



S.A.(MD)No.239 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 03.07.2024

PRONOUNCED ON:13.09.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD)No.239 of 2017

and

C.M.P.(MD)No.4949 of 2017

Muthulakshmi : Appellant/2nd Respondent/
2nd Defendant

Vs.

1.Selvarani
2.Mahalakshmi : Respondents 1 and 2/Appellants/
Plaintiffs

3.T.Kumarasamy : 3rd Respondent/2nd Respondent/
1st Defendant

PRAYER:- Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree passed in A.S.No.13 of 2012, dated 14.03.2017, on the file of the Subordinate Court, Palani, reversing the judgment and decree in O.S.No.33 of 2008, dated 14.12.2011, on the file of the District Munsif Court, Palani.



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For Appellant : Mr.Anand Chandrasekar
for M/s Sharvabhavuman Associates

For Respondents :Mr.VR.Shanmuganathan
for R.1 and R.2
:R.3-Exparte

JUDGMENT

The Second Appeal is directed against the judgment and decree passed in A.S.No.13 of 2012, dated 14.03.2017, on the file of the Subordinate Court, Palani, reversing the judgment and decree made in O.S.No.33 of 2008, dated 14.12.2011, on the file of the District Munsif Court, Palani.

2. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original suit.

3. The second defendant is the appellant. The respondents 1 and 2 as plaintiffs have filed the above suit against the appellant and the third respondent for partiton and allotment of 2/3 shares in the suit properties in favour of the plaintiffs. Admittedly, the plaintiffs are the sisters of the



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first defendant. It is not in dispute that the suit properties originally belonged to one Kalianna gounder – paternal grandfather of the plaintiffs and the first defendant ancestrally, that the family members of Kalianna gounder entered into a registered partition dated 25.06.1968, wherein the properties shown as “B” schedule properties therein including the suit properties in the present suit were allotted to the share of Thangavel gounder – father of the plaintiffs and the first defendant and that the said Thangavel gounder died intestate in the year 1992.

4. The case of the plaintiffs is that after the death of their father – Thangavel gounder, the first defendant was managing the suit properties and giving share of income to the plaintiffs, that the second plaintiff has filed a suit against the first defendant in respect of some of their properties in O.S.No.161 of 2007 and hence, the first defendant has become inimical towards the plaintiffs and on that account, the first defendant has made a claim that he is going to alienate the suit properties, that when the plaintiffs applied for encumbrance certificate, they came to know about the sale deed dated 01.09.2005 allegedly executed by the first defendant in favour of the second defendant and other encumbrances made, that the first defendant in the said sale deed



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has stated that the plaintiffs and their mother have executed a registered release deed dated 06.05.1994 in favour of the first defendant and on that basis, he had become the absolute owner of the properties including the suit properties, that the plaintiffs came to know that while executing the settlement deed in favour of their mother by the first defendant, the first defendant under the pretext of obtaining attesting signatures from the plaintiffs has created the release deed, that the plaintiffs were constrained to send a legal notice dated 05.12.2007 to the defendants demanding partition of the suit properties, that though the first defendant has received the same, he has not chosen to send any reply nor complied with the notice demand, that the second defendant has sent a reply dated 11.12.2007 with false and untenable allegations and that therefore, the plaintiffs were constrained to file the present suit claiming partition and allotment of their 1/3 share each in the suit properties.

5. The first defendant before the trial Court and the first appellate Court, had remained exparte.

6. The defence of the second defendant is that the plaintiffs along with their mother executed a release deed dated 06.05.1994 relinquishing



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their rights in the joint family properties in favour of the first defendant, that the contentions of the plaintiffs that they have not executed the release deed and that when they affixed their signatures for attesting the settlement deed dated 06.05.1994 executed by the first defendant in favour of their mother, the first defendant has misused the same are false and incorrect, that the second defendant, on proper legal advise, scrutiny of documents, purchased an extent of 3 Acres in item No.1 of the suit property, vide sale deed dated 14.09.2005 and the remaining extent of 2.93 Acres, vide sale deed dated 04.02.2008 for valuable consideration and since the date of sales, the second defendant has been in continuous possession and enjoyment of the first item of the property, that the second defendant has sent a suitable reply dated 11.12.2007 in response to the plaintiffs' legal notice and that since the plaintiffs have already relinquished their rights in the suit properties, they are not entitled to claim any share in the suit properties and therefore, the suit is liable to be dismissed.

6. The learned trial Judge, upon perusing the pleadings of both sides, has framed the following issues:



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(a) Is it true that the plaintiffs and their mother jointly executed a release deed dated 06.05.1994 in favour of the first defendant?

(b) Whether the sale deed dated 12.06.2007 executed in favour of the second defendant is valid?

(c) Whether the plaintiffs are entitled to get 1/3rd share each in the suit properties?

(d) To what other reliefs?

7. During trial, the plaintiffs have examined the second plaintiff – Mahalakshmi as P.W.1 and two other witnesses namely Shanmugavel and Appadurai as P.W.2 and P.W.3 respectively and exhibited 10 documents as Exs.A.1 to A.10. The second defendant has examined herself as D.W.1 and summoned and examined the staff attached to the Sub-Registrar office – Jeyalilly as D.W.2 and exhibited 5 documents as Exs.B.1 to B.5 and through D.W.2, 3 witness documents came to be exhibited as Exs.X.1 to X.3. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, has passed the judgment and decree dated 14.12.2011 dismissing the suit. Aggrieved by the dismissal of the suit, the plaintiffs have preferred an appeal in A.S.No.13 of 2012 and the learned



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Subordinate Judge, Palani, upon considering the materials available on record and on hearing the arguments of both sides, has passed the judgment and decree dated 14.03.2017 by allowing the appeal and thereby setting aside the judgment and decree passed by the trial Court and granting the preliminary decree declaring that the plaintiffs are entitled to get 1/3 share each in the suit properties. Challenging the preliminary decree granted by the first appellate Court, the second defendant has preferred the Second Appeal.

8. At the time of admission, the following Substantial Questions of Law came to be formulated:

A. When the 2nd plaintiff who was examined as P.W.1, had admitted her signature in the release deed dated 06.05.1994, whether the approach of the appellate Court in holding that the release deed has not been proved by examining the attestors to the said document is correct in law?

B. When the plaintiffs have not raised any plea or prayer as to the invalidity of release deed dated 06.05.1994, on the basis of improper registration, whether the approach of the appellate Court in holding that



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the release deed is invalid on the basis of Sections 21 and 51 of the Registration Act, 1908 is sustainable in law?

C. Whether the finding of the appellate Court that the release deed dated 06.05.1994 marked as exhibit X.3, has not been registered properly as contemplated under Sections 21 and 51 of Registration Act, 1908 and as such cannot be deemed as a valid instrument is correct in law?

9. It is pertinent to note that the plaintiffs have claimed partition and allotment of 1/3 share each on the basis that the properties were allotted to their father in a partition entered into between the plaintiffs' father and his brothers, vide partition deed dated 25.06.1968 in respect of their ancestral properties and that the plaintiffs's father and mother died intestate. But the second defendant has claimed ownership over the first item of the suit properties on the basis of the sale deeds executed by the first defendant in his favour, who in turn claimed ownership of the entire properties on the basis of the registered release deed dated 06.05.1994 executed by the plaintiffs and their mother in favour of the first defendant.



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10. The learned trial Judge, by holding that the execution of release deed dated 06.05.1994 by the plaintiffs and their mother has been proved by the second defendant and since the release deed is a valid document, the sales made by the first defendant in favour of the second defendant based on the release deed, are also legally valid and that since the plaintiffs have already relinquished their rights in the suit properties, they are not entitled to claim partition, dismissed the suit. But on the other hand, the learned first appellate Judge, by placing the burden on the second defendant to prove the execution of the release deed and by holding that the second defendant has failed to prove the execution of the release deed, dated 06.05.1994, that the said release deed has also been not registered in terms of Sections 21 and 51 of the Indian Registration Act and that since the release deed is not a valid document, the first defendant had no saleable interest in the suit properties and hence, the sales obtained by the second defendant from the first defendant are not valid, has granted the preliminary decree as sought for by the plaintiffs.

11. The learned Counsel for the appellant/second defendant would submit that though the plaintiffs in their plaint would claim that they have not executed the release deed, in the subsequent paragraphs, they



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would claim that when they went to attest the settlement deed executed by the first defendant on the same date in favour of their mother, using the said signatures, he has created the release deed, that second plaintiff as P.W.1 in her chief examination has not stated anything denying the execution of release deed, that P.W.1 in her cross-examination would admit her signatures found in the release deed and that since the plaintiffs have not disputed the release deed specifically and moreover, second defendant has admitted her signatures in the release deed, the question of examining the attestors to the release deed does not arise at all, that since the plaintiffs have alleged fraud in an indirect manner by alleging that the signatures were obtained from them under another pretext, but they have not raised necessary pleadings with regard the alleged fraud in terms of Order 6 Rule 4 C.P.C., and that the plaintiffs have not adduced any evidence to substantiate the same.

12. The learned Counsel would further submit that the attestors to the release deed are the close relatives of the plaintiffs, who were examined as P.W.2 and P.W.3 and they have also not specifically denied their attestation of the release deed and the execution of the same by the plaintiffs, that the said witnesses would only feign ignorance, that the



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plaintiffs have not raised any plea about the non-compliance of the release deed in term of Sections 21 and 51 of the Indian Registration Act in their plaint, that the absence of specific description of the property in the release deed, would not invalidate the release deed itself and that therefore, the release deed executed by the plaintiffs along with their mother in favour of the first defendant are to be construed as a valid document and consequently, the sales effected by the first defendant in favour of the second defendant are to be considered as valid.

13. The learned Counsel for the respondents/plaintiffs would submit that as per their case, the release deed was obtained under the guise of getting witness signatures in the settlement deed executed by the first defendant to his mother for some other properties and registered on the same day, that the plaintiffs are admittedly illiterates, that a combined reading of witnesses of P.W.1, P.W.2 and P.W.3 would go to show that the plaintiffs signed some documents thinking themselves as witnesses and without knowing that it is a release deed and there was no understanding on that day to release their shares and as such, the release deed was obtained by misrepresentation, that the first defendant is a beneficiary under the release deed and as such, the second defendant has no



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independent right, but claims only through the first defendant and that therefore, only if the release deed is proved, the second defendant's right gets fructified and hence, the release deed must be proved by the first defendant.

14. The learned Counsel would further submit that the first defendant who sold the property on the basis of the release deed, has not entered into witness box to assert that he got the release, that the second defendant who is the subsequent purchaser from the first defendant alone had entered the box, that the second defendant has only produced xerox copy of the release deed and the same was marked as Ex.B.1 and as such, the said document has no evidentiary value and is inadmissible in evidence, that in the absence of production of the original of the release deed and the failure of the first defendant to enter into witness box, adverse inference has to be drawn, that the above aspects would go to prove that the release deed was not executed with any intention to release the shares and that it was obtained by playing fraud.

15. The learned Counsel would further submit that the release deed do not contain any schedule of property as mandatorily required under



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Section 21 r/w 51 of the Indian Registration Act, that the compliance of Section 21 of the Registration Act is mandatory, as the object of the registration is not to record of transfer interparties, but notice of transfer to public and therefore, the registration of release of particular schedule of property is must to effect transfer of that property, that since the release deed did not contain any schedule of property and the same was recorded only in Book IV and not in Book I, the same cannot be considered as valid document, that the recitals in the release deed are not to the effect that they are releasing their shares in the properties of Kaliyanna gounder or Thangavelu gounder and hence, the properties are not certain and specific, that the evidence of D.W.2 and the documents under Exs.X.1 to X4 would go to show that there were other registrations done between the parties on the same day and that the appellate Court has rightly allowed the appeal and set aside the judgment and decree passed by the trial Court.

16. It is pertinent to note that the plaintiffs in their plaint have referred about the release deed dated 06.05.1994 which came to be registered in Document No.37/1994, but the plaintiffs have taken a stand that they were taken to the registrar office to sign as attesting witnesses



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in the settlement deed executed by the first defendant in favour of their mother, but the first defendant utilising the signatures obtained from the plaintiffs, has forged and created the release deed now in dispute. It is necessary to refer the exact plaint averments hereunder for better appreciation:

“ 7. 1 – ம் பிரதிவாதி சேன்ற 14.09.2005 – ம் ுத்தி வழக்குச் சொத்துக்களைப் பொருத்து 2 – ம் பிரதிவாதிக்கு ஒரு மலரணையான கிரையப்பத்திரம் எழுதிப் பதிந்து கொடுத்துள்ளார். ஆதில் தனக்கும்இ வாதிகளுக்கும் பூர்வீகப் பாத்தியப்பட்ட சொத்துக்களை வாதிகளின் பாகத்தைப் பொருத்துச் சேன்ற 06.05.1994 – ம் ுத்திய பழனி 1 – நிர் ணை சார்பதிவகம்இ 4.14.87.88.37 / 1994 – ம் எண் பொது பாகப்பாத்திய விடுதலைப் பத்திரம் மூலம் விடுதலை பெற்றிருப்பதாகக் கண்டு கிரையம் கொடுத்துள்ளார். அவ்வாறான விடுதலைப் பத்திரம் எதுவும் ுமற்படி ுத்தியில் வாதிகள் 1 – ம் பிரதிவாதிக்கு எழுதிக் கொடுக்கவில்லை.

8. உண்மையில் 1 – ம் பிரதிவாதிதான் தன் தாயாருக்கு ுமற்படி ுத்தியில் ஒரு தானசாசனப் பத்திரம் எழுதிக்கொடுத்தார். அதற்கு வாதிகள் ரூவரும் சாட்சிக் கையெழுத்துப் ுபாடுமாறு அழைத்ததை ஏற்றுக்கொண்டு கையெழுத்துப் ுபாட்டதை ஏதா ுபார் ஐரியாக உற்பத்தி செய்து பதிவு செய்திருப்பதாக வாதிகள் தற்பாது



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அறிகிறார்கள். மஹும் மிரதிவாதிகள் நேவரும் மசர்ந்து வழக்குச்
சொத்துக்களைப் பொருத்து வாதிகளுக்குத் தெரியாமல் பல சூடுஇ
ஒத்திஇ மபான்ற வில்லட்களை சட்டவிராதமாக
ஏற்படுத்தியுள்ளார்கள்.””

17. As rightly contended by the learned Counsel for the second defendant, the second plaintiff as P.W.1 in her chief examination affidavit has nowhere denied or disputed the execution of the release deed and even there was no reference to the release deed dated 06.05.1994, despite specific averments with regard to the execution of the release deed in the written statement of the second defendant. More importantly, as rightly pointed out by the learned Counsel for the second defendant, P.W.1 in her cross-examination would admit the signatures found in the release deed, dated 06.05.1994 and on the basis of the said admission, the said signature came to be exhibited as Ex.B.1

18. It is pertinent to note that the document dated 06.05.1994 in entirety was not marked and only the signatures of the second plaintiff found in that document came to be exhibited. It is evident from the deposition of P.W.1, at the time of marking the second plaintiff's



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signatures as Ex.B.1, the Counsel appearing for the plaintiffs had raised objection that the document that was shown to P.W.1 was only a xerox copy and the learned trial Judge has marked the said signatures, subject to the objections raised by the Counsel for the plaintiffs. But it is pertinent to note that neither the trial Judge nor the first appellate Judge has referred the above objections raised by the plaintiffs' Counsel and no decision was given by them with regard to the said objections. When a trial Judge has marked a particular document subject to the objections raised by the other side and fails to decide the objections at that point of time and leaving it for deciding at the time of pronouncement of judgment, then the trial Court is duty bound to consider the objections and give their decision with regard to the objections in the judgment.

19. In the case on hand, as already pointed out, both the Courts have not given their findings with regard to the objections. But it is evident from the records that the second defendant's side has produced and shown the registration copy of the release deed dated 06.05.1994 to P.W.1 and on admission of her signature, the same came to be marked as Ex.B.1 and it is not a xerox copy as objected and recorded by the learned trial Judge. It is pertinent to note that when P.W.1 was in witness box,



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during her cross-examination, the other side has shown the document and elicited the answer and on that basis, the signatures found in that document came to be exhibited and as such, the plaintiffs' side have absolutely nothing to raise objections and even assuming that the document shown to the witness is a xerox copy of the document and when the witness was questioned about the signatures found in that document, the other side has absolutely no right to raise objections on the ground that it is a xerox copy and even if the witness admits the xerox copy of the document, that itself can be marked. Considering the above, the objection raised by the plaintiffs' side is absolutely devoid of substance and is liable for rejection.

20. P.W.1 in her cross-examination would say that she came to know about the release deed subsequent to the filing of the suit and the relevant portion is extracted hereunder:

“..... மற்கண்ட பாகபாத்திய விடுகலை பத்திரமானது 1ம் பிரதிவாதியால் ஏற்படுத்தப்பட்டுள்ளது என்ற விபரம் எனக்கு நீத வாழ்க்கு தாக்கல் செய்த பின்னிட்டுதான் எனது வழக்கறிவர் மூலமாக தெரியவந்தது. வழக்கறிவர் கூறிதான் எனக்கு பாகபாத்திய விடுகலைப்பத்திரம் பற்றி எனக்கு தெரிய வந்தது. மற்ற விபரம் எனக்கு தெரியாது.”



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But immediately, she would turn around and say

“5.12.07ம் ஁ததி வா.சா.ஆ.ஃன் ஁ுலம் ஁ஃகளால் வழக்கறி஁ர் அறிவிப்பு அனுப்பப்படுவதற்கு ஁ுன்பு 1ம் ஁ிரதிவாதி஁ிட஁ிருந்து ஁ஃகளுக்கு வந்த அறிவிப்பை கண்ட ஁ின் தான் பாகபாத்திய விடுதலை பத்திர஁ானது ஁ஃகளால் ஁ழுதப்பட்டுள்ளது ஁ன்று 1ம் ஁ிரதிவாதி கூறிய விபரம் ஁ஃகளுக்கு தெரிய வந்தது.

..... வா.சா.ஆ.9 பதிலறிவிப்பு 2ம் ஁ிரதிவாதியால் அனுப்பப்பட்ட ஁ிறகு ஁ழுதிக்கொடுத்துன் ஁ன்று சொல்வது போ஁் ஁ன்று தெரிந்துகொண்டன். 1ம் ஁ிரதிவாதி ஁ுமற்கண்டவாறு நாஃகள் பாகபாத்திய விடுதலைபத்திரம் ஁ழுதிக் கொடுத்தா஁் ஁ன்று ஁ுமாசடி செய்ததன் காரண஁ாக 1ம் ஁ிரதிவாதி ஁ீது சட்டப்பூர்வ஁ான நடவடிக்கை ஁துவும் ஁டுத்தீர்களா ஁ன்றால் ஁ஃகள் சார்பாக ஁ந்த நடவடிக்கையும் ஁டுக்கவில்லை.

஁ுமற்கண்ட பாகபாத்திய விடுதலை பத்திர஁ானது ஁ிரதிவாதி வசம் ஁ள்ளது ஁ன்பதை அறிந்து கொள்ள நீதி஁ன்றத்திலாவது ஁னு செய்து பார்த்தா஁ா ஁ன்றால் பார்க்கவில்லை.””

21. P.W.1 in subsequent cross-examination would say

“தான செட்டில்஁ெண்ட் பத்திரத்தில் தான் சாட்சி கையெழுத்து செய்துள்ளீர்களா ஁ன்றால் ஁ந்த பத்திரத்தில் கையெழுத்து செய்கூறா஁் ஁ன்பதை அறியா஁ல் 1ம் ஁ிரதிவாதி ஁ன்னுடைய அண்ணன் ஁ன்பதால் நல்லெண்ணத்தின் அடிப்படையில் படித்து பார்க்கா஁ல் கையெழுத்து செய்தா஁். 6.5.94ம் ஁ததி பதிவு அலுவலகத்திற்கு



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எத்களுடைய தாயாருக்கு நாட்கள் துணையாக உடன் சென்றாம்

In the re-examination, she would say

“6.5.94 ம் ஁ததி எனது தாயாருக்கு செட்டில்மெண்ட் பத்திரம் எழுதுவதற்காக எத்களை அழைத்து சென்ற ஁ததியில் எத்தனை பத்திரம் எழுதப்பட்டது என்று நாட்கள் பார்க்கவில்லை.”

22. It is not in dispute that the plaintiffs have examined the two attesting witnesses to the release deed dated 06.05.1994 namely Thiru.Shanmugavel and Appadurai as P.W.2 and P.W.3 respectively. P.W.2 and P.W.3 in their chief examination would depose that they have subscribed their signatures as attesting witnesses to the settlement deed executed by the first defendant in favour of his mother. P.W.2 in his chief examination would say that they have not put their signatures in any other documents, except the settlement deed. But P.W.3 would say that he was not aware as to whether any other document came to be executed on that day between the parties. In cross-examination, P.W.2 would say that he does not know as to whether he had put his signatures as witness in two documents and the relevant evidence is extracted hereunder:

“ அன்று 2 ஆவண்தகளில் நான் சாட்சி கையொப்பம் செய்ததன் என்றால் எனக்கு தெரியாது. செட்டில்மெண்ட் ஆவணத்தில் கண்டுள்ளது ஁பால் 1ம்



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பிரதிவாதி தன் தாயாருக்கு சொத்தை கொடுத்து விட்டார். ஓர ஁ததியில்
பாகபாத்திய விடுதலை பத்திரமும்இ செட்டில்மெண்ட் பத்திரமும்

எழுதப்பட்டதென்றால் மொத்தமாக என்னிடம் கையொப்பம் வாட்சினார்கள்.”

But in subsequent cross-examination, he would say that since he was invited for standing as attesting witness in the settlement deed, he has put his signatures only in that document.

23. P.W.3 in his cross-examination would say that he does not remember as to how many documents came to be executed on that day and how many signatures he had subscribed on that day;

“..... அன்று மொத்தம் எத்தனை கையொப்பம் செய்தன் என நினைவில்லை. எத்தனை ஆவணங்கள் எழுதப்பட்டதென்ற விபரமும் நினைவில்லை.
அன்றைய ஁ததியில் செட்டில்மெண்ட் ஆவணம் மற்றும் பாகபாத்திய விடுதலைப்பத்திரம் எழுதப்பட்டதென்றால் எனக்கு தெரியாது. ஁மற்படி ரேண்டு ஆவணத்திலும் நான் கையொப்பம் செய்துள்ளன் என்றால் நீண்டநாளாகிவிட்டதால் தற்பாது நினைவில்லை.”

24. Considering the above, as rightly contended by the learned Counsel for the second defendant, the plaintiffs have not specifically



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denied the execution of the release deed dated 06.05.1994 and their witnesses P.W.2 and P.W.3 have also not taken a definite stand that the release deed was not executed, but only settlement deed came to be executed on that day. As already pointed out, the learned Counsel for the plaintiffs in his arguments, would submit that the release deed was obtained by exercising fraud and misrepresentation by the second defendant on the plaintiffs. But admittedly, there is absolutely no pleadings in the plaint and there is no evidence to substantiate the same.

25. At this juncture, it is necessary to refer the decision of Kerala High Court in ***Rohini Juliet @ Lekha V. Sherry Kunju and another*** reported in ***CDJ 2020 KER High Court 027***, wherein the judgment of the Hon'ble Apex Court in ***Govinbhai Chhotabhai Patel and others Vs. Patel Ramanbhai Mathurbhai*** reported in ***2019(12) SCALE 732*** was referred and the Hon'ble Apex Court has specifically held that in the absence of specific denial of the execution and in the absence of any evidence of forgery and fabrication, the other side was under no obligation to examine the attesting witness to prove the documents in terms of Section 68 of the Indian Evidence Act and the relevant portions are extracted hereunder:



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*“11. The Apex Court in the somewhat similar factual situation as in the case at hand, in **Govindbhai Chhotabhai Patel and Ors. v. Patel Ramanbhai Mathurbhai [2019 (12) SCALE 732]** held that, such omnibus allegations does not amount to specific denial of execution necessitating proof of the document in terms of Section 68 of the evidence act. The proviso to Section 68 necessitates proof in terms of the Section only where the execution is “specifically denied”.*

*13. The Apex Court concluded that in the absence of specific denial of execution and in the absence of any evidence of forgery or fabrication, the donee was under no obligation to examine the attesting witnesses to prove the gift deed in terms of Section 68 of the evidence act. In order to explain the meaning of the term “specifically denied” occurring in Section 68 of the evidence act, and to distinguish it from a general denial of execution, the Apex Court referred to a judgment of the Division Bench of this Court in *Kannan Nambiar v. Narayani Amma and Ors.* reported in 1984 KLT 855. Paragraphs 14 and 15 of the said judgment that were relied on by the Apex Court reads thus:-*

“Ab initio we have to examine whether there is any specific denial of the execution of the document, in the pleadings. Before considering whether there is specific denial we have to consider what is the exact requirement demanded when the proviso enjoins a specific denial. 'Specific' means with



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exactness, precision in a definite manner (See Webster's 3rd New International Dictionary). It is clear, that something more is required to connote specific denial in juxtaposition to general denial. See Dashrath Prasad v. Lallosing (AIR 1951 Nag. 343).

We think that specific denial of execution of gift is an unambiguous and categorical statement that the donor did not execute the document. It means not only that the denial must be in express terms but that it should be unqualified, manifest and explicit. It should be certain and definite denial of execution.”

26. In the case on hand, since the release deed itself is a document requiring compulsory attestation, the legal position above referred is squarely applicable to the case on hand. In the absence of any pleadings or evidence for forgery or for misrepresentation and in the absence of specific denial of the execution of the release deed in the manner known to law, the second defendant is under no obligation to examine one of the attesting witnesses of the release deed and that since there is no legal obligation on the part of the second defendant, the objections raised in



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this regard cannot be sustained.

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27. Now turning to the technical defence of the plaintiff's that mandatory requirements as contemplated under Section 21 r/w Section 51 of the Indian Registration Act were not complied with, with regard to the release deed dated 06.05.1994. No doubt, Section 21 of the Indian Registration Act contemplates that no non-testamentary document relating to immovable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same and Section 51 provides that non testamentary documents relating to immovable property is to be entered in the Book No.1. In the case on hand, no doubt, the release deed does not contain any specific schedule of properties and admittedly the same came to be entered in Book No.4 and not in Book No.1.

28. The learned Counsel for the second defendant would rely on the decision of the Division Bench of this Court in ***Valliamman and another Vs. Tamilselvi and others*** in three appeals in A.S.Nos.189, 207 of 2013 and 1049 of 2012, dated 16.12.2022 wherein also similar issue came to be raised and the Hon'ble Division Bench has observed as



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follows:

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“20. Though [Section 21](#) specifically requires the documents of conveyance to contain the description of the property to identify it, there is no provision which would invalidate the document if the description of the property is not given. The requirement under [Section 21](#) as per plain language indicates that description of property is mandatory and it is introduced, probably with an avowed object to serve public interest so that anyone can easily find out from the Register all the transactions in relation to particular property. However, absence of specific description of property in a document would not invalidate the conveyance or registration as there is no specific provision either in the [Registration Act](#) or in any other statute. [Section 54](#) of the Registration Act defines 'sale' as a transfer of ownership in exchange for a price paid or promised or part paid and part promised. The Deed of Release involves transfer of ownership and in the present case, it is for a consideration paid. The intention of the parties to the document can be seen from the recitals of the document where plaintiffs 1 and 3 have agreed to convey their right in all the properties of their father whether it is movable or immovable. The specific recitals would indicate in unambiguous terms that the document is in respect of all the properties of Vaiyapuri Gounder. Though the Deed of Sale is different from the Release Deed, the Release Deed is not defined under the



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Transfer of Property Act. If a person conveys interest either by a Release Deed or by a Deed of Exchange, the document of conveyance by any description if it conveys an interest in immovable property that will satisfy the definition of 'sale' and if it is in relation to immovable property of the value of Rs.100/-, it can be made only by a registered instrument. Since the document-Ex.A2 is registered, the transfer is complete by execution of the Release Deed upon registration.

23.Since there is specific provision which declares the nullity of document registered outside the State of Tamil Nadu in contravention of Clause (a) of [Section 28](#), the Division Bench has observed that the document registered in contravention of [Section 28\(a\)](#) of the Registration Act is null and void. The same principle cannot be applied in the present case. It is to be pointed out that, though there is a statutory prohibition to register a document without describing the property for the purpose of identification, the consequence of registration of a valid document has not been dealt with in any of the provisions of the [Registration Act](#). The object of [Registration Act](#) is to serve public interest. The purpose of registration is to provide information to people who intend to deal with the property as to the nature and extent of rights of anyone in respect of the property. Therefore, the document which is registered in accordance with the Act is to put on record for the benefit of



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public so that people may see the record and enquire the particulars insofar as the lands which they may be concerned. In other words, the purpose and object of [Registration Act](#) is to prevent fraud and to protect innocent persons dealing with properties. In that context, this Court is of the view that a person who is a party to the document cannot challenge the same on the ground that the registration is not in accordance with [Section 21](#) of the [Registration Act](#).

29. The Division Bench has specifically held that though the requirement under Section 21 as per plain language indicates that description of property is mandatory, in the absence of any specific provision either in the Registration Act or in any other statute, absence of specific description of property in a document would not invalidate the conveyance or registration and that the purpose and object of the Registration Act is to prevent fraud and to protect the innocent persons dealing with properties and that a person who is a party to the document cannot challenge the same on the ground that the registration is not in accordance with Section 21 of the Registration Act.

30. The learned Counsel for the second defendant would also rely



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on the judgment of this Court in ***W.Subbalakshmi Ammal Vs. Narasimiah*** reported in ***1927-II-MLJ-482*** wherein it has been held that the deed of conveyance was entered in Book No.IV and not in Book No.1 as prescribed by Section 51 of the Registration Act is, by itself an error in mere procedure committed by the Registrar and the relevant passages are extracted hereunder:

“Indian Registration Act, XXI of 1908, Ss 21(1) and 51 – Description of properties – Sufficiency of – Test – Deed entered in Book IV instead of Book I – Error in mere procedure – Deed if invalid – Limitation Act, Art.47 – Date of Magistrate's order – No existing legal right in plaintiff on that date – Accrual of right subsequently – Applicability.

Held that the description of the properties in the deed was sufficient to identify the properties as required by S. 21(1) of the Registration Act; as any one reading it would be identify the properties without any difficulty.

The fact that a deed of conveyance was entered in Book NO.IV and not in Book I as prescribed by S.51 of the Registration Act is, by itself, an error in mere procedure committed by the Registrar and does not render invalid the deed which he has registered.”

The above decisions are squarely applicable to the case on hand.



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31. As rightly contended by the learned Counsel for the second respondent, in the release deed, the plaintiffs and their mother have allegedly relinquished their rights in all the immovable properties belonging to their joint family and in view of the settled legal position above referred, absence of specific schedule of properties in the release deed would not invalidate the document and as such, the same cannot be considered as invalid document.

32. Considering the above, this Court has no hesitation to hold that the plaintiffs have miserably failed to prove that the release deed was obtained by misrepresentation and by fraud and consequently this Court has to necessarily hold that the release deed dated 06.05.1994 is valid and legal. Since the plaintiffs have executed the release deed relinquishing their rights in the suit property, they have absolutely no locus standi to file the present suit to claim shares in the suit properties. But the learned appellate Judge, by wrongly placing the burden of proof on the second defendant and without considering the legal aspects in proper perspective, has come to a decision that the second defendant has failed to prove the release deed in the manner known to law and on that



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basis, granted the preliminary decree as sought for. Hence, this Court concludes that the impugned judgment and decree passed by the first appellate Court are liable to be set aside and the judgment and decree passed by the trial Court are to be restored. Considering the other facts and circumstances of the case and the claim putforth by the plaintiffs after the execution of the release deed, this Court is of the view that the plaintiffs are liable to be mulcted with costs throughout.

33. In the result, the Second Appeal is allowed with costs throughout and the judgment and decree dated 14.03.2017, passed in A.S.No.13 of 2012, on the file of the Subordinate Court, Palani is set aside and the judgment and decree dated 14.12.2011, passed in O.S.No. 33 of 2008, on the file of the District Munsif Court, Palani are restored and the suit in O.S.No.33 of 2008 stands dismissed. Consequently, the connected Miscellaneous Petition is closed.

13.09.2024

NCC : Yes:No
Index : Yes : No
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1. The Subordinate Court, Palani.
2. The District Munsif Court, Palani.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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