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A.S.(MD).Nos.38 of 2021 and 150 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on : 25.03.2024

Orders Pronounced on: 20.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

A.S.(MD).Nos.38 of 2021 and 150 of 2020
and CMP(MD) Nos.1198 of 2021 and 5436 of 2020

A.S.(MD).No.38 of 2021:

E.Selvaraj

...Appellant/Defendant No.1

Vs.

1.E.Jaculine

2.Baby Isabell

3.D.Gunasingh

4.D.Asir

5.The Branch Manager,
Indian Overseas Bank,
No.762, Anna Salai, Chennai-600 002.

6.R.Rakesh

7.The Branch Manger,
Allahabad Bank,
Plot No.391,
Anna Nagar Main Road, Anna Nagar,
Madurai-625 009.

8.R.Uma

9.S.Ravi

10.K.Mallika

...Respondents 2 to 10/Defendants 2 to 10

Prayer: First Appeal is filed under Section 96 r/w. Order 41 Rule 1 and 2 of Code of Civil Procedure, to set aside the judgment and decree passed by the 1st Additional District Judge, Madurai in O.S.No.114 of 2011 dated 01.02.2020.



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A.S.(MD).Nos.38 of 2021 and 150 of 2020



For Appellant :Mr.Selva Aditya
for Mr.G.Prabhu Rajadurai
For R1 :Mr.S.Chandrasekaran
For R3 & R4 :Mr.S.Anand Chandrasekar
for M/s.Porkodi Karnan
For R7 :Mr.S.Priyan Karthik
For R2, 5, 6, 8 to 10:No appearance.

A.S.(MD).No.150 of 2020:

1.D.Gunasingh

2.D.Asir

...Appellant/Defendants 3& 4

Vs.

1.E.Jaculine

2.E.Selvaraj

3.Baby Isabell

4.The Branch Manager,
Indian Overseas Bank,
198, Kamarajar Salai,
Madurai-625 009.

5.R.Rakesh

6.The Branch Manger,
Allahabad Bank,
Plot No.391,
Anna Nagar Main Road, Anna Nagar,
Madurai-625 009.

7.R.Uma

8.S.Ravi

9.K.Mallika

...1st Respondent/Plaintiff

...Respondents 2 & 3/Defendants 1, 2

...Respondents 4 to 9/Defendants 5 to 10

Prayer: First Appeal is filed under Section 96 r/w. Order 41 Rule 1 and 2 of Code of Civil Procedure, to set aside the judgment and decree passed by the 1st Additional District Judge, Madurai in O.S.No.114 of 2011 dated 01.02.2020.



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A.S.(MD).Nos.38 of 2021 and 150 of 2020

For Appellant :Mr.S.Anand Chandrasekar
for M/s.Porkodi Karnan

For R1 :Mr.S.Chandrasekaran
For R2 :Mr.Selva Aditya
for Mr.G.Prabhu Rajadurai
For R6 :Mr.S.Priyan Karthik
For R3 to 5, 7 to 9 : No appearance

COMMON JUDGMENT

The above appeals have been preferred as against the decree and judgement dated 01.02.2020 passed in O.S.No.114 of 2011 on the file of the learned 1st Additional District Judge, Madurai, wherein 1st respondents in both the appeals has filed a suit for partition and the same was decreed. As against the decree and judgment, the 1st defendant in the main suit has preferred appeal in A.S.(MD).No.38 of 2021. The 3rd and 4th defendants have preferred appeal in A.S.(MD).No.150 of 2020.

2. Brief averments of the plaint are as follows:

The plaintiff and 1st and 2nd defendants are brothers and sisters born to one Esthak Nadar and Anthoniammal. The said Esthak Nadar owned number of immovable properties and movable properties such as lorries and conducted a lorry service business in the name of 'Antonys' and also acquired several properties out of his self earned money. The said Esthak Nadar died



on 23.3.1998 and his wife Mrs.anthoniammal predeceased her husband.

Therefore, the plaintiff and defendants 1 and 2 each are entitled to the properties of Esthak Nadar. After the demise of father of the plaintiff, she along with defendants 1 and 2, have been in joint possession and enjoyment of the suit properties. Since the plaintiff and the 2nd defendant after marriage, living separately with their respective family, the 1st defendant was authorized to manage and look after all the properties. Accordingly, the 1st defendant used to pay a sum of Rs.30,000/- per annum for the income derived from the properties. Till 2009, he shared the income derived from the suit properties. Subsequently, he had not paid the said income. Thereafter, the plaintiff applied for encumbrance certificate and came to know about the fraudulent sale made by the 1st defendant in favour of defendants 3, 4 and 6. The 2nd defendant sold the properties to the 3rd defendant through sale deed dated 20.10.2005 and in favour of 4th defendant on 14.12.2005 in respect of 1st item of the properties and sold the property through sale deed dated 03.05.2011 in favour of 6th defendant with regard to the 2nd item of the suit properties. The said sale deeds are 'void ab initio' and not binding on the plaintiff.

(ii) The defendants 3 and 4 have also mortgaged the 1st item of the suit properties in favour of the 5th defendant dated 8.1.2007 and also they executed a supplemental mortgage deed in favour of the 5th defendant dated



25.10.2007. The defendants 3 and 4 could not acquire any valid title over the 1st item of the suit property and thereby they are not entitled to execute mortgage deeds in favour of the 5th defendant. Therefore, the said mortgage deeds are also 'void ab initio' and they will not be binding upon the plaintiff's share over the property. The 1st defendant had also conspired with the 2nd defendant and sold the suit properties and other joint family properties at Kandavilai Village, Kanyakumari District, suppressing the legal rights of the plaintiff, for which, the plaintiff also reserves right to challenge the same after getting full particulars.

(iii) Further the 3rd item of the suit property namely Antony's Blue Metals and some other properties at Masthanpatti Village were purchased from and out of the sale proceeds of the joint family properties. Therefore, in the crusher industry, the plaintiff is having share. Further, the 1st defendant had pledged the stone crusher in favour of the 7th defendant. The said pledge will not be binding on the plaintiff; the plaintiff is having 1/3rd share of the suit properties and thereby the said encumbrances over the properties will not be binding on her 1/3rd share. The said documents in favour of the defendants 3 to 7 are not bonafide and those transactions are 'Sham and Nominal'. The defendants 8 to 10 had conspired with 1st defendant along with his co-owner Mrs.Uma and her husband Mr.S.Ravi and have created fraudulent and 'Sham and Nominal' sale deeds on 25.4.2012 with regard to plot Nos.1 to 5 for an



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extent of 6690 square feet. The defendants 8 to 10 are not bonafide purchasers for valuable consideration. They purchased the property in pending proceedings. The plaintiff issued legal notice to the defendants on 23.4.2011. The defendants 1,2 and 5 have received the said legal notice and the defendants 3 and 4 are managed to return the same. The 1st defendant had issued a reply notice dated 20.5.2011 with false particulars and then the plaintiff issued a rejoinder notice on 4.6.2011. Despite the repeated demands made by the plaintiff to the defendants 1 and 2 for an amicable partition, that were ended in vain. Therefore, the suit is filed.

3. The gist of the written statement filed by the 1st defendant are as follows:

The plaintiff and the 1st defendant had executed a registered release deed in favour of the 1st defendant after receipt of consideration in respect of the suit properties through release deed dated 18.1.1999. The release deed was acted upon and there was no joint possession and enjoyment with the plaintiff after the release deed dated 18.1.1999. The said release deed was suppressed by the plaintiff and after the release deed, the 1st defendant has become the absolute owner of the properties and he has been in exclusive possession and enjoyment of the properties. The stone crusher business in the name of M/s.Antony Blue Metals is separate property of the 1st defendant and



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he has been running the said stone crusher business from 1998 onwards out of his own funds and income and the plaintiff has no right over the above said stone crusher business. This defendant never paid a sum of Rs.30,000/- per annum till 2009 and he need not pay the amount, since he is absolute owner and as he has right over the properties, he is entitled to sell the properties. The plaintiff and 2nd defendant have jointly received consideration and executed the said release deed after the demise of their father. The suit is barred by limitation and there is no cause of action for the suit. Hence, the suit is liable to be dismissed.

4. The averments of the written statement filed by defendants 3 and 4 are as follows:

The plaintiff suppressed the registered release deed executed in favour of the 1st defendant in respect of the suit properties along with 2nd defendant. The 3rd defendant purchased a part of 1st item of the suit property from the 1st defendant through sale deed dated 20.10.2005 for valuable consideration. The 4th defendant purchased another part of the 1st item of the suit properties through registered sale deed dated 14.12.2005 for valuable consideration. From the date of purchase, these defendants are in peaceful possession and enjoyment of the 1st item of the property without any disturbance. The plaintiff by suppressing the release deed dated 18.1.1999, filed the present



suit with a view to extract money from these defendants. It is false to state that the sale deeds in the name of 3rd and 4th defendants are not legally valid and 'void ab initio'. These defendants are bonafide purchasers for valuable consideration. The plaintiff has no locus standi to question about the mortgage in favour of the 5th defendant. It is false to state that the sale deeds executed in favour of the 3rd and 4th defendants by the 1st defendant are 'Sham and Nominal' and these defendants are not binamis to the 1st defendant. These defendants have not been served with any notice as alleged in the plaint.

5. The averments of the written statement filed by the defendants 8 and 9 are as follows;

The 1st defendant and 8th defendants are family friends. Therefore, they purchased the properties jointly. For want of funds, they decided to sell the properties and they formed the lay out for quick disposal of the properties. One plot was sold to 9th defendant and the defendants 9 to 10 have purchased the properties for valuable consideration and they are bonafide purchasers. The properties were purchased by defendants 1 and 8 on 15.12.2005. The 9th defendant purchased the properties for valuable consideration and thereby 8th and 9th defendants are unnecessary parties to the suit and the suit is liable to be dismissed.



6. The brief facts of the reply statement filed by the plaintiff are as follows:

The release deed dated 18.1.1999 is a rank forgery played by the 1st defendant immediately after the death of her father. The plaintiff never executed any such release deed in favour of the 1st defendant on 18.1.1999 that too along with 2nd defendant intending to release their legal rights over the schedule mentioned property. The father of the plaintiff and the defendants 1 and 2, during his life time subscribed life insurance policy and after his demise, all the legal heirs became entitled to the fruits of the said policy and other bank balance in the accounts. Therefore, in order to obtain those amounts from the respective institutions, the 1st defendant requested the plaintiff and the 2nd defendant to execute a consent deed. For the said purpose only, she signed in consent deed and not for any other reason as alleged in the reply notice. The consideration for the alleged release is only a formal and nominal one and the same is not based on the real value of the properties held by their deceased father. There is no mention about the schedule of properties and the said release deed become 'void ab initio' and it is only a "sham and nominal" and not at all enforceable in law. Therefore, the 1st defendant could not derive any absolute title over the estate of Esthak Nadar at any point of time. The stone crusher business was formed through the funds derived from the joint family. The 8th and 9th defendants are



binamis and fiduciary persons of the 1st defendant. Therefore, the above said sale in favour of the 8th and 9th defendants become 'void ab initio'.

7. Based on the above said pleadings and hearing both sides the trial Court has framed the following issues:-

"1. Whether the plaintiff herein has released her rights in favour of the suit property by way of release deed dated 18.01.1999?

2. Whether the suit properties are available for partition?

3. Whether the defendants 3,4, 5 to 10 are bonafide purchaser for value?

4. Whether the plaintiff is entitled to the relief of partition as prayed for?

5. Whether the plaintiff is entitled to other relief as prayed for?

6. To what other relief?

11. For the purpose of proper adjudication, the above issues have been recast as hereunder:

1. Whether the plaintiff herein has released her rights in favour of the suit property by way of release deed dated 18.01.1999?

2. Whether the suit properties are available for partition?

3. Whether the plaintiff is entitled to the relief of partition as prayed for?

4. Whether the plaintiff is entitled to other relief as prayed for?

5. To what other relief? "



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8. Before the trial Court on the side of the plaintiff PW1 was examined and Ex.A1 to A25 were marked. On the side of the defendants DW1 to DW4 were examined and Ex.B1 to B3 were marked.

9. The Trial court after considering the evidences adduced on both sides decreed the suit in favour of the plaintiff. The trial Court has decreed the suit in respect of 1st and 2nd items and dismissed in respect of 3rd and 4th items. As against the said decree and judgment, the 1st defendant has preferred the appeal in A.S.No.38 of 2021. The 2nd and 3rd defendants prepared the appeal in A.S. No.150 of 2020.

Grounds of appeal in A.S.(MD).No.38 of 2021:

(i) The judgment and decree of the learned 1st Additional District Judge in granting partition to the plaintiff is erroneous, against law, weight of evidence and against the probabilities of the case.

(ii) The Learned 1st Additional District Judge is erroneous in arriving it the conclusion that the Ex. B1 relinquishment deed is not valid, when the Plaintiff has not sought for any such relief to declare the relinquishment deed as null and void.



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(iii) The Learned 1st Additional District Judge failed to consider that the Ex.B1 relinquishment deed is a registered document executed in the year 1999 by the Plaintiff and the 2nd Defendant and was not challenged before any Court of law as invalid at any point of time and hence the Plaintiff in the guise of seeking partition could not assail Ex.B1 as sham and nominal.

(iv) The Learned 1st Additional District Judge failed to consider that after the execution of relinquishment deed i.e., from 1999, the 1st Defendant became the sole owner and enjoying the suit properties exclusively by paying property tax and electricity charges for the past 11 years and therefore the case of the Plaintiff is highly unbelievable.

(v) The Learned 1st Additional District Judge failed to consider that after 1999, there was no joint possession of the suit properties and therefore the Plaintiff has miserably failed to prove that she was in joint possession till the year 2011 as per her pleadings.

(vi) The Learned 1st Additional District Judge failed to consider that the Plaintiff and the 2nd Defendant out of their own volition executed the release deed by receiving consideration of Rs.25,000/- each.



(vii) The Learned 1st Additional District Judge failed to consider that without a prayer to declare Ex.B1 as null and void, the Plaintiff could not entitle for partition and even for asking such relief the suit is barred by limitation and hence the suit is liable to be dismissed.

(viii) The Learned 1st Additional District Judge failed to consider that the Plaintiff is inconsistent towards Ex.B1 by alleging that it is forged in her reply statement and obtained by fraud during her examination and then the consideration for the deed is not on the real value of the property.

(ix) The Learned 1st Additional District Judge failed to consider that the Plaintiff has not establish that she had the knowledge of execution of Ex.B1 only after receiving the reply notice Ex.A21 by any substantial proof. In the said circumstance the mere statement of the Plaintiff could not be accepted as the Ex.B1 is a public document registered duly.

(x) The Learned 1st Additional District Judge failed to consider that the 1st Defendant is in open and exclusive possession and enjoyment of the suit property from the year 1999 and deal with the property with all rights. Hence the statement of the Plaintiff that she had no knowledge of release deed till 2011 is highly unbelievable and the suit is nothing but a vexatious



proceeding.

(xi). The Learned 1st Additional District Judge is erred in overlooking the contradictory statements made by the Plaintiff with regard to the execution of Ex.B1.

(xii) The other reasons adduced are equally unsound and unsustainable.

Grounds of appeal in A.S.(MD).No.150 of 2020:

(a) The judgment of the trial Court is contrary to law, weight of evidence and the same is liable to be set aside.

(b) The Learned Trial Judge had failed to see that the suit is barred for partial partition, more particularly, the Plaintiff had admitted in the plaint itself that she has left out some other properties in the suit.

(c) The Learned Trial Judge has failed to see that the suit is barred by limitation especially when the Plaintiff had executed the registered release deed in the year 1999 and came to the Court only in the year 2009.

(d) The Learned Trial Judge had failed to see that the suit is barred by limitation in one more aspect that the possession of the suit property by the Defendants 3 and 4 from the year of their purchase in the year 2005 is well within the knowledge of the Plaintiff as per her deposition.



(e) The Learned Trial Judge had failed to appreciate Ex.B-1 which is a registered document in appropriate manner. The presumption provided in the Indian Evidence Act with regard to a registered document has been declined by the Learned Trial Judge.

(f) The Learned Trial Judge ought not to have decreed the suit when the Plaintiff has failed to rebut the presumption with respect of Ex.B-1 which is being signed by the Plaintiff and witnessed by her husband and that being a registered document.

(g) When the Plaintiff has not chosen to seek declaration of nullity of Ex.B-1, she is not entitled to seek partition and nullity of Ex.A4, A5, A7 & A8.

(h) The Learned Trial Judge is also not correct in nullifying the Ex.A4, A5, A7 & A8 when Ex.B-1 as legal and valid.

(i) The Learned Trial Judge has failed to consider the legal proposition that consideration need not be adequate to invalidate any contract. The Plaintiff has not taken any plea fraud, coercion or undue influence in execution of Ex.B-1 and therefore the Trial Court is not correct to overlook the same by discussing about the consideration.



(j) The Learned Trial Judge had failed to see that the Appellants/Defendants 3&4 are bonafide purchasers who had purchased the property relying a registered release deed and have been in possession of the property from the date of their purchase with the knowledge of the Plaintiff.

10. For the sake of convenience and brevity the parties herein after will be referred to as per their status/ranking in the trial Court.

11. The learned counsel for the appellant in A.S.No.38 of 2021 would contend that originally the suit properties belonged to Esthak Nadar and he died on 23.3.1998 and his wife predeceased him. After the demise of said Esthak Nadar, his daughters and son namely the plaintiff and defendants 1 and 2 are entitled to the properties of the Esthak Nadar. The plaintiff and the 2nd defendant had relinquished their share in favour of the 1st defendant through release deed dated 18.01.1999 after receipt of valuable consideration. The said release deed was duly executed attested and acted upon. Based on the release deed, the appellant/1st defendant sold the 1st item of the property to 3rd and 4th defendants for valuable consideration and also sold the one portion of the property to 6th defendant in respect of the 2nd item. The 3rd item of the suit properties are separate properties of the appellant/1st defendant. After execution of release deed, he had been in



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possession and enjoyment of the properties and thereby, he sold the properties to the 3rd parties. The plaintiff has suppressed the above said release deed and pre suit notice was issued by the plaintiff and the same was replied by appellant/1st defendant. In the reply notice, he categorically stated about the release deed executed by the 1st respondent/plaintiff but she filed the suit by suppressing the said release deed. Further on the same day, she along with 1st and 2nd defendant executed a power deed in favour of husband of the 2nd defendant namely Fruse Antony Martin in respect of the property situated in Kanniyakumari District and the same was sold to 3rd parties by the power agent and the same has not been questioned by the plaintiff. Therefore, she know very well about the execution of relinquishment deed and after filing of the written statement, the plaintiff filed reply statement by stating that the said release deed was obtained by playing fraud, but the said fraud has not been properly pleaded and not proved with sufficient evidences.

12. The learned counsel further submitted that the defendants have examined one of the attesting witnesses of the release deed as D.W.3 and co-executor as D.W.2. D.W.2 has categorically deposed about the execution of relinquishment deed and D.W.3 categorically deposed about the execution and attestation of the release deed. The said release deed has been marked as Ex.B1. Therefore, Ex.B1 release deed has been amply proved by the



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defendant. The plaintiff failed to prove the alleged fraud played by the defendants in getting release deed. After the relinquishment through release deed by the plaintiff, she has no right over the property and based on the release deed, the 1st defendant sold the properties to 3rd parties. The 3rd item of the property is separate property of the appellant/1st defendant and he started the business in the year 1998. There is no relationship between the plaintiff and 3rd item of the suit property. The 4th item of the suit property was purchased by 1st defendant and his family friend 8th defendant and the plaintiff has no interest or right over the 4th item of the property. The plaintiff after knowing very well about the release deed dated 18.01.1999 filed the suit after lapse of limitation period in the year 2011 and filed the suit. Therefore, the suit is barred by limitation. The trial Court failed to consider the above said aspects and decreed the suit in respect of the 1st and 2nd items and dismissed the suit in respect of other items. Therefore, the decree and judgment passed by the trial Court are liable to be set aside.

13. The learned counsel for the appellants in A.S.(MD).Nos.150 of 2020 would contend that defendants 3 to 9 have purchased the properties from the 1st defendant. Originally the suit properties belonged to the father of the plaintiff and defendants 1 and 2 and the father of plaintiff and defendants 1 and 2 died on 23.3.1998 and his wife Anthoniammal predeceased him.



Therefore, the plaintiff and defendants 1 and 2 each entitled to 1/3rd share over the suit properties. While so, after the demise of said Esthak Nadar, the plaintiff and 2nd defendant executed the registered release deed in favour of the 1st defendant through release deed dated 18.1.1999 by relinquishing her share over the properties. After the said release deed, the 1st defendant alone had been in possession and enjoyment of the 1st item of the property and thereby, the 3rd defendant purchased one portion of the 1st item of the property from the 1st defendant through sale deed dated 20.10.2005. The 4th defendant purchased another portion of 1st item of the property through sale deed dated 14.12.2005. Both the 3rd and 4th defendants had purchased the properties for good and valuable consideration.

13.1. The said release deed executed by the plaintiff and her sister has been marked as Ex.B1. Further on the side of the defendants D.W.1 to D.W.4 were examined. The D.W.2 is co-executor of release deed dated 18.01.1999 and D.W.3 is attesting witness of the release deed and they categorically deposed about the execution, attestation and passing of consideration of Ex.B1 release deed. Therefore the said release deed has been amply proved through oral and documentary evidences. More over the plaintiff herself admitted the execution of release deed, but she denied that it is not a release deed and the same was obtained by playing fraud and she only put her



signature for the purpose of name transfer in the bank accounts and LIC policy benefits. Therefore, the plaintiff admitted the execution of the release deed and her contention is that it was obtained by playing fraud. While so, it is the duty of the plaintiff to prove the alleged fraud. But the plaintiff has not examined any other witnesses and she was examined as P.W.1 and she failed to examine any other witnesses to prove that the said relinquishment released deed was obtained by playing fraud. Further the plaintiff has not sought for any relief to set aside the release deed dated 18.01.1999 and she sought for the relief of declaration in respect of the sale deeds and she has to pay the Court fee under section 40 of the Court Fees Act and not under Section 25(d) of T.N Court Fees and Suit Valuation Act. The above said aspects have not been considered by the trial Court and the trial Court has erroneously decreed the suit. Therefore, the decree and judgment passed by the trial Court are liable to be set aside.

13.2. To support his contention, learned counsel for the appellant relied the following judgments:

1.Kuppurama Mudaliar Vs. The State of Tamil Nadu and others reported in AIR 1979 Madras 263.



2.A.Leela Vs.Paaniyandi and others made in CRP.No.1324 of 1996

dated 11.02.1998.

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14. The learned counsel appearing for the 1st respondent in both the appeals would contend that originally 1st and 2nd items were belonged to father of the plaintiff and defendants 1 and 2 and 3rd and 4th items were purchased from the income derived through 1st and 2nd item of the properties and thereby the plaintiff is entitled to 1/3rd share in all the properties. The trial Court erroneously dismissed the suit in respect of 3rd and 4th item of the properties and only decreed 1st and 2nd items. The plaintiff never executed release deed dated 18.01.1999, in fact, after the demise of father of plaintiff and 1st and 2nd defendants, the 1st defendant wanted to get the amounts available in the bank and to get the LIC policy amount obtained by their deceased father. For that purpose, she executed consent deed but she never executed release deed as alleged by the defendants. The defendants have played fraud in getting the release deed. While so, the said release deed has not been acted upon; the 1st defendant sold the properties to 3rd and 4th defendants in respect of the 1st item and also the 1st defendant sold the 2nd item of the property to 6th defendant. Therefore, those sale deeds are not binding upon the plaintiff's share over the properties. The 3rd and 4th defendants have mortgaged the properties to the banks and 6th defendant also



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mortgaged the property to the 7th defendant. The 8th and 9th defendants colluded with the 1st defendant had created encumbrances over the properties in the name of sale deeds and thereby, those deeds are not binding on the plaintiff.

14.1 The learned counsel for the respondents' further contended that in order to prove the case of the plaintiff, she was examined as P.W.1 and marked Ex.A1 to A25 and thereby she proved that release deed was not executed by her and no consideration was passed through the said release deed. Even as per the release deed, the relinquishment amount was mentioned as Rs.25,000/- each. But the sale deeds would go to show that they are disproportionate to the original value of the property. The 1st defendant himself admitted that the value of the property was Rs.20 lakhs on the date of execution of alleged release deed. But only a meagre amount of Rs.25,000/- alone mentioned in the deed. Therefore the said deed was obtained fraudulently. Hence the said deed is not binding upon the plaintiff and the trial Court after considering the evidences adduced on both sides decreed the suits in respect of 1st and 2nd item of the property. Therefore, the present appeal is liable to be dismissed.

15. In this case, the plaintiff has filed a suit for partition before the trial



Court in respect of the suit schedule properties. The trial Court has decreed the suit in respect of 1st and 2nd items and dismissed in respect of 3rd and 4th items. As against the dismissal of 3rd and 4th items, there is no appeal or cross objections preferred by the plaintiff and the present appeals were preferred by 1st, 2nd and 3rd defendants as against the decree passed in respect of 1st and 2nd items of the properties. Therefore, these appeals are only in respect of 1st and 2nd items of the Suit properties.

16. This Court heard both sides and perused the records. Upon hearing both sides and perusing the records, the points for determination in A.S. (MD).No.38 of 2021 are as follows:

1. Whether the plaintiff and the 2nd defendant had executed the release deed dated 18.01.1999 in favour of the 1st defendant?

2. Whether the plaintiff is entitled to share over the 1st and 2nd item of the property.

3. Whether the plaintiff is entitled to declaration in respect of sale deed dated 03.05.2001 in favour of 6th defendant executed by 1st defendant in respect of 2nd item of the suit property.

4. Whether the decree and judgment passed by the trial Court are sustainable in law or on facts?

5. Whether this appeal has to be allowed or not?



17. Likewise, the points for determination in A.S.(MD).No.150 of 2020 are as follows:

1. Whether the plaintiff and the 2nd defendant had executed the release deed dated 18.01.1999 in favour of the 1st defendant?

2. Whether the plaintiff is entitled to share over the 1st and 2nd item of the property.

3. Whether the plaintiff is entitled to the relief of declaration in respect of sale deed dated 20.10.2005 in favour of the 3rd defendant by the 1st defendant in respect of the 1st item of the property.

4. Whether the plaintiff is entitled to declaration in respect of sale deed dated 14.12.2005 in favour of 4th defendant executed by 1st defendant in respect of 1st item of the suit property.

5. Whether the plaintiff is entitled to declaration in respect of mortgage deed dated 18.01.2007 in favour of the 5th defendant.

6. Whether the plaintiff is entitled to declaration in respect of mortgage deed dated 25.10.2007 in favour of 5th defendant.

7. Whether the decree and judgment passed by the trial Court are sustainable in law or on facts?

8. Whether this appeal has to be allowed or not?



18. Points No.1 in A.S.(MD).Nos.38 of 2021 and 150 of 2020

(i) Before the trial Court, the plaintiff has filed a suit for the relief of partition and separate possession and to declare that the sale deeds executed in favour of 3rd, 4th and 6th defendants are not binding on the plaintiff's 1/3rd share over the property and declare that the mortgage deed in favour of 5th and 7th defendants are not binding upon the plaintiff's 1/3rd share over the property.

(ii) According to the plaintiff, the suit properties 1 and 2 belonged to father of the plaintiff and defendants 1 and 2; their father died on 23.3.1998. After his demise, the plaintiff and defendants 1 and 2 are equally entitled to the suit properties. The suit properties are under joint possession and enjoyment of the plaintiff and defendants 1 and 2.

(iii) The plaintiff and 2nd defendant entrusted the possession of the property to the 1st defendant and he enjoyed the properties and he purchased the 3rd and 4th item of the suit properties from and out of the income derived through 1st and 2nd schedule properties. Therefore all the properties are joint family properties of the plaintiff and 1st and 2nd defendants. The 1st defendant shared the income derived from the suit properties and paid a sum of Rs.30,000/- per year till 2009. Thereafter, he refused to pay the share to the plaintiff. Hence, he filed suit for partition.



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(iv) According to the defendants they admitted that originally 1st and 2nd properties belonged to Esthak Nadar, who is the father of plaintiff and 1st and 2nd defendants. But they denied that the 3rd and 4th items were purchased through income derived from the 1st and 2nd items of the Suit properties. According to the 1st defendant, 3rd and 4th items of the suit properties are his separate properties. The trial Court has dismissed the suit as against the 3rd and 4th items of the properties and there is no appeal or cross objections filed by the plaintiff in respect of those properties and the present appeals are filed by the defendants 1 to 3 only in respect of 1st and 2nd items of the properties. Therefore, the findings of the trial Court in respect of 3rd and 4th items are became final.

(v) According to the 1st defendant, after the demise of Esthak Nadar, the plaintiff and the 2nd defendant who are the sisters executed a release deed in his favour dated 18.01.1999 by relinquishing their rights over the properties. The plaintiff also taken a plea that she never executed any release deed but at the same time she executed a deed of consent after demise of her father to get benefits from the bank and LIC policies and also she pleaded that the said release deed was obtained by playing fraud. While so, it is the duty of the plaintiff to prove that the said release deed was obtained by playing fraud.



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(vi) The said release deed has been marked as Ex.B1 through the 1st defendant. In the said deed, the husband of the plaintiff and husband of 2nd defendant are the attesting witnesses. The plaintiff has failed to examine the attesting witness who is none other than her husband to prove that the said deed was not executed for relinquishing her right over the properties and only for consent deed to obtain the money from the bank amount and LIC policies benefits. In this context the PW1 in her cross examination stated as follows:-

”பவர் பத்திரம் எழுதி கொடுத்த தேதி அன்றே என் தகப்பனாருக்கு பாத்தியப்பட்ட மற்ற சொத்துக்களை பொறுத்தவரை நானும் 2ம் பிரதிவாதியும் சேர்ந்து 1ம் பிரதிவாதிக்கு ஆதரவாக பாகபாத்திய விடுதலை பத்திரம் ஒன்றை எழுதி கொடுத்துள்ளேன் என்றால் சரியல்ல. எல்.ஐ.சி மற்றும் வங்கி பணத்திற்காக சம்மத பத்திரம் ஒன்றை தான் எழுதி கொடுத்தேன் என்று சாட்சி சொல்கிறார். 1ம் பிரதிவாதி என்னிடம் எல்.ஐ.சி மற்றும் வங்கி பணத்திற்காக என்று சொல்லி ஒரு பத்திரத்தில் என்னிடம் கையொப்பம் வாங்கினார். 18.1.1999 ல் நான் பத்திரம் பதிவு செய்து கொடுத்தேன் என்றால் சரியாக ஞாபகமில்லை. என் கணவரும் 2ம் பிரதிவாதியின் கணவரும் 18.01.1999 தேதியிட்ட பாகபாத்திய விடுதலை பத்திரத்தில் சாட்சி கையொப்பம் செய்துள்ளார்கள் என்றால் அது எனக்கு சரியாக தெரியாது. என் கணவரின் தகப்பனார் பெயர் ஞானமுத்து. நானும் 2ம் பிரதிவாதியும் தாவா சொத்துக்களை பொறுத்து விடுதலை பத்திரம் எழுதி கொடுத்துவிட்டு தற்போது பொய்யாக பாகம் கோரி இந்த வழக்கை தாக்கல் செய்துள்ளேன் என்றால் சரியல்ல.”

Therefore, from the above said evidence, it is clear that the plaintiff



admitted the execution of deed\Ex.B1. But according to her, it is not a release deed, it was executed as consent deed. While so, it is the duty of the plaintiff to prove the alleged fraud played by the defendant. Further the same plaintiff also admitted through her cross examination that she issued notice to the defendants and the 1st defendant issued reply stating that she executed release deed dated 18.01.1999 and the said reply notice has been marked as Ex.A21. In the said EX.A21, there is a categorical averment that she executed release deed dated 18.1.1999 and thereafter only she filed the suit.

(vii) In the suit there is no pleadings about the above said relinquishment of the share and the release deed. Therefore, the plaintiff suppressed the material fact. In this context, the plaintiff in her cross examination stated as follows:-

”நான் 1ம் பிரதிவாதிக்கு தாவா சொத்துக்களை பொறுத்து முதலில் வழக்கறிஞர் அறிவிப்பு அனுப்பினேன் என்றால் சரிதான். அந்த அறிவிப்புக்கு 1ம் பிரதிவாதி பதில் அறிவிப்பு அனுப்பினார் என்றால் சரிதான். அந்த பதில் அறிவிப்பிலேயே 1 மற்றும் 9ம் பிரதிவாதியின் கூட்டு தொழிலை பற்றியும் அவர் சொந்த பணத்தில் சொத்து வாங்கிய விவரத்தையும் சொல்லியிருந்தார் என்றால் சரியல்ல. வா.சா.ஆ 21 பதில் அறிவிப்பில் சொத்தை நான் விடுதலை செய்து கொடுத்துவிட்டதாகவும் 1ம் பிரதிவாதி சொல்லியிருக்கிறார் என்றால் சரிதான்.18.1.1999 ல் விடுதலை பத்திரம் எழுதி கொடுத்ததை பற்றி 1ம் பிரதிவாதி வா.சா.ஆ 21 பதில் அறிவிப்பில் சொல்லியிருந்தும் அதை பற்றி எனது பிரதில் நான் எதுவும் குறிப்பிடவில்லை



என்றால் சரிதான்.”

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Therefore, from the evidence of P.W.1, it is clear that she received the reply notice and had knowledge about the averments in the reply notice that she executed a release deed dated 18.1.1999. But in the plaint, she nowhere stated about the alleged fraud played by the defendant and it was not executed as release deed and it is only consent deed. Only in the reply statement, which was filed after filing of written statement she pleaded that the said release deed was obtained by playing fraud. Once the plaintiff taken plea of fraud it is her duty to prove that the said document was obtained by playing fraud. There is no sufficient pleadings or evidence to substantiate the contention of the plaintiff and the plaintiff has not even examined her husband who is also one of the attesting witness in the said release deed. Therefore, the plaintiff failed to prove that the release deed was obtained by playing fraud.

(viii) Per contra, the 1st defendant was examined as D.W.1 and one of the co-executor was examined as D.W.2 and one of the attesting witness was examined as D.W.3. The defendants side witnesses D.W.1 to D.W.3 have categorically deposed about the execution and attestation of the release deed/Ex.B1. Therefore, they proved the execution and attestation of the release deed Ex.B.1 in accordance with law.

(ix) Further, after the execution of release deed, the 1st defendant sold



the properties to 3rd and 4th defendant in respect of the 1st item of the property and they are in possession and enjoyment of the property and the same was also admitted by the plaintiff in her cross examination.

(x) At this juncture it is appropriate to refer the admission made by the plaintiff in her cross examination. She admitted in her cross examination that it is not correct to say that upto 2005, the 1st defendant was in possession of the 1st item of the property. Further he stated that thereafter she do not know and the whereabouts of 1st defendant's residence. The evidence of PW1 extracted here under:

”என் தகப்பனார் உயிருடன் இருந்தவரை 1ம் இலக்கசொத்தில் இருந்தார். அதன் பின்பு 1ம் பிரதிவாதி அந்த சொத்தில் இருந்து வருகிறார் என்றால் சரியல்ல. 2005ம் ஆண்டுவரை 1ம் இலக்கசொத்தில் 1ம் பிரதிவாதி இருந்துவந்தார். அதன்பின்பு அவர் எங்கிருக்கிறார் என்று தெரியாது. அதன்பின்பு எங்களுக்குள் பேச்சுவார்த்தை இல்லை என்று சாட்சி சொல்கிறார்.”

(xi) The above said admission would go to show that after 2005, the 1st defendant was not in possession of the property and the plaintiff admitted that the 1st item of the property was sold to 3rd and 4th defendants in the year 2005. Thereby it is clear that the above said release deed dated 18.1.1999 was acted upon and she had knowledge about the sale deed in the year 2005 itself, but she has not taken any steps, immediately. According to the pleadings of the plaintiff up to 2009 the 1st defendant shared income of Rs.30,000/- per year, but in the year 2005 itself the portion of property of 1st item was sold to



3rd parties and the 1st defendant was not in possession after 2005. Therefore, from the said conduct of the plaintiff we can infer that she know about the sale deed and the release deed.

(xii) Further, PW.1 in her cross examination stated that she has not sought for any relief in respect of the release deed and she categorically admitted that

”பிராதில் நான் 18.1.1999 தேதியிட்ட விடுதலை பத்திரத்தை பற்றி குறிப்பிடவில்லை என்றால் அதுபோன்ற பத்திரம் எதுவும் இல்லாததால் கூறவில்லை. பிராதில் மேற்சொன்ன விடுதலை பத்திரத்தை ரத்துசெய்யக்கோரி பரிகாரம் எதுவும் கோரவில்லை என்றால் சரிதான். 1ம் பிரதிவாதியின் பதில் அறிவிப்பிற்கு பிறகும் நான் 18.1.1999 தேதியிட்டவிடுதலை பத்திரத்தை ரத்து செய்யவோ அல்லது அவர் மீது மோசடியாக கிரையம் செய்து கொடுத்துவிட்டார் என்று நடவடிக்கை எதுவும் எடுக்கவோ இல்லை என்று சொன்னால் 1ம் பிரதிவாதி எனது சகோதரர் என்பதாலும் 18.1.1999 தேதியிட்ட விடுதலை பத்திரம் எதுவும் இல்லாததாலும் நாங்கள் அவ்வாறு நடவடிக்கை எதுவும் எடுக்கவில்லை. சம்மத பத்திரம் எதையும் நான் நீதிமன்றத்தில் தாக்கல் செய்யவில்லை என்றால் அதுபோன்ற பத்திரம் என்னிடம் இல்லாததால் தாக்கல் செய்யவில்லை. 1, 2 பிரதிவாதிகளிடமும் அது இல்லை. நான் பத்திர பதிவு அலுவலகத்தில் சென்று கையொப்பம் இட்டேன் என்றால் அலுவலகத்திற்குள் செல்லவில்லை வரண்டாவில் கையெழுத்து போட்டேன்.”

Therefore, from the above said evidence of P.W.1, it is clear that she has not signed in the document at Registrar Office and she only put her signature outside the Registrar Office. Per contra Ex.B1 is registered



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document and she put her signature in the Registrar Office. Therefore, the evidence of P.W.1 is not trust worthy and she suppressed the execution of release deed and the conduct of the P.W.1 shows that she know very well about the execution of release deed dated 18.1.1999 and she know about the possession of D3 and D4 from the year 2005. Thereby, the plaintiff has failed to prove that the said release deed was obtained by playing fraud.

(xiii) Per contra the defendants proved that deed was duly executed. Further the plaintiff has not denied the passing of consideration, her contention is that the amount mentioned in the deed is not proportionate with the value of the property on the date of execution of sale deed. Normally while executing the release deed, the value of the property cannot be looked into and thereby the inadequacy of consideration is immaterial.

(xiv) Further P.W.1 in her evidence stated that since there is no description of property mentioned in the deed dated 18.1.1999, without reading the contents of the document, she signed in the document as if the said document is consent deed, therefore, the said deed will not be binding upon in respect of 1/3rd share of the plaintiff. In this context, she stated in her chief affidavit that

”மேற்படி விடுதலைப்பத்திரம் என குறிப்பிட்டுள்ள பத்திரத்தில் என் பொது குடும்ப



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சொத்துக்களைப் பொருத்து யாதொரு விவரமும் குறிப்படாத நிலையில் மேற்படி 18.1.1999 ம் தேதிய விடுதலைப்பத்திரமானது என்னால் படித்துப் பார்த்து அதன் உண்மையான சங்கதிகளை அறிந்துக் கொள்ளாமல் 1 ம் பிரதிவாதி உடன் பிறந்த சகோதரர் என்ற முறையில் சம்மதப்பத்திரம் என்ற நிலையில், நான் கையொழுத்து செய்திருக்கும் பட்சத்திலும், மேற்படி பத்திரத்தின் மூலம் எனது பிரிவினையில்லாத 1□3 பாக சொத்தினை நான் விடுதலை செய்து கொடுத்ததாக சட்டரீதியாக ஏற்றுக்கொள்ளத்தக்கதில்லை. மேலும், மேற்படி கூடுதல் சங்கதிகளை மேற்படி பத்திரத்தில் கண்டிருக்கும் பட்சத்தில் அவை யாவும், 1 ம் பிரதிவாதியின் நம்பிக்கை மோசடி செயலாகும். மேலும், மேற்படி 18.01.1999 ம் தேதிய பத்திரத்தின் மூலம் நான் யாதொரு பிரதிபிரயோஜனத் தொகையும் உண்மையில் பெற்றுக் கொள்ளவில்லை என்றும், மேற்படி பத்திரத்தில் நான் பெற்றுக் கொண்டதாக குறிப்பிடப்பட்டுள்ள தொகையும் 1 ம் பிரதிவாதியின் நம்பிக்கை மோசடி செயலாகும்.”

(xv) The above extracted deposition in respect of chief examination of P.W.1 shows that she admitted the signature found in Ex.B1. But it was not executed for release deed and only for consent deed. Once the plaintiff came to know about the dis-possession of the 1st defendant in the 1st item of the property and the same came to knowledge to her in the year 2005, she ought to have taken steps to file the suit immediately, but she waited till 2011. More over it is admitted fact that the plaintiff along with D1 and D2 executed power deed in favour of one Fruse Antony Martin who is husband of 2nd defendant in respect of the property situated in Kanniyakumari District;



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thereafter the said property was sold to 3rd parties. But, so far, the plaintiff has not taken any steps in respect of that property and the said property also has not been included in the suit. Though the defendants have not taken any plea in respect of partial partition, it is admitted by the plaintiff that the said property belongs to her father. But as against that property, no steps was taken. But the plaintiff has not included the said property in this suit and there is a pleading in the plaint that she would take separate steps for the property. In the release deed Ex.B1 the attesting witnesses are none other than the husband of plaintiff and husband of 2nd defendant. The plaintiff not even examined her husband who is one of the attesting witness as witness in this suit. When the plaintiff has taken plea that the release deed was not executed and she only put her signature for consent deed, she ought to have examined her husband as witness in this suit, but she failed to examine her husband as witness in the suit. The said conduct of the plaintiff would show that she know about the execution of release deed in favour of the 1st defendant as well as the power deed dated 18.1.1999.

(xvi) Yet another contention raised by the plaintiff is that she has not received any consideration for the said release. In the pleadings nowhere she has stated that she never received the amount of Rs.25,000/- but her contention is that the amount mentioned in the release deed is



disproportionate to the market value of the property on the date of release deed.

(xvii) So far as the relinquishment deed is concerned, in usual course, the co-sharers while relinquishing the properties in favour of her blood relatives, they wont expect the value of the property and after receiving some consideration, they used to relinquish their shares. If they want to get the market value, then they could sell the property through sale deed, but the relinquishment deed is only for nominal receipt of amount and they would execute the deed. Therefore, the value of the property is immaterial as far as the release deed is concerned. Therefore, for the above said reasons, in so far as the release deed is concerned, the contention of the plaintiff that the amount mentioned in the release deed is inadequate, is not an acceptable one.

(xviii) Therefore, in view of the above said discussions, this Court is of the opinion that the plaintiff and 2nd defendant had executed the release deed dated 18.01.1999 in favour of the 1st defendant. The point is thus answered in favour of the appellant as pointed out herein.

19. Point No.2 in A.S.(MD).Nos.38 of 2021 and 150 of 2020



The plaintiff has filed the suit for the relief of partition and separate possession of the suit properties. The trial Court has decreed the Suit in respect of 1st and 2nd items by holding that the plaintiff is entitled to 1/3 share over the properties.

(ii) According to the plaintiff, 1 and 2 items of properties belonged to her father namely Esthak Nadar. It is also admitted that he died in the year 1998 and after the demise, the plaintiff and the defendants 1 and 2 each entitled to share over the properties.

(iii) The above said facts are not denied by the defendants. But according to the defendants, the plaintiff and 2nd defendant executed a release deed by relinquishing their share in favour of the 1st defendant. This Court also in the previous point decided that the plaintiff and the 2nd defendant had executed a release deed dated 18.01.1999 in favour of the 1st defendant. Once the plaintiff relinquished her right in favour of 1st defendant, she cannot claim any share over the suit properties. Therefore, the plaintiff is not entitled to share over the 1st and 2nd items of the suit properties.

(iv) Further according to the 3rd and 4th defendants, the properties were purchased in the year 2005. The plaintiff also has knowledge about the dispossession of the 1st defendant in the 1st item of the property. The 3rd



defendant was examined as D.W.4 and he deposed about the purchase of the property and the plaintiff also in her evidence stated that up to 2005, the 1st defendant was residing in the 1st item of the property and thereafter she does not know the whereabouts of D1. Therefore, it shows that the plaintiff had knowledge about dis-possession of the 1st defendant and the 3rd and 4th defendants are in possession of the property, but the plaintiff has not taken any steps till 2011. Therefore, the plaintiff after execution of release deed dated 18.1.1999 cannot claim any share over the properties.

(v) It is relevant to point out that the plaintiff after knowing the fact that she has executed the release deed in respect of suit properties, she has not taken any steps to set aside the said relinquishment deed on the ground that it was obtained by playing fraud. Once the plaintiff came to knowledge about the Ex.B1/ document she ought to have taken steps to set aside the said deed, since she is one of the parties to the document. Therefore, the plaintiff without challenging the said release deed, she is not entitled to claim share over the properties. Thus the point is answered.

20. Point No.3 in A.S.(MD).No.150 of 2020

The plaintiff has sought for the relief of declaration in respect of the sale deed dated 20.10.2005 in favour of the 3rd defendant in respect of the 1st



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item of the property. According to the plaintiff, she is entitled to 1/3rd share over the property, but the 1st defendant sold the property in favour of the 3rd defendant through sale deed dated 20.10.2005 and thereby the said sale deed is not binding upon her in respect of 1/3rd share. This Court in previous point decided that the plaintiff had already relinquished her share in respect of the property through release deed dated 18.1.1999 and also decided that the plaintiff is not entitled to any share over the property. The learned counsel appearing for the appellant has relied the judgments in (1) Kuppurama Mudaliar Vs. The State of Tamil Nadu and others reported in AIR 1979 Madras 263. (2) A.Leela Vs.Paaniyandi and others made in CRP.No.1324 of 1996 dated 11.02.1998. As far as the judgment relied on by the appellant are concerned, the proposition in the said decisions will not be applicable to the present facts of the case since the plaintiff is not a party to the said documents. Therefore, the plaintiff is not entitled to any relief in respect of the sale deed dated 20.10.2005, in favour of the 3rd defendant. Thus the point is answered.

21. Point No.4 in A.S.(MD).No.150 of 2020

The plaintiff has sought for the relief of declaration in respect of the sale deed dated 14.12.2005 in favour of the 4th defendant in respect of the 1st item of the property. According to the plaintiff, she is entitled to 1/3rd share over the property, but the 1st defendant sold the property in favour of the 4th



defendant through sale deed dated 14.12.2005 and thereby the said sale deed is not binding upon her in respect of 1/3rd share. This Court in previous point decided that the plaintiff had already relinquished her share in respect of the property through release deed dated 18.1.1999 and also decided that the plaintiff is not entitled to any share over the property. Therefore, the plaintiff is not entitled to any relief in respect of the sale deed dated 14.12.2005, in favour of the 4th defendant. Thus the point is answered.

22. Point No.5 in A.S.(MD).No.150 of 2020

The plaintiff has sought for the relief of declaration in respect of the mortgage deed dated 18.01.2007 in favour of the 5th defendant. According to the plaintiff, she is entitled to 1/3rd share over the property, but the 1st defendant mortgaged the property in favour of the 5th defendant dated 18.01.2007 and thereby the said mortgage deed is not binding upon her in respect of 1/3rd share. This Court in previous point decided that the plaintiff had already relinquished her share in respect of the property through release deed dated 18.1.1999 and also decided that the plaintiff is not entitled to any share over the property. Therefore, the plaintiff is not entitled to any relief in respect of the mortgage deed dated 18.01.2007, in favour of 5th defendant. Thus the point is answered.

23. Point No.6 in A.S.(MD).Nos.150 of 2020



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The plaintiff has sought for the relief of declaration in respect of the mortgage deed dated 25.10.2007 in favour of the 5th defendant. According to the plaintiff, she is entitled to 1/3rd share over the property, but the 1st defendant mortgaged the property in favour of the 5th defendant dated 25.10.2007 and thereby the said mortgage deed is not binding upon her in respect of 1/3rd share. This Court in previous point decided that the plaintiff had already relinquished her share in respect of the property through release deed dated 18.1.1999 and also decided that the plaintiff is not entitled to any share over the property. Therefore, the plaintiff is not entitled to any relief in respect of the mortgage deed dated 25.10.2007, in favour of the 5th defendant. Thus the point is answered.

24. Point No.3 in A.S.(MD).Nos.38 of 2021

The plaintiff has sought for the relief of declaration in respect of the sale deed dated 03.05.2001 in favour of the 6th defendant in respect of the 2nd item of the property. According to the plaintiff, she is entitled to 1/3rd share over the property, but the 1st defendant sold the property in favour of the 6th defendant through sale deed dated 03.05.2001 and thereby the said sale deed is not binding upon her in respect of 1/3rd share. This Court in previous point decided that the plaintiff had already relinquished her share in respect of the property through release deed dated 18.1.1999 and also decided that the



plaintiff is not entitled to any share over the property. Therefore, the plaintiff is not entitled to any relief in respect of the sale deed dated 03.05.2001, in favour of the 6th defendant. Thus the point is answered.

25. Point No.7 in A.S.(MD).No.150 of 2020 and Point No.4 in A.S.(MD).No.38 of 2021

The plaintiff has filed the suit for relief of partition and separate possession of the suit properties. The trial Court has decreed the Suit in respect of 1st and 2nd items by holding that the plaintiff is entitled to 1/3 share over the properties. The trial Court failed to consider the fact that the plaintiff has executed the release deed in favour of the 1st defendant through deed dated 18.1.1999 and the plaintiff having admitted the execution of deed dated 18.1.1999, she has to prove that the said deed was not executed for release deed and only for consent deed in respect of getting bank amount and LIC policy amount. The plaintiff failed to examine the attesting witness of the document. Per contra the defendants have proved the execution of Ex.B1 by examining the attesting witness and the co-executor of Ex.B1 was examined



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as D.W.2 and she also categorically stated about the execution and this aspect has not been considered by the trial Court. Further the trial Court has dismissed the suit in respect of 3rd and 4th items of the property. At the same time, the trial court failed to consider the conduct of the plaintiff that after having knowledge about the dis-possession of 1st defendant and the possession of other defendants, she has not taken any steps till 2011. Further, the trial Court failed to consider the relevant fact that plaintiff along with D1 and D2 executed Ex.A2 power deed in favour of one Fruse Antony Martin in respect of the property situated in Kanniykumari District and thereafter the said property was sold to 3rd parties. But, so far, the plaintiff has not taken any steps in respect of that property and the said property also has not been included in the suit. Though the defendants have not taken any plea in respect of partial partition., it is admitted by the plaintiff that the said property also belongs to her father. But as against that property, no steps were taken. This conduct would show that she know about the execution of release deed as well as the power deed dated 18.1.1999.

(ii) The trial Court without considering the above said aspects, decreed the suit in respect of 1st and 2nd items of the property and also granted relief of declaration in respect of the documents in Ex.A4 to A8. The trial Court while discussing about the points, declared that Ex.A4 to A8 are not binding



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upon the 1/3rd share of the plaintiff. But at the same time, in the result portion, only declared in respect of EX.A5 to A8. Therefore, as discussed supra, this Court is of the opinion that the decree and judgment passed by the trial Court are unsustainable and the same are liable to be set aside by allowing these appeals. Thus the points are answered.

26. In the result,

(i) appeals in A.S.(MD).Nos.150 of 2020 and 38 of 2021 are allowed. The decree and judgment passed by the 1st Additional District Judge, Madurai in O.S.No.114 of 2011 dated 01.02.2020 are set aside. The suit in O.S.114 of 2011 is dismissed. No costs. Consequently connected miscellaneous petitions are closed.

20.06.2024

Index : Yes/No
Internet : Yes/No
Citation : Yes/No
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To

The 1st Additional District Judge, Madurai.



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