



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 03.12.2025

PRONOUNCED ON: 21.01.2026

CORAM:

THE HONOURABLE MR.JUSTICE P. DHANABAL

**SA No.11 of 2015
and M.P. No.1 of 2015**

1. Marappa S/o.Late Muniappa @ Vattappa
2. Venugopal S/o. Late Marappa
3. Puttamma @ Nagarathnamma W/o. Lakshmaiah.... Appellants / Appellants
/ Defendants 1, 6 and 11

vs.

1. Choodanath S/o. Marappa
2. Krishnappa S/o. Marappa
3. Seenappa S/o. Marappa
4. Venkatapathi S/o. Marappa
5. Suresh Babu [died] S/o.Marappa
6. Krishnappa S/o. Marappa
7. Kenchamma W/o. Late Marappa
8. Santhamma W/o. Venkatapathi
and D/o. Marappa
9. Sunandhamma W/o. Narayanappa
10. Sulochana W/o. Late Suresh Babu Respondents/ Respondents /
Defendants 2 to 5 and 7 to 10.
11. Minor Chitra
12. Minor Sonia
13. Minor Sindhu

[Since the 5th respondent died, the respondents 10 to 13 brought on record as legal heirs of the deceased / 5th respondent Suresh Babu vide order dated 18.07.2021 made in C.M.Ps Nos.6112, 6114 and 6116 of 2019]



PRAYER: This Second Appeal has been preferred under Section 100 of Code of Civil Procedure praying to set aside the judgment and decree in A.S. No.15 of 2013 dated 25.04.2014 passed by the learned Subordinate Judge, Hosur confirming the judgment and decree in O.S. No.145 of 2004 dated 21.12.2012 passed by the learned District Munsif, Hosur.

For Appellant(s): Mr. V. Raghavachary,
Senior Counsel for
Ms. V. Srimathi

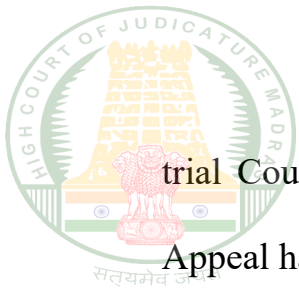
For Respondent(s): M/S.I.ABRAR MD.ABDULLAH [FOR R1]

M/S P.VALLIAPPAN, Senior Counsel and
M/S.SMS.SHRIRAMNARAYANAN
[FOR R2 TO R5 and R10 to R13]

R6 to R9 – Notice served – no appearance.

ORDER

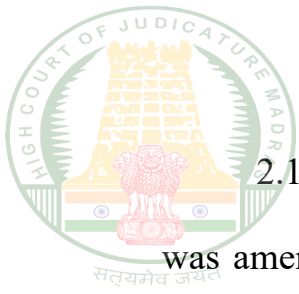
The Second Appeal has been preferred as against the decree and judgment dated 25.04.2014 passed in A.S. No.15 of 2013 on the file of the Subordinate Judge, Hosur wherein the 1st respondent herein, being the Plaintiff, had filed the Suit for partition and separate possession and alternatively to declare the title of the Plaintiff to the 2nd schedule of the properties and for costs. The trial Court decreed the Suit for the alternative relief of declaration. Aggrieved by the said decree and judgment, the defendants 1, 6 and 11 have preferred the Appeal Suit in A.S. No.15 of 2013 before the Subordinate Judge, Hosur. The First Appellate Court dismissed the appeal Suit by confirming the decree and judgment of the



trial Court. Aggrieved by the said decree and judgment, the present Second Appeal has been preferred by the said defendants.

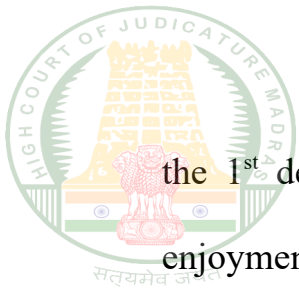
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2. The *case of the Plaintiff* before the trial Court is that the Plaintiff is the son of the 1st defendant. The defendants 2 to 5 are the brothers of the Plaintiff and sons of the 1st defendant. The 1st defendant had three daughters and they got married before 1989. Therefore, they are not entitled to any share over the Suit properties. The 6th defendant is the son of one Kenchamma, who is the daughter of the 1st defendant. The Suit properties are the ancestral properties of the Plaintiff and the defendants 1 to 5 and they have been jointly possessing and enjoying the Suit properties. There is no partition took place between the Plaintiffs and the defendants. The 1st defendant being the father of the Plaintiff and the defendants 2 to 5 has been managing the Suit properties as a Joint Family Kartha. The 6th defendant is a proforma defendant in the above Suit for the purpose of adjudication of the Suit. The Plaintiff is in joint possession and enjoyment of the Suit properties along with the defendants 1 to 5. The defendants 1 to 5 were on eremitical terms due to women folk with the Plaintiff. The Plaintiff had been demanding the partition of the schedule properties, but the defendants refused for the amicable partition. On the other hand, they tried to alienate the properties in favour of the 6th defendant or to third parties. Therefore, Suit has been instituted by the Plaintiff for partition.



2.1. After filing written statement and after recording evidence, the Plaintiff was amended. As per the Written statement and the evidence adduced by the parties, there was a partition and a Panchayath Muchalika Bhaga pattika dated 11.01.1993. As per the said Panchayath Muchalika Bhaga Pattika, the Schedule 'D' was allotted to the Plaintiff's share. Therefore, the Plaintiff is satisfied if the title for 'D' schedule is declared in his favour, which are described as Schedule II property. Therefore, the Plaintiff sought for an alternative relief to declare the title of Schedule II property in his favour and also prayed for partition of his 1/6th share over the Suit properties.

3. The ancestral nature of properties and joint possession are denied by the defendants. The *case of the 1st defendant* is that the Plaintiff is not in joint possession and enjoyment of the Suit properties along with the defendants. The Plaintiff is not entitled to 1/6th share over the Suit properties. There is no cause of action for the Suit. The Suit property has not been properly valued and the Court fee paid is not correct. In fact, about 7 years ago, the properties were divided and on the basis of the said division, a Panchayat Muchalika was taken place. In the family arrangement, the Plaintiff was allotted and he has been in possession and enjoyment of the same. As such, the defendants 1 to 5 also got properties and they were in separate possession and enjoyment of the same. The properties of the 1st defendant's wife were divided among the daughters of



the 1st defendant. Thereafter, all the parties are in separate possession and enjoyment of their respective shares. The 2nd defendant sold a portion of his share to one Krishnappa of Nagandapalli. As such other transactions were also taken place after their family arrangement. The 1st defendant got his share and he is in separate possession and enjoyment of the same and he is entitled to alienate the properties as per his wish. After obtaining their respective shares, the parties made several developments by spending huge amount. The Plaintiff is in out of possession in others' shares. If the Plaintiff has got any grievance, he should have sought for the relief to set aside the partition. Therefore, the Suit is liable to be dismissed.

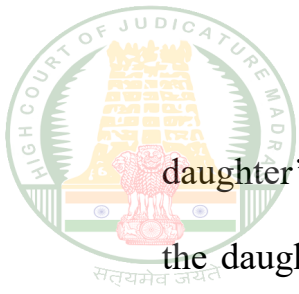
3.1. Thereafter, the 1st defendant filed an additional written statement stating that he denied the alleged Bhaga Pattika and he never executed any such Bhaga Pattika. If the Plaintiff is having knowledge about the said Bhaga Pattika, he should have whispered the same while he filed the Suit. If any Bhaga Pattika is available, it may be created by the Plaintiff. Initially the Suit was filed for partition alleging that he is in joint possession of the properties. In the amended Plaint contrary to the original relief, he is seeking the relief of declaration. Therefore, the Suit is liable to be dismissed. The 1st defendant had executed a Gift Deed in favour of the 6th defendant and from the date of gift, the 6th defendant is in possession and enjoyment of the property. The 6th defendant



had executed a Sale Deed in favour of one Munirathna and the said Munirathna is in possession and enjoyment of the property. During the pendency of the Suit, the Plaintiff and the defendants 1 to 5 and 8 to 11 have executed a Sale Deed in respect of some of the Suit properties to and in favour of one M/s. Taneja Aerospace and Aviation Ltd., and the same was suppressed by the Plaintiff. In the said Sale Deed, signature of these defendants was obtained by other vendors by force, but they have not shared their proportionate share amount. The defendants 2 to 5 abducted the 1st defendant and kept him in an illegal custody in various places and harassed the 1st defendant and obtained his thumb impressions and signatures in a number of blank stamp papers and other blank papers by force. Therefore, the Suit is liable to be dismissed.

3.2. The 6th defendant filed an additional written statement by reiterating the written statement filed by the 1st defendant and by denying the alleged Panchayat Muchalika Bhaga Pattika executed on 11.01.1993. He further stated that the 1st defendant has executed a Gift Deed in favour of the 6th defendant and the 6th defendant had executed a Sale Deed in favour of one Munirathna and the said Munirathna is now in possession and enjoyment of the said property.

3.3. The defendants 8 and 9 have filed their written statement stating that the relationship between the parties are admitted. In the Complaint, the 2nd



daughter's name is mentioned as Shanthamma. In fact, the said Shanthamma is the daughter-in-law of the 1st defendant. It is incorrect to state that daughters are not entitled to the Suit properties. The daughters of the 1st defendant are also equally entitled to share over the properties. In fact, the 1st defendant executed a Gift Deed in favour of the 6th defendant on 11.04.2008. The defendants and the Plaintiff are not in joint possession as alleged in the Plaint. In fact, the Plaintiff as well as the defendants 1 to 5 and the daughters of the 1st defendant have divided the Suit properties in the year 2001 and they were in separate possession and enjoyment of the same. In the said partition, the land in Sy. No.488/3B was allotted to the share of the daughters of the 1st defendant. Most of the properties are the self-acquired properties of the 1st defendant. The 1st defendant had executed a Gift Deed in favour of these defendants in respect of the Sy. Nos.288/1A, 282/1B and 284. In the said gifted properties, these defendants are in separate possession and enjoyment. Apart from that, these defendants are in possession and enjoyment of their respective shares allotted to them. The claim of 1/6th share is incorrect and vague. These 8th and 9th defendants are also having equal shares. The Plaintiff is in out of possession. The Plaintiff, defendants and the daughters of the 1st defendant had jointly sold the land in Sy. No.492/5, 492/3, 489/1, 357/4, 487/2, 490/1, 452/2 and including the land in Sy. No.488/3B to The Taneja Airlines. Therefore, through the said sale proceedings, the Plaintiffs, defendants 2 to 5 had received entire sale



consideration and the 1st defendant and these defendants 8 and 9 were not given any share in the sale proceedings. An extent of 0.27 cents in Sy. No.284 has been kept as a common property for the five family members. Therefore, the description of the property is incorrect. There is no cause of action to the Suit and hence the Suit is liable to be dismissed.

4. Based on the above said pleadings and after hearing both sides, the trial Court has framed the following *issues and the additional issues*:

Issues:

- a. Whether the Plaintiff is entitled to the 1/6th share of the Suit properties.
- b. Whether the Plaintiff is entitled for permanent injunction restraining the 6th defendant from alienating the Suit properties.
- c. Whether the Suit is correctly valued.
- d. Whether the descriptions of the Suit properties are correct.
- e. Whether the Plaintiff is entitled for preliminary decree as prayed for.
- f. Whether the Plaintiff is entitled to permanent injunction as prayed for.
- g. To what other reliefs, the Plaintiff is entitled to.

Additional Issues:

- (i) Whether the 'Baga Pattika' is true and genuine.
- (ii) Whether the Plaintiff is entitled to the alternative relief of declaration of title of Suit schedule II properties as prayed for.



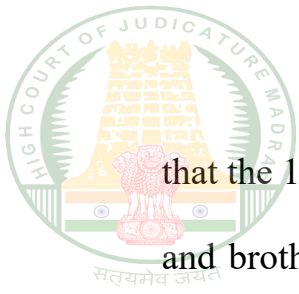
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5. Before the trial Court, on the side of the Plaintiff, PW1 and PW2 were examined and Ex.A.1 to Ex.A.4 were marked. On the side of the defendants, DW1 to DW4 were examined and Ex.B.1 to Ex.B.9 were marked. After hearing both sides and perusing the records, the trial Court decreed the Suit in respect of the alternative prayer of declaration and dismissed the Suit in respect of the partition and separate possession. Aggrieved by the said decree and judgment, the defendants 1, 6 and 11 have preferred an appeal Suit in A.S. No.15 of 2013 on the file of the Subordinate Judge, Hosur. The First Appellate Court also framed the following points for determination:

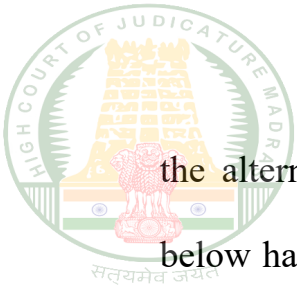
- (i) *Whether the Bhaga Patti is genuine and acted upon.*
- (ii) *Are the findings of the trial Court to its issues correct.*
- (iii) *What is the verdict of this Court in this appeal.*

After hearing both sides and perusing the records, the First Appellate Court dismissed the appeal and confirmed the decree and judgment passed by the trial Court. Aggrieved by the said decree and judgment, this second appeal has been preferred by the defendants 1, 6 and 11.

6. The learned Senior counsel appearing for the appellants would submit



that the 1st respondent / Plaintiff has filed a Suit for partition as against his father and brothers, in respect of the self-acquired properties of the 1st defendant. In fact, already an oral partition was taken place between the parties in respect of ancestral properties. The Suit has been filed by including the self-acquired properties of the 1st defendant. Since already partition was taken place, the Plaintiff is not entitled to any partition over the properties. The Plaintiff has not even mentioned about the alleged partition between the family members and initially filed the Suit for the relief of partition and then after examination of witnesses, amended the Plaint for the relief of declaration based on the alleged partition. In fact, there is no any Panchayat Muchalika Bhaga Pattika executed between the family members and the Plaintiff has not pleaded about the said Muchalika in his pleadings and not even produced the said Muchalika as one of the documents and the Muchalika referred by the 1st defendant is not that Muchalika and the defendants 2 to 5 abducted the 1st defendant during the pendency of the case and created Ex.B.4 Muchalika. Only after giving evidence, the Plaintiff has amended the Plaint. Therefore, both the Courts have erroneously decreed the Suit in respect of declaration based on the above said Muchalika. After amendment, no opportunity was given to the 1st defendant to adduce evidence and there is no evidence in respect of the above said Muchalika Bhaga Pattika, Ex.B.4. Therefore, the Courts below have erroneously decreed the Suit. Once the Plaintiff pleaded the relief of partition,



the alternative relief of declaration cannot be granted. However, the Courts below have decreed the Suit in respect of declaration and dismissed the Suit in respect of partition.

7. The learned Senior counsel appearing for the respondents would submit that in fact, the Suit properties are the joint family properties and the Plaintiff has filed the Suit for partition and thereafter, the defendants filed their Written statement alleging that there is a partition and also Panchayat Muchalika Bhaga Pattika was executed and as per the Bhaga pattika, 'D' schedule property was allotted to the Plaintiff and therefore, the Plaintiff has specified those properties and the Plaint was amended and an alternative prayer for declaration of title over the properties was prayed. The defendants also admitted the partition between the parties, thereby the trial Court after considering the evidences adduced on both sides, correctly decreed the Suit based on the Muchalika Bhaga Pattika. Therefore, the Plaintiff is entitled to the relief as prayed for in the Plaint in respect of declaration and both the Courts have rendered concurrent findings and the present second appeal is liable to be dismissed.

8. This Court heard both sides and perused the entire materials available on record.



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9. At the time admitting the second appeal, this Court has formulated the following *substantial questions of law*:

- (i) *Whether Ex.B.4, the execution of which has been denied, could have been the basis for the Courts below for granting a decree for declaration of title.*
- (ii) *Whether the Courts below were right in holding that, Ex. B4 is a genuine document when there is no witness to prove the execution of the said document.*
- (iii) *Whether the Courts below were right in ignoring the fact that the first defendant was abducted and he was rescued on the intervention of a Criminal Court and before the Criminal Court, he had made statement as to how he was abducted etc.,*
- (iv) *Whether the Courts below were right in holding that since abduction had taken place in the year 2010, the Ex.B.4 dated 11.01.1993 would not have been obtained after such abduction.*
- (v) *Whether the Courts below were right in relying on Ex.B.4 when the document has not been engrossed on necessary stamp paper and the same has not been registered.*

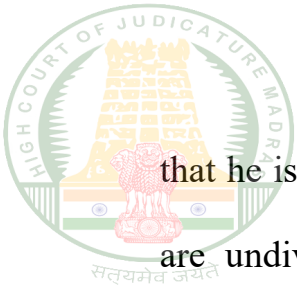
10. For the sake of convenience and brevity, the parties hereinafter will



be referred to as per their status / ranking in the Trial Court.

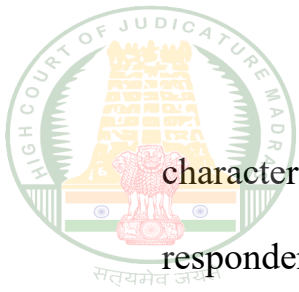
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11. In this case, there is no dispute in respect of relationship between the parties. The Plaintiff, being the son of the 1st defendant has filed a Suit as against his father / 1st defendant and his brothers 2 to 5 defendants. Initially the Suit was filed for partition and separate possession and the 1st defendant had filed his written statement stating that the Suit schedule properties are not ancestral properties and joint family properties of the Plaintiff and the defendants. In fact, seven years ago, the properties were divided and on the basis of the said division, the Panchayath Muchalika Bhaga Pattika was also taken place. In the family arrangement, the Plaintiff was allotted and he has been in possession and enjoyment of the same. The defendants 1 to 5 got the properties and they are in separate possession and enjoyment of the same. The properties of the 1st defendant's wife were also divided among the daughters of the 1st defendant and the same was accepted by the 1st defendant. All the parties are in separate possession and enjoyment of their respective shares. After partition, the 2nd defendant sold a portion of the property to one Krishnappa of Nagandapalli. The Plaintiff is in out of possession of others' shares. Thereafter the Plaintiff amended the Plaint and sought for an alternative prayer of declaration of title of the properties based on the partition through Bhaga Muchalika. Once the Plaintiff filed the Suit for the relief of partition alleging



that he is in joint possession and enjoyment of the properties and the properties are undivided Hindu Joint Family properties, merely based on the written statement filed by the defendants, he cannot seek alternative relief of declaration, contrary to the earlier pleadings and the stand taken by him. Once the Plaintiff admitted that the properties are ancestral and joint family properties of the Plaintiff and the defendants and they have been in joint possession and enjoyment of the properties, he has to prove his case by adducing sufficient evidence. Merely because the defendants have taken the stand that the properties were already partitioned, without filing any reply statement for the written statement filed by the defendants, the Plaintiff cannot take a contrary plea for the earlier plea taken by him. In this case, after filing written statement and after recording evidences by both the parties, the Plaintiff has filed an application to amend the Plaint and the same was allowed and the same has not been challenged by the defendants.

12. At this juncture, the learned Senior counsel appearing for the appellants would submit that though the appellants have not challenged the said amendment, they are entitled to challenge the same in this appeal, as per Section 105 of Code of Civil Procedure. The said amendment petition ought not to have been allowed by the trial Court, since it introduced new plea and entirely contra to the earlier plea taken by the Plaintiff and it would alter the nature and



character of the Suit. Per contra, the learned Senior counsel appearing for the respondents would submit that the appellants / defendants have not challenged the said amendment immediately after allowing that application and after decreeing the Suit, they preferred the first appeal and before the First Appellate Court also, they have not challenged the order of amendment. Now in this second appeal, they cannot challenge the order without challenging the same through first appeal. Therefore, according to the Plaintiff, the defendants cannot question the order passed by the trial Court in respect of amendment.

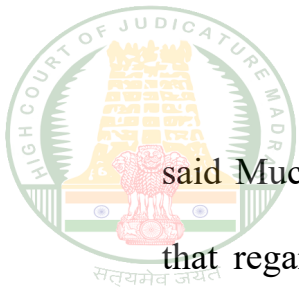
13. This Court also perused the entire materials. It is true that the trial Court allowed the amendment application after recording the evidence by both the parties and the same was not challenged by the defendants and when the defendants have challenged the said decree and judgment, before the First Appellate Court, they have not raised any question with respect to the amendment of Plaint. Now at this stage of second appeal, they have challenged the said amendment and there is no ground raised before the First Appellate Court and in this second appeal also, there are no grounds raised by the appellants in respect of the amendment. Therefore, the contention of the learned senior counsel appearing for the appellants that the amendment application ought not to have been allowed by the trial Court, is not acceptable, since they have not raised any objection either before the trial Court or at the



time of first appeal. Only at the time of second appeal, the appellants challenged the amendment, that too without any grounds. However, it is an admitted fact that after amendment, no evidence was adduced by the parties.

14. PW1, in his evidence, has deposed that the properties are ancestral and joint family properties of the Plaintiff and the defendants 1 to 5 and they have been in joint possession and enjoyment of the properties and there is no partition took place between the Plaintiff and the defendants and he is entitled to 1/6 share over the Suit properties and he also prayed only for partition over the Suit properties. There is no evidence in respect of the alternative prayer sought for in the Suit for declaration and there is no evidence as about the above said partition between the parties and as about Ex.B.4, Bhaga Pattika. The Courts below have failed to consider the same and without any evidence, the Courts below have granted the relief.

15. As far as the Suit for declaration is concerned, it is the duty of the Plaintiff to prove his case on his own evidence and the alternative relief is being the relief of declaration in respect of the title of the properties, it is the duty of the Plaintiff to prove his case, but he has not produced any documents in respect of the properties and no any evidence adduced by the Plaintiff with respect to the alternative relief. Moreover, nowhere the said document of Muchalika has been referred in the Plaint. When the 1st defendant has categorically denied the



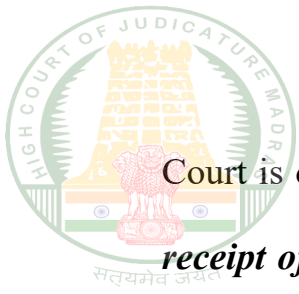
said Muchalika document, it is the duty of the Plaintiff to adduce evidence to that regard and also it is the duty of the Courts to afford opportunity to the parties to adduce evidence in respect of that Ex.B.4, Bhaga Pattika after amendment. On a perusal of records, it is seen that no any evidence was adduced by the parties after the amendment. The Plaintiff, who is seeking relief of declaration in respect of the properties, has not even pleaded about the above said Bhaga Pattika and based on the pleadings made in the written statement, he amended the Plaint and in the Plaint, there are no particulars about the said Bhaga Pattika and the details as to which property has been allotted to which party are also not found and even as per Ex.B.4, Bhaga Pattika, 'D' Schedule property was allotted to the Plaintiff. The said 'D' Schedule contains 7 items of the properties. But in the Plaint, 2nd Schedule contains 10 items of the properties. The Plaintiff has not explained that how those properties were acquired by him.

16. Even assuming that the said Bhaga Pattika was executed without any parental documents, how the Court can come to a conclusion about the title of the properties and no any parental documents were produced by either parties to prove that those properties are belonging to the family of the Plaintiff and the defendants. The said Bhaga Pattika is also not a registered document. When the properties were partitioned between the parties on the same day, it should be



registered, but the said documents is not a registered one. The said document was executed on 11.01.1993. When the said document ExB.4 was executed between the parties, the Plaintiff ought to have mentioned about the same in the Plaint at the time of filing the Suit itself. But he has not mentioned anything about the alleged Muchalika Bhaga Pattika document. Once he pleaded about the joint possession and enjoyment in the undivided Joint family property, he cannot turn around only based on the plea taken by the defendants contrary to the earlier plea taken by him. These aspects have not been considered by the Courts below. Therefore, it is appropriate to set aside the decree and judgments passed by the Courts below and remand back the matter to the trial court for recording evidence, to consider the same afresh by affording opportunity to both the parties to adduce evidence and for fresh disposal.

17. Though this Court has formulated substantial questions of law at the time of admitting the second appeal, after amendment no evidence was adduced by both the parties and the available evidences are not sufficient to answer for the said substantial questions of law. As far as the judgments relief on by both the learned Senior counsels are concerned, those judgments cannot be relied upon as the matter has been remanded back to the trial Court for fresh consideration. Therefore, the matter is remanded back to the trial Court for a fresh consideration and the parties are at liberty to adduce evidence. The trial



Court is directed to dispose the case *within 3 (three) months from the date of receipt of a copy of this judgment.* The parties are also directed to co-operate for speedy disposal of the case.

18. With the above said observations and directions, this *second appeal is allowed and the decree and judgment passed by the trial Court in O.S. No.145 of 2004 dated 21.12.2012 confirmed by the First Appellate Court in A.S. No.15 of 2013 dated 25.04.2014 are set aside and the matter is remanded back to the trial Court for fresh consideration. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.*

21.01.2026

mjs

Index:Yes/No

Speaking/Non-speaking order

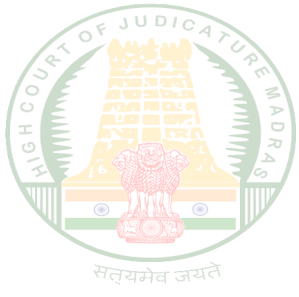
Internet:Yes

Neutral Citation:Yes/No

To

1. The Subordinate Judge, Hosur

2. The District Munsif, Hosur.



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SA No.11 of 2



P.DHANABAL J.
mjs

Pre-Delivery Judgment in
SA No.11 of 2015

21.01.2026