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A.S.No.24 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2025

CORAM

THE HONOURABLE DR JUSTICE G. JAYACHANDRAN

AS No.24 of 2023
and CMP.No.515 of 2023

Bipin Manibhai Patel @
Bipin Chandra Manibhai Patel (died)

2. Nilesh Bipin Chandra Patel,
S/o.Bipin Manibhai Patel @ Bipin Chandra Manibhai Patel,
No.2, Saint Laurent Bazaar Street,
Puducherry.
(Sole Appellant died, A2 brought on
record as LRS of deceased sole
Appellant viz., Bipin Manibhai Patel
@ Bipin Chandra Manibhai Patel,
vide order of Court dated 30.07.2025
made in CMP.Nos.17804, 17808, 17803
of 2025 in AS.24 of 2023(GJJ) ...Appellant

/Vs/

Pushpaben N. Patel (deceased)

1. Sanjeev Datta,
S/o.Dilip Kumar,
Rep.by its Power of Attorney,
Arjun Vir Datta,
S/o.Sanjeev Datta,
No.62, Rue Francois Martin Street,
Faith Apartment-II, No.6, Puducherry.

2. Sailesh N Patel

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S/o.Late Pushpaen N Patel,
12, Franquin Crescent, Kuraby,
Queensland-4112, Australia.

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3. Shamik N Patel

S/o.Late Pushpaen N Patel,
21, Arundel Road,
Cheadle Hulme Cheshire,
Stockport, Manchester,
UK.

4. Shilpa N Patel

S/o.Late Pushpaen N Patel,
93, Nandan Barg,
Swaraj, JOL Road,
Karamsad-388 345
Anandm Gujarat

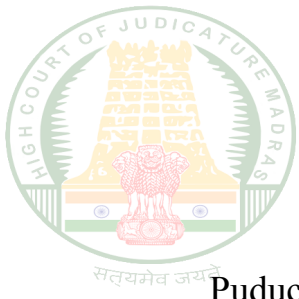
... Respondents

PRAYER: Appeal Suit is filed under Section 96 r/w Order XLI Rule 1 of CPC, to set aside the Judgment and Decree dated 23.12.2021 made in I.A.No.1114 of 2021 in O.S.No.160 of 2021, on the file of III Additional District Judge, Puducherry by allowing the appeal.

For Appellant : Mrs.Chitra Venkatraman,
Senior Counsel, for
Mr.T.S.Basakaran

For Respondents : Mr.C.A.Diwakar
for R1 to R4

JUDGMENT



A.S.No.24 of 2022

O.S.No.160 of 2021 on the file of the III Additional District Court,

Puducherry filed for declaration of plaintiff's right of preemptive purchase in respect of the suit property and to declare sale deed dated 10.01.2020 executed by the first defendant in favour of the second defendant is not valid and not binding upon the plaintiff.

2. The defendants have filed a petition under Order VII Rule 11 CPC for rejection of the plaint which has been favourably considered by the Court below on the ground that the suit is barred by limitation and there is no cause of action for the suit.

3. The trial Court considering the petition filed under Order VI Rule 11 of CPC had allowed the petition on the ground that the plaint suffers suppression of material facts and it tantamounts to abuse of process of Court.

4. Being aggrieved, the plaintiff had preferred the appeal, challenging the observation of the Court in a petition filed under Order 7 Rule 11 of CPC stating that right of pre-emption runs with the land. The right will not get



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extinguished by intervening documents between the parties contrary to the spirit of right conferred while the above appeal is pending. The plaintiff died and legalheirs were brought on record and in view of the demise of the plaintiff/appellant, the scope and ambit of the suit has changed. Furthermore, it is now stated by the learned Senior Counsel appearing for the appellant that the property which was sold to son-in-law who is not the member of the family has now been settled in favour of daughter through her settlement deed dated 12.01.2022 after rejection of the plaint. Therefore, the intention of retaining the property within the family members been substantially achieved.

5. As a result, the appellant is not interested in pursuing the litigation any further and seek leave of this Court to restore the suit and liberty to withdraw the suit and get refund of the court fee. The learned Senior Counsel also refers Section 58 of the Pondicherry Court Fee Suit Valuation Act, 1972, the refund and settlement before hearing. The provision under Section 58 of Puducherry Court Fee and Suit Valuation Act permits refund of the court fee when parties agree for a settlement out of court before any evidence has been recorded on the merits of the claim or any suit is



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compromised ending in compromise decree before any evidence has been recorded on the merits of the claim or any appeal is disposed before the commencement of hearing of such appeal, half the amount of court fee paid in respect of the claim or claims in the suit or appeal as the case may be, ordered by the Court to be refunded. For easy reference, Section 58 of the Pondicherry Court Fee and Suit Valuation Act is extracted below:

58. Refund and settlement before hearing. - Wherever by agreement of parties,-

(i) any suit is dismissed as settled out of Court before any evidence has been recorded on the merits of the claim, or

(ii) any suit is compromised ending in a compromise decree before any evidence has been recorded on the merits of the claim, or

(iii) any appeal is disposed of before the commencement of hearing of such appeal, half the amount of court fees paid in respect of the claim or claims in the suit or appeal, as the case may be, shall be ordered by the Court to be refunded to the parties by whom the same have been respectively paid.

Explanation.- The expression “ merits of the claim” shall have the meaning assigned to it in section 11.

6. It is the case where the suit been dismissed pursuant to the order passed under Order VI Rule 11 of CPC and the appeal is directed against the



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order rejecting the plaint. The appellant states that the plaintiff has filed a memo for withdrawal of the suit after restoring the suit on file.

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7. Taking into consideration the facts and circumstances of the case and the provisions of Section 58 of Pondicherry Court Fee and Suit Valuation Act, this Court is of the view that at the appellate stage, the party who want to settle the dispute and withdraw the litigation, is entitled half of the court fee under Section 58 of suit Valuation Act. Therefore, considering the submissions made by the learned Senior Counsel appearing for the appellant and the affidavit filed by the appellant reporting settlement and withdrawal of the suit, this Court while allowing the appeal against the dismissal of the suit under Order VII Rule 11 of CPC, the suit in OS No.160 of 2021 and the appeal arising out of suit AS.No.21 of 2023 stands disposed of recording the settlement and the appellant is permitted to get back half of the Court fee paid and also to pay a cost of Rs.5,000/- to the respondent being court fee paid in the suit of Rs.5,000/- to the respondent within the period of one month from the date of receipt of a copy of this order. No costs. Consequently, the connected petition is closed.



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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

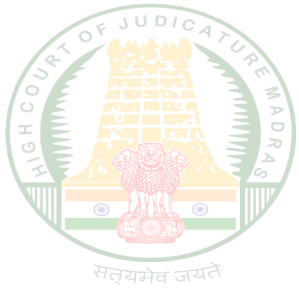
Vv

To,

1 The III Additional District Judge, Puducherry

2. The Section Officer,
V.R.Section, Madras High Court,
Chennai.

Dr.G.JAYACHANDRAN,J.



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