

A.S.NO.309 OF 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2025

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CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL SUIT No.309 of 2019

R.Thangarathinam

S/o.A.Raju

Residing at Door No.173,
Poosaripatty, Anupoor Village,
Valapady Taluk, Salem District.

... Appellant /
2nd Defendant

Vs.

1.R.Chandrasekaran

S/o.A.Raju

Residing at Door No.173,
Poosaripatty, Anupoor Village,
Valapady Taluk, Salem District.

... 1st Respondent /
Plaintiff

2.A.Raju

S/o.Angamuthu Padayachi

Residing at Door No.173,
Poosaripatty, Anupoor Village,
Valapady Taluk, Salem District.

3.R.Vijayarathinam

S/o.A.Raju

Residing at Door No.173,
Poosaripatty, Anupoor Village,
Valapady Taluk, Salem District.



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4.R.Sakkarai Ammal

W/o. A.Raju

Residing at Door No.173,
Poosaripatty, Anupoor Village,
Valapady Taluk, Salem District.

... Respondents 2-4/
Defendants 1,3&4

PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Preliminary Decree dated August 31, 2018 passed in O.S.No.308 of 2016 by the learned II Additional District Judge, Salem, by allowing the Suit for partition, declaration and permanent injunction as prayed for in full.

For Appellant : Mr.N.Manokaran
for M/s.R.Marudhachalamurthy

For Respondent-1 : Dr.A.Thiyagarajan
Senior Counsel
for M/s.A.Vinupradha

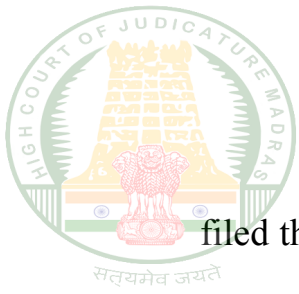
For Respondent-3 : Mr.R.Balaramesh

For Respondents 2&4: Served – No appearance

J U D G M E N T

Feeling aggrieved by the Judgment and Decree dated August 31, 2018 passed in O.S.No.308 of 2016 by the 'II Additional District Court, Salem' ['Trial Court' for brevity], the second defendant therein has

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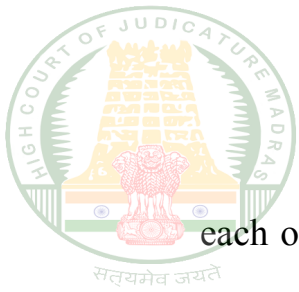
filed this Appeal Suit under Section 96 read with Order XLI Rule 1 of 'the Code of Civil Procedure, 1908' ['CPC' for short].

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFF'S CASE

3. The case of the plaintiff as put forth in the plaint is that the Suit Properties are the ancestral and joint family properties of the plaintiff's family consisting of his father / first defendant, brothers / defendants 2 & 3 and mother / fourth defendant and they are all in joint possession and enjoyment of the Suit Properties. The plaintiff and defendants 1 to 3 are entitled each 1/4 share in the Suit Properties. On August 22, 2016 the plaintiff demanded for partition of the Suit Properties. The defendants 1 to 3 agreed on the same day viz., August 22, 2016 and a registered Partition Deed was entered into, wherein, the fourth defendant was arrayed as a formal party. Believing the sweet words of the first defendant, the plaintiff put his signature and thumb impression in the Partition Deed without reading over its contents. At the time of registration of the Partition Deed, the defendants told the plaintiff that

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each of them (other than fourth defendant / mother) would get $\frac{1}{4}$ share in

the Suit Properties. The plaintiff absolutely believed the defendants' words. After execution of the Partition Deed, the plaintiff and the defendants were enjoying the Suit Properties as undivided joint family properties till the date of plaint. On October 25, 2016, the plaintiff came to know through one Real Estate Broker - Ramasamy that the plaintiff has no right in the Suit Properties as per the Partition Deed, and the defendants 2 and 3 alone have got right and interest over the Suit Properties. Immediately, the plaintiff applied for certified copy of the Partition Deed, before the Sub Registrar's Office, Ayothiyapattanam, and learnt that the defendants 2 and 3 alone have got right and interest of all the ancestral properties. The plaintiff did not receive any amount as mentioned in the Partition Deed and the Partition Deed has been created with a view to defeat and defraud the plaintiff. Hence, the plaintiff filed a Suit for partition and declaration to declare the Partition Deed dated August 22, 2016 as null and void and for other reliefs.

THIRD DEFENDANT'S CASE

4. The third defendant filed written statement and the same

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was adopted by the defendants 1, 2 and 4. It is averred in the written statement that the plaintiff and the defendants executed a registered Partition Deed dated August 22, 2016 and allotted shares to the respective parties. The plaintiff and the defendants agreed and accepted the same. The said Partition Deed had been acted upon. Contra averments stated in the plaint were all denied as false. The plaintiff is not entitled to $\frac{1}{4}$ share as mentioned in the plaint and is precluded from filing the Suit, since the Suit Properties were already partitioned as per the registered Partition Deed. The Suit is not valued properly and the Court Fee paid is incorrect. The plaintiff ought to have valued the plaint under Section 40 of the 'Tamil Nadu Court-Fee and Suits Valuation Act, 1955' ['TNCF Act' for short]. Since the plaintiff is a party to the Partition Deed dated August 22, 2016 the Suit is not maintainable in the absence of the relief of setting aside or cancellation of the Partition Deed. The plaintiff is estopped under Section 115 of the Indian Evidence Act, 1872. Accordingly, the defendants prayed to dismiss the Suit.

TRIAL COURT

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5. Based on the pleadings, the Trial Court framed the

following issues:

- '1. Whether the Suit is valued properly?*
- 2. Whether the partition deed dated 22.08.2016 is valid and binding on the plaintiff?*
- 3. Whether the claim of the plaintiff is barred by estoppel?*
- 4. Whether the plaintiff is entitled to get preliminary decree for partition as prayed for?*
- 5. Whether the plaintiff is entitled to get the relief of declaration as prayed for?*
- 6. Whether the plaintiff is entitled to get the relief of permanent injunction as prayed for?*
- 7. To what other relief?'*

6. At trial, plaintiff was examined as P.W.1, his wife was examined as P.W.2, one Ramasamy was examined as P.W.3 and Ex-A.1 to Ex-A.6 were marked on the side of the plaintiff. On the side of the defendants, third defendant was examined as D.W.1, one Mr.Murugan was examined as D.W.2 and Ex-B.1 to Ex-B.6 were marked.

7. After full-fledged trial, the Trial Court concluded that the defendants failed to prove the existence of joint family nucleus and joint family fund, as well as the alleged payment of Rs.4,00,000/- to the



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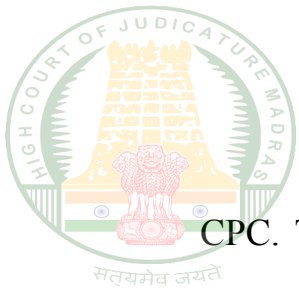
plaintiff on the date of the Partition Deed in order to clear the alleged debts of the plaintiff. The Trial Court further held that the plaintiff signed in the Partition Deed without reading the contents, in good faith and in a *bona fide* belief that equal share would be allotted to him in the landed properties. The Partition Deed dated August 22, 2016 is not valid and binding the plaintiff. Accordingly, the Trial Court declared the Partition Deed as null and void. Consequently, the Trial Court decreed the Suit and passed a Preliminary Decree for partition and permanent injunction.

FIRST APPEAL

8. Feeling aggrieved, the second defendant has preferred this First Appeal under Section 96 read with Order XLI Rule 1 of the CPC.

ARGUMENTS

9. Mr.N.Manoharan, learned Counsel representing Mr.R.Marudhachalam, learned Counsel on record for the appellant / second defendant would argue that, the plaintiff's case is there was misrepresentation with regard to contents and allotment of properties under Ex-A.6 - Partition Deed. If it is so, the burden is upon the plaintiff to plead and prove such misrepresentation. There is no specific/clear pleadings in this regard as contemplated under Order VI Rule 4 of the



CPC. The plaintiff has not disputed the execution of Ex-A.6 - Partition

Deed. The plaintiff is worldly wise, employed as a conductor in Tamil

Nadu State Transport Corporation (TNSTC) as well as holding the post of

director of a Self-help Group. Plaintiff's wife is also a witness to Ex-A.6 -

Partition Deed and she also runs a Self-help Group. Further, Ex-A.6

Partition Deed is a registered one. In these circumstances, the allegations

that the defendants, who are all farmers, dominated the will of the

plaintiff, that the defendants misrepresented the contents and allotment of

properties under Ex-A.6 - Partition Deed and that the plaintiff signed

without perusing Ex-A.6 Partition Deed is not believable. Further, there is

no legal mandate for equal division of properties in a partition; co-sharers

may receive consideration in lieu of their share or a part of their share.

Furthermore, the plaintiff being a party to the document ought to have

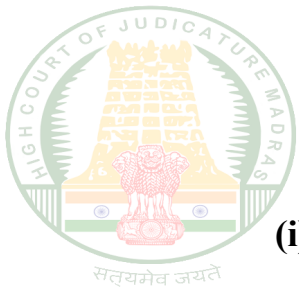
sought to cancel the document and valued the Suit under Section 40 of

TNCF Act. The Trial Court failed to consider the above aspects and

erroneously decreed the Suit. Accordingly, he prayed to allow the First

Appeal.

9.1. In support of his submissions, he would rely on the following Judgments:



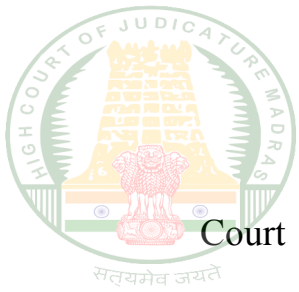
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- (i) Judgment of the Hon'ble Supreme Court in ***J.Vasanthi Vs. N.Ramani Kanthammal***, reported in ***(2017) 11 SCC 852***;
- (ii) Judgment of this Court in ***Panneer Selvam Vs. Kalaivani***, reported in ***2023 SCC OnLine Mad 2258***;
and
- (iii) Judgment of this Court in ***N.Karuppanna Vs. C.Nacimuthu Gounder***, reported in ***MANU/TN/6458/2024***.

10. Per Contra, Dr.A.Thiyagarajan, learned Senior Counsel for M/s.A.Vinupradha, learned Counsel for the Respondent No.1 / plaintiff, would argue that the defendants, who are the parents and brothers of the plaintiff, were in a dominant position and the plaintiff due to the fiduciary relationship, believed their words and signed Ex-A.6 - Partition Deed without giving it a reading. In Ex-A.6 - Partition Deed, properties are not divided in a lawful manner and no property was allotted to the plaintiff. The burden of proof that Ex-A.6 -Partition Deed is true and valid is upon the defendants, since they held a dominant position in the family. Presumption under Section 114 of the Indian Evidence Act, 1872 is a presumption of fact and it is a rebuttable one. Mere registration alone is not sufficient to take away the property rights of the plaintiff. The Trial



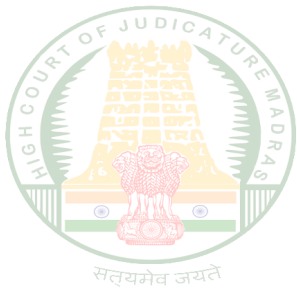
Court rightly concluded that plaintiff signed Ex-A.6 - Partition Deed without perusing the same only out of the belief of equal allotment of properties and the trust he had in the fiduciary relationship. The defendants failed to prove that a sum of Rs.4,00,000/- was passed as consideration under Ex-A.6 in lieu of plaintiff's share in the immovable properties. Further, the Court Fee paid and the Suit valuation is correct. The Trial Court rightly appreciated the evidence available on record and decreed the Suit as prayed for. There is no reason to interfere with the same. Accordingly, he prayed to dismiss the First Appeal.

11. Mr.R.Balaramesh, learned Counsel for the third respondent / third defendant supports the arguments advanced by the learned Counsel for the appellant / second defendant.

POINTS FOR CONSIDERATION

12. Heard on either side. Perused the entire materials available on record. The points that arise for consideration in this case are

(i) whether Ex-A.6 - Partition Deed dated August 22, 2016 is true, valid and binding on the



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plaintiff ?

(ii) whether the finding of the Trial Court that the Partition Deed was obtained by misrepresentation of the contents thereof as well as allotment of properties thereunder is right ?

(iii) whether the Suit valuation and Court Fee paid are correct as per law ?

(iv) whether the Judgment and Decree of the Trial Court is to be interfered with ?

DISCUSSION

13. The Suit Properties were ancestral and joint family properties in the hands of the first defendant who is the father of the plaintiff and defendants 2 and 3. The plaintiff is working as a conductor in TNSTC and the defendants are all engaged in agriculture. The plaintiff is also a director of a Self-help Group. In Ex-A.6, the plaintiff's wife has signed as one of the witnesses and she is a part of some other Self-help Group. The plaintiff admitted the execution of Ex-A.6 - Partition Deed and there are no dispute with regard to the above facts.



14. Ex-A.6 - Partition Deed is a registered one. In Ex-A.6, 'A'

Schedule Property - a sum of Rs.5,000/- each out of joint family funds - was allotted to first defendant and fourth defendant, who are the father and the mother of the plaintiff and defendants 2 & 3. Ex-A.6 recites that 'B' Schedule Property which consists of a sum of Rs.4,00,000/-, was allotted to the plaintiff for medical expenses and educational expenses of his minor children. 'C' Schedule Property, an extent of 1 Acre 38 Cents, and 'D' Schedule Property, an extent of 1 Acre 60 Cents, were allotted to second defendant and third defendant respectively. Perusal of Ex-A.6 reveals that its original was given to second defendant and a copy was given to third defendant. The plaintiff has signed in both, the original and the said copy.

15. The plaintiff is the elder brother aged about 45 years at the time of Ex-A.6-Partition Deed. He has completed XII Standard and his wife is also educated. They both are worldly wise as could be seen from the facts that the plaintiff is a director of a Self-help Group and that his wife is a part of some other Self-help Group. Defendant Nos.2 & 3 are farmers. The plaintiff (P.W.1) and his wife (P.W.2) have admitted the execution of Ex-A.6 as well as their signatures therein. It is worthwhile to refer to the cross-examination of the plaintiff. Relevant portion is as



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“நான் அரசு போக்குவரத்து கழகத்தில், சேலம் ஜான்சன் பேட்டை கிளையில் நடத்துனராக கடந்த 10 வருடங்களாக பணிபுரிந்து வருகிறேன். நான் 12-ஆம் வகுப்பு வரை படித்துள்ளேன். எனக்கு ஆங்கிலம் எழுதப் படிக்க தெரியும். 3வது பிரதிவாதி, 9-ம் வகுப்பு வரை படித்துள்ளார். 2வது பிரதிவாதி 12-ஆம் வகுப்பு வரை படித்திருக்கிறார். நானும் மற்றும் 20 நபர்களும் சேர்ந்து ஜீவநதி என்ற பெயரில் ஆண்கள் சுய உதவி குழு அமைத்து 2009 ஆம் வருடத்திலிருந்து செயல்படுத்தி வந்தோம் என்றால் சரிதான். அந்த குழுவின் இயக்குனர் நான்தான். என் மனைவி, பூஞ்சோலை என்ற சுய உதவி குழு அமைத்து, அதில் அவர்தான் இயக்குனராக இருந்து வருகிறார் என்றால் சரிதான். நான் நடத்தி வரும் சுய உதவி குழுவின் அனைத்து நடவடிக்கைகள் மற்றும் கணக்கு வழக்குகளை படித்துப் பார்த்துதான் நான் கையொப்பம் செய்வேன் என்றால் சரிதான். மேற்படி இரண்டு சுய உதவி குழுவிற்கும், அக்ரஹார நாட்டாமங்கலம் கிராம தொடக்க வேளாண்மை கூட்டுறவு வங்கியில் கணக்கு வைத்துள்ளோம் என்றால் சரிதான். நான் நடத்தி வரும் சுயஉதவி குழுவில், ரூ.5,53,740,- யை நான் மோசடி செய்துவிட்டேன் என்று என் மீது புகார் வந்தது என்றால் சரிதான். ஆனால் அந்த புகார் பொய்யாகும். மேற்படி மோசடி செய்த பணத்தை திருப்பி செலுத்துவதற்காகதான், எனது பங்கிற்கு பதிலாக, பணமாக பெற்றுக்கொண்டேன் என்றால் சரியல்ல. . . .”

15.1. As seen from the above, the defendants had put a



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suggestion to the plaintiff that there was an allegation of mis-appropriation of Self-help Group money by the plaintiff to the tune of Rs.5,53,740/- and that to settle the matter, the plaintiff received Rs.4,00,000/- in lieu of his share in the Suit Properties. The plaintiff admitted the existence of such an allegation but denied the same as false. He denied receiving consideration in lieu of his share as well. D.W.2, who is one of the witnesses to Ex-A.6, has deposed otherwise; he has deposed that the plaintiff in order to settle his debts, received a sum of Rs.4,00,000/- in lieu of his share in the Suit Properties as consideration under Ex-A.6 - Partition Deed.

16. The plaintiff is an educated, full age person working as a conductor and also a director of a Self-help Group, while the defendants are his parents and brothers engaged in agriculture. In this scenario, this Court is unable to accept the contention that the plaintiff signed Ex-A.6 - Partition Deed unaware of its contents as well as the allotment of properties thereunder, out of the faith he had in the fiduciary relationship. There are no clouds around Ex-A.6. There is no legal mandate of equal division of immovable properties in a partition. Joint family members can very well receive consideration in the form of cash from joint family fund in lieu of their share in the joint family properties. There is no legal barrier



against that. The plaintiff has not established that the defendants were in a dominant position, nor does the facts and circumstances of the case support his contention. In these circumstances, the burden to plead and prove misrepresentation is upon the plaintiff, who brought up the plea (See Order VI Rule 4 of CPC). The plaintiff has failed to discharge the same. Therefore, this Court is of the considered view that Ex-A.6 is true, valid and binding on the plaintiff. It is settled law that a party to the document admits its execution but denies the recitals contained therein, in such a scenario, unless happens to establish their case, the document is valid. As stated *supra*, the plaintiff miserably failed to prove his case and hence the Ex-A.6 is a valid one. Further, such a document is a voidable one and not void, in the light of the Judgment of the Hon'ble Apex Court in ***Jami Appanna Vs. Jami Venkatappadu***, reported in (1953) 66 LW 304, wherein it has been observed as under:

' . . . Now the authorities have made a distinction between misrepresentations as to the character of the deed and misrepresentations as to its contents. With reference to the former, it has been held that the transaction is void, while in the case of the latter, it is voidable. . . . '

17. As regards Court Fee and Suit valuation, the plaintiff



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being a party to the document and wanting to avoid it, ought to have sought to set aside / cancel Ex-A.6 - Partition Deed and valued the Suit at the value of Ex-A.6 - Partition Deed. Hence, the Court Fee paid under Section 25 (d) of TNCF Act is not correct.

18. The Trial Court failed to consider that Ex-A.6 - Partition Deed is a registered one and hence the presumption under Section 114 of Indian Evidence Act, 1872 is attracted and that the plaintiff has not rebutted the same through satisfactory evidence. The Trial Court failed to consider the evidence of P.W.1, P.W.2 and D.W.2 in the right perspective and erred in its finding that the plaintiff signed Ex-A.6 - Partition Deed without reading only out of the faith he had in the fiduciary relationship. The Trial Court further erred in its findings that the burden to prove against the contention of misrepresentation is upon the defendants. It also erred in finding that no consideration was passed under Ex-A.6, when Ex-A.6 have clear recitals in this regard and D.W.2 / Witness has deposed in support of the same. Its findings that Ex-A.6 - Partition Deed is void and the Court Fee paid is correct is also not correct. Hence, its Judgment and Decree are liable to be set aside. There is no quarrel with the legal position advanced by the Judgments relied upon by the learned Counsel for the



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second defendant. The points that arose are answered accordingly in favour of the defendants and against the plaintiff.

RESULT

19. Resultantly, the First Appeal is allowed. The Judgment and Decree of the Trial Court is set aside and the Original Suit is dismissed. In view of the relationship between the parties, there shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

16.06.2025

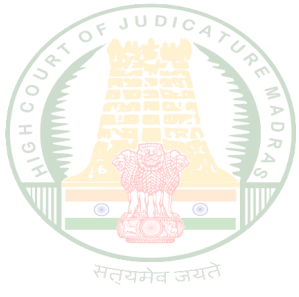
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Speaking Order : Yes / No
Neutral Citation : Yes / No
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R.SAKTHIVEL, J

TK

To

The II Additional District Judge
Salem.



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