

A.S.(MD)No.127 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON: 21.01.2025

PRONOUNCED ON:30.04.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

A.S.(MD)No.127 of 2018

and

C.M.P.(MD)No.15060 of 2024

1.Pappi @ Nagarajan

2.P.Kumar

3.P.Venkittusamy

4.P.Pappa @ Latha

5.P.Umarani

6.P.Balaji

7.P.Saraswathi Ammal

:Appellants/Plaintiffs

Vs.

1.Ramasamy Naidu(died)

: Respondent/Defendant

2.Sampathammal

3.Prema

4.India

(Respondents 2 to 4 are brought on record
as LR's of the deceased sole respondent vide
Court order dated 02.08.2024 made in
C.M.P.(MD)Nos.10389, 10391 and 10392
of 2024)



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PRAYER:- Appeal Suit filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree dated 04.09.2014 in O.S.No. 59 of 2011, on the file of the Additional District and Sessions Judge, Dindigul.

For Appellants : Mr.N.Murugesan
for Mr.N.Madhava Govindan

For Respondents :Mr.S.Parthasarathy
Senior Counsel
for Mr.M.P.Senthil
for R.2 to R.4

: R.1 died – steps taken

JUDGMENT

The Appeal Suit is directed against the judgment and decree made in O.S.No.59 of 2011, dated 04.09.2014, on the file of the Additional District Court, Dindigul.

2. The plaintiffs are the appellants and they have filed the above suit claiming partition and allotment of 1/2 share in the suit properties and for permanent injunction restraining the defendant from in any manner alienating the suit properties in favour of the third parties.



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

4. The relationship not in dispute is that the plaintiffs 1, 2, 3 and 6 are the sons, the plaintiffs 4 and 5 are the daughters and the seventh plaintiff is the wife of the deceased Perumal Naidu and that the said Perumal Naidu is the brother of the defendant – Ramasamy Naidu. It is not in dispute that the defendant's father – Venkatasamy Naidu had four sons viz., Gopal, Seetharaman, Perumal – father of the plaintiffs 1 to 6 and Ramasamy – defendant, that the defendant's brother Gopal went away from the family, that the other three brothers had purchased the properties jointly, that they have subsequently entered into a registered partition dated 20.12.1961 under Ex.B.1 and the properties shown in schedule “A” therein were allotted to the share of Seetharaman and “B” schedule therein were allotted jointly to the defendant and his brother Perumal Naidu and they had been in joint possession and enjoyment of the suit properties and that subsequently, the defendant and his brother Perumal Naidu had purchased the other items of the suit properties vide sale deeds under Exs.A.1 to A.5.



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5. The case of the plaintiffs is that the said Perumal Naidu died on 17.03.2002 intestate leaving behind the plaintiffs as his legal heirs to succeed his estate, that after the death of Perumal Naidu, the plaintiffs along with the defendant have been in possession and enjoyment of the suit properties, that the plaintiffs after coming to know that the defendant has been attempting to encumber the suit properties, approached the defendant and demanded for an amicable partition, that the defendant blatantly refused for partition and denied the legal share of the plaintiffs in the suit properties and that therefore, the plaintiffs were constrained to file the above suit for partition and allotment of 1/2 share in all the suit properties.

6. The defence of the defendant is that there was an oral partition entered into between the defendant and his brother – Perumal Naidu 35 years back, that both of them had been in separate possession and enjoyment of the properties allotted to them in the said partition and since both of them were in need of a document to show the earlier partition, they have entered into a family arrangement deed dated 07.01.1996 under Ex.B.3 recording the earlier partition effected between

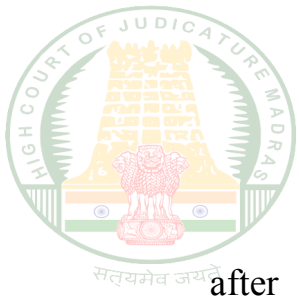


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them, that Perumal Naidu and the defendant had also got patta in their names in respect of the properties allotted to them, that the defendant has constructed a house in the property allotted to him and got electricity service connection, that the said Perumal Naidu accepting the partition had executed a settlement deed dated 28.11.2001 under Ex.B.4 in favour of his daughter – fifth plaintiff settling the property allotted to him, that the defendant had also executed a registered Will dated 29.04.2002, bequeathing his properties to his daughter Indira and that since the partition had already taken place and the same was acted upon, the plaintiffs are not entitled to claim partition again and are not entitled to get any share in the suit properties.

7. It is the further defence of the defendant that the plaintiffs have earlier filed a suit in O.S.No.290 of 2002 claiming partition and the same was pending on the file of the Additional Subordinate Court, Dindigul and subsequently, the case was transferred to the Additional District Court, Fast Track Court, Dindigul and renumbered as O.S.No.91 of 2004 and that subsequently, the plaintiffs have allowed the said suit to be dismissed for default, that thereafter they have filed an application to restore the suit which was dismissed for default in I.A.No.17 of 2007 and



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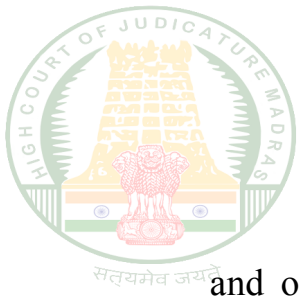
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after enquiry, the same came to be dismissed vide order dated 10.09.2007, that the plaintiffs have preferred a revision before this Court in C.R.P.(NPD)(MD)189 of 2008 and the same also came to be dismissed vide order dated 15.07.2010 and that therefore, the present suit claiming the very same relief of partition is barred by the principle of res judicate and hence, the suit is liable to be dismissed as not maintainable.

8. The learned Additional District Judge, upon considering the pleadings of both parties, has framed the following issues:

- (1) Whether the plaintiffs are entitled to get 1/2 share in the suit schedule properties?
- (2) Whether the plaintiffs are entitled to get permanent injunction as claimed?
- (3) To what other reliefs, the plaintiffs are entitled to?

9. During trial, the plaintiffs examined the first plaintiff as P.W.1 and one Veeravel as P.W.2 and exhibited 7 documents as Exs.A.1 to A.7. The defendant examined himself as D.W.1 and one Alagarsamy as D.W.2 and exhibited 12 documents as Exs.B.1 to B.12. The learned trial Judge, upon considering the pleadings and evidence both oral and documentary

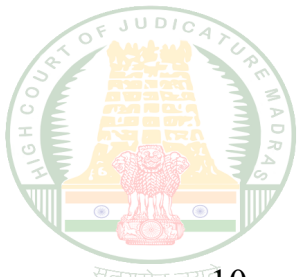


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and on hearing the arguments of both sides has passed the impugned judgment and decree dated 04.09.2014 by holding that the defendant has proved the partition entered into between himself and his brother Perumal Naidu, dismissed the suit. Aggrieved by the impugned judgment and decree, the present appeal came to be filed.

10. The learned Counsel for the appellants/plaintiffs would submit that the defendant has taken a stand that oral partition was made 35 years ago and the same was put in writing by way of family arrangement on 07.01.1996, that Ex.B.3 termed as partition deed is an unregistered and unstamped document and as such, the said document cannot be admitted in evidence as per Section 17(1)(b) and Section 49 of the Registration Act, that an instrument of partition which operate or intended to operate as a declared volitions constituting or severing ownership and causes a change of legal relation to the property divided among the parties, requires registration under Section 17(1)(b) of the said Act, that the trial Court on the basis of Ex.B.3 has taken the evidence of D.W.2 and concluded that Ex.B.3 oral partition was proved by the defendant, that D.W.2 in his evidence would only say that the defendant and his brother had partitioned the properties equally and both of them were allotted with



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10 acres each, that he was not available when the defendant has subscribed his signature and Perumal Naidu had put his thumb impression in the said document, that the evidence of D.W.2 – close relative of the defendant cannot be relied on to prove Ex.B.3 – partition deed, that Ex.B.4 settlement in favour of the fifth plaintiff does not refer about the oral partition of the year 1975 nor the partition deed dated 07.01.1976 and hence, the said document cannot be taken into consideration to show that there was oral partition, that Ex.B.7 letter allegedly given by the plaintiffs' father does not contain any date nor mentioned about the oral partition nor the unregistered partition, that the plaintiffs have proved that the said document was created for the purpose of the case and that the learned trial Judge without considering the above aspects in proper perspective and the legal position has mechanically held that the oral partition and the consequent partition deed under Ex.B.3 came to be proved by the defendant and on that basis, dismissed the suit.

11. The learned Counsel would further submit that the principle of res judicata cannot be applied to the case on hand, as the previous suit admittedly for partition was not decided on merits and that the trial Court



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without considering the doctrine of res judicata and the relevant legal position, has mechanically held that the suit is barred by res judicata.

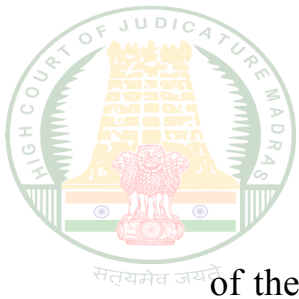
12. The learned Counsel for the respondents would submit that the suit properties were orally partitioned by the brothers as early as in the year 1975 and from the said year onwards, they are in separate possession and enjoyment over their properties and dealt with their respective properties by executing mortgage deed, settlement deed, that the revenue records for their respective shares were also mutated on their individual names, that the above documents filed and admission would clearly and conclusively prove the oral partition, that the defendant immediately after oral partition, mortgaged a portion of the property allotted to his share with Vembarpatti Village Co-operative Housing Society on 16.04.1975 under Ex.B.2, that Perumal Naidu signed as one of the attestors to the said mortgage deed and in the schedule of properties, one of the boundary was mentioned as property belonged to the defendant's brother – Perumal Naidu, that since Perumal Naidu himself had admitted the mortgage and signed as an attestor, the plaintiffs are estopped to claim partition over the suit properties, that the defendant and his brother Perumal Naidu have subsequently entered into a family



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arrangement deed on 07.01.1996 recording the oral partition effected in the year 1975, wherein both of them have specifically admitted that there was an oral partition 20 years back and they had been in possession and enjoyment of the properties allotted to them, that the said Ex.B.3 document is not executed in presenti and it was only recording the past transaction of oral partition and as such, the same does not require registration, that the defendant has also examined D.W.2, one of the attessor to Ex.B.3 and he would depose about the execution of the said document, that the defendant's brother – Perumal Naidu had executed a settlement deed under Ex.B.4 in favour of his daughter – fifth plaintiff, which also fortified the claim of oral partition pleaded by the defendant, that P.W.1 in his evidence would admit that separate pattas were issued in the name of Perumal Naidu and Ramasamy Naidu 30 years back, that the above admission of P.W.1 would go to prove the case of the defendant that from the year of oral partition, the respective parties mutated the revenue records in their individual name, that the defendant, through oral and documentary evidence and the admission of P.W.1, has proved his case of oral partition and the properties were already partitioned and the parties are in enjoyment of their respective shares and that since the value



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of the property got increased, the plaintiffs making unlawful claim have laid the above suit.

13. The learned Counsel would further contend that the learned trial Judge negated the claim of the plaintiffs also on the principle of res judicata, that the plaintiffs have filed the earlier suit for partition and the same has been dismissed, that the Civil Revision Petition filed against the dismissal of the restoration petition was also dismissed, that the plaintiffs have also suppressed the above material facts and therefore, the suit is liable to be dismissed on the ground of suppressio veri, suggestio false and res judicata.

14. At the outset, let us take the plea of res judicata. As already pointed out, it is not in dispute that the plaintiffs have filed the earlier suit in O.S.No.91 of 2004 (O.S.No.290 of 2002, on the file of the Additional Subordinate Court, Dindigul) and the said suit has been dismissed for default by the Additional District Court, Dindigul, that the plaintiffs have filed an application in I.A.No.17 of 2007 to restore the suit, which was dismissed for default and the said application was ordered to be dismissed vide order dated 10.09.2007 and that the



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plaintiffs have preferred the revision before this Court in C.R.P.(NPD) (MD)No.189 of 2009 and that the same was also ordered to be dismissed by this Court. The learned Judge, considering the above aspects, has come to a decision that the suit is barred by res judicata.

15. The learned Counsel for the plaintiffs would rely on a decision of this Court in ***Baliah Nadar and another Vs. Rayappan and others*** reported in (1993)1 MLJ 60, wherein, a learned Judge of this Court has observed that there is no substance in the argument that the suits are barred by the principles of res judicata as the suit which was for partition was dismissed for default and there was no decision on merits and as such, the principles of res judicata will not apply.

16. The learned Counsel would also rely on a decision of this Court in ***Maria Francis (Died) and others Vs. M.Varghese @ Maria Varghese and others*** reported in 2017(1) CTC 374, wherein since the suit for partition was dismissed for default, the later suit was challenged on the ground the same is barred under Order 9 Rule 9 C.P.C., and the learned Judge of this Court has observed as follows:



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“10. With regard to the first submission on the question of maintainability of the suit for partition on the ground of bar under *Order IX, Rule 9 C.P.C.*, the arguments of the learned counsel for the appellants is not sustainable in view of the position that the bar under *Order IX, Rule 9 C.P.C.* is not applicable in a case where the suit is for partition. Since the suit for partition only brings about severance of status and the cause of action continues till there is actual partition, the provision, namely, the bar under *Order IX, Rule 9 C.P.C.*, was held to be inapplicable in several decisions of this Court.

11. The following are the binding precedents on this point.

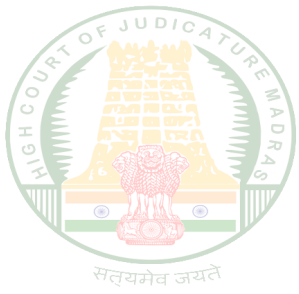
(1) *Ramasesha Iyer v. C.V.Ramanujachariar* reported in AIR 1935 Madras 458.

(2) *Asha Sharma v. Amar Nath* reported in AIR 2003 HP 32.

(3) *V.Ponramu v. B.Usharani* and 3 others reported in (2009) 1 MLJ 126.

(4) *Balamani and another v. S.Balasundaram* reported in (2009) 4 MLJ 218.

12. Thus the first question of law raised by the appellants is answered against them holding that the present suit is maintainable and that the bar under *Order IX, Rule 9 C.P.C.*, is not applicable when the earlier suit and the present suit are for partition.”



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17. The principle of Res judicata prevents relitigation of issues between the same parties, but its applicability varies depending on the circumstances of the previous suit. The doctrine of res judicata does not apply to suits dismissed for default, as no decision is rendered on the merits. In partition cases, the cause of action is ongoing, permitting the filing of a new suit despite a prior dismissal for default. Therefore, the finding of the learned trial Judge that the suit is barred by res judicata is legally unsustainable.

18. Now turning to Ex.B.3 titled as partition deed which came to be exhibited subject to the objection of other side, as the said document which is compulsory registerable is unregistered and unstamped and as such such, the same cannot be admitted in evidence.

19. The learned Counsel for the plaintiffs would rely on a decision of this Court in ***R.Kumar and others Vs. C.Natarajan*** in C.R.P.(PD)No. 1943 of 2018 dated 09.07.2018, wherein a learned Judge of this Court has held that unstamped and unregistered is not admissible in evidence since the partition deed is required to be compulsory registered under



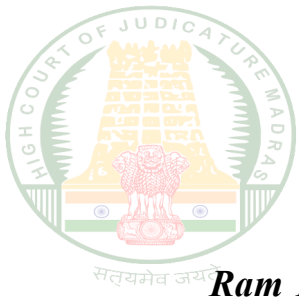
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Section 17(1)(b) of the Registration Act and the relevant passage is extracted hereunder:

“The unstamped and unregistered partition is not admissible in evidence since the partition deed is required to be compulsorily registered under Section 17(1)(b) of the Registration Act. Therefore, the unregistered document which is insufficiently stamped cannot be received for, as the same is not admissible in evidence. Since this is only a suit for bare injunction and not either for partition or declaration, what is to be decided in this suit is to prove their possession. In regard to the decision cited by the learned counsel for the petitioners, it only speaks about the unregistered partition deed can be received for collateral purpose which is not applicable to the present case as the document sought to be marked is not only an unregistered partition deed but also insufficiently stamped and relief sought for in the application is not only for impounding the stamp duty penalty and for also direction for registration of the document. Therefore, under these circumstances, the order passed by the trial Court does not warrant any interference by this Court.”

20. The Hon'ble Supreme Court in ***S.Kaladevi vs V.R.Somasundaram & Others*** reported in ***(2009)2 MLJ 361*** and ***Sita***



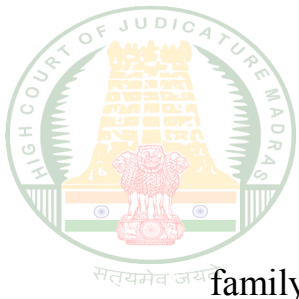
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Ram Bhama vs Ramvatar Bhama reported in ***2018(3) MWN Civil 206*** and ***Avinash Kumar Chauhan vs Vijay Krishna Mishra*** reported in ***(2009)3 MLJ 409***, has settled the legal position that even an unregistered and unstamped document can be received in evidence to prove a collateral purpose if stamp duty is paid with penalty.

21. In the case on hand, it is the specific contention of the plaintiffs that Ex.B.3 is a clear cut partition deed and as such, the same is required to be compulsory registerable under Section 17(1)(b) of the Registration Act and that since the document is unregistered and also unstamped, the same cannot be admitted in evidence for any purpose. But according to the defendant, Ex.B.3 is not executed in presenti and it was only recording the past transaction of oral partition took place in the year 1975 and that therefore, the said document does not require registration.

22. The learned Counsel for the defendant would rely on the judgment of the Hon'ble Supreme Court in ***Ravinder Kaur Grewal and others Vs. Manjit Kaur and others*** reported in ***(2020)9 SCC 706***. The main issue raised before the Hon'ble Supreme Court was whether the



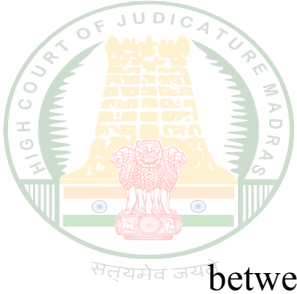
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family arrangement deed was required to be registered as interest in immovable property worth more than Rs.100/- was transferred in favour of the plaintiffs and whether it was open to the parties to resile from the aforesaid arrangement when they had acted upon the terms of the aforesaid settlement to the prejudice of the other party. The Hon'ble Apex Court has observed as follows:

“A distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the Court for making necessary mutation. In such a case, the memorandum itself does not create or extinguish any rights in immovable properties and therefore, does not fail within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable.”

23. At this juncture, it is necessary to refer the contents of Ex.B.3 partition deed. After referring to the purchases made jointly by the defendant and his brother Perumal Naidu and by referring to “B” schedule properties allotted to them in a partition effected on 20.12.1961



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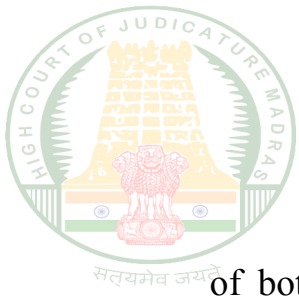
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between themselves and their third brother – Seetharaman, they have stated

“..... நம் நேவருக்கும் கட்டுப்பட்ட “பி’ டெயூல் சொத்துக்களையும் நாம் அனுபவித்து வந்து அதன் பின் சுமார் 20 வருடங்களுக்கு முன் வாய்க்கரால் முலம் பாகப் பிரிவினை ஏற்படுத்தி நாம் அனுபவித்து வருகிறோம். பேபால் நமக்குள் எழுத்து முலமாக ஒரு ஆதரவு உதவை என நாம் கருதி நீத பாக பத்திரத்தை எழுதிக்கொண்டோம்.

ஆகவ நாமளில் 1வது நபர் அனுபவித்துக் கொண்டு வரும் தேனடியில் குறிப்பிட்ட “ஏ’ டெயூல் சொத்தை பொறுத்து 2வது நபருக்கும் :யாரின் வாரிசுதாரர்களுக்கும் யாதொரு பாத்தியமும் பின் துயர்ச்சியும் கிடையாதென்றும் நாமளில் 2வது நபர் அனுபவித்து கொண்டு வரும் “பி’ டெயூல் சொத்துக்களை பொறுத்து நாமளில் 1வது நபருக்கும் :யாரின் வாரிசுதாரர்களுக்கும் யாதொரு பாத்தியமும் பின்துயர்ச்சியும் கிடையாதென்றும் நாம் ஏற்கெனவே அவரவர் பாகச் சொத்துக்களுக்கு செலுத்திவரும் கிதி வரி வகையறாவை எப்பாதுமே ஁பால் செலுத்திக் கொண்டு வருவண்டியதென்றும் ஁மலகண்ட விபரப்படி நாம் மனப்பூர்வமாக சம்மதித்து எழுதிக்கொண்ட பாக சாசனப் பத்திரம்.”

Thereafter, they have listed out the properties which were in possession



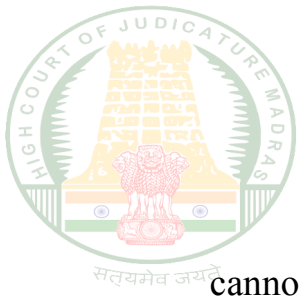
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of both parties. As rightly contended by the learned Counsel for the defendant, the parties have not divided the properties through the said document, but they have only recorded the earlier partition entered into between themselves and thereby listed out the properties that were allotted to them and are being possessed by them.

24. The learned Counsel for the plaintiffs would also contend that the very title of Ex.B.3 would only go to show that the parties have divided the properties through the said document. In ***Faqir Chand Gulati vs Uppal Agencies Pvt. Ltd. and another reported in (2008)10 SCC 345***, the Hon'ble Supreme Court has reiterated the settled legal position that the title or caption or the nomenclature of the instrument/document is not determinative of the nature and character of the instrument/document, though the name may usually give some indication of the nature of the document and that the nature and true purpose of a document has to be determined with reference to the terms of the document, which express the intention of the parties.

25. Considering the above and taking note of the legal position above referred, this Court has no hesitation to hold that the said Ex.B.3



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cannot be considered as a partition deed and can only be taken as a document recording the earlier partition and as such, the same is not required to be compulsorily registerable and as such, the objection with regard to the admissibility of the said document cannot legally be sustained.

26. The learned Counsel for the plaintiffs would contend that Ex.B.3 reveals an unequal partition, with the defendant receiving more properties and Perumal Naidu receiving only 6 acres. DW2, the alleged attester to Ex.B.3, would testify that he didn't see the executant sign the document, contrary to the document's validity. Furthermore, the trial Court observed that PW2's evidence regarding property allotment was not satisfactory, and there are interlineations in the document, which further questions its genuineness and that the defendant has failed to prove the execution and authenticity of Ex.B.3.

27. As rightly contended by the learned Counsel for the defendant, D.W.2 would admit his signature found in Ex.B.3 and the trial Court has rightly observed that there are some contradictions and the same cannot be given much importance as D.W.2 was deposing after long time since



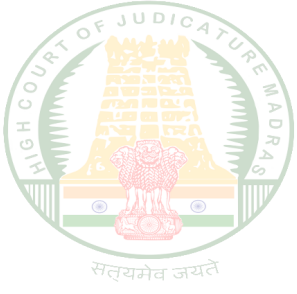
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the execution of Ex.B.3 and that the said contradictions would not have an effect of doubting the genuinenes of the said document. It is pertinent to note that though the defendant has specifically pleaded about the oral partition and the consequent execution of Ex.B.3 in the written statement, the plaintiffs have not filed any reply statement nor disputed the above facts in his chief examination affidavit filed at the trial.

28. As rightly pointed out by the learned Counsel for the defendant, P.W.1 in cross-examination would say that he was not aware about the property transaction prior to 11 years, that he does not know as to whether his father and Ramasamy Naidu had executed document on 07.01.1996 regarding the earlier partition and the relevant portion is extracted hereunder:

“1996க்கு முன்பு எனது அப்பாவும் ராமசாமியும் சொத்துக்களை வாக்கரலாக பிரித்துக்கொண்டார்கள் என்றால் சரியல்ல. எனக்கு 48 வயது. எனக்கு கடந்த 11 வருடமாகத்தான் நீத விவரம் தெரியும். 11 வருடத்திற்கு முன்பு அவர்களுடைய சொத்து விவரங்கள் பற்றி எனக்குத் தெரியாது. 7.1.1996ல் எனது அப்பாவும் ராமசாமியும்



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ஏற்கனவு பாகம் செய்ததை பத்திரம் எழுதிக்கொள்வாம் என
பத்திரம் எழுதியது எனக்குத் தெரியாது.”

29. Moreover P.W.1 in his evidence would admit that they have issued notice demanding partition on 10.04.2002 for which the defendant has sent a reply on 25.04,2002 and that subsequently they have filed the suit in O.S.No.290 of 2002, which was subsequently renumbered as O.S.No.91 of 2004 before the Additional District Court, Dindigul.

30. The learned Counsel for the defendant would submit that the defendant in the earlier reply dated 25.04,2002 itself has specifically pleaded about the oral partition and the subsequent execution of Ex.B.3 partition document, but the plaintiffs in their plaint filed in 2011 have neither referred about the exchange of legal notices nor denied the oral partition and the execution of Ex.B.3 and that they have completely suppressed the earlier proceedings.

31. As rightly contended by the learned Counsel for the defendant, the plaintiffs even after coming to know about the plea of oral partition and the execution of Ex.B.3 between the defendant and Perumal Naidu,



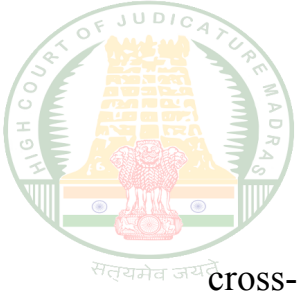
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they have not chosen to dispute or deny the same specifically. It is evident from Ex.B.2, that the defendant in 1975 has mortgaged a property by showing one of the boundary for the said property is the property owned by his brother Perumal Naidu and more particularly, the said Perumal Naidu had attested the said mortgage deed. It is further evident from Ex.B.4 settlement deed dated 28.11.2011 that the said Perumal Naidu has settled some properties in favour of his daughter – fifth plaintiff and it is necessary to refer the following recitals in the said document:

“ சென்ற 11.04.1962ம் ஆதி நத்தம் சார்பதிவகம் 1 புத்தகம் 521 வால்டும் 8384 பக்கங்களில் 1962ம் வருடத்திய 622ம் நம்பராக பதிவு செய்யப்பட்ட கிரையப்பத்திரப்படி எனக்கும் என்னுடைய னைய சுகாதரரர் ராமசாமி நாயுடு அவர்களுக்கும் பாத்தியப்பட்டு அதன்பின் என்னுடைய பாகத்துக்கு கட்டுப்பட்டு என்னுடைய பெருக்கு மட்டா ஏற்பட்டு நான் என் கைவசம் வைத்து நிராபணையாக அனுபவித்து வருகிற தேனடியில் குறிப்பிட்ட சொத்தை

32. As rightly pointed out by the learned Counsel for the defendant, the plaintiffs have not disputed Ex.B.4 settlement deed and in



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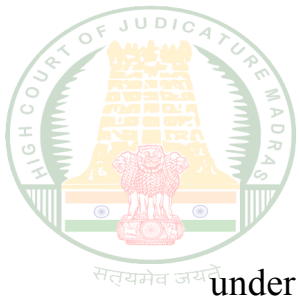
cross-examination, P.W.1 would say that he was not aware of the settlement deed executed in favour of the fifth plaintiff by his father.

33. No doubt as rightly pointed out by the learned Counsel for the plaintiffs, though Ex.B.3 was not referred, but as rightly contended by the learned Counsel for the defendant, the said Perumal Naidu has specifically referred that the said property was allotted to his share as “என்னுடைய பாகத்திற்கு கட்டுப்பட்டு”

34. The first plaintiff as P.W.1 in his cross-examination would admit that even 32 years before, separate patta came to be issued in the name of Perumal Naidu and Ramasamy Naidu and the relevant portion is extracted hereunder:

“32 வருடத்திற்கு முன்பு ராமசாமி பெயரில் தனித்து பட்டா உள்ளது. எங்கள் பெயரினும் தனித்தும் பட்டா உள்ளது.”

35. The learned Counsel for the defendant would submit that Perumal Naidu has submitted a letter to the TNEB saying no objection to transfer the electricity service connection in favour of the defendant



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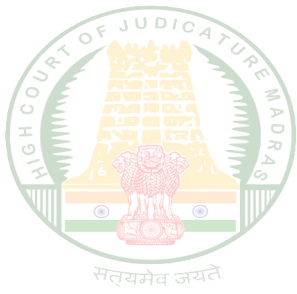
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under Ex.B.7. No doubt, the plaintiffs have disputed the said document.

But P.W.1 in cross-examination would admit that the electricity service connection was there for 30 years in favour of the defendant.

36. It is settled law that oral partitions are valid, akin to written instruments. The Hon'ble Supreme Court in H. Vasanthi v. A. Santha (2023 SCC Online SC 998) has held that partitions through settlement or oral understanding are permissible and can be legally binding, even without a written document, provided they are supported by sufficient evidence. The Hon'ble Apex Court has consistently recognized the validity of oral partitions, with the burden of proof lying on the party claiming such a partition. The conduct of parties subsequent to the alleged oral partition can also be considered to determine its validity.

37. In the present case, the defendant has successfully demonstrated the subsequent conduct of himself and his brother, Perumal Naidu, which substantiates the oral partition, as the same is evident from the defendant's execution of a mortgage deed, Perumal Naidu's execution of a settlement deed, mutation of revenue records, and the issuance of separate pattas in favor of the brothers long ago.



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38. Given the above analysis, the finding of the learned trial Judge regarding the partition is well-founded, and this Court finds no reason to interfere with the reasoned judgment, except for the finding on res judicata. Consequently, this Court concludes that the Appeal Suit lacks merit and is liable to be dismissed. Considering the circumstances, including the suppression of material facts, this Court further decides that the appellants/plaintiffs should be burdened with costs.

39. In the result, the Appeal Suit is dismissed with costs and the judgment and decree dated 04.09.2014 in O.S.No.59 of 2011, on the file of the Additional District and Sessions Judge, Dindigul stands confirmed. Consequently, the connected Miscellaneous Petition is also dismissed.

30.04.2025

NCC : Yes : No
Index : Yes : No
Internet : Yes : No

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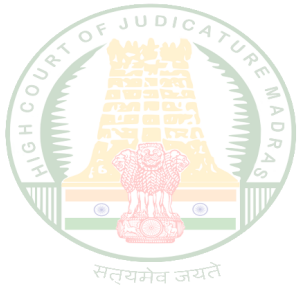


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1. I Additional District and Sessions Judge (PCR), Tiruchirappalli.

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2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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