

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.04.2026

PRONOUNCED ON :29.04.2026

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.706 of 2020
and CMP.No.10223 of 2022

N.Krishnaswamy (died)
1.Pankajamani
2.K.Madhankumar
3.K.Geetha

... Appellants

vs.

Balakrishnan (died)
1.N.Varadharajan
2.B.Kanagam
3.B.Leelavathi
4.B.Savithiri
5.V.Sasikala

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 02.09.2020 passed in A.S.No.36 of 2014 on the file of the Principal District Judge, Coimbatore reversing the Judgment and Decree dated 25.09.2013 in O.S.No.1006 of 2010 on the file of the Principal Subordinate Judge, Coimbatore.



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S.A.No.706 of 2020



For Appellants : M/s.Udaya P.S.Menon

For Respondents :M/s.R.N.Amarnath

J U D G M E N T

The children of the deceased 1st defendant and 2nd defendant are the appellants. The 2nd plaintiff and legal heirs of deceased 1st plaintiff are the respondents.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3. The respondents/plaintiffs filed a suit seeking declaration that settlement deed dated 05.08.2009 executed by 1st defendant in favour of 2nd defendant was null and void and for partition of their 2/3rd share in the suit property. They also sought for permanent injunction restraining the defendants from altering the character of the suit property in any manner. The suit was dismissed by the Trial Court. The plaintiffs preferred an appeal before First Appellate Court. The First Appellate Court reversed the findings of the Trial Court and allowed the appeal. As a necessary consequence, the suit was decreed. Aggrieved by the same, the appellants/defendants have come before this Court.

2/26

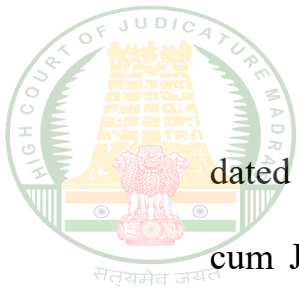


Averments found in the plaint:

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4(i). According to the plaintiffs, they and the 1st defendant are brothers, the 2nd defendant is the wife of the 1st defendant. The plaintiffs and 1st defendant jointly purchased total extent of 2.08 acres in S.F.Nos.426/2, 472/2 and 429/2 situated in Oddarpalayam Village, Coimbatore Taluk under registered sale deed dated 30.09.1981. Thus, the plaintiffs and 1st defendant are entitled to 1/3rd share in the property purchased by them. Subsequently, the plaintiffs and 1st defendant had jointly sold an extent of 0.63 acres in S.F.No.426/2, an extent of 0.55 acres in S.F.No.429/2 and another extent of 0.40 acres in S.F.No.429/2 in favour of 3rd parties under three different sale deeds in the year 1994-1995. The balance extent now available with the plaintiffs and 1st defendant is only 0.50 acres (i.e 0.40 acres in S.F.No.429/2 and 0.10 acres in S.F.No.427/2).

4 (ii). In the year 1996, a difference of opinion arose between the plaintiffs and the 1st defendant, as a result of which, the 1st defendant filed a vexatious suit against the plaintiffs, seeking direction to the plaintiffs to execute the release deed in respect of their share in the suit property in favour of the 1st defendant pursuant to the alleged agreement



dated 23.08.1995 in O.S.No.95/1996 on the file of District Munsif Court cum Judicial Magistrate Court, Palladam. According to the plaintiffs, there was no such agreement. Though the plaintiffs appeared in the said suit through a counsel initially, subsequently, the 1st defendant approached the plaintiffs for amicable settlement and believing the words of 1st defendant, the plaintiffs did not continue to defend the suit.

4(iii). It was claimed by the plaintiffs that later it became impossible to enjoy the property jointly and hence approached the 1st defendant seeking partition of the suit property into three equal shares and allotment of two such shares to them. The 1st defendant postponed the partition under some pretext or other. Hence, the plaintiffs applied for encumbrance certificate and found that the 1st defendant executed a gift deed in favour of 2nd defendant on 05.08.2009.

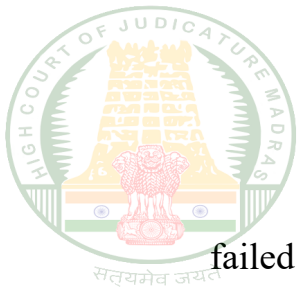
4(iv). It was also stated by the plaintiffs that at the best, 1st defendant can convey only his 1/3rd share in favour of the 2nd defendant. It was also stated in the recitals found in the settlement deed that the suit property had come to the share of 1st defendant under a oral partition. The plaintiffs denied any such oral partition and in these circumstances, the present suit was filed seeking the above said reliefs.



Averment found in the written statement of the 1st defendant and adopted by the 2nd defendant:

5(i). The defendants admitted in the written statement that the plaintiffs and defendants jointly purchased 2.08 acres in the above mentioned three survey numbers. However, it was further stated that the plaintiffs sold their 2/3rd share in the entire extent of 2.08 acres to various parties and subsequently executed an unregistered release deed on 23.08.1995 relinquishing their right and interest in the unsold properties in favour of the 1st defendant.

5(ii). It was further stated that since stamp papers were not available at the relevant point of time, the plaintiffs agreed to execute the registered release deed as and when required by the defendants. It was also stated that the said agreement was acted upon and defendants had been in possession and enjoyment of the remaining extent (i.e., the present suit property) as absolute owner. It was also stated that the defendants obtained permission for putting up construction and patta pass book was also issued in his name.



5(iii). It is the specific case of the defendants that the plaintiffs failed to execute the release deed as promised and hence the 1st defendant was constrained to file a suit in O.S.No.95 of 1996 seeking direction to plaintiffs to execute registered release deed as per the terms of release agreement dated 23.08.1995 and on their failure seeking a direction from the Court to execute release deed in favour of the defendants. Though the plaintiffs initially appeared before the Court, later failed to defend the suit and ultimately an ex-parte decree was passed on 27.02.1997 in favour of the 1st defendant.

5(iv). It was also stated that the 1st defendant filed execution petition in E.P.No.27 of 2000 to execute the above decree. Later the plaintiffs filed application in I.A.No.106 of 2001 to condone the delay of 1322 days in seeking to set aside the ex-parte decree and the same was dismissed. It was also stated that the execution petition filed by the 1st defendant was pending at the time of filing of written statement.

5(v) It was also stated that in view of the above mentioned legal proceedings, the plaintiffs could not claim share in the suit property. It was also stated that the 1st defendant executed a registered settlement deed in favour of his wife i.e., 2nd defendant on 05.08.2009. Now with



ulterior motive of grabbing his property the plaintiffs laid the present vexatious suit. On these pleadings, the defendants sought for dismissal of the suit.

Evidence let in by parties:

6. Before the Trial Court, the 1st plaintiff was examined as PW.1 and eleven documents were marked on their side as Exs.A1 to A11. The 1st defendant was examined as DW.1 and yet another witness was examined as DW.2. On behalf of defendants, seventeen documents were marked as Exs.B1 to B17

Findings of the Trial Court as well as First Appellate Court:

7 (i) The Trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that the plaintiffs having failed to contest O.S.No.95 of 1996 filed by the 1st defendant could not seek partition and hence dismissed the suit. Aggrieved by the same, the plaintiffs filed an appeal in A.S.No.36 of 2014 on the file of the Principal District Court, Coimbatore.

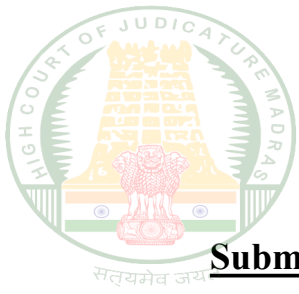


7(ii) The First Appellate Court held that the decree obtained by 1st defendant in O.S.No.95/1996 had become time barred and hence the 1st defendant could not claim any right over the suit property under the said decree and accordingly held that the plaintiffs were entitled to decree for partition and allowed the appeal. Aggrieved by the same, the appellants/defendants have come before this Court.

Substantial Questions of law framed at the time of admission:

8. At the time of admission, this Court formulated the following substantial questions of law by order dated 06.01.2021:

- (a) *Whether the findings in judgment in O.S.No.95/1996 does not operate as res-judicata between the parties in the present proceedings?*
- (b) *Whether the preliminary decree became invalid and unenforceable and not binding on the respondents when it was not executed within limitation period?*
- (c) *Whether the 1st Appellate Court misdirected itself in holding that the decree passed is only preliminary decree and no finality of rights attained by parties without considering the provisions of Sections 2(2), Sections 96 and Section 97 of CPC?.*



Submission of learned counsel for appellants:

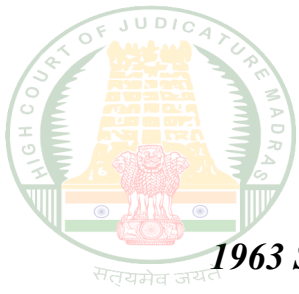
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9(i). Elaborating on the substantial questions of law formulated at the time of admission, the learned counsel appearing for the appellants vehemently contended that the judgment passed in O.S.No.95 of 1996 would operate as *res judicata* on the present suit and hence the suit for partition and declaration to declare the settlement deed executed by 1st defendant in favour of 2nd defendant as null and void could not be maintained by the plaintiffs.

9.(ii). It is further submitted by the learned counsel that the right of the defendants was already crystallized by the Civil Court decree and hence the present suit is liable to be dismissed on the principle of *res judicata*.

9.(iii). In support of the contention of the learned counsel appearing for the appellant relied on the following judgments:

(i) ***Punjab National Bank and others Vs. Surendra Prasad Sinha*** reported in ***1993 Supp (1) SCC 499***;



(ii) *Venkata Reddi and others Vs. Pothi Reddi* reported in AIR 1963 SC 992;

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(iii) *Saroja Vs.Chinnasamy (dead) by LRs and another* reported in (2007) 8 SCC 329;

(iv) *Channappa (D) through Lrs. Vs.Parvatewwa (D) through LRs* reported in 2026 INSC 343.

Submission of learned counsel for the Respondents:

10(i) The learned counsel appearing for the respondents would submit that the plaintiffs never transferred their 2/3rd share in the suit property in favour of the 1st defendant under any registered document and therefore, the present suit filed by them is very well maintainable. The learned counsel further submitted that the unregistered agreement relied on by the defendants under Ex.B2 will not convey any title to them and at the most it can only be treated as an agreement to release the interest in favour of the 1st defendant and the said documents will not create any interest in the immovable property. The learned counsel also submitted that a decree for specific performance will not create any interest in the subject matter of the agreement unless pursuant to the decree a sale deed has been executed in favour of the decree holder. In the case on hand, according to the learned counsel, the decree for

10/26



specific performance obtained by the 1st defendant in O.S.No.95 of 1996 has become time barred as the same has not been executed. In such circumstances, merely based on the said decree, which is for specific performance, the defendants cannot seek to non-suit the plaintiffs.

10(ii). In support of said contention, the learned counsel appearing for the appellant relied on the following judgments:

- (i) *Sachindra Nath Sett Vs. Naba Kumar Mallick and others reported in (1952) 1 SCC 445;*
- (ii) *Gomtibai (smt) (dead) through LRs and others Vs. Mattulal (dead) through LRs reported in (1996) 11 SCC 681;*
- (iii) *Kumaran Vs. Kumaran reported in 2010 SCC OnLine Ker 4753.*

Reply arguments by counsel for appellants:

11. By way of reply, the learned counsel appearing for the appellant submitted that observation of the First Appellate Court that earlier decree had become invalid is not correct. According to her, the execution of the decree is barred, but however the validity of the decree is intact. The learned counsel reiterated her submission that the present suit is barred by doctrine of *res judicata*.

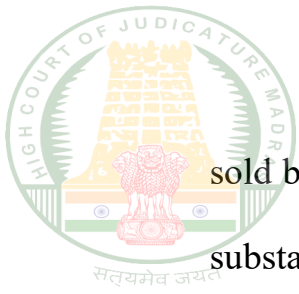


Discussion on the question of laws:

12(i). Since the questions of law framed at the time of admission are inextricably mixed up with each other, all the questions of law are taken up for consideration together.

12(ii). It is not in dispute that the plaintiffs and 1st defendant purchased 2.08 acres of land in three survey numbers 426/2, 427/2 and 429/2 under Ex.A1, dated 30.09.1981. Later they jointly sold 1.58 acres of land to 3rd parties in two S.F.Nos.426/2 and 429/2 under three registered documents which were marked as Exs.A2 to A4. Therefore, only an extent of 0.50 acres of land i.e., 0.10 acres in S.F.No.427/2 and 0.40 acres in S.F.No.429/2 are remaining in their hands as unsold. The present suit has been filed only in respect of the unsold extent of lands.

12(iii). A perusal of Ex.A1 would indicate that the plaintiffs and 1st defendant jointly purchased the above mentioned lands. A conjoint reading of Exs.A2 to A4 would indicate that portion of the land purchased by them were jointly sold by them by receiving consideration. Though the pleadings were raised by the defendants as if, there was oral partition and the properties allotted to the plaintiffs were



sold by them and unsold portion belongs to the 1st defendant, in order to substantiate the said oral partition, the defendants have not let in any acceptable evidence.

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12(iv). The recitals in Exs.A2 to A4 would indicate that portion of the property purchased by plaintiffs and 1st defendant were jointly sold to 3rd parties and they jointly received the sale consideration. In such circumstances, the oral partition and allotment of sold properties to plaintiffs can not be accepted. Though in Ex.B2-release arrangement, there is a reference about the sale of properties allotted to the plaintiffs, in the very same document, there is a recital stating that the plaintiffs are entitled to 1/3rd share in the unsold portion. Therefore, Ex.B2-release arrangement and the subsequent suit filed by the 1st defendant seeking a direction to plaintiffs to execute a registered release deed in his favour would destroy the plea raised by the 1st defendant as if, there was a oral partition and the plaintiffs are not entitled to any share in the unsold portion. If the plaintiffs are not entitled to any interest in the unsold portion i.e., the suit property, there was no necessity for the 1st defendant to seek specific performance of the release arrangement marked as Ex.B2 in the earlier suit in O.S.No.95 of 1996. The 1st defendant admitting the title and interest of the plaintiffs in the suit property filed



earlier suit in O.S.No.95 of 1996 and sought for performance of the agreement dated 25.08.1995 marked as Ex.B2. The prayer sought for in

O.S.No.95 of 1996 is in the nature of specific performance of the agreement. Having admitted the title and interest of the plaintiffs over the suit property and having prayed for performance of the agreement, the 1st defendant is not entitled to say that there was oral partition and the present suit properties were exclusively allotted to him.

12(v). Ex.A6 is a patta for the suit property stands in the name of the plaintiffs and defendants. Ex.B5-patta pass book produced by the defendants also established the names of the plaintiffs mentioned in the said documents along with the names of the 1st defendant and others. Ex.B8 is the revenue documents for suit property in S.F.No.427/2 and its stands in the name of the plaintiffs and 1st defendant.

12(vi). In the light of Exs.A6, B5 and B8, it is clear, the revenue documents stand in the name of plaintiffs and 1st defendant and in such circumstances, the plea raised by the first defendant as if the agreement dated 25.08.1995 was acted upon and he has been in exclusive possession of the suit property cannot be accepted.



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12(vii). Ex.B9 is the revenue document namely Adangal for S.F.No.429/2 and issued in the name of 1st defendant. The said adangal document was not signed by the competent authority namely the Tahsildar and it was signed only by Village Administrative Officer. The date of issuance of that Adangal extract is not clear and a close perusal of Ex.B9 would indicate it was issued on 04.02.2012. Therefore, it was the revenue document issued subsequent to the suit. Further, it was not issued by the competent authority. In such circumstances, no weightage can be given to it.

12(viii). In the light of the revenue documents mentioned above, the exclusive possession pleaded by the defendants is not acceptable. The revenue documents in the name of plaintiffs and the 1st defendant points to the fact that the property is in joint possession.

12(ix). As mentioned earlier, admitting the title and interest of the plaintiffs, in respect of the 2/3rd share in the suit property, 1st defendant filed a suit for specific performance of the agreement dated 25.08.1995 in O.S.No.95 of 1996. The said suit was decreed ex parte. The 1st defendant who was the plaintiff in the suit filed execution petition in E.P.No.27 of 2000. The said execution petition was filed to

15/26

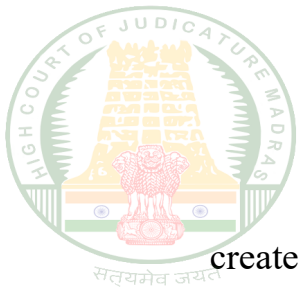


direct the present plaintiffs/judgment debtors therein to execute the release deed pursuant to the agreement dated 25.08.1995.

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12(x). It is seen from Ex.A11 that the execution petition was closed on 20.07.2001. It is also seen that from 22.12.2000 to 28.06.2001, for several hearings, there was no representation for both sides. Ultimately, the execution petition was closed on 20.07.2001. In the decree passed on 27.02.1997, the plaintiffs herein/judgment debtors therein were directed to execute the release deed within two months and the said two months period expired on 27.04.1997. Therefore, it is clear that on 27.04.2009, the decree had become time barred. Therefore, on the date of present suit i.e., on 15.04.2010, the 1st defendant lost his right to execute the decree for specific performance obtained by him.

12(xi). In the light of the said position, we have to decide, whether the decree obtained by the 1st defendant in O.S.No.95 of 1996 *per se* will create any interest in the suit property in the absence of enforcement of the said decree and execution of sale deed by the present plaintiffs/judgment debtor therein in favour of deceased appellant N.Krishnaswamy/plaintiff therein.



12(xii). It is settled law that an agreement *per se* will not create any interest in the immovable property. Therefore, Ex.B2 unregistered release agreement will not create any interest in the suit property in favour of 1st defendant. Now let us see, whether the decree passed to enforce agreement dated 25.08.1995 would create any interest in favour of 1st defendant in the absence of registered sale deed. The above said controversy came up for consideration before a Division Bench of Kerala High Court in ***Kumaran Vs. Kumaran*** reported in **2010 SCC OnLine Ker 4753**. In the said judgment, the Division Bench of Kerala High Court categorically held that a decree for specific performance passed on the basis of an agreement will not create any interest in the property in favour of the decree holder and it only super-adds the sanction of the Court to enforce it through the medium of Court.

12(xiii). In ***Kumaran*** case, cited supra, it was categorically held that the transfer of title occurs only on execution of registered document pursuant to the decree. The relevant observation reads as follows:

Unless and until the agreement for sale in favour of the vendee fructifies into a sale deed, he cannot claim to have



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*acquired any title to the property. This position is unaffected by the mere fact of the vendee having instituted the suit for specific performance of the contract for sale and of having obtained a decree in his favour. Such a decree is only a creature of the agreement between the parties to the contract for sale and as such, it has no greater force or significance than the earlier contract between them. The decree embodies in it, the contract between the parties with the command of the court superadded to it, enabling the Plaintiff to have the agreement enforced through court. All the same, title to the property continues to remain in the vendor himself and such title passes on to the vendee only when the sale deed is executed by the vendor under the command of the court or on his behalf by the court. The title that the vendee so obtains would not relate back to the date of the contract for sale. The contrary view taken in *Jahar Lal v. Bhupendranath* (AIR 1922 Cal. 412) and in *Dina v. Gujaba* (AIR 1926 Nag. 95) was dissented from following the dissent of the Nagpur High Court in *Shewantibai's case* (supra). *Kochuvareed's case* (supra) was also followed. The law, with no doubt, is that a decree for specific performance of an agreement for sale*



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would not, by itself, be effective as a transfer of title and so long as the sale deed is not executed in favour of the successful vendee, either by the vendor himself or by the court, the title continues where it was before the passing of the decree. To the same effect is the decision of the Division Bench of this Court in Chrisentia Chacko v. Choyikutty (1987 (1) KLT SN 60 (C. No. 83). A Full Bench of the Allahabad High Court in Mahendra Nath and Anr. v. Smt. Baikunthi Devi and Ors. (AIR 1976 All. 150) stated that a person who has got only a contract for sale or has got a decree for the specific performance of the contract, has got no interest in the land. He can only enforce the contract compelling the other side to execute the sale deed failing which the Court might execute a sale deed for the Defendant, but the rights and liabilities under the contract do not attach to the land. In Hiralal Agarwala v. Bhagirathi Gore and Ors. (AIR 1975 Cal. 445), it was stated that a decree for specific performance passed on the basis of a contract for sale of immovable property does not create any interest in the property in favour of the decree-holder. It only superadds the sanction of the court to enforce it through the medium of court. As such the decree-holder can



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S.A.No.706 of 2020



enforce the said contract and get it enforced through court, subject to whatever interest the judgment-debtor had at the time of execution. Therefore, there can be no doubt about the proposition that the mere existence of a contract for sale or a decree for specific performance on that basis does not, in any manner, affect the title of the vendee who has entered into the contract for sale. With the Specific Relief Act, 1963, as it now stands, the concept of passing a decree as understood in the earlier decisions gets modified to be directions in terms of the provisions of that Act and the decisions referred to above would have only to be read in the light of such modulation of the statute law. But, the law as regards the effect of the direction of the court for specific performance continuous to be the same. Such direction has no efficacy or potency of a transfer of property.

12(xiv). The Apex Court in ***Rajeswari and others Vs. Shanmugam and another*** reported in ***2025 INSC 1329*** held as follows:

18. It will be seen from the above judgment that neither an agreement of sale nor a decree passed on the basis of



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S.A.No.706 of 2020

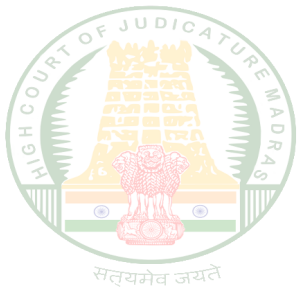


specific performance of the contract gives any right or title to the decree holder and the right and title passes to him only on the execution of the deed of sale either by the judgment debtor himself or by the Court itself in case the judgment debtor fails to execute the sale deed.

12(xv). In the light of the law laid down in the above mentioned decisions, it is very clear that a decree for specific performance only commands the judgment debtor who is a party to the agreement to perform his part of the agreement. It does not grant a declaration declaring title of the agreement holder, on the contrary, it commands the judgment debtor to perform his part of the contract and execute the conveyance deed as agreed by him. In other words, such a decree, *per se*, does not create any interest in immovable property in favour of decree holder.

12(xvi). In case of failure on the part of the judgment debtor to execute conveyance deed as per the writ of the Court, then, the Court itself will execute the document in favour of the decree holder. Only on execution of the document pursuant to the decree and registration of the same, the title will get conveyed to the decree holder.

21/26



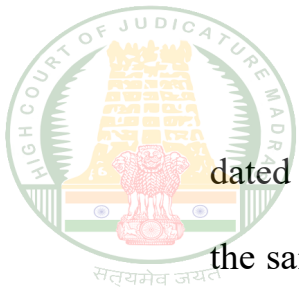
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12(xvii). In the light of law laid down by Apex Court in **Rajeswari** case cited supra, it is clear that decree for specific performance *per se* will not create any interest in the subject matter of the agreement, in favour of the decree holder and he would acquire interest only on execution of registered documents pursuant to the decree.

12(xviii). In the light of the above discussion, it is clear that the decree obtained by the 1st defendant in O.S.No.95 of 1996 will not obliterate the title and interest of the plaintiffs to the extent of their 2/3rd share. Therefore, I conclude that the decree in O.S.No.95 of 1996 will not bar the present suit for partition, which has been filed based on plaintiffs interest over the suit property as the said interest has not been destroyed by the earlier decree in anyway.

12(xix). Therefore, I hold the present suit is not at all barred by doctrine of *res judicata*. In the present suit, the plaintiffs seek partition of the 2/3rd share based on the title or interest in the property.

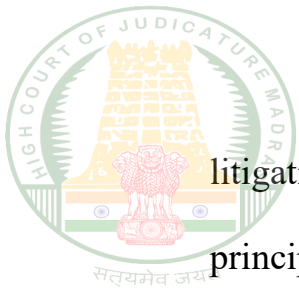
In the earlier suit, the 1st defendant sought for enforcement of agreement



dated 25.08.1995 by admitting the title of the present plaintiffs. Since the said decree has not been executed, the interest and title possessed by the present plaintiffs never got conveyed to the 1st defendant.

12(xx). As discussed earlier, the earlier decree obtained by the 1st defendant got time bared already and in such circumstances, the title and interest of the present plaintiffs remains intact. Therefore, they are entitled to seek partition based on their title and interest over the suit property. In the earlier suit, the Court had no occasion to declare the title of the 1st defendant. On the other hand, affirming the title of the present plaintiffs, it directed them to execute a release deed in favour of 1st defendant.

12(xxi). The judgment relied on by the learned counsel for the appellant in *AIR 1963 SC 992, 2007 (8) SCC 329 and 2026 INSC 343* are relating doctrine of *res judicata* and the case law in *1993 Supp (1) SCC 499* is relating to the proposition that limitation bars only the remedy and not the subsisting right of the party. There is no quarrel with regard to the proposition in the above mentioned case laws. However, the main issue to be decided in this case is whether the decree for specific performance obtained by the 1st defendant in the earlier

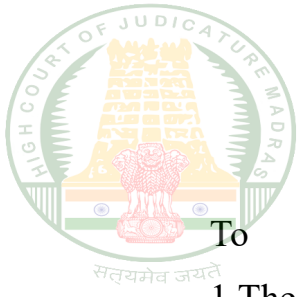


litigation creates an interest in the present suit property, so as to attract principle of *res judicata*. This Court already came to the conclusion, the earlier decree obtained by the first defendant will not create any interest in the suit property in favour of the 1st defendant. In such circumstances, the said decree will not operate as *res judicata* on the present suit which has been filed by the plaintiffs based on their interest in the suit property. Therefore, the decision relied on by the learned counsel for the appellants are not helpful to the appellants.

13. In such circumstances, the present suit filed by the plaintiffs based on their interest/title in the suit property seeking partition is not at all barred by doctrine of *res judicata*. The questions of law raised at the time of admission are answered against the appellants and the second appeal stands dismissed. No costs. Consequently connected Civil Miscellaneous Petition is closed.

29.04.2026

Index : Yes
Speaking order: Yes
Neutral Citation: Yes
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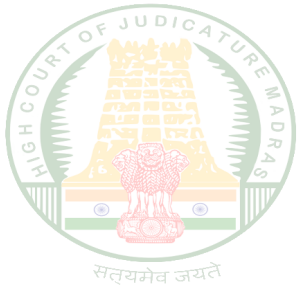
S.A.No.706 of 2020



To

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- 1.The Principal District Judge, Coimbatore.
- 2.The Principal Subordinate Judge, Coimbatore.



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S.A.No.706 of 2020



S.SOUNTHAR, J.

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Pre-delivery order made in
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29.04.2026