule Property which include a portion of Suit "B" Schedule Property to the 2nd Defendant. The sale is wholly invalid and will not confer any title on the 2nd Defendant. The Sale has taken place on 17.10.2013 which is invalid.

The Suit "A" and "B" Schedule Property as on date is vacant. The superstructures which were dilapidated have fallen down and the debris removed. The Plaintiff is in actual possession of Suit "B" Schedule Property and in joint possession of Suit "A" Schedule Property. So, he is seeking the

Partition of "A" Schedule Property, relief of the injunction in respect of "B" Schedule Property and to declare that the Sale Deed, dt. 17.10.2013 as null and void.

3. The averments in the Written Statement filed by the 1st Defendant, in brief, are as follows:

The Suit filed by the Plaintiff for Partition is most vexatious, not maintainable in law and on facts and it has to be dismissed with cost. This Defendant denies the allegations that in view of High Court Judgment in S.A.No.586/1992 the Suit "A" Schedule Property has to be divided between the legal heirs of Haji Abdul Hameed and the legal heirs of A.A.Rahman and with regard to the other immovable Properties the parties have disposed the same. This Defendant further denies the allegations that Municipal Survey Department committed a grievous blunder in giving measurement for the Suit "A" Schedule Property and Municipal Survey Department behind the back of the Plaintiff has given wrong measurements and this will not take away the right of the Plaintiff and other co-owners in respect of "B" Schedule Property.

This Defendant further denies the allegations that taking advantage of the mistake committed by the Municipal Survey in giving wrong measurements this Defendant has sold Suit "A" Schedule Property which include a portion of Suit "B" Schedule Property to the 2nd Defendant and the sale is wholly invalid and it will not confer any title and the Plaintiff is in joint possession of Suit "A" Schedule Property and he is entitled for Partition on Suit "A" Schedule Property.

This Defendant submits that prior and after the disposal of the Second Appeal this Defendant's husband Rahman Shib and Plaintiff's father Haji Abdul Hammeed Sahib were enjoyed the Properties as per the Award

and sold their lands allotted to them under the Award to the third Parties. So, the Plaintiff's father Haji Abdul Hammeed Sahib ratified the Award and he has accepted the Award passed by the arbitrator. The "A" Schedule Property in the Award has been allotted to the Haji Abdul Hammeed Sahib and the Suit "B" Schedule is last item of the said "A" Schedule of the Award. The legal heirs of the Haji Abdul Hammeed Sahib sold the Suit "B" Schedule Property to one Asharaf Ali under the registered seal dated 12.03.2015. The Xerox copy of the Sale Deed dated 12.03.2015 is filed herewith and it may be treated as part and parcel of this statement.

The Suit "A" Schedule Property has been acquired by this Defendant's husband under the Award passed by the arbitrator, ever since the date of Award this Defendant's husband was in possession and enjoyment of the Suit "A" Schedule Property and after his demise his wife (1st Defendant), his Sons and Daughters were jointly in possession and enjoyment of the Suit "A" Schedule Property as his only legal heirs. On 03.02.2012 the Sons and Daughters of the 1st Defendant had executed a Registered Release Deed in favor of this Defendant. The release Deed is true and valid and in pursuance of the release Deed this Defendant is in possession and enjoyment of the Suit "A" Schedule Property. The Patta also stands in the name of this Defendant. This Defendant paid the water tax and property to the Nellikuppam Municipality and this Defendant filed the Xerox Copy of the tax receipts and it may be treated as part and parcel of this statement.

This Defendant is in need of money, hence she decided to dispose a portion of the Suit "A" Schedule Property. Having known about it, the 2nd Defendant approached this Defendant and expressed his willingness to purchase the portion of the Suit "A" Schedule Property. After the price negotiation, this Defendant has executed a Registered Sale Deed in favor of

the 2nd Defendant on 17.10.2013. The Sale Deed executed by this Defendant is true and valid and supported by consideration. Now, 3/4th of the Suit "A" Schedule Property is in possession and enjoyment of this Defendant and 1/4th of the Suit "A" Schedule Property is in possession and enjoyment the 2nd Defendant. The Plaintiff is not at all in possession and enjoyment of the Suit "A" and "B" Schedule Property. In pursuance of the release Deed dated 03.02.2012 and Sale Deed dt. 17.10.2013 this Defendant and 2nd Defendant alone in possession and enjoyment of the Suit "A" Schedule Property and one Ashraf Ali is in possession and enjoyment of the Suit "B" Schedule Property, who purchased the same under the registered sale Deed dt. 12.03.2015 from the Plaintiff and his brothers and sisters. So, admittedly the Plaintiff is not in possession and enjoyment of the Suit "A" Schedule and "B" Schedule Property. Hence, the allegations that the Plaintiff is deemed to be in joint possession over the Suit "A" Schedule Property and he is in actual possession of Suit "B" Schedule Property is false and it is not acceptable one. Admittedly the Plaintiff is not in the possession and enjoyment of the Suit Property, hence the Plaintiff ought to have valued the Suit on the market value of the Suit "A" Schedule Property and he shall pay the ad valorem Court Fee under Sec.37(1) of Tamil Nadu Court Fees Act. The Xerox copy of the release Deed dt. 03.02.2012, the Xerox Copy of the Patta, Municipal Tax Receipts, the Xerox copy of the Sale Deed dt. 17.10.2013 are is filed herewith and they may be treated as part and parcel of this statement. This Defendant under takes to produce the registration copies of the documents at the time of trial.

The Plaintiff has filed the above suit for declaration to declare the Sale Deed dt. 17.10.2013 by 1 and 2 Defendant is null and void. The allegations in the Plaint amount to cancellation of the document and though the prayer is couched in the form of declaration that the document is

invalid, the relief in substance indirectly amounts to seeking for cancellation of Sale Deed dt. 17.10.2013. Hence, the Court Fee paid under Sec.25(d) of the act is not correct. The Plaintiff ought to have valued the suit on the marked value of the Suit "A" Schedule Property and he shall pay the ad valorem Court Fee under Sec.40 of Tamil Nadu Court fees Act.

The Plaintiff's father died leaving behind him his Sons and Daughters namely Plaintiff, Mohamed Kasim, Noor Mohamed, Abdul Rasheed, Madinamma, Jaipunnisa and Mohamadabee as his only legal heirs. They are necessary Parties to the Suit. The Suit is bad for non-joinder of necessary Parties, hence the Suit is liable to be dismissed.

The Plaintiff and his brothers, sisters have sold the Suit "B" Schedule Property to one Ashraf Ali under the Register Sale Deed dt. 12.03.2015 and in pursuance of the Sale Deed now the said Ashraf Ali is in possession and enjoyment of the Suit "B" Schedule Property. Hence, the Plaintiff cannot seek relief of permanent injunction as against the Defendants in respect of the "B" Schedule Property. The said Ashraf Ali is necessary party to the proceedings. The Suit is bad for non-joinder of necessary parties, hence the Suit is liable to be dismissed. The Plaintiff has no locus standi to file the above Suit for Partition, Declaration and for Permanent injunction in respect of the Suit "A" and "B" Schedule Properties.

It is to stated that the Suit Property has not been properly valued and the Court Fee paid is not good, hence the Suit is liable to be dismissed. She has sold the Property to the 2nd Defendant as an absolute owner of the Suit "A" Schedule Property. Since, she is an absolute owner of the Suit "A" Schedule Property, the Plaintiff is not entitled to claim any share in the Suit "A" Schedule Property. This Defendant is an absolute owner of the Suit "A" Schedule Property i.e. comprises in T.S. No.73 alone. This Defendant has not sold any portion of the Property comprises in T.S.No.72 i.e. Suit "B"

Schedule Property to the 2nd Defendant as alleged in the Plaint. There is no cause of action arose of the Suit, the alleged cause of action mentioned in the Plaint is false and it is created for the purposes of Case. The Suit as framed by the Plaintiff is not proper and the Suit is not at all maintainable one. The Suit is barred by limitation; hence the Suit is liable to be dismissed. The Plaintiff has filed this vexatious Suit only to harass this Defendant and for unlawful gain. The Plaintiff has not come with clean hands and they had misused the Judicial Machinery; hence he is not entitled to seek any relief before this Honourable Court. This Defendant reserves his rights to file Additional Statement, if any, later. The Defendant therefore prays that his Honourable Court may be pleased to dismiss the Suit with exemplary cost and render justice.

4. The averments in the Written Statement filed by the 2nd Defendant, in brief, are as follows:

It is false to say that the Municipal Survey Department committed a grievous blunder in giving measurement for the Suit "A" Schedule Property and Municipal Survey Department behind the back of the Plaintiff has given wrong measurements and this will not take away the right of the Plaintiff and other co-owners in respect of "B" Schedule Property. It is again false to say that taking advantage of the mistake committed by the Municipal Survey in giving wrong measurement 1st Defendant has sold Suit "A" Schedule Property which include a Portion of Suit "B" Schedule Property to this Defendant and the sale is wholly invalid and it will not confer any title and the Plaintiff is in joint possession of Suit "A" Schedule Property and he is entitled for Partition on suit "A" Schedule Property. The said allegations are invented for the purpose of the Case and the said allegations are hereby specifically denied.

The Suit "A" Schedule Property belonged to the husband of the 1st

Defendant and he was in possession and enjoyment of the Suit "A" Schedule Property till his demise and after his demise his wife, his Sons and Daughters were jointly in possession and enjoyment of the Suit "A" Schedule Property as his only legal heirs. The Sons and Daughters of the deceased Rahman Sahib had executed a registered release Deed in favor of the 1st Defendant on 03.02.2012 and in pursuance of the Release Deed dt. 03.02.2012 the 1st Defendant is in possession and enjoyment "A" Schedule Property and she had paid water tax and Property tax for the Suit "A" Schedule Property and the Patta for the Suit "A" Schedule Property also stands in the name of the 1st Defendant.

The 1st Defendant has decided to sell the Portion of the Suit "A" Schedule Property to meet out her family expenses. Having known about the same this Defendant approached the 1st Defendant and expressed his willingness to purchase the Suit "A" Schedule Property and after receipt of the full and valuable consideration the first has executed Registered Sale Deed in favor of this Defendant on 07.10.2013. The Sale Deed executed by the 1st defendant in favor of this Defendant is true, valid and supported by consideration. This Defendant is in possession and enjoyment of the Property purchased him under the Sale dt. 17.10.2013.

This Defendant submit that prior to purchase of the Property he has verified the encumbrance over the Property for 30 years and he verified revenue and Municipal records and after conforming the title of the 1st Defendant over the Suit "A" Schedule Property, this Defendant has purchased a portion of the Suit "A" Schedule Property. This Defendant is bonafide purchaser for value. This Defendant is unnecessary party to the proceedings, hence on this sole ground the Suit is liable to be dismissed. There is no cause of action arose for the Suit, alleged cause of action mentioned in the Plaint are myth and imaginary one, hence on this sole

ground the Suit is liable to be dismissed. This Defendant is not aware of the earlier proceeding between the 1st Defendant's husband and his brothers. The Court Fee paid by the Plaintiff is not correct and good the Suit Property has not been properly valued. The Plaintiff ought to have paid the Court Fee for the 3rd relief as per the market value of the Property but the Plaintiff notionally valued the 3rd relief to declare Sale Deed dt. 17.10.2013 and paid a fixed Court Fee under Sec.25(d) of Court Fee Act and it is not proper. The Plaintiff shall pay the ad valorem Court Fee under Sec.40 of Court Fees Act. It is therefore, prayed that the Honourable Court may be pleased to dismiss the Suit with Cost and render justice.

5. The averments in the Addl.Written Statement filed by the 1st Defendant, in brief, are as follows:

The Suit filed by the Plaintiff is most vexatious, not maintainable in law and on facts and it is liable to be dismissed. This Defendant states that High Court disposed the Second Appeal on 19.08.2002. At that time, the Suit "A" Schedule , "B" Schedule Properties and Manjil Land alone exist in the hands of the respective parties i.e. Plaintiff's family and 1st Defendant's husband family. As per the judgment of the High Court, the Award passed by the Arbitrator is not valid in law. Hence, the Suit "A" Schedule, "B" Schedule and Manjil lands are common Properties of Abdul Hameed Sahib (Plaintiff's father), Mohamad Ali Sahib and Abdul Rehman (1st Defendant's husband). This Defendant states that there was a gentleman agreement between the Plaintiff and the 1st Defendant's husband. In pursuance of the gentleman agreement, Plaintiff assured that he will not claim any title over the Suit "A" Schedule Property, like wise this Defendant's husband assured that he will not claim any title in Suit "B" Schedule Property and Manjil Lands. After the disposal of the Second

Appeal, the Plaintiff and his siblings were disposed the Suit "B" Schedule Property and Manjil Lands to the 3rd Parties. So, there are no divisible Properties in the hands of the Parties. Hence, the Plaintiff cannot claim any share in the Suit "A" Schedule Property. The Plaintiff and his siblings sold the Suit "B" Schedule Property on 12.03.2015. The Plaintiff has made a strange claim of injunction in respect of Suit "B" Schedule Property after selling it to to 3rd Party. The Plaintiff played practice of fraud upon the Court. The Suit is bad for partial Partition (i.e. Suit "B" Schedule Properties and Manjil Lands. Hence, on this sole ground the Suit is liable to be dismissed. It is therefore, prayed that this Honourable Court may be pleased to dismiss the Suit with Cost and render justice.

6. The averments in the Reply Statement are as follows:

This Plaintiff specifically denies the correctness of the allegations made in the Additional Written Statement filed by the 1st Defendant. The oral arrangement pleaded now for the first time cannot be allowed to be raised. It is false to allege that the Plaintiff gave any assurance that he will not claim any title in respect of "A" Schedule Property. There is no question of Partial Partition. The Parties are Muslims and the Hindu law theory of joint family / Coparcenary does not arise. On the date of the institution of the Suit, Plaintiff alone had been in possession and he sought for the relief of injunction which ought to have been granted to him. The Property was not sold then. It is therefore, prayed that the Suit may be decreed.

7. Based on the above pleadings, the following issues were framed for Trial:

1. Whether the Plaintiff is entitled for a Preliminary Decree for

Partition and separate possession of his Half Share in "A" Schedule Property with liberty to move for division by metes and bounds?

2. Whether the Plaintiff is in possession of "B" Schedule Property on the date of filing this Suit and is entitled for a Permanent Injunction against the Defendants as prayed for?

3. Whether the Sale Deed, dt.17.10.2013, executed by the Defendants 1 and 2 is null and void?

4. Whether the Suit has been properly valued and correct Court fee has been paid?

5. Whether the Suit is bad for non-joinder of Parties?

6. Whether the Suit is bad for cause of action?

7. Whether the Plaintiff is entitled for a decree as prayed for?

8. To what reliefs, the Parties entitled?

8. Additional Issues framed on 16.06.2020:

1. Whether the Suit is bad for Partial Partition (i.e. Suit "B" Schedule Properties and Manji Lands)?

2. Whether the Suit barred by Law of Limitation?

9. On the side of the Plaintiff, the Plaintiff has been examined as PW.1 and Ex.A1 to Ex.A.14 have been marked. On the side of Defendants, the 1st Defendant's Son Anzaree has given evidence as D.W.1 and the 2nd Defendant has been examined as D.W.2 and Ex.B1 to Ex.B12 have been marked through PW1 during cross examination and Ex.B13 to Ex.B26 have been marked.

10. The Learned Counsel for the Plaintiff has argued that the "A" Schedule Property was originally belonged to One Khan Sahib Abdul

Razack Sahib and the "B" Schedule was purchased by the Father of Plaintiff; namely, Abdul Hameed Sahib, by a Sale Deed, dt. 20.03.1958. Said Khan Sahib Abdul Razack Sahib had three Sons; namely, Abdul Hameed Sahib (Father of Plaintiff), Mohamed Ali Sahib and Abdul Rahman Sahib. The Three Sons of Khan Sahib Abdul Razack Sahib had decided to Partition the Properties and had appointed One Arbitrator; namely, N.M.Ibrahim Maricair. He has passed an Award on 06.05.1974. But, the parties did not take Possession as per the Award. Then, they executed into fresh division evidenced by Deed dt. 29.07.1974 and this was followed by a Released Deed dt. 31.10.1975, executed by Abdul Rahman confirming the Deed dt. 29.07.1974. So, it happened that neither the Award nor the subsequent documents were registered.

The Plaintiff is giving two Schedule of Properties. One in respect of T.S.No.73, which is Schedule "A" and T.S.No.72, which is Schedule "B". In the arbitration Award as modified by the subsequent Deed dt. 29.07.1974. Schedule "A" Property was allotted to Haji Abdul Hamid and confirmed by the Release Deed. But, under the Arbitral Award the Schedule "A" Property was allotted to A.A.Rahman. Hence, A.A.Rahman had filed a Suit for Declaration of title and for Injunction against the legal heirs of Haji Abdul Hamed Sahib in O.S.229/88, on the file of the Subordinate Judge, Cuddalore, on the basis of the Arbitral Award. The Suit was decreed. There was an appeal in A.S.104/90, on the file of the Additional District Judge, Cuddalore, and it was allowed and the Suit filed by A.A.Rahman was dismissed. Then, A.A.Rahman took up the matter by way of Second Appeal in S.A.586/1992, on the file of the Honourable High Court of Judicature at Madras and the said Appeal was dismissed with the following the Observations:

"The Appellant / Plaintiff cannot claim any right on the basis of Ex.A1, as it is not registered. The Defendants also cannot claim any right on the basis of Ex.B1, as the said document also is not registered. In view of the fact that the Appellant / Plaintiff cannot claim any right in the Suit Property on the basis of the alleged Partition under Ex.A1, even if he is in possession of the Suit Property, such possession has to be constructed only a behalf of co-owners, and so the Plaintiff cannot claim any adverse possession over the Suit Property. The same principle will apply to the Respondents / Defendants also, even if they are in possession of the Suit Property".

Said Haji Abdul Hameed and A.A. Rahman are no more. So, the Suit "A" Schedule Property has to be divided between the legal heirs of Haji Abdul Hameed and the legal heirs of A.A.Rahman. However, the 1st Defendant, being the Wife of A.A. Rahman, has sold the whole "A" Schedule Property to the 2nd Defendant by a Sale Deed on 17.10.2013, which is illegal and void.

As the "B" Schedule Property was purchased by Father of the Plaintiff; Abdul Hameed Sahib, by a Sale Deed, dt. 20.03.1958, under Ex.A6, the Plaintiff seeks Injunction. Hence, the Suit is for Partition, Injunction and for declaration of the Sale Deed, dt. 17.10.2013 is null and void. He prays to decree the Suit as prayed for, with Costs. He relied upon the judgments, reported in 1). **AIR 1986 KER. 149**, 2). **AIR 1971 SC 2184**, 3). **AIR 2003 P H 372**, 4). **2015 (1) MWN (Civil) 636**, 5). **AIR 1957 S.C. 314 (V 44 C 45)**, 6). **2016 5 L.W. 647**, 7). **AIR 1961 PAT. 11**, 8). **AIR 1995 SC 895**, 9). **2020 SCC ONLINE SC 37**, 10). **AIR 1993 SUPREME COURT 1587**, 11). **AIR 1997 SC 1879** and 12). **AIR 1973 PATNA 250 (V 60 C 83)**.

11. The Learned Counsel for the 1st Defendant has argued that the Suit "A" Schedule Property has been acquired by the husband of 1st Defendant under the Award passed by the Arbitrator, ever since the date of Award, the 1st Defendant's husband was in possession and enjoyment of the Suit "A" Schedule Property and after his demise, 1st Defendant, his Sons and Daughters were jointly in possession and enjoyment of the Suit "A" Schedule Property as his only legal heirs. On 03.02.2012, her Sons and Daughters had executed a Registered Release Deed in favour of 1st Defendant. She is in possession and enjoyment of the Suit "A" Schedule Property. The Patta also stands in her name. She has paid the Water Tax and Property Tax to the Nellikuppam Municipality. As She is in need of money, She has decided to dispose a portion of the Suit "A" Schedule Property. Having known about it, the 2nd Defendant approached her and expressed his willingness to purchase the portion of the Suit "A" Schedule Property. After the price negotiation, She has executed a Registered Sale Deed in favor of the 2nd Defendant on 17.10.2013. Now, 3/4th of the Suit "A" Schedule Property is in possession and enjoyment of this Defendant and 1/4th of the Suit "A" Schedule Property is in possession and enjoyment of the 2nd Defendant.

Besides, the Suit is bad for partial Partition and is barred by the Law of Limitation. He prays to dismiss the Suit with Costs. He relied upon the Judgments :1). AIR 1934 MAD. 665, 2). 2019 CJ (MAD.) 10, 3). 2017 (1) LW 562, 4).AIR 2017 SC 1034, 5). 1996 (2) MLJ 41, 6). 2014 CJ (GUJ.) 491, 7). 1986 (1) MLJ 412, 8). 1928 CJ (CAL.) 377, 9). AIR 1958 SC 827, 10). 1970 CJ (SC) 283, 11). 2017 CJ (SC) 249, 12). AIR 2004 SC 1206, 13). 2017 (6) MLJ 257, 14). 2003 (8) SCC 319, 15). AIR 1965 SC 271 and 16). 1982 KLJ 27.

12. The Learned Counsel for the 2nd Defendant has argued that the Suit "A" Schedule Property belonged to the husband of the 1st Defendant and he was in possession and enjoyment of the Suit "A" Schedule Property till his demise and after his demise, his wife, his Sons and Daughters were jointly in possession and enjoyment of the Suit "A" Schedule Property as his only legal heirs. The Sons and Daughters of the deceased Rahman Sahib had executed a registered Release Deed in favor of the 1st Defendant on 03.02.2012 and in pursuance of the Release Deed, dt. 03.02.2012, the 1st Defendant is in possession and enjoyment "A" Schedule Property.

13. The 1st Defendant has sold the "A" Schedule Property to the 2nd Defendant under a Registered Sale Deed on 17.10.2013. He is in possession and enjoyment of the Property purchased him under the Sale dt. 17.10.2013. Hence, he prays to dismiss the Suit with Costs.

For the sake of convenience, the Additional Issue Nos.1 and 2, dt. 16.06.2020 are taken up, *first*.

14. Additional Issue No. 1 :

The 1st Defendant has specifically pleaded in her Additional Written Statement that the Suit is bad for Partial Partition (i.e. Suit "B" Schedule Properties and Manjil Lands).

15. On the other hand, the Plaintiff has filed a Reply Statement by stating that there is no question of Partial Partition. The Parties are Muslims and the Hindu Law Theory of Joint Family / Coparcenary does not arise.

16. It is to state that the question of Partial Partition of Mohammedan Parties has been well settled in various decisions, as it has no application to Muslims.

In **MOHD. ABDULLAH VS. MOHD. RAHIMAN, AIR 1964, MAD**, it is held that "the Doctrine of Partial Partition is applicable only to a Hindu Co-parcenary where the Co-parceners are joint in estate, and not to Muslims, who are only tenants-in-common; Under the Mahomedan law the heirs of a deceased Muslim succeed to a definite fraction of every part of his estate. Muslim Sharers are not obliged to sue for Partition of all the Properties in which they are interested. There is nothing to preclude one of them from seeking a Partition of some of the Items of the Properties."

In **SAYED SHAH GHULAM CASE, AIR 1971 SC 2184**, it is held that in Mohammedan law, the Doctrine of Partial Partition is not applicable, because the heirs are tenant-in-common and the heirs of the deceased Muslim succeed to the definite fraction of every party of of his estate.

17. The mandate given Under Section 41 of Mahomedan Law as regards to Partial Partition is that the " Doctrine of Partial Partition is applicable only to a Hindu Co-parcenary; where the Co-parceners are joint in estate, and not to Muslims, who are only tenant-in-common. Under the Mahomedan Law, the heirs of the deceased Muslim succeed to a definite fraction of every part of his estate. Muslim Sharers are not obliged to sue for Partition of all the Properties in which they are interested. There is nothing to preclude one of them from seeking a Partition of some of items of the Properties ". (Reference: MULLA'S - MAHOMEDAN LAW).

The Judgment relied by the Learned Counsel for 1st Defendant, reported in 2014 CJ (GUJ.) 491 and 2017 (6) MLJ 257 are not applicable to this Case as the facts are different.

As such, the Doctrine of Partial Partition is not applicable to Muslims. Hence, it is held that the Suit is not bad for Partial Partition.

This Issue is answered accordingly.

18. **Additional Issue No. 2 :**

This is a Suit for Partition of "A" Schedule Property, for Declaration of the Sale Deed dt. 17.10.2013 as null and void and for Permanent Injunction, restraining the Defendants from entering into the "B" Schedule Property.

19. The Case of the Plaintiff is that One Khan Sahib Abdul Razack Sahib had Three Sons. They are : Abdul Hameed Sahib (father of Plaintiff), Mohamed Ali Sahib and Abdul Rahman Sahib (husband of 1st Defendant). The Three Brothers had decided to have a division of the Properties and appointed one N.M.Ibrahim Maricair as sole Arbitrator to effect a division of the estate. The Arbitrator has passed an Award on 06.05.1974. But, the Parties to the Award did not take possession as per the Award. The Parties were enjoying the Properties according to their convenience. Subsequently, they mutually agreed to have the allotment valid and executed into fresh division evidenced by Deed dt. 29.07.1974 and this was followed by a Release Deed dt. 31.10.1975, executed by Abdul Rahman, confirming the Deed dt. 29.07.1974. So, it happened that neither the Award nor the subsequent documents were registered.

The Plaintiff is giving two Schedule of Properties; one in respect of T.S.No.73, which is Schedule "A" and T.S.No.72, which is Schedule "B". In the Arbitration Award, as modified by the subsequent Deed dt.

29.07.1974, the Schedule "A" Property was allotted to Haji Abdul Hamid and confirmed by the Release Deed. But, under the Arbitral Award, the Schedule "A" Property was allotted to A.A.Rahman. Basing his claim on the Arbitral Award, A.A.Rahman has filed a Suit for Declaration of title and for injunction against the legal heirs of Haji Abdul Hamed Sahib in O.S.229/88, on the file of the Subordinate Judge, Cuddalore. The Suit was decreed. There was an Appeal in A.S.104/90, on the file of the Additional District Judge, Cuddalore, which was allowed and the Suit filed by A.A.Rahman was dismissed. Then, A.A.Rahman took up the matter by way of Second Appeal in S.A.586/1992, on the file of the High Court of Judicature at Madras and the said Appeal was dismissed with the following observation:

"The Appellant / Plaintiff cannot claim any right on the basis of Ex.A1, as it is not registered. The Defendants also cannot claim any right on the basis of Ex.B1, as the said document also is not registered. In view of the fact that the Appellant / Plaintiff cannot claim any right in the Suit Property on the basis of the alleged Partition under Ex.A1, even if he is in possession of the Suit Property, such possession has to be constructed only a behalf of co-owners, and so the Plaintiff cannot claim any adverse possession over the Suit Property. The same principle will apply to the Respondents / Defendants also, even if they are in possession of the Suit Property". So, the Suit "A" Schedule Property has to be divided between the legal heirs of Haji Abdul Hamid and the legal heirs of A.A.Rahman. With regard to other immovable Properties the Parties have disposed of the same.

20. The Suit "A" Schedule Property was purchased by the father A.Abdul Razack Sahib on 17.03.1945. The Property, so purchased gives the measurement and also the extent.

21. However, taking advantage of the mistake committed by the Municipal Survey in giving wrong measurements, the 1st Defendant herein has sold the whole of Suit "A" Schedule Property, which includes a portion of Suit "B" Schedule Property to the 2nd Defendant. The sale is wholly invalid and will not confer any title on the 2nd Defendant. The Sale has taken place on 17.10.2013, which is invalid. And, as the "B" Schedule Property was purchased by One Haji Abdul Hamed Sahib, the Father of the Plaintiff, on 20.03.1958, he also seeks Injunction against the Defendants.

Whereas, the 1st Defendant took a specific plea that the Suit is barred by Limitation and hence, the Suit is liable to be dismissed.

22. The 1st Defendant states that her husband Abdul Rahman had acquired title over the "A" Schedule Property by the Award, dt. 06.05.1974, passed in Ex.A4. Eversince, the date of Award, her husband was in possession and after his demise, She (1st Defendant), her Sons and Daughters were jointly in possession and enjoyment of the "A" Schedule Property, as the legal heirs of Abdul Rahman. On 03.02.2012, the Sons and Daughters of the 1st Defendant had executed a Registered Release Deed in favour of the 1st Defendant. The 1st Defendant is in possession and enjoyment of the Suit "A" Schedule Property.

23. The 1st Defendant has disposed a portion of the Suit "A" Schedule Property to the 2nd Defendant. The 1st Defendant has executed a Registered Sale Deed in favor of the 2nd Defendant on 17.10.2013. Now, 3/4th of the Suit "A" Schedule Property is in possession and enjoyment of the 1st Defendant and 1/4th of the Suit "A" Schedule Property is in possession and enjoyment the 2nd Defendant. The Plaintiff is not at all in possession and enjoyment of the Suit "A" and "B" Schedule Property. In pursuance of the Release Deed, dated 03.02.2012 and Sale Deed, dt.

17.10.2013, the 1st Defendant and 2nd Defendant alone are in possession and enjoyment of the Suit "A" Schedule Property and one Ashraf Ali is in possession and enjoyment of the Suit "B" Schedule Property, who purchased the same under the registered Sale Deed dt. 12.03.2015 from the Plaintiff and his brothers and sisters.

24. However, in the Second Appeal in S.A. 586/1992, preferred by A.A. Rahman, the husband of 1st Defendant, the Honourable High Court of Judicature at Madras, by dismissing the Appeal on 19.08.2002, has Observed that "The Appellant / Plaintiff cannot claim any right on the basis of Ex.A1, as it is not registered. The Defendants also cannot claim any right on the basis of Ex.B1, as the said documents also is not registered. In view of the fact that the Appellant / Plaintiff cannot claim any right in the Suit Property on the basis of the alleged Partition under Ex.A1, even if he is in possession of the Suit Property, such possession has to be constructed only on behalf of co-owners, and so the Plaintiff cannot claim any adverse possession over the Suit Property. The same principle will apply to the Respondents / Defendants also, even if they are in possession of the Suit Property ".

25. As such, neither said A.A. Rahman nor his Wife/1st Defendant or their Legal Heirs can claim any right on the basis of Ex.A1. Hence, the "A" Schedule remains to be common Property and it can be deemed that the Plaintiff is in joint possession and enjoyment of "A" Schedule Property as a Co - Owner.

26. It is not the Case of 1st Defendant that her husband had perfected title over the "A" Schedule Property by way of Adverse Possession. The ground of Ouster is also not pleaded. Unless, the pleadings

are complete and all the necessary ingredients to constitute Ouster by adverse possession are set out in the written statement, the plea relating to the title of the Property in question cannot be said to have been raised.

27. It is to state that the Legislature has not prescribed any period of Limitation for filing a Suit for Partition, because Partition is an incident attached to the Property and there is always a running cause of action for seeking Partition by one of the Co-Sharers, if and when he decides not to keep his share joint with other Co-Sharers. Since the filing of the Suit is wholly dependent upon the Will of the Co-Sharer, the period of Limitation, specially the date or time from which such period would commence, could not have been possibly provided for by the legislature and, therefore, in this Act also a period of Limitation, so far as suits for Partition are concerned, has not been prescribed.

28. Normally, where the Property is joint, Co-Sharers are the representatives of each another. The Co-Sharer, who might be in possession of the joint Property, shall be deemed to be in possession on behalf of all the Co-Sharers.

29. The Learned Counsel for the 1st Defendant has argued that the Suit is barred by Limitation, in view of Articles 101, 110 and 113 to the Schedule of the Limitation Act, 1963.

He has argued that the Suit has been instituted after the Observation made in S.A. 586/1992, by the Honourable High Court of Judicature at Madras. The Appeal was disposed on 19.08.2002. As per the Article 101 to the Schedule of the Limitation Act, 1963, a Suit, upon a Judgment, has to be instituted within Three Years. This Suit has been filed in the year 2015.

Hence, this Suit is barred by the Limitation.

30. It is to state the in the Judgment, dt.19.08.2002 in S.A. 586/1992, by the Honourable High Court of Judicature at Madras, (19.08.2002), it has been Observed that: "The Appellant / Plaintiff cannot claim any right on the basis of Ex.A1, as it is not registered. The Defendants also cannot claim any right on the basis of Ex.B1, as the said documents also is not registered. In view of the fact that the Appellant / Plaintiff cannot claim any right in the Suit Property on the basis of the alleged Partition under Ex.A1, even if he is in possession of the Suit Property, such possession has to be constructed only on behalf of co-owners, and so the Plaintiff cannot claim any adverse possession over the Suit Property. The same principle will apply to the Respondents / Defendants also, even if they are in possession of the Suit Property."

31. So, the husband of 1st Defendant or the 1st Defendant , even if was/is in possession of the "A" Schedule Suit Property, such possession has to be construed only on behalf of Co-Owners. So, the Cause of action and the right to sue is continuing One. Hence, the Article 101 to the Schedule of the Limitation Act, 1963, has no application to the Suits for Partition between Co - Owners.

To apply Article 110 to the Schedule of the Limitation Act, 1963, it must be proved that the Suit Property is a joint family Property and the Person, who claims a Share, might have been excluded from the Property. Here, it is not Case of Plaintiff and not the defence of Defendants.

32. The moment that the Honourable High Court observed in A.S.586/1992 in Ex.A4 that the Appellant / Plaintiff cannot claim any right

as it is on the basis of Ex.A1, as it is not registered, the "A" Schedule becomes in the joint possession and enjoyment of the Plaintiff and 1st Defendant's husband.

33. With regard to Article 113 to the Schedule of the Limitation Act 1963, it is to state that it is a Residuary Provision, which envisages that any Suit for which no period of Limitation is provided, elsewhere, in the Schedule, the prescribed period of Limitation is 3 years, which begins to run when the right to sue accrues. The Article 113 is called as "Omnibus Article of the Limitation Act".

The Honourable High Court of Judicature at Madras, in its Judgment in S.A. 586/1992, on 19.08.2002, has Observed that: "..... In view of the fact that the Appellant / Plaintiff cannot claim any right in the Suit Property on the basis of the alleged Partition under Ex.A1, even if he is in possession of the Suit Property, such possession has to be constructed only on behalf of co-owners, and so the Plaintiff cannot claim any adverse possession over the Suit Property....."

Hence, the Plaintiff is a Co-Owner of the "A" Schedule Property.

It is well settled that in the Suit of Partition, the cause of action is continuing one. A Co-Owner can file successive Suits for Partition as the cause of action there off will be continues one.

34. It is to reiterate that the Legislature has not prescribed any period of Limitation for filing a Suit for Partition, because **Partition is an incident attached to the Property and there is always a running cause of action for seeking Partition by one of the Co-sharers if and when he decides not to keep his share joint with other co-sharers.** Since the filing of the Suit is wholly dependent upon the will of the co-sharer, the period of

Limitation, specially the date or time from which such period would commence, could not have been possibly provided for by the legislature and, therefore, in this Act also a period of Limitation, so far as suits for Partition are concerned, has not been prescribed.

35. However, even assuming for a while that the Article 113 to the Schedule of the Limitation Act 1963 has application to the Case on hand, it is to state that there is no specific denial by the 1st Defendant as to the Share of Plaintiff. But, admittedly, the 1st Defendant has sold a portion of "A" Schedule Property to the 2nd Defendant on 17.10.2013, depriving the rights of Plaintiff over the "A" Schedule Property. It amounts to denial of the right of Plaintiff. So, the right to sue accrues to Plaintiff on 17.10.2013. (Till then his possession is considered to be joint possession). This Suit for Partition is filed on 03.03.2015. As per Article 113 to the Schedule of the Limitation Act, the Limitation to file a Suit is Three Years, when the right to sue accrues. In the Cause of Action Column also, it is stated as on 17.10.2013, when the invalid Sale in favour of 2nd defendant was executed by 1st Defendant. So, it can be said that the Suit is filed in time and not barred by Limitation.

The Judgments reported in AIR 2004 SC 1206, AIR 1958 SC 827 and 1982 KLJ 27 submitted by the Learned Counsel for the 1st Defendant, are not applicable to this Case.

This Issue is answered accordingly.

36. **Issue No. 1 :**

The Case of the Plaintiff is that One Khan Sahib Abdul Razack Sahib had Three Sons; namely, Abdul Hameed Sahib (Father of Plaintiff), Mohamed Ali Sahib and Abdul Rahman Sahib.

The Plaintiff is One of the Sons of Late Abdul Hameed Sahib. He is One of the Co-owners in respect of the "A" Schedule Property.

37. The Said Three Brothers had decided to have a division of the Properties and appointed one N.M.Ibrahim Maricair as sole Arbitrator to effect a division of the estate. The Arbitrator has passed an Award on 06.05.1974. But, the Parties to the Award did not take possession as per the Award. The Parties were enjoying the Properties according to their convenience. Subsequently, they mutually agreed to have the allotment valid and executed into fresh division evidenced by Deed dt. 29.07.1974 and this was followed by a Released Deed dt. 31.10.1975, executed by Abdul Rahman confirming the Deed dt. 29.07.1974. So, it happened that neither the Award nor the subsequent documents were registered.

38. The Plaintiff is giving two Schedule of Properties. One in respect of T.S.No.73, which is Schedule "A" and T.S.No.72, which is Schedule "B". In the Arbitration Award as modified by the subsequent Deed dt. 29.07.1974. Schedule "A" Property was allotted to Haji Abdul Hamid and confirmed by the Release Deed. But, under the Arbitral Award the Schedule "A" Property was allotted to A.A.Rahman. Hence, A.A.Rahman had filed a Suit for Declaration of title and for Injunction against the legal heirs of Haji Abdul Hamed Sahib in O.S.229/88, on the file of the Subordinate Judge, Cuddalore, on the basis of the Arbitral Award. The Suit was decreed. There was an appeal in A.S.104/90, on the file of the Additional District Judge, Cuddalore, and it was allowed and the Suit filed by A.A.Rahman was dismissed. Then, A.A.Rahman took up the matter by way of Second Appeal in S.A.586/1992, on the file of the Honourable High Court of Judicature at Madras and the said Appeal was dismissed with the

following the Observations:

"The Appellant / Plaintiff cannot claim any right on the basis of Ex.A1, as it is not registered. The Defendants also cannot claim any right on the basis of Ex.B1, as the said document also is not registered. In view of the fact that the Appellant / Plaintiff cannot claim any right in the Suit Property on the basis of the alleged Partition under Ex.A1, even if he is in possession of the Suit Property, such possession has to be constructed only a behalf of co-owners, and so the Plaintiff cannot claim any adverse possession over the Suit Property. The same principle will apply to the Respondents / Defendants also, even if they are in possession of the Suit Property".

Said Haji Abdul Hameed and A.A.Rahman are no more. So, the Suit "A" Schedule Property has to be divided between the legal heirs of Haji Abdul Hameed and the legal heirs of A.A.Rahman.

With regard to "B" Schedule Property, the Plaintiff states that it was purchased by his Father; Abdul Hameed Sahib, by virtue of a Sale Deed, dt. 20.03.1958. The Certified Copy of the said Sale Deed, dt. 20.03.1958 is Ex.A6.

39. Whereas, the 1st Defendant states that the Suit "A" Schedule Property has been acquired by her husband under the Award passed by the Arbitrator, ever since the date of Award this Defendant's husband was in possession and enjoyment of the Suit "A" Schedule Property and after his demise, She, (1st Defendant), his Sons and Daughters were jointly in possession and enjoyment of the Suit "A" Schedule Property as his only legal heirs. On 03.02.2012, her Sons and Daughters had executed a Registered Release Deed in her favour. She is in possession and enjoyment of the Suit "A" Schedule Property. The Patta also stands in

here name. She has paid the Water Tax and Property Tax to the Nellikuppam Municipality.

40. As She is in need of money, She has decided to dispose a portion of the Suit "A" Schedule Property. Having known about it, the 2nd Defendant approached her and expressed his willingness to purchase the portion of the Suit "A" Schedule Property. After the price negotiation, She has executed a Registered Sale Deed in favor of the 2nd Defendant on 17.10.2013. Now, 3/4th of the Suit "A" Schedule Property is in possession and enjoyment of this Defendant and 1/4th of the Suit "A" Schedule Property is in possession and enjoyment the 2nd Defendant.

41. The 2nd Defendant states that the Suit "A" Schedule Property belonged to the husband of the 1st Defendant and he was in possession and enjoyment of the Suit "A" Schedule Property till his demise and after his demise, his wife, his Sons and Daughters were jointly in possession and enjoyment of the Suit "A" Schedule Property as his only legal heirs. The Sons and Daughters of the deceased Rahman Sahib had executed a registered Release Deed in favor of the 1st Defendant on 03.02.2012 and in pursuance of the Release Deed, dt. 03.02.2012, the 1st Defendant is in possession and enjoyment "A" Schedule Property.

42. The 1st Defendant has decided to sell the Portion of the Suit "A" Schedule Property to meet out her family expenses. Having known about the same, he has approached the 1st Defendant and expressed his willingness to purchase the Suit "A" Schedule Property and after receipt of the full and valuable consideration the first has executed Registered Sale Deed in favor of this Defendant on 17.10.2013. He is in possession

and enjoyment of the Property purchased him under the Sale dt. 17.10.2013.

So, it has to be seen now that the Case of Plaintiff could be accepted and he is entitled for 1/2 in the "A" Schedule for himself and LRs Abdul Hameed Sahib.

43. It is to state said Abdul Hameed Sahib had got the "A" Schedule Property herein as per the Agreement, dt. 29.07.1974, executed between Abdul Hameed / the father of Plaintiff and Abdul Rahman / the husband of the First Defendant. It was also followed by a Release Deed, dt. 31.10.1975. In the Agreement, dt. 29.07.1974, all Three Sons of Khan Sahib Abdul Razack Sahib had signed. The Agreement dt. 29.07.1974 was marked as Ex.B1 in the said O.S. No.229/1988, on the file of Sub-Judge, Cuddalore. It is specially stated in Ex.B1 and during arguments of the Learned Counsel for the Plaintiff that the another Son of said Khan Sahibm Abdul Razack Sahib; namely, Mohamed Ali Sahib was given other Properties, separately. The Xerox Copy of the Agreement dt. 29.07.1974 was marked here as Ex.A2 with objections. The Non-Impleadment in O.S. No.229/1988, on the File of Sub-Judge, Cuddalore and in this Suit by Mohamed Ali Sahib, another Son of Khan Sahibm Abdul Razack Sahib or his Legal Heirs, shows that they have no claim over the "A" Schedule herein.

44. Further, in the Second Appeal in S.A.586/1992, dt. 11.08.2002, on the file of the Honourable High Court, Madras, it has been held that: "The Appellant / Plaintiff cannot claim any right on the basis of Ex.A1, as it is not registered. The Defendants also cannot claim any right on the basis of Ex.B1, as the said document also is not registered. In view of the

fact that the Appellant / Plaintiff cannot claim any right in the Suit Property on the basis of the alleged Partition under Ex.A1, even if he is in possession of the Suit Property, such possession has to be construed only on behalf of co-owners, and so the Plaintiff cannot claim any adverse possession over the Suit Property. The same principle will apply to the Respondents/ Defendants also, even if they are in possession of the Suit Property".

45. Accordingly, the "A" Schedule in this Suit, referred in Ex.B1 in S.A.586/1992 in AS.104/1990 in O.S.229/1988, becomes **common Property** of A.A.Rahman / Husband of 1st Defendant and Abdul Hameed Sahib / Father of Plaintiff. And, as held, the possession of "A" Schedule under Ex.B1 (in S.A.586/1992) has to be construed only on behalf of **Co-Owners** and the Plaintiff (in O.S.229/1988); namely, A.A.Rahman / Husband of 1st Defenant, can not claim any adverse possession on the Suit Property.

46. The Claim of 1st Defendant over the "A" Schedule property is only on the basis of the Award under Ex.A1. But, in the Second Appeal in S.A.586/1992, dt. 11.08.2002, on the file of the Honourable High Court, Madras, it has been held that the Appellant / Plaintiff (the Husband of 1st Defendant herein) cannot claim any right on the basis of Ex.A1, as it is not registered. In view of the fact that the Appellant / Plaintiff cannot claim any right in the Suit Property on the basis of the alleged Partition under Ex.A1, even if he is in possession of the Suit Property, such possession has to be constructed only a behalf of co-owners, and so the Plaintiff cannot claim any adverse possession over the Suit Property. Accordingly, the 1st Defendant, being the Wife of deceased Abdul

Rahman, can not have any right over the "A" Schedule property **in its entirety**. The 1st Defendant has sold a portion in "A" Schedule property, under Ex.B14 to the 2nd Defendant on 17.10.2013, after Eleven Years, from the date of judgment in the Second Appeal in S.A.586/1992 (dt. 11.08.2002). It can be said that, the Legal heirs of deceased Abdul Rahman; namely, the 1st Defendant (1st Defendant) and her Sons and Daughters, are having Half Share only in the "A" Schedule Property, in view of the Judgment in the Second Appeal in S.A.586/1992, dt. 11.08.2002, on the file of the Honourable High Court, Madras.

47. The Decisions, reported in 1). AIR 1934 MAD. 665, 2). 2017 (1) LW 562, 3). AIR 2017 SC 1034, 4). 1986 (1) MLJ 412, 5). 1928 CJ (CAL.) 377, 6). 1970 CJ (SC) 283, 7). 2017 CJ (SC) 249 and 8). 2003 (8) SCC 319, submitted by the Learned Counsel for the 1st Defendant are not applicable to the Case on hand as the facts are different.

48. Thus, the Father of Plaintiff / Abdul Hameed Sahib, being a Co-Owner, is entitled Half Share in the Plaintiff "A" Schedule Property. As said Abdul Hameed Sahib is no more now, his Legal Heirs, including this Plaintiff, are entitled Half Share in the Plaintiff "A" Schedule Property.

This Issue is answered accordingly.

49. **Issue No. 2:**

The Plaintiff states that on the date of filing of the Suit, he was in possession of the "B" Schedule Property and is entitled for Permanent Injunction restraining the Defendants from entering into the "B" Schedule Property. The Plaintiff states that the Property on the West of "A"

Schedule Property is T.S. No.72, which is now described as Schedule "B" by his Father; Haji Abdul Hamed Sahib, on 20.03.1958 under a Registered Sale Deed. The Sale Deed gives the boundaries, measurements and extent and other details. The Municipal Survey Department behind the back of the Plaintiff has given wrong measurements. This will not take away the right of the Plaintiff and other Co-Owners in respect of Schedule "B" Property.

50. Taking advantage of the mistake committed by the Municipal Survey in giving wrong measurements, the 1st Defendant herein has told the whole of Suit "A" Schedule Property, which includes a portion of Suit "B" Schedule Property to the 2nd Defendant. The sale is wholly invalid and will not confer any title on the 2nd Defendant. The Sale has taken place on 17.10.2013.

51. However, the 1st Defendant, in her Written Statement, has stated that One Ashraf Ali has purchased the "B" Schedule Property from the Plaintiff and his Brothers and has Sisters, through a Registered Sale Deed dt. 12.03.2015 and said Ashraf Ali is in possession and enjoyment of the same. The Xerox Copy of Certified copy of Sale Deed is Ex.B1. The 1st Defendant has also given evidence through her Son as DW.1 in this regard. The DW.1 has clearly deposed that " the Plaintiff and his Brothers and Sisters have executed a Sale Deed on 12.03.2015 in favour of One Ashraf Ali, in respect of Plaintiff "B" Schedule Property. At present, the Plaintiff "B" Schedule is in enjoyment of Ashraf Ali ". This evidence has not been denied or challenged by the Plaintiff during cross examination. Further, in the Reply Statement, the Plaintiff has stated as on the date of the institution of the Suit, Plaintiff alone had been in

possession and he sought for the relief of injunction, which ought to have been granted to him. The Property was not sold then. So, it is admitted that on this day, the Plaintiff is not in possession of "B" Schedule.

52. The Learned Counsel for the Plaintiff has argued that it is the right and duty of the Plaintiff, being a Seller, to protect the rights of his Buyer, in View of Section 55 (2) of The TP Act and he relied upon a Judgment, reported in **MANI J. MEENATTOOR VS. MRS. AMY HOMI COLABWALLA AND ORS., AIR 1986 Ker 149.** It has been perused carefully. The facts are different. Here, the relief is pertaining to Injunction. As per Ex.B1, a Portion of "B" Schedule was sold to One Ashraf Ali and was put into possession. The Section 55 The TP Act provides the Rights and Liabilities of Buyer and Seller. It is, generally, to protect the rights of the Buyer relating any encumbrance on Title over the Purchased Property or any other dispute over the Purchased Property, which will arise, later. So, the Judgment cannot be applied to the Case on hand.

53. Admittedly, the "B" Schedule has been sold to one Ashraf Ali and he is in Possession of the Same, as per Ex.B1. In other words, the Plaintiff is not in Possession and enjoyment of the "B" Schedule in its entirety. Here, the Plaintiff is seeking Injunction against the Defendants over the entire "B" Schedule property. As per Section 41(j) of the Specific Relief Act, 1963, an Injunction can not be granted, when the Plaintiff has no personal interest in the matter. In this regard, the Observation made in **PREMJI RATANSEY VS. UNION OF INDIA, 1994 SCC (5) 547, is relied upon.** Wherein, it is held that "Injunction is a personal right under Section 41(j) of the Specific Relief Act, 1963; the Plaintiff must have personal interest in the matter. The interest of right not

shown to be in existence, cannot be protected by injunction". Also, relied upon the Judgments, reported in **SRI MUNIRAJ VS. SMT GIRIYAMMA, 2012 STPL 24695 KARNATAKA** and **JOAQUIM L DIAS AND ORS. VS. BAPTIST COELHO AND ORS., 2012 STPL 17508 BOMBAY**. Here, the Plaintiff can not have any personal Interest over the "B" Schedule property as he sold it.

54. But, at the later part of his argument, the Learned Counsel for the Plaintiff has argued that only a Portion of the "B" Schedule, to an extent of East-West: 35 Feet (ஐரூபி அடி) and North-South: 105 Feet (ஐரூபி அடி), Out of East-West: 53 1/2 Feet (ஐரூபி அடி) and North-South: 112 Feet (ஐரூபி அடி) has been sold to One Ashraf Ali. So, Injunction may be granted in respect of "B" Schedule Property, excluding the Portion sold to said Ashraf Ali. It is strange.

55. It is to state that absolutely, there is no pleadings as to the relief of Injunction and its Cause of Action in the body of Plaint. A Party, who wants a Relief against another Party, should have some Cause of Action against him. Then, it is noted that a Portion of "B" Schedule was Sold to One Ashraf Ali by the Plaintiff and his Brothers and Sisters, after the institution of this Suit. No amendment is made in the Plaint. It has been suppressed. No Proof as to possession by the Plaintiff over the "B" Schedule Property, is filed. The grant of Injunction is an Equitable Relief. So, the Person, who seeks Equitable Relief, should come to Court with clean hands. The Judgment reported in **VASANTHA KUMAR @ VEER VASANTHAKUMAR VS. THE DIRECTOR AND ORS., 2019 CJ (MAD.) 10**, submitted by the Learned Counsel for the 1st Defendant is relied upon. Hence, Under these circumstances, it is held that the Plaintiff is not entitled for Injunction against the Defendants, in respect of the "B"

Schedule Property.

This Issue is answered accordingly.

56. **Issue No.3 :**

The 1st Defendant claims title over the "A" Schedule property that her husband had acquired it by the Award in Ex.A1. However, on the Second Appeal preferred by her husband in S.A.586/1992, the Honourable High Court of Judicature at Madras, has Observed, by dismissing it, as the Appellant / Plaintiff cannot claim any right on basis of Ex.A1 as it is not registered. It is further, observed that in view of the fact that the Appellant / Plaintiff cannot claim any right in the Suit Property on the basis of the alleged Partition under Ex.A1, even if he is in possession of the Suit Property, such possession has to be constructed only a behalf of co-owners, and so the Plaintiff cannot claim any adverse possession over the Suit Property. The same principle will apply to the Respondents / Defendants also, even if they are in possession of the Suit Property". It was never disputed that the 1st Defendant and her children have Half Share in the "A" Schedule Property.

57. The Honourable Supreme Court in the judgment **A.ABDUL RASHID KHAN (DEAD) AND OTHERS, V. P.A.K.A. SHAHUL HAMID AND OTHERS, 2000 (1) SCC 636, and in the Judgment MANZOOR AHMED MAGRAY V. GHULAM HASSAN ARAM AND OTHERS, 1999 (7) SCC 703**, held that where any property is held jointly and once any party to the contract has agreed to sell such joint property, the agreement, then, even if the other co-sharer has not joined, at lest to the extent of his share, the party to the contract is bound to execute the Sale Deed. The same principle was reiterated in *Kammana Sambamurthy v. Kalipatnapu Atchutamma*, 2011(1) MWN (Civil) 99

(SC) : 2011 (1) MLJ 404(SC).

58. So, the claim over the "A" Schedule by the 1st Defendant in its entirety under the Award in Ex.A1 is not valid. But, She has Half Share. The Second Appeal was disposed on 19.08.2002. This Suit has been filed in the year 2015. The 1st Defendant has pleaded that she has sold 1/4th Share of the Suit "A" Schedule Property in favour of 2nd Defendant by a Registered Sale Deed dt. 17.10.2013. The 3/4th Portion of "A" Schedule Property is in her possession and enjoyment. As per the Plaint, the total extent of "A" Schedule Property is East - West : 24' 3" Feet (ஐராதி அடி) and North - South : 112' Feet (ஐராதி அடி). It is not disputed by the 1st Defendant. Of this total extent, the 1st Defendant is entitled Half Share only, i.e. to an extent in East - West: 12' 1" Feet (ஐராதி அடி) and in North - South: 56' Feet (ஐராதி அடி). As per the Sale Deed in Ex.B14, the 1st Defendant has sold an extent of 18' 1/4 " Feet (ஐராதி அடி) in East - West and 55' Feet (ஐராதி அடி) in North - South. It is to state that the conveyance under Ex.B14 by the 1st Defendant in favour of 2nd Defendant is valid only to the extent of her Share. In other words, any conveyance under Ex.B14 by the 1st Defendant in favour of 2nd Defendant in respect of "A" Schedule is not Valid to the extent beyond her Share.

(It is not the Issue here. However, for Clarity, it is to state that as the husband of 1st Defendant / Abdul Rahman has undivided Half Share in the "A" Schedule Property, his Legal Heirs; namely, the 1st Defendant and her Children can succeed it. So, the Sale Deed under Ex.B14 by the 1st Defendant in favour of 2nd Defendant is valid only to the extent of their Share. It is well settled that Whenever a share in the Property is sold, the Buyer has a right to apply for the Partition of the Property and get the share demarcated. The 2nd Defendant is entitled to get his Share

as per the Sale Deed in Ex.B14, subject to the Saleable Right of the 1st Defendant, as the Sale Deed under Ex.B14 by the 1st Defendant in favour of 2nd Defendant is valid only to the extent of 1st Defendant's Share).

This Issue is answered accordingly.

59. **Issue No. 4 :**

The 1st Defendant has stated that the Plaintiff has filed the above Suit for Declaration to declare the Sale Deed dt. 17.10.2013, executed between 1 and 2 Defendants is null and void. The allegations in the Plaint amount to cancellation of the document and though the prayer is couched in the form of Declaration that the document is invalid, the relief in substance indirectly amounts to seeking for cancellation of Sale Deed dt. 17.10.2013. Hence, the Court Fee paid under Sec.25(d) of the Act is not correct. The Plaintiff ought to have valued the Suit on the market value of the Suit "A" Schedule Property and he shall pay the ad valorem Court Fee under Sec.40 of Tamil Nadu Court Fees Act.

60. However, the Learned Counsel for the Plaintiff has argued that as the Plaintiff is not a Party to the Sale Deed dt. 17.10.2013, the Court Fee under Sec.25(d) of the Court Fees and Suit Valuations Act is correct. The Sale Deed dt. 17.10.2013 under Ex.B14 is perused. The Plaintiff is not a Party to the document. In **M/S. SIDDHA CONSTRUCTION (P) LTD., VS. M. SHANMUGAM, 2006 (5) CTC 255 (MAD.)**, it is held that " When the Plaintiff's are not Parties to the impugned Sale Deed, they need not pay Court Fees under Sec.40 (1) of the Tamil Nadu Court Fees and Suits Valuation Act and the payment of Court Fees under Sec.25(d) is proper. Hence, the Valuation of Plaintiff under Sec.25(d) for the relief of Declaration of Sale Deed dt. 17.10.2013 as null and void, is correct.

This Issue is answered accordingly.

61. **Issue No. 5 :**

The 1st Defendant has specifically raised a plea that the Suit is bad for non-joinder of Parties as the Other Legal Heirs of Haji Abdul Hameed Sahib were not impleaded as Parties. In this regard, the Learned Counsel for the Plaintiff has argued that it has been clearly pleaded in the Suit Plaint that the Plaintiff is one of the Sons of Late Haji Abdul Hameed Sahib. He is one of the Co-owners of the legal heirs of late Abdul Hameed Sahib and is instituting the Suit in that capacity. One Co-Owner can maintain a Suit. Here, on perusal of the entire Averments and Evidences, the "LIS" involved in this Case can be decided effectively, effectually and completely, with the present Parties. The Judgment, reported in **KANAKARATHANAMMAL VS. V.S.LOGANATHA MUDALIAR AND ANOTHER, AIR 1965 SC 271 and MARUVANA BEEVI VS. M. ABDUL SALAM, 1996 (2) MLJ 41**, as submitted by the Learned Counsel for the 1st Defendant are not applicable as the facts are different. Hence, it is held that the Suit is not bad for non-joinder of Parties.

This Issue is answered accordingly.

62. **Issue No. 6 :**

The right to sue accrues to the Plaintiff on 17.10.2013, when the Sale under Ex.A1 in favour of 2nd Defendant by the 1st Defendant was made in respect of "A" Schedule. It is a denial of the right of Plaintiff over the "A" Schedule Property. Hence, it can be said that the Suit is sustainable and is not bad for cause of action.

This Issue is answered accordingly.

63. **Issue Nos. 7 and 8:**

In view of the Observation made in Issue No.1, the Plaintiff is entitled for a Preliminary Decree for Partition and Separate Possession of his Half Share in " A" Schedule Property, with liberty to move for division by metes and bounds. In view of the Observation made in Issue No.3, the Sale Deed, dt. 17.10.2013, executed by the 1st Defendant in favour of 2nd Defendant, is valid only to the extent of her Share over the "A" Schedule Property. In other words, any conveyance under Ex.B14 by the 1st Defendant in favour of 2nd Defendant in respect of "A" Schedule is not valid to the extent beyond her Share. And, in view of the Observation made in Issue No.2, the Plaintiff is not entitled for a Permanent Injunction, restraining the Defendants from entering into the "B" Schedule Property. On considering the relationship of Parties and the Circumstances, there is no Order as to Costs.

These Issues are answered accordingly.

In the result, the Suit is Partly Decreed by passing a Preliminary Decree for Partition and Separate Possession of Plaintiff's Half Share in the " A" Schedule Property, with liberty to move for division by metes and bounds and declaring that the Sale Deed, dt. 17.10.2013, executed by the 1st Defendant in favour of 2nd Defendant, is valid only to the extent of 1st Defendant's Share over the "A" Schedule Property. In other words, any conveyance under Ex.B14 by the 1st Defendant in favour of 2nd Defendant in respect of "A" Schedule is not valid to the extent beyond her Share. However, the Plaintiff is not entitled for a Permanent Injunction, restraining the Defendants from entering into the "B" Schedule Property, as prayed. Hence, the Suit in respect of the relief of

Injunction is dismissed. On considering the relationship of Parties and the Circumstances, there is no Order as to Costs.

Directly dictated to Steno-Typist, typed by her, corrected and pronounced by me in open Court on the 7th day of July, 2020.

Sd/- G. Sendil Kumar, B.A., B.L.,
I Additional District & Sessions Judge,
Cuddalore.

List of Exhibits and List of Witnesses

Plaintiff side documents:

- | | | |
|--------|------------|--|
| Ex.A1 | 06.05.1974 | Xerox Copy of Arbitrator Award copy |
| Ex.A2 | 29.07.1974 | Xerox Copy of Agreement Deed |
| Ex.A3 | 31.10.1975 | Xerox Copy of Release Deed. |
| Ex.A4 | 19.08.2002 | Judgment Copy of S.A.No.586/1992 on the file of the Honourable High Court of Judicature at Madras. |
| Ex.A5 | 17.03.1945 | Certified Copy of Registered Sale Deed |
| Ex.A6 | 20.03.1958 | Certified copy of Registered Sale Deed |
| Ex.A7 | 17.03.2013 | Certified copy of Sale Deed executed by Mumthaj Pegam in favour of Neelakandan. |
| Ex.A8 | 03.02.2012 | Certified copy of Registered Release Deed |
| Ex.A9 | 06.08.2013 | Xerox copy of "A" Register extract |
| Ex.A10 | 06.03.1990 | Certified copy of Judgment in O.S.229/88 on the file of Subordinate Court, Cuddalore. |
| Ex.A11 | 06.03.1990 | Certified copy of Decree in O.S.229/88 on the file of Subordinate Court, Cuddalore. |

- Ex.A12 10.03.1992 Certified copy of Judgment in A.S.104/90 on the file the Additional District Court, Cuddalore.
- Ex.A13 13.04.2009 Xerox copy of death certificate of Abdullah
- Ex.A14 07.11.2016 Xerox copy of Death Certificate of Hajee.N.Jainallabuddin.

Defendant's side documents:

- Ex.B.1 12.03.2015 Xerox Copy of Sale Deed in favour of Ashraf Ali
- Ex.B.2 21.10.2013 Xerox copy of Sale Deed in favour of Ragmanbee
- Ex.B.3 21.10.2013 Xerox copy of Sale Deed in favour of A.H.Mohamadu Ameen.
- Ex.B.4 23.10.2013 Xerox copy of Sale Deed in favour of Thaslimbegam.
- Ex.B.5 01.11.1975 Registered Settlement Deed in favour of Ansaree
- Ex.B.6 01.11.1975 Registered Settlement Deed
- Ex.B.7 01.11.1975 Registered Settlement Deed in favour of A.A.Rahiman Sayabu
- Ex.B.8 01.11.1975 Registered Settlement Deed in favour of Mumtajibegam
- Ex.B.9 01.11.1975 Registered Settlement Deed
- Ex.B.10 01.11.1975 Registered Settlement Deed
- Ex.B.11 04.06.1983 Registered Sale Deed in favour of Manonmani Ammal
- Ex.B.12 01.12.1983 Registered Sale Deed in favour of Rajambal Ammal and others
- Ex.B.13 03.02.2012 Registered Release Deed in favour of Mumtajibegam.

- Ex.B.14 17.10.2013 Xerox Copy of Sale Deed in favour of P.Nellakandan
- Ex.B.15 23.07.2012 Patta transfer Order issued by Tahsildar, Panruti.
- Ex.B.16 05.05.2015 Xerox copy of Power Deed in favour of Dhulkar.
- Ex.B.17 25.06.2012 Electricity Bill in the name of Rahaman A.A.
- Ex.B.18 26.06.2007 Kist Receipt in the name of A.Abdul Rahman
- Ex.B.19 21.02.2009 Kist Receipt in the name of Rahiman. A.A.
- Ex.B.20 07.01.2020 Kist Receipt in the name of Mumthaj Begam.
- Ex.B.21 07.01.2020 Kist Receipt in the name of Mumthaj Begam.
- Ex.B.22 07.03.2012 Kist Receipt in the name of Mumthaj Begam.
- Ex.B.23 23.08.2021 Kist Receipt in the name of A.Abdul Rahman
- Ex.B.24 19.02.2015 Kist Receipt in the name of Mumthaj Begam.
- Ex.B.25 10.03.2012 Town Survey Field Register Extract
- Ex.B.26 19.02.2015 Kist Receipt in the name of Mumthaj Begam.

Plaintiff side witness:

P.W.1. Thiru. A. Dhulkar (the Plaintiff)

Defendants' Side Witness:

D.W.1 Thiru. Anzaree

D.W.2 Thiru. Neelakandan (the 2nd Defendant)

Sd/- G. Sendil Kumar, B.A., B.L.,
I Additional District & Sessions Judge,
Cuddalore.

Draft/Fair Judgment.

O.S. No. 51 / 2015.

Dt. 07.07.2020

C.1.A.