

A.S(MD)No.128 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.04.2026

Pronounced on : 29.07.2026

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

A.S(MD)No.128 of 2020

and

C.M.P(MD)Nos.4567 of 2020 and 6804 of 2021

Senthilkumar,
S/o.A.Kandasamy,
No.255/9, AKS Complex,
Market Bye Pass Road,
Ottanchathiram Town,
Ottanchathiram Taluk,
Dindigul District.

... Appellant/9th Defendant

Vs.

1.Manikandan,
S/o.Krishnan,
No.494/1-B, Thootathu Salai,
Thumichampatti,
Ottanchathirm Taluk,
Dindigul District.

...1st Respondent/Plaintiff

2.Krishnan,
S/o.Late.Ramasamy Gounder,
Thootathu Salai,
Thumichampatti,
Ottanchathirm Taluk,
Dindigul District.

3.Malaiappa Gounder,
S/o.Vellaiappa Gounder,
Pudur, Thumichampatti,
Ottanchathiram Taluk,
Dindigul District.



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4.Selvaraj,
S/o.Selvakumar Gounder,
Venkatapuram,
Odaipatti Village,
Ottanchathiram Taluk,
Dindigul District.

5.Sekaran,
S/o.Murugan,
D.No.22C-1-6,
Dharapuram Road,
Ottanchathiram Town,
Ottanchathiram Taluk,
Dindigul District.

6.Manikandan,
S/o.Murugan,
Pudur, Thumichampatti,
Ottanchathiram Taluk,
Dindigul District.

7.P.Manian,
S/o.Perumalsamy,
Perumalnaikkanvalasu,
Thevathoor Village,
Ottanchathiram Taluk,
Dindigul District.

8.R.Karuppusamy,
S/o.Ramasamy Gounder,
West Poothampatti,
Poothampatti Post,
Vedasandur Taluk,
Dindigul District.



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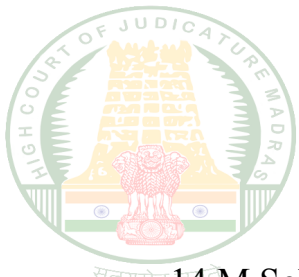
9.T.Rengammal,
W/o. Late. Thangavel,
D.No.274B/1-5,
Viswanatha Nagar,
Ottanchathiram,
Ottanchathiram Taluk,
Dindiugl District.

10.R.Saravanakannan,
S/o.Ramasamy Gounder,
No. 21E/4, Nagappapilai Therku Thottam,
Athikombai,
Ottanchathiram Taluk,
Dindiugl District.

11.P.Radhakrishnan,
S/o.Palanisamy Gounder,
Ayakattu Thottam,
Akkaraipatti, Odaipatti,
Ottanchathiram Taluk,
Dindiugl District.

12.E.Pommuraj,
S/o. Errama Naicker,
No.1/215/1-97A,
Ondivadanaickenpatti,
Palakkanuthu Village,
Dindigul Taluk,
Dindigul District.

13.Selvi,
W/o.Senthil Kumar,
No.255/9, AKS Complex,
Market Bye Pass Road,
Ottanchathiram Town,
Ottanchathiram Taluk,
Dindiugl District.



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14.M.Selvam,
S/o.Muthusamy Gounder,
No.601, Chandrasekar Maligai Kadai,
Naganampatti,
Ottanchathiram Taluk,
Dindigul District.

15.Jeyapaul,
S/o. Late. Peria Ramasamy,
Samiyarpudur, Virupatchi,
Ottanchathiram Taluk,
Dindigul District.

16.S.Prabhu,
S/o.Sivasamy,
Samiyarpudur, Virupatchi,
Ottanchathiram Taluk,
Dindigul District.

...Respondents 2 to 16/
Defendants 1 to 8, 10 to 16

PRAYER:- This Appeal Suit is filed under Section 96 of the Civil Procedure Code, to set aside the judgment and decree, dated 06.03.2020 made in O.S. No.55 of 2011 on the file of the Additional District Court (FTC), Palani.

For Appellant : Mr.N.Dilip Kumar
for Mr.S.R.Suresh Kumar
For R1 : Mr.J.Barathan
for Mr.J.Lawrance
For R4 : Mr.E.Murugavel
For R5, R6, R8,
R9, R12 & R13 : Mr.A.Mohan
R2, R3, R7, R10,
R11, R14 to R16 : Given up vide Court Order,
dated 20.03.2025



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JUDGMENT

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This Appeal Suit is directed against the judgment and decree, dated 06.03.2020 passed in O.S.No.55 of 2011 on the file of the Additional District Court (Fast Track Court), Palani.

2.The appellant is the 9th defendant in O.S.No.55 of 2011 on the file of the Additional District Court (Fast Track Court), Palani. The 1st respondent is the plaintiff and the respondents 2 to 16 are the defendants 1 to 8 and 10 to 16 in that suit. The 1st respondent/plaintiff filed the suit for partition seeking 1/2 share in the suit properties and for declaration that the sale deeds, dated 24.03.1997, 31.03.1997 and 13.02.2009 are null and void as they were executed without the knowledge of the plaintiff and for injunction.

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

4.The brief facts are as below:

(a) The case of the Plaintiff (1st Respondent herein):-

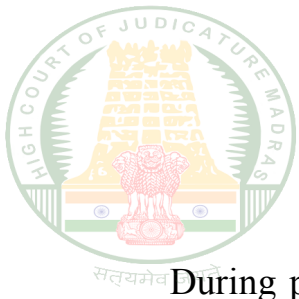
The suit property and other properties belonged to the joint family



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consisting of the 1st defendant and his siblings. In the partition took place among them on 27.04.1984, the suit properties and other properties were allotted to the branch of the 1st defendant. Thereafter, in a partition held on 17.04.1998, some properties were allotted to the plaintiff's sister Lakshmi Prabha. The rest of the properties were jointly enjoyed by the family of the plaintiff and the 1st defendant. Wantonly, the 2nd item was not shown in the partition dated 17.04.1998. There was sufficient income from the suit properties, so there was no need to borrow a loan. But the 1st defendant had not taken care of the family and spent money lavishly on gambling. The 1st defendant sold the properties to the other defendants by way of sale deeds and power of attorney deed. The said deeds do not bind the plaintiff. One Govindaraj filed a suit in O.S.No.12 of 2009 for specific performance and after the plaintiff became a major, a compromise took place and the said Govindaraj gave money towards the share of the plaintiff and so the suit was agreed to be decreed. When the plaintiff demanded partition from the rest of the properties, the 1st defendant did not give a proper reply and the plaintiff came to know that the 1st defendant sold the properties through a power deed dated 20.08.2003 and the sale deeds dated 24.03.1997, 31.03.1997, 21.11.2002 and 22.12.2009 for his gambling expenses. Hence, the plaintiff filed the suit.



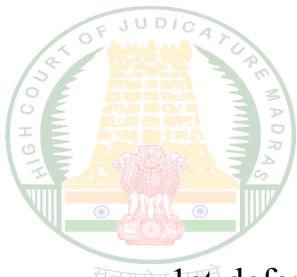
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During pendency of the suit, since the defendants 9 and 10, as power agents, alienated some portion of the properties to the defendants 11 to 16, they were added as parties. The power deed and the sale deeds will not bind the plaintiff.

(b) The case of the 1st defendant:-

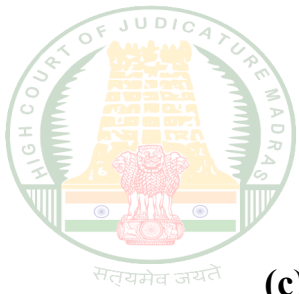
The contents of the partition deeds, dated 24.07.1984 and 17.09.1998, are admitted. As there was doubt prevailing about 15 years back, the 1st defendant was constrained to borrow loans for family expenses and other necessities. In the Oddanchatram area, there was a practice to execute a sale deed or power deed to obtain a loan. So, the 1st defendant executed a sale deed in respect of his land in S.No.633/1 and 633/2 to one Palanachamy Gouder on getting Rs.1,00,000/-. He also obtained Rs.7,00,000/- from one Maniyan through Govindaraj, for which he executed a sale deed dated 21.11.2002 in respect of the 2nd item of the suit property. Except this, this defendant has not alienated any property including the 2nd item. The 1st defendant executed a sale deed in favour of defendants 2 to 5 on 24.03.1997 in respect of the 1st item since they gave financial assistance to clear sundry debts. They sold the said property by way of plots and gave Rs.1 crore and 20 lakhs to this defendant. Taking advantage of the misunderstanding between the



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1st defendant and his wife, his wife, along with Govindaraj, the 6th defendant and the plaintiff, filed suits. As already stated, the sale deed dated 21.11.2002 was executed in favour of the 6th defendant only for loan purposes and the same is not legally valid. The 6th defendant executed sale deeds dated 16.02.2009, in favour of the defendants 7 and 8 in respect of the 2nd item. In turn, the defendants 7 and 8 executed a power deed in favour of the defendants 9 and 10. The defendants 9 and 10 forged sale deeds in the name of defendants 11 to 16. The 6th defendant filed a suit in O.S.No.27 of 2010 (O.S.No.91 of 2006) for declaration of his title over the property, hence, the subsequent alienation by him in favour of the defendants 7 and 8 is not valid U/s.52 of the Transfer of Property Act. In the year 1997, the plaintiff was aged only 6 years and he did not know directly about the loan transaction as there was a necessity to get a loan for the benefit of the family. The contra averment made by the plaintiff is not accepted. The plaintiff's mother received Rs.1 crore and 50 lakhs from the sale consideration of the 1st item. The plaintiff and his mother invested the same and also purchased a three-storeyed building. The plaintiff has not added that property in this case. So, the suit is liable to be dismissed.



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(c) The case of the 3rd defendant:-

The partition dated 17.04.1998 will bind the plaintiff and the 1st defendant. In fact, the 1st defendant derived more than 12 acres in the partition and this defendant has only 2 acres. The rest of the properties are in the hands of the 1st defendant. The alleged lavish expenditure of the 1st defendant is denied. The plaintiff wantonly stated so. When the plaintiff himself admitted that on getting money, he compromised with Govindaraj in O.S.No.12 of 2009 for specific performance, with the intention to grab money, the plaintiff has filed this suit. All the alleged sale deeds were properly executed for a valuable sale consideration. So, the suit may be dismissed.

(d) The case of the 6st defendant:-

All the family properties got by the plaintiff, the 1st defendant, and the plaintiff's sister, Lakshmi Praba, were not specifically mentioned in the suit. So, without showing all the properties as per the partition deed dated 27.04.1984, the present suit filed by the plaintiff is not sustainable. The partition deed, dated 17.04.1998, was created without partitioning the properties, so the same is not legally valid. To clear sundry family debts, the 1st defendant offered to sell the suit property for Rs.7,00,000/- to this



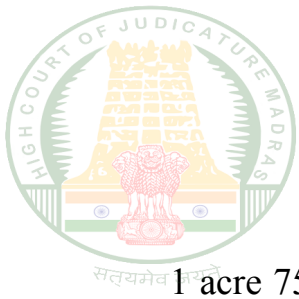
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defendant and entered into a sale agreement on 21.10.2002. Then, the 1st defendant sold the suit property to this defendant by executing a sale deed, dated 21.11.2002, in favour of this defendant by receiving a sale consideration of Rs.7,00,000/-. Thereafter, this defendant sold the suit property to the defendants 7 and 8 by way of a registered sale deed, dated 13.02.2009. The defendants 7 and 8 executed a general power of attorney deed dated 10.08.2011 in favour of the defendants 9 and 10, who filed a suit in O.S.No.305 of 2011 for an injunction before the Sub Court, Palani and the suit is pending. The plaintiff has no cause of action for the suit. Hence, the suit is liable to be dismissed.

(e) The case of the 9th defendant:-

The suit items 1 and 2 originally belonged to the family of the 1st defendant and the same were allotted to the 1st defendant in the partition that took place on 27.04.1984. The 1st defendant was allotted a total land measuring 10 acres 42 cents, but the plaintiff purposely showed only the suit properties, i.e., 1st item measuring 2 acres and the 2nd item measuring 1 acre 81 cents. The plaintiff has not explained anything about the remaining extent allotted to his father. The 1st defendant sold the suit 2nd item, i.e.,



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1 acre 75 cents in S.No.635/1, leaving 6 cents for path to the 6th defendant on 21.11.2002 on receiving due sale consideration and also handed over possession of the property on the same day. Thereafter, the 1st defendant and his son, the plaintiff herein, have no right over the 2nd item. The 6th defendant sold the 2nd item to the defendants 7 and 8 by way of a registered sale deed dated 13.02.2009 and a separate patta was also issued in the name of defendants 7 and 8. As the value of land has increased, the 1st defendant with the intention to grab more money, disturbed the defendants 7 and 8 from enjoying the property, so their power agents i.e., the defendants 9 and 10 have filed a suit in O.S.No.305 of 2011 on the file of the Sub Court, Palani, for an injunction against the 1st defendant and obtained an interim injunction in I.A.No.761 of 2011. The 1st defendant has not preferred any appeal against the interim injunction. The 1st defendant set up one Thenmoli as a lessee and filed a suit in O.S.No.155 of 2011 against the defendants 1, 6, 7 and 8; in that suit, the 1st defendant did not appear. The defendants 6, 7 and 8 appeared and filed a written statement. The 1st defendant has also set up one Chelladurai as a sale agreement holder and filed a suit in O.S.No.154 of 2011 against the defendants 7 and 8. On the same foot, the 1st defendant through his son has filed the present suit. The acts of the plaintiff and the 1st defendant against the



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defendants 7 and 8 were only to grab more money. On the basis of the power deed dated 10.08.2011, the defendants 9 and 10 have laid out the 2nd item into 33 house plots and sold out the house plots to various persons including the defendants 11 to 14. The plaintiff has not added the other purchasers as defendants. So the suit is bad for non-joinder of necessary parties. The plaintiff's sister Lakshmi Praba was given 2 acres 50 cents in S.No.634/1; the rest of the land, 6 acres 11 cents in S.No.634/1, was shown as the suit property seeking partition. The plaintiff has not explained why he left the other portions. Even the family of the plaintiff and the 1st defendant was given a total land measuring 11 acres 12 cents, out of which 2 acres 50 cents was given to the plaintiff's sister. If so, still 8 acres 62 cents are available for the plaintiff and the 1st defendant. So, the plaintiff and the 1st defendant would get 1/2 share, i.e., 4 acres 31 cents in suit items 1 and 2. If really, the suit properties are to be partitioned, the suit properties measuring 3 acres 31 cents should be allotted to the 1st defendant as per law of equity. Hence, the challenge regarding the sale deeds executed by the 1st defendant in respect of the suit property is not legally acceptable. The plaintiff has not filed the suit for a proper partition, that too leaving out other purchasers and only to grab money from the defendants. The plaintiff is not in joint possession of the suit property,



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so the plaintiff has to pay the Court fee U/s.37(1) of the Tamil Nadu Court Fees and Suit Valuation Act, instead of the fixed Court fee paid U/s.37(2).

Hence, the suit is liable to be dismissed.

5.The trial Court framed the following issues upon the pleadings of both parties.

(1) Whether the plaintiff is entitled to the relief of partition and separate possession as prayed for?

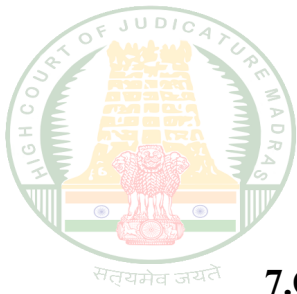
(2) Whether the plaintiff is entitled to the relief that the sale deeds dated 24.03.1997, 31.03.1997, 20.08.2003, 21.11.2002 and 22.12.2009 are null and void?

(3) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?

(4) Whether the partition deed dated 17.4.1998 is binding on the plaintiff and 1st defendant?

(5) Whether the 1st defendant sold the suit properties for his personal wish and not for legal necessity expenses of family?

6.During trial, on the plaintiff's side, P.W.1 and P.W.2 were examined and Ex.A.1 to Ex.A.6 were marked. On the defendants' side, the 9th defendant was examined as D.W.1 and Ex.B.1 was marked.



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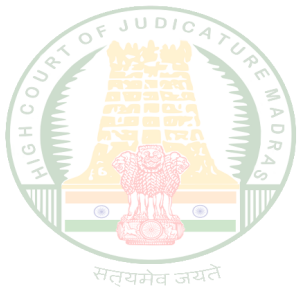
7. On appreciation of evidence and on consideration of the arguments made on behalf of the parties, the trial Court has held that the 1st defendant sold the properties for his personal expenses, lavishly for playing cards and hence, the 1st defendant has not sold the properties towards family expenses under legal necessities, thereby decreeing the suit as prayed for by passing judgment dated 06.03.2020.

8. Aggrieved by the judgment and decree of the trial Court dated 06.03.2020, the 9th defendant has preferred this appeal.

9. At the time of arguments, the learned counsel for the 1st respondent/plaintiff filed a memo of objections raising the issue of maintainability of the appeal filed by the 9th defendant.

10. The points for consideration in this appeal are:

- 1. Whether the appeal is maintainable?*
- 2. Whether the sale deeds executed by the 1st defendant were for his personal expenditure and not for family necessities?*



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3. Whether the suit is bad for non joinder of necessary parties and also for partial partition?

4. Whether the sale deeds in respect of the suit properties executed by the 1st defendant can be declared as null and void?

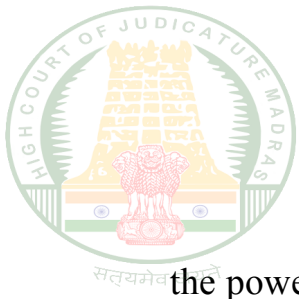
5. Whether the trial court has not properly appreciated the evidence of both?

6. Whether the judgment and decree of the trial court are sustainable?

7. Whether the appeal is to be allowed?.

11. Point No.1

The learned counsel for the 1st respondent/plaintiff has submitted that originally the suit was filed against the defendants 1 to 8 on 30.05.2011, in the suit, the defendants 2, 7 and 8 remained exparte. The purchasers of the property prior to filing of the suit were impleaded as defendants. During the pendency of the suit, on 10.08.2011, the defendants 7 and 8 executed a power of attorney in favour of the defendants 9 and 10 and subsequently the defendants 9 and 10 sold some properties to other defendants. The power of attorney and the subsequent purchasers were added as defendants 9 to 16. The defendants 11 to 16 also remained exparte before the trial Court. None of the original defendants entered the witness box, only the 9th defendant, who is



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the power agent, deposed as D.W.1. He could depose only with respect to facts which are within his personal knowledge and relied on the decision reported in **2005 (2) SCC 217** in the case **Janki Vashdeo Bhojwani and Another /v/ Indusind Bank Ltd. and Others**. Moreover, the appellant, as the 9th defendant, has contested the suit in the capacity of a power agent alone and not in his personal capacity. The trial Court decreed the suit. When the principal remained exparte and did not want to file an appeal, his power of attorney could not prefer an appeal independently, that too without representing the principal. Therefore, it is imperative for the appellant/9th defendant to seek leave of this Court before filing an appeal. The appellant has not filed any petition under Order 3 Rule 2 of CPC. It has not been done so. Even the appeal lists his principal as a respondent. The appellant has not even filed any power of attorney; he filed only Ex.B.1 sale agreement. The appellant is in no way aggrieved by the impugned judgment and decree. This Court has also answered the question whether the power of attorney can file an appeal in his individual capacity in its decision reported in **CDJ 2022 MHC 9297 in Senthilkumar /v/ Subramanian and Others** case, it is held in paragraph Nos.21 to 23 as follows:

21.In the light of the above decisions, this Court is of the opinion that the 5th defendant has no



power or authority to file an appeal in his individual capacity as against the decree passed in favour of the plaintiff. It is true that the plaintiff has arrayed the 5th defendant as a party to the suit, but on a reading of the plaint, it is seen that the suit has been filed mainly against the defendants 1 to 4, who are the original owners of the suit properties and the plaintiff has made it clear in the plaint that the 5th defendant has been arrayed as a party only in the capacity of Power Agent of the defendants 1 to 4. Therefore, it is clear that the 5th defendant has been arrayed only as a proper party to the suit. The prayer sought for in the plaint is for a decree to receive the balance sale consideration and execute the sale deed in favour of the plaintiff, either by the defendants 1 to 4 or by the 5th defendant. Hence, the suit prayer is also not targeted against the 5th defendant to manifest him as a necessary party to the suit. Therefore, arraying of the 5th defendant as a party to the suit by the plaintiff will not bar the plaintiff from taking a stand on the locus of the 5th defendant for the first time in the present appeal.

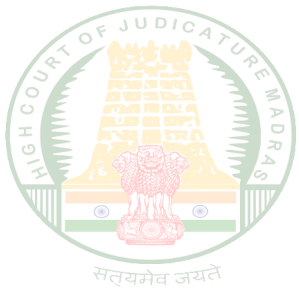
22.In V.N.Krishna Murthy and another v. Ravikumar and others [2020 (9) SCC 501], the Hon-ble Supreme Court has held as follows :

‘21.Applying the above tests, we are of the



considered opinion that appellants can neither be said to be aggrieved persons nor bound by the judgment and decree of the Trial Court in any manner. The relief claimed in the suit was cancellation of agreement to sell. On the other hand, the sale deeds which were the basis of the claim of the appellants were executed on the basis of General Power of Attorney, and had nothing to do with the agreement to sell which was subject matter of suit. The judgment and decree of the Trial Court is in no sense a judgment in rem and it is binding only as between the plaintiffs and defendants of the suit, and not upon the appellants. '

23.From the judgment cited supra, it is clear that a party to the proceedings has a right to appeal and a person who is not a party to the proceedings can appeal only if he satisfies the Court that he is aggrieved by the judgment impugned and obtains leave of the Court. No doubt, in the present case on hand, the 5th defendant is a party to the suit, however, it is pertinent to note that he has not been arrayed as a defendant in his individual capacity, but only in the capacity of Power Agent of the defendants 1 to 4. Therefore, it is imperative on the 5th defendant to seek leave of this Court before



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filing the appeal against the judgment passed in the suit, but he has failed to do so. Even if tested whether the 5th defendant can be granted leave, being a Power Agent of the defendants 1 to 4, the 5th defendant can in no way be aggrieved by the impugned judgment and decree, insofar as the defendants 1 to 4 are the only persons who are truly impacted by the impugned judgment and decree. When the defendants 1 to 4 have chosen to remain ex parte in the suit and have also not chosen to file any appeal even after a decree has been passed against them by the trial Court, the Power Agent, who has no power or authority to file any appeal even by virtue of the Power of Attorney relied upon by him, nor even aggrieved by the judgment and decree impugned herein, is not entitled to file any appeal against the judgment and decree of the trial Court and therefore, this Court finds that the appeal filed by the 5th defendant is not maintainable. Point No.1 is answered accordingly.

The appellant's side relied on the decision reported in **2001 (3) MLJ 15** in support of his case and the same has no relevance since the question of the power agent filing the appeal in his individual capacity was not an issue in that case. Hence, this appeal is not maintainable.

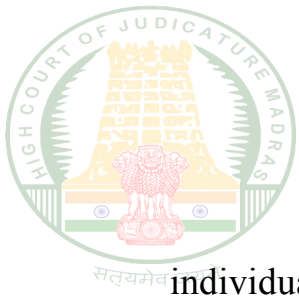


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12.The learned counsel for the appellant/9th defendant has submitted that the 1st respondent/plaintiff has not added the defendants 9 and 10 as power of attorneys of their principals and they have been added in their individual capacity. The provision under Order 41 Rule 4 of CPC, enables any one of the defendant or plaintiff to prefer an appeal and it is a settled position that even in the absence of a person against whom a decree has been passed on a ground common with the appellant, the appeal is maintainable and appropriate relief can be granted and relied on ruling reported in **AIR 1970 Supreme Court 108** in the case of **Ratan Lal Shah /v/ Firm Lal-mam Das Chhadamma Lal and Another**. The appellant/9th defendant and the 10th defendant have laid out the property into house plots based on a power of attorney deed and sold out them to 33 persons. The plaintiff has not specifically denied the same, but the plaintiff added the subsequent purchasers as defendants. So, the appellant is an aggrieved person and this appeal is maintainable.

13.On perusal of the plaint, in short cause title and long cause title, the plaintiff has not shown the defendants 9 and 10 as power agents of their principals, namely the defendants 7 and 8, they have shown them in their



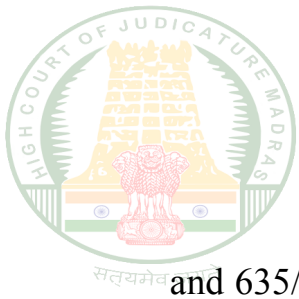
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individual capacity. The appeal is preferred by the 9th defendant in his individual capacity. It is a settled position that even an exparte defendant can prefer an appeal. As rightly submitted by the learned counsel for the appellant/9th defendant, relying on the decision reported in **AIR 1970 Supreme Court 108 in the Ratan Lal Shah case**, the object of Order 41 Rule 4 of CPC enables one of the parties to the suit to obtain relief in appeal when the decree appealed from proceeds on a ground common to him and others. Moreover, the argument of the 1st respondent/plaintiff that the appellant is not an aggrieved person is not acceptable. Because it is the case of the appellant/9th defendant that, on the basis of the power deed executed by the defendants 7 and 8, they have sorted the property into house plots and sold out them to 33 persons. The plaintiff has not specifically denied the same, but the plaintiff added the subsequent purchasers as defendants. So, the argument regarding the aggrieved person has no merit. Therefore, this Court is of the considered opinion that the appeal is maintainable.

14. Point Nos.2 to 7:

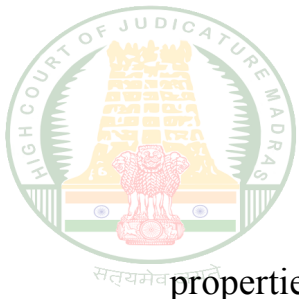
The learned counsel for the appellant/9th defendant has submitted that there is no dispute that the suit properties with a larger extent in S.Nos.634/1



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and 635/1 were allotted to the 1st defendant under Ex.A.1 - Partition Deed, the plaintiff is the son of the 1st defendant through the 2nd wife and he was born on 21.10.1991. The 1st defendant has a daughter, Lakshmi Praba, through his 1st wife and she was given 2 acres 50 cents in S.No.634/1 under Ex.A.2 dated 17.04.1998. Prior to that, the 1st defendant sold 2 acres with a pathway right in S.No.634/1 to the defendants 2 to 5 through Ex.A3 and Ex.A.4 sale deeds dated 24.03.1997 and 31.03.1997. The 1st defendant has further sold 1 acre 75 cents along with pathway, including 6 cents in S.No.635/1 by virtue of a registered sale deed under document No.2168/2002 dated 21.11.2002. The 6th defendant sold the same to the defendants 7 and 8 through Ex.A.5 - Sale Deed dated 13.02.2009. The plaintiff has challenged the sale deeds Ex.A.3, Ex.A.4 and Ex.A.5 as null and void; he has not challenged the sale deed dated 21.11.2002, which related to the 2nd item. The plaintiff showed the suit properties consisting of two items viz., 1st item as 2 acres in S.No.634/1 and 2nd item as 1 acre 81 cents in S.No.635/1. In fact, the 1st defendant was given an extent of 8 acres 61 cents in S.No.634 and 1 acre 81 cents in S.No.635. While the 1st defendant was given a total extent of 10 acres 42 cents and the plaintiff stated Hindu Undivided Family properties as 10 acres 42 cents, the plaintiff has sought partition only with regard to suit



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properties measuring 3 acres 81 cents. In Ex.A.2, the 1st defendant has specifically mentioned that he independently purchased 70.5 cents and the said property was not included in this suit. The plaintiff, as P.W.1 in his cross-examination, admitted that he has not included the said property. Hence, without adding all properties, the plaintiff cannot seek partial partition. The defendant has specifically contended in his written statement. So, the suit is hit by partial partition and the trial Court has also not framed any issue in this aspect.

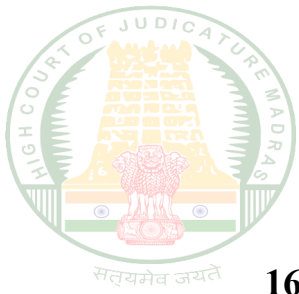
15.The learned counsel for the appellant has relied on the ruling of the Madras High Court rendered in the case of **Gandhi /v/ Saminatha Gounder and Anr.**, reported in **2006 (1) CTC 267** and held as follows:

“4.Mr.V. Raghavachari, learned counsel for the appellant placed reliance on the judgment of the Supreme Court rendered in [Kenchegowda \(since deceased\) by Legal Representatives v. Sri Slddegowda @ Motegowda, JT 1994 \(4\) SC 125](#) In this case, the Supreme Court has laid down the law holding that in a suit for partition when all the joint family properties are not made subject matter of the suit, such suit is not maintainable. The legal position in that regard is well settled, even though the learned counsel for the first



respondent would contend that even the existence of the jewel is not known and therefore, the non-inclusion is not deliberate and in any event, it would not affect the relief of partition claimed.

5.I do not agree with the said contention. As stated above, when the plaintiff as a witness has admitted the existence of such valuable jewel as belonging to the joint family, it was the duty on his part to include that as a schedule property. The non-inclusion thereof is certainly fatal to the relief of partition. In my view, absolutely no question of law, nevertheless a substantial question of law, is involved in the matter and the judgment of the first Appellate Court in coming to a conclusion as if it is not proved that the plaintiff has taken a "Kasu Malai" from the first defendant and therefore, non-inclusion of "Kasu Malai" in the schedule will not affect the relief claimed in the suit is not sustainable. What is important is whether such a property should be included for partition when once it has come to the knowledge of the parties that the said property is available and it is not material as to whether the same is in possession of the plaintiff or the defendant...."

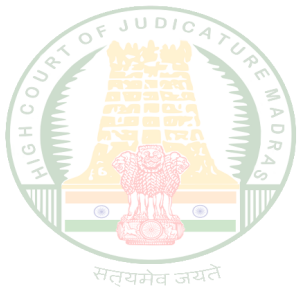


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16.The learned counsel for the appellant further submitted that the plaintiff has admitted the existence of another legal heir, i.e., the daughter of the 1st defendant, namely Lakshmi Praba. The plaintiff has denied the partition deed dated 17.04.1998 through which the 1st defendant gave 2 acres 50 cents to her daughter, who is the sister of the plaintiff. In this suit, the plaintiff has not impleaded her sister Lakshmi Praba. The plaintiff/P.W.1 has categorically admitted in his cross examination that “அந்த லட்சுமிபிரபா இவ்வழக்கில் ஒரு தரப்பினராக சேர்க்கப்படவில்லை..”. Further, this defendant specifically pleaded in his written statement that the defendants 9 and 10, as power agents of defendants 7 and 8, have plotted out the property purchased by them and alienated it to 33 different individuals and they are in possession of the same and so they became co-sharers. The plaintiff has added a few purchasers, but he has not added all the subsequent purchasers, so the suit is bad for non-joinder of necessary parties. Therefore, without adding the sister of the plaintiff and the subsequent purchasers/co-sharers, the present suit is not maintainable by relying on the citation reported in **(1994) 4 SCC 294 in the case of Kenchegowda (since deceased) by Legal Representatives /v/ Siddegowda alias Motegowda**, in which it is held in paragraph No.16 as follows:

“16. Even otherwise, a suit for partial



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partition in the absence of the inclusion of other joint family properties and the impleadment of the other co-sharers was not warranted in law. Thus, we find no difficulty in allowing these appeals which are accordingly allowed.”

17.The learned counsel for the appellant further argued that in Ex.A.2 partition deed and earlier sale deeds, the plaintiff is also a party, when he specifically admitted the partition in favour of his sister and he cannot ignore other sale deeds as they were made for personal expenses of his father. The plaintiff, who was born on 21.10.1991, became major on 21.10.2009. He filed an amendment petition in 2013, after a lapse of three years from attaining majority, amended the plaint by adding paragraph No.7a. Even then, he has not challenged the sale deed dated 21.11.2002 and has not included it in his prayer, despite making an averment. The plaintiff cannot pick and choose deeds. The plaintiff produced Ex.A.5 - sale deed dated 13.02.2009, which was executed by the 6th defendant in favour of defendants 7 and 8. The 6th defendant specifically mentioned in Ex.A.5 that he purchased the suit property from the 1st defendant under a sale deed dated 21.11.2002. The plaintiff has also mentioned about the same in the plaint. Still, he has not challenged the sale deed dated 21.11.2002 under which a Hindu Undivided Family property

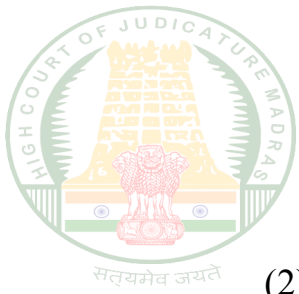


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was sold by the 1st defendant for himself and for his minor son. Till date, the plaintiff has not challenged the said deed of the year 2002. Moreover, it is barred by limitation for seeking cancellation of the deed dated 21.11.2002. Hence, when the plaintiff being an eo-nominee party and has not challenged the earlier sale deed dated 21.11.2002, cannot challenge subsequent sale deeds under Ex.A.5 in respect of the 2nd item of the suit property and hence, these acts of the plaintiff vitiate his case for the 2nd item and relied on the rulings as follows:

(1) 1956 (2) MLJ 411 (FB) in the case of Sankaranarayana Pillai and Anr. /v/ Kandasamy Pillai, it is held as follows:

“Our answer to the first question is that if the minor is eo nomine a party to a sale-deed or other document of alienations, he must sue for the cancellation of the document under [Section 7\(iv-A\) of the Court-fees Act](#) and it is not enough if he applies for possession under [Section 7\(v\) of the Act](#); and to the second question our answer is that there can be no distinction whether the father as guardian of the minor and not as the manager of the joint family executes the deed. Even in that case also the document has to be set aside. ”



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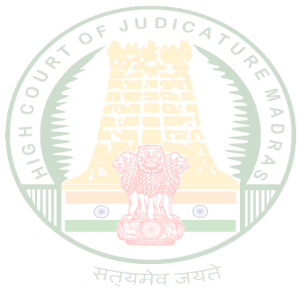
(2) 2001 (3) MLJ 15 in the case of Balu @ Balakrishnan /v/ Minor

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B.Sasikumar and Others, wherein it is held in paragraph Nos.38 to 40 as follows:

“38. The Full Bench also laid down that where a minor is an eo nomine, a party to a sale or other document of alienation by a guardian which he seeks to avoid it is not enough for him to merely sue for possession and pay Court fee only for possession, but it is essential that he should seek for cancellation of the document and pay appropriate Court-fees, while pointing out that it makes no difference whether the sale deed is executed by the guardian of the minor as guardian or as manager of the joint family and in either case the transaction has to be challenged and set aside. In other words, when he is an eo nomine party, it is not open to the minor to ignore the transaction and seek possession of the property. The legal position as held in the pronouncements holds the field as no dicta to the contra had been cited at the hearing.

39. Alienation made by father neither for legal necessity nor for benefit of the estate, nor for payment of antecedent debts is not valid and not binding on the minor. For judging the validity of such transactions or alienations each transaction



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should be examined independently.

40. If the alienation is not avyavaharika or tainted with immorality or illegality and the debts were antecedent in fact as well as in time to the alienation, then the alienation made by father will be binding and not otherwise. In Hindu Law, the Manager of a joint Hindu family has power to alienate the joint family property for value so as to bind the interest of both adult and minor coparceners in the property, provided the alienation is made for legal necessity or for the benefit of the estate. Further, whether a transaction is for the benefit of the family or not, it would depend upon the facts and circumstances of each case. It should be of a defensive character or it could be one for the benefit of the family."

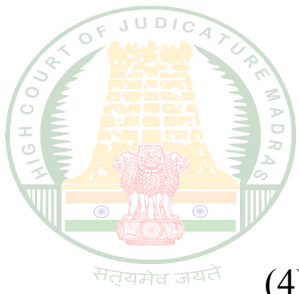
(3) 2004 (13) SCC 480 in the case of Nagappan /v/ Ammasai Gounder and Others, in which the Hon'ble Supreme Court has held in paragraph Nos.8 and 9 as follows:

"8. The High Court held that in the absence of a prayer for setting aside of the sale deeds, the suit filed by the appellant for recovery of possession was not maintainable. Placing reliance on the two Division Bench judgments in Sridharan v.



Arumugam and in K.Jagannathan v. A.M.Vasudevan Chettiar and a Full Bench decision in C.R.Ramaswami Ayyangar v. C.S.Rangachariar of his own High Court, the learned Single Judge held that where the minor is an eo nomiee party to a sale deed or other documents related to alienation, he must sue for the cancellation of the documents and it is not enough if he applies for possession without getting the sale deed cancelled. Such a suit would not be maintainable. Since the appellant had failed to seek the relief of setting aside of the sale deed and their cancellation, the suit filed by the appellant was not maintainable.

9.The view taken in the impugned judgment is in consonance with the view taken by this Court in Vishwambhar v. Laxminarayan. In the said decision, Their Lordships, after considering the entire case law, held that sale effected without taking permission of the Court under Section 8(2) of the Hindu Minority and Guardianship Act, 1956 is voidable at the instance of the plaintiffs and the plaintiffs are required to get the alienation set aside if they want to avoid the transfer and recover the property from the purchasers. If a prayer for setting aside the alienation is not made, then the suit seeking possession would not be maintainable."



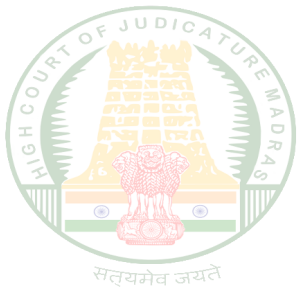
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(4) Judgment of **High Court Madras in A.S.No.183 of 2016 dated 19.04.2023 in the case of Puvaneswary Balachandran @ Shantha and Ors. /v/ Vijayalakshmi and Ors.**, it is held in paragraph No.15 as follows:

“15.On the interpretation of [Section 8](#) of the Act, the Hon'ble Supreme Court and this Court, in various judgments including the judgment in the case of [Murugan and others v. Kesava Gounder \(dead\) through LRs and others reported in AIR 2019 SC 2696](#), have reiterated the position that any alienation by the minor represented by the guardian is voidable, and the alienation by the guardian is binding on the minor unless it is set aside within a period of three years from the date of attaining majority. The relevant portion of the judgment is extracted below:

20.The alienations, which were voidable, at the instance of minor or on his behalf were required to be set aside before relief for possession can be claimed by the plaintiffs. Suit filed on behalf of the plaintiffs without seeking prayer for setting aside the sale deeds was, thus, not properly framed and could not have been decreed.” In this case, the alienation by 2nd plaintiff's father under Ex.B12 is not challenged by the minor within the period of limitation on attaining majority. In such



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circumstances, Point No.(ii) is answered in favour of the appellants, holding that the suit for partition without a prayer to set aside the release deed under Ex.B12 is not valid. "

In the above settled position, when the plaintiff has not challenged the earlier sale deed dated 21.11.2002, his challenge regarding the subsequent sale under Ex.A.5, dated 13.02.2009, executed by the 6th defendant in favour of defendants 7 and 8 is not sustainable and there is no pleading in respect of Ex.A.5 sale deed in the plaint. The plaintiff became major on 21.10.2009. So, within three years from the date of majority, the plaintiff has to challenge the alienation under the sale deed dated 21.11.2002 as per Article 60 of the Limitation Act. But the limitation to set aside the sale deed dated 21.11.2002 is lost. Hence, the suit is not maintainable regarding the 2nd item of suit property.

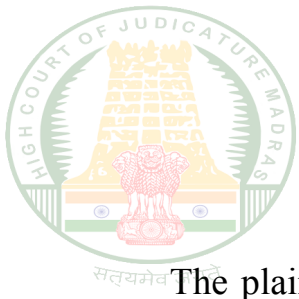
18.The learned counsel for the appellant has relied on the decision of the Hon'ble Supreme Court in the case of **Vishwambhar and Others vs Laxminarayan (dead) through LRs and Another**, reported in **2001 (6) SCC 163**, wherein it is held in paragraph No.9 as follows:

"9. If in law the plaintiffs were required to have the sale deeds set aside before making any claim in respect of the properties sold then a suit



without such a prayer was of no avail to the plaintiffs. In all probability realising this difficulty the plaintiffs filed the application for amendment of the plaint seeking to introduce the prayer for setting aside the sale deeds. Regarding the suit filed by Vishwambhar it was filed within the prescribed period of limitation but without the prayer for setting aside the sale deeds. Since the claim for recovery of possession of the properties alienated could not have been made without setting aside the sale deeds the suit as initially filed was not maintainable. By the date the defect was rectified (December, 1985) by introducing such a prayer by amendment of the plaint the prescribed period of limitation for seeking such a relief had elapsed. In the circumstances the amendment of the plaint could not come to the rescue of the plaintiff.”

19.The learned counsel for the appellant/9th defendant next argued that the plaintiff has not proved the alleged alienation of immovable property for illegal purposes. The plaintiff must plead that the alienation by his father is for immoral or illegal purposes and the onus is heavily on him to show that the recitals in the sale deed are false and the vendor did not receive any sale consideration or that the consideration is for immoral or illegal purposes.



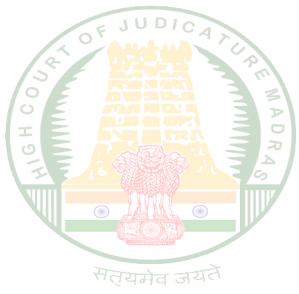
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The plaintiff must show that there was no antecedent debt for the family and there was no compelling necessity.

20.For this argument, the learned counsel has relied on the ruling reported in **1996 (1) CTC 661 in the case of P.B.Ramjee and two Ors. /v/ P.B.Lakshmanaswamy Naidu and ten Others**, it is held in paragraph Nos.8, 12 and 19 as follows:

"8.We have been taken through the entire evidence on record. We do not find any justification to interfere with the conclusion of the trial court on the facts. The plaintiff has examined himself as P.W.I. In his chief examination, he has stated that his father, the first defendant used to play cards and drink, According to him, the first defendant spent monies only for playing cards and drinking and he never effected repairs for the family house. It is stated that the house continues to be in the same state of affairs as it was when he was studying in the school. It should be pointed out here that in the plaint, there is no reference whatever to the first defendant playing cards. In paragraph 4 of the plaint, the allegation is that the plaintiffs father is a spend thrift and he utilised the funds for discharging his "Avyavaharika" debts. In paragraph 7, it is stated that the plaintiff



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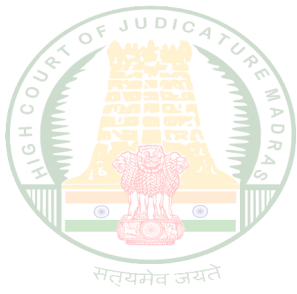


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feels that the amount was utilised for illegal and immoral purposes. In the same paragraph, a vague allegation is made to the effect that the first defendant is a well known spend thrift and a race-goer. Nowhere in the plaint there is any allegation that the first defendant used to play cards or drink. In cross-examination, the plaintiff has admitted that his maternal uncle is not living with him. He has stated that the plaint contains a reference to his father playing cards and drinking after losing in the games, whereas there is no such statement in the plaint.

12. We have no hesitation to hold that the evidence adduced on the side of the plaintiff is hardly sufficient to prove that the first defendant was addicted to drinking and race-going; nor is it proved that he was playing cards and that he was a spend- thrift. There is absolutely no evidence to show that the debts were incurred for illegal and immoral purposes. There is no doubt whatever that the suit mortgage was executed for the purpose of discharging the antecedent debt and thus it is binding on the plaintiff.

19. A Division Bench of this court, in which one of us was a party, had recently an occasion to consider the question in Sridharan and Ors. v. Arumugham and Ors., 1993 (2) M.L.J. 428 and it has held that in so far as the documents in which the minor children are made parties, they are bound in



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law to pray for setting aside the same and without such prayer, the suit is not sustainable in relation to those documents.”

(2) 2002 (3) MLJ 43 in the case Minor S.Vijayakumar (Died) and Others. /v/ R.Subbarayan, it is observed and held paragraph Nos.13 to 23 as follows:

"13. We have already noticed that the learned Senior Counsel Mr.V.K. Muthuswamy wanted us to draw distinction between the alienees who remained ex parte as the evidence of the plaintiffs in regard to the said alienations stands unchallenged by the alienees concerned and those alienees who contested the case. We do not think that this contention by the learned Senior Counsel can be countenanced at all. The larger question is whether the alienations had been made by the first defendant for his illegal or immoral purposes. This the plaintiffs have to prove. If they succeed in proving the same, all the alienations will go, otherwise they will prevail.

14. It is not disputed that the plaintiffs are eo nomine parties to the various transactions by the father in favour of the different parties. In [BALU @ BALAKRISHNAN VS. MINOR B. SASIKUMAR AND](#)



OTHERS (2001 (3) MLJ 15) E. PADMANABHAN, J. has considered the question on this point by referring to a number of decisions and has held that if a person is an eo nomine party to a document, he should seek for setting aside the alienations or should have sought for cancellation of the alienations as well as the encumbrances. The failure to seek cancellation would be fatal to his case. It is not in dispute that possession in the instant case has passed on to the alienees.

15.In *Ramaswamy Aiyangar v. Rengachariar* (1940 (I) MLJ 32 = ILR 19 40 Madras 259 (FB)) referred to by the learned Judge it has been held that "in a case where possession has passed on to the alienee, there should be a prayer for setting aside the transactions before the plaintiff could recover possession from the said alienee."

16.In *Sankaranarayana Pillai v. Kandasami Pillai* (AIR 1956 Madras 670 = 1956 (2) MLJ 411) it has been held by the subsequent Full Bench without any room for doubt that if the minor is an eo nomine party to a sale deed or other documents of alienations, he should sue for the cancellation of the documents and it is not enough if he applies for possession. The hypothesis would be the same whether the father as guardian of the minor and not as the Manager of the joint family executes the deed.



17. *The position therefore is that the present suit having been filed by the plaintiffs for a mere declaration that the alienations are not binding on them without specifically seeking to set aside the alienations, is not maintainable. The appeal can be dismissed on this short ground. However, we will discuss the materials available on record with regard to the other points, which have been raised for consideration.*

18. *It is settled law that minors' impugning alienations by joint family Manager/Father should allege and prove that they were for immoral or illegal purposes. The onus is on them to show that the recitals in the deeds are false and that the vendor did not receive consideration or that the consideration was for immoral or illegal purposes.*

19. *In matters like this where the minors challenge alienations by father/Manager on the ground that the alienations were brought about by the father for illegal or immoral purposes, that there were no antecedent debts for the family, that there was no compelling necessity or that no benefit accrued to the estate, there are certain basic and rudimentary requirements to be satisfied.*

20. *It is incumbent on the plaintiffs to prove that there was income from the family properties,*



that it was adequate and that "after meeting the generality of the expenses connected with the family there could have been available surplus, the existence of which cannot prompt reasonable persons to borrow unnecessarily or to mortgage unnecessarily the family properties, so as to ultimately burden them."- Santanavenugopalakrishnan and others v. K.V.Venugopal (1976 (2) MLJ 134).

21.As pointed out in Raghubanchmani Prasad Narain Singh vs. Ambica Prasad Singh (AIR 1971 SC 776), alienation by Manager of joint Hindu Family even without legal necessity is voidable and not void.

22. The onus lies on the plaintiff to prove that the recital in the document as to payment of consideration is false and in fact the executant did not receive consideration. Smt.Rani and Antoher v. Smt.Santa Bala Debnath and others (AIR 1971 SC 1028).

23. It is also well settled by precedents that even if there was no binding purpose, even if the alienation was not for discharging antecedent debts, for necessity or benefit of the estate as long as there is a debt and it had not been incurred for any immoral or illegal purpose, on the theory of pious



obligation, the sons would be liable to discharge the debts out of the joint family property in their hands.

21.The learned counsel for the appellant further argued that it is also equally settled law that if there was no binding purpose, even if the alienation was not for discharging antecedent debts, for benefit of estate the sons would be liable to discharge the same out of joint family property in their hands by relying on decision of the Hon'ble Apex Court reported in **AIR 1964 SC 1425 in the case of "Virdhachalam Pillai vs. Chaldean Syrian Bank Ltd. Trichur and Anr.** It is held in paragraph Nos.8 and 9 as follows:

"8.Are the debts sued on incurred for family necessity and binding upon the 2nd defendant?"....
An issue in this form arose because of the different views entertained of the Hindu law as regards the scope of the pious obligation of a son to discharge the debts of the father which are not illegal or immoral. In the view of Hindu lawyers the repayment of a debt was conceived of not merely as a legal obligation which had been undertaken when the debt was incurred but non-repayment was considered a sin. The duty of relieving the debtor from this sin was fastened on his male descendants to the third degree. The duty being thus religious, it



was held not attracted if in its nature it was illegal, or immoral i.e., avyavaharika. Whatever might have been the extent of the son's liability according to the Hindu law givers, under the Mitakshara law as administered in all the States, the liability of the son, grandson, great grand son etc., was not treated as a personal liability but as dependent on his becoming entitled to family assets and that it extended to the entirety of his interest therein, but no more.

9.The authorities to which it is wholly unnecessary to refer, have firmly established the following and the position is not in doubt:

(1) A father can by incurring a debt, even though the same be not for any purpose necessary or beneficial to the family so long as it is not for illegal or immoral purposes, lay the entire joint family property including the interests of his sons open to be taken in execution proceedings upon a decree for the payment of that debt."

22.The learned counsel for the appellant further argued that the plaintiff has not produced the sale deed dated 21.11.2002 in respect of the 2nd item. The sale deeds dated 21.03.1999 and 31.03.1997 in respect of the 1st item were produced as Ex.A.3 and Ex.A.4 and the recitals therein show that the properties were sold for pending debts and improvement of the Hindu undivided family



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and to develop agricultural prospects and also to clear the debt covered by the Court decree in O.S.No.635 of 1995. The plaintiff has not produced any contra material to disprove the same, but he admitted in his cross-examination that there is no sufficient income from their agricultural properties, while he pleaded that there is sufficient income from the property. He stated as “தாவா சொத்துக்களில் நல்ல வருமானம் கிடைக்கவில்லை..”. The trial Court has concluded that the 1st defendant sold the properties for his illegal purpose based on the evidence of P.W.2, who deposed that the 1st defendant had the habit of playing cards along with bad company. P.W.2 has not deposed about the alienations and he is unaware of family properties and other civil litigations. Hence, this evidence is unworthy. The trial Court has not even framed an issue regarding illegal or immoral expenses. There is no documentary evidence to show that the alienations were without consideration. The 1st defendant has not entered into the witness box and subjected himself for cross examination, if so, the sale done by him can be held as per the contents mentioned in those sale deeds. The plaintiff admits that he received money accepting the other litigation in respect of the alienation by his father in O.S.No.12 of 2009. The plaintiff wantonly avoided impleading his sister Lakshmi Praba in this suit and purposely filed this suit



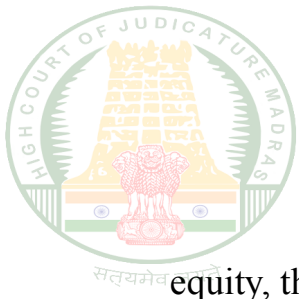
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only with respect of selling of 2 acres under Ex.A.3 & Ex.A.4 and 1 acre 81 cents in Ex.A.5. He also purposely suppressed the other suits in O.S.No.305 of 2011, O.S.No.155 of 2011 and O.S.No.154 of 2011. These show that the plaintiff, with the intention of grabbing money, has filed this suit.

23.The learned counsel for the appellant further submitted that the plaintiff has admitted that the properties were alienated and the defendants 11 to 16 and other purchasers are in possession of the property, if so, the plaintiff has to pay the Court fee U/s.37(1) and not U/s.37(2). On this aspect also, the suit is not maintainable.

24.Lastly, the learned counsel for the appellant/9th defendant has submitted that the 1st defendant was given a total extent of 10 acres 42 cents and he separately purchased 70 cents. The plaintiff has not shown all the above extent of property as suit property, he has only showed 3 acres 81 cents out of the total 10 acres 42 cents. Even for the sake of argument, the plaintiff is entitled to a 1/2 share, leaving 2 acres 50 cents given to his sister, the remaining land available is 7 acres 92 cents and out of which the plaintiff and the 1st defendant are entitled to 3 acres 96 cents each. While so, on applying



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equity, the subsequent purchasers can be entitled to the suit property measuring 3 acres 81 cents from the share of the 1st defendant. Hence, the appeal may be allowed.

25.The respondents 4, 5, 6, 8, 9,12 and 13 adopt the arguments advanced by the appellant's side.

26.Per contra, the learned counsel for the 1st respondent/plaintiff has argued that the appellant mainly contended that the plaintiff has not included all the properties allotted to the share of 1st defendant under 'C' Schedule of partition deed, dated 27.04.1984 and also non inclusion of properties allotted to the plaintiff and the 1st defendant under 'A' Schedule in Ex.A.2 partition deed dated 17.04.1998. In the earlier partition, the ancestral properties were partitioned by the brothers of the Hindu Undivided Family. Thereafter, from out of his property, the 1st defendant gave property to his daughter under Ex.A.2 registered partition deed dated 17.04.1998. The plaintiff has not challenged Ex.A.2 partition deed dated 17.04.1998 and has simply stated that the recitals are not binding on him. He has not sought any relief regarding the share allotted to his sister Lakshmi Praba, and he has filed the suit for partition

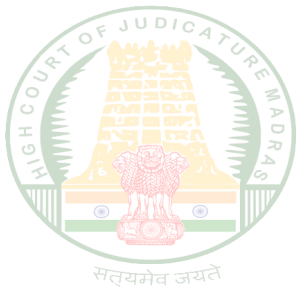


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of the share of the plaintiff and the 1st defendant, leaving the property allotted to his sister. Further, the plaintiff has specifically explained the non-inclusion of some other portion of properties covered under Ex.A.2 that one Govindaraj filed a suit in O.S.No.12 of 2009 for specific performance and, on attaining majority, he questioned the sale agreement and as the said Govindaraj paid half the share amount to the plaintiff, he did not include those properties. The concept of partial partition is not statutory. The basis is that a person should not repeat suits one by one. The principle of partial partition has exceptions also and the Hon'ble Supreme Court has modified the law on partial partition in its decisions as follows:

(1) **2022 SCC Online SC 240 in B.R.Patil vs. Tulsya Y.Swakar** case in which it is held in paragraph No.10 as follows:

"10.This is the state of the pleading and evidence in support of the existence of the property other than what has been scheduled by the plaintiffs and for which partition is sought. It is true that the law looks with disfavor upon properties being partitioned partially. The principle that there cannot be a partial partition is not an absolute one. It admits of exceptions. In Mayne's 'Treatise on Hindu Law & Usage' 17th Edition, Paragraph 487, reads as follows:

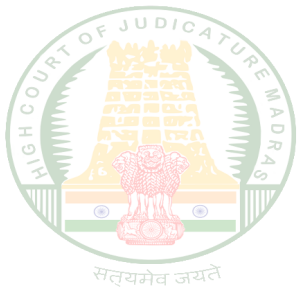


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“487. Partition suit should embrace all property – Every suit for a partition should ordinarily embrace all joint properties. But this is not an inelastic rule which admits circumstances of a particular case or the interests of justice so require. Such a suit, however, may be confined to a division of property which is available at the time for an actual division and not merely for a division of status. Ordinarily a suit for partial partition does not lie. But, a suit for partial partition will lie when the portion omitted is not in the possession of coparceners and may consequently be deemed not to be really available for partition, as for instance, where part of the family property is in the possession of a mortgagee or lessee, or is an impartible Zamindari, or held jointly with strangers to the family who have no interest in the family partition. So also, partial partition by suit is allowed where different portions of property lie in different jurisdictions, or are out of British India. When an item of property is not admitted by all the parties to the suit to be their joint property and it is contended by some of them that it belongs to an outsider, then a suit for partition of joint property excluding such item



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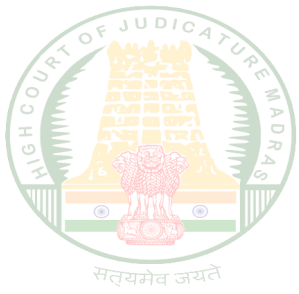
does not become legally incompetent of any rule against partial partition.”

(2) 2026 (1) CTC 314 (DB) in the case of Ponselvam and Ors. v.

K.Kalaiselvi, it is held in paragraph Nos.10 and 15 as follows:

“10.The learned Senior Counsel appearing for the appellants had relied upon a decision of the Hon'ble Supreme Court reported in B.R.Patil v. Tulsa Y. Sawkar and others, 2022 SCC Online SC 240 to contend that the suit is bad for partial partition.

15.As and when the other co-owners of Pandi Nadar choose to seek for partition, the parties to the present suit can claim their respective shares. The wife of the deceased son of Pandi Nadar cannot be made to wait for an indefinite period till the members of the larger co-parcenary (who do not make any claim over the suit schedule properties) choose to partition their properties. Therefore, the suit is not bad for partial partition. As a consequence, the non-impleading of other relatives of Pandi Nadar would not render the suit as bad for non-joinder of necessary parties.



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(3) 2022 (5) CTC 204 in P.Amnachalam and Others v. M.Kaliammal

and Anr. case, wherein it is held in paragraph Nos.13, 19 and 27 as follows:

"13.In approaching the issue, it is necessary to remember that the conceptual defense of partial partition need not, and hence does not, operate uniformly. Before addressing it, it is necessary to restate why a suit for partial partition is not encouraged, or rather not permitted. The underlying principle is that in a suit for metes and bounds partition of an estate held in common as in co-sharership or co-ownership, Courts are required to adjust the equities as between the co-sharers/co-owners based on the character and value of the properties. Courts are required to factor in the divisibility of the property, the value of the property, provision for convenient enjoyment of a specific property to be allotted to parties, and if there are alienees of whole or any portion of any such property or properties, as the case may be, from any of the co-sharers or co-owners, then to transfer such equities that their vendors would be entitled to. Therefore, unless all the properties are before the Court, adjusting inter se equities between the parties vis-à-vis the properties



required to be partitioned may not be possible. This describes the ground rule against suits for partial partition.

Working the Plea of Partial Partition:

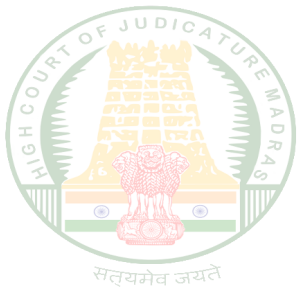
19.As would be seen later, a defense founded in a plea of partial partition can produce different consequences, and not necessarily the same. But, before addressing it, it is necessary to categorise the situations where issue of partial partition may arise:

a) Where the co-sharers or co-owners, as the case may be, do not know about the existence or availability of properties other than those litigated upon.

b) Where the plaintiff is in actual physical possession or in exclusive management of the partible properties, holding them also for the benefit of the other co-sharers.

c) Where the plaintiff is not in actual physical possession of the estate, enjoys it constructively with the co-sharer in possession, or where the defendant is in an identical position as the plaintiff in situation (b).

d) Where a suit is laid or defended by an alienee of a co-sharer or a co-owner.



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27.The conclusion is to state the obvious.

The suit has to be decreed with a rider barring the plaintiffs from instituting any further suit for the partition of any properties not included in the present suit, as it would amount to abuse of judicial process.”

The judgment relied on by the appellant reported in **AIR 1952 Madras 419 and 2006 (1) CTC 267**, which were rendered by the High Court, whereas the decision relied on by the plaintiff in **2022 SCC Online SC 240** is the latest judgment of the Hon'ble Supreme Court and hence, the decision of the appellant in **1994 (4) SCC 294** may not hold good due to march of law. Therefore, there is a chance for a partial partition case and instead of dismissing the suit, a preliminary decree can be passed foreclosing other items.

27.The learned counsel for 1st respondent/plaintiff has further submitted that the appellant/9th defendant raised a plea that the sister of the plaintiff and subsequent purchasers were not impleaded. The contention is not correct. The plaintiff admitted the execution of the partition deed dated 17.04.1998 regarding the properties belonging to the plaintiff, his sister and the 1st defendant and in that partition, his sister Lakshmi Praba was given a share, so she is not a member of the joint family of the plaintiff and the 1st defendant



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and hence, there is no question of impleading Lakshmi Praba as a party to the suit. Further, the plaintiff has added the purchasers who purchased the properties prior to filing of the suit as defendants 2 to 8. The appellant's plea is that the 2nd item was purchased by the 6th defendant from the 1st defendant on 21.11.2002 and he sold the same to defendants 7 and 8. The defendants 7 and 8 executed a power deed in favour of defendants 9 and 10, who sold the property by converting it into plots to the defendants 11 to 16 and other purchasers. It is the specific case of the plaintiff that his father, the 1st defendant, sold the family properties for his illegal and immoral activities for gambling and wayward life. The plaintiff examined P.W.1 and P.W.2 to substantiate the illegal and immoral expenses. On the defendants' side, except for putting suggestions, no adverse evidence was obtained from P.W.1 and P.W.2. The sale deeds executed in favour of defendants 2 to 8 are not for family necessity. When the plaintiff attacks the sale deeds made by his father as being for illegal and immoral purposes and not for family necessity, the initial burden lies upon the said purchasers/defendants 2 to 8 U/s.101 to 104 of the Indian Evidence Act. None of the defendants 2 to 8 entered into witness box to substantiate their case and no document was filed in their favour. The non-adducing of evidence by the defendants by not entering the witness box is fatal to their case and



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relied on the decision reported in **2025 SCC Online SC 2149 in K.S.Shivappa vs. K.Neelamma** case, in which it is held in paragraph Nos.38 to 40 as follows:

“38. The aforesaid plaintiff, Smt. K. Neelamma had not entered the witness box to prove her plaint case or to assert her title over the suit property. She had not even proved the sale deed dated 17.12.1993 under which she has allegedly purchased the suit land from Krishnoji Rao or to state that Krishnoji Rao was having a valid title over the said land to transfer her. In fact, she could not even upon entering the witness box could have proved the valid title of Krishnoji Rao in the absence of any plaint allegations to the above effect. It is settled that the evidence either ocular or documentary cannot travel beyond the pleadings.

39. The power-of-attorney holder of the plaintiff, Smt. K. Neelamma namely Shivaji Rao Salanki, PW-1 was not competent to depose or to prove anything which was not within his personal knowledge or was otherwise personally known to the plaintiff, Smt. K. Neelamma. The testimony of such a witness i.e. a power-of-attorney holder is inadmissible with regard to the facts within the personal knowledge



of the plaintiff who has failed to enter the witness box. This is settled by this Court in [Janki Vashdeo Bhojwani vs. IndusInd Bank Ltd.](#) In the recent case of [Rajesh Kumar vs Anand Kumar and Ors.](#), a Division Bench of this Court in which one of us (P. Mithal, J. was a member) reaffirmed the principle that where the plaintiff refuses to testify, the proxies cannot substitute his personal testimony on key issues within the personal knowledge of the plaintiff. A Power-of-Attorney holder is thus, not entitled to depose in place of the principal.

40. In the overall facts and circumstances of the case, firstly for the reason that the plaintiff failed to enter the witness box so as to testify and prove her plaint case; and secondly for the reason that the sale deed executed by the father of the minors was repudiated by the minors within time on attaining majority, no valid right or title stood transferred to Krishnoji Rao from whom Smt.K.Neelamma had allegedly purchased the suit land. Therefore, the suit as instituted has to fail.”

28.The learned counsel for the 1st respondent/plaintiff further submitted that even the 1st defendant has not entered the witness box to disprove the



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version of the plaintiff. So, the alienation made by the 1st defendant is not for family necessity. For this argument, the learned counsel relied on the ruling of the Hon'ble Supreme Court reported in **2011 (12) SCC 220 in Rangammal vs. Kuppusamy and Another case**, in which it is held in paragraph Nos.20, 21, 28 and 31 as follows:

“20. Therefore, it is more than apparent that when the plaintiff/respondent came up with a case of execution of sale deed on 24.2.1951 for half of the schedule property/disputed property alleged to have been sold out for legal necessity which had fallen into the share of appellant Rangammal, the burden clearly lay on the plaintiff/respondent No.1 to discharge that the sale deed executed by Kumara Naicker to his own son and nephew Arumuga Gounder in regard to the share which had admittedly fallen into the appellant share Rangammal who was a minor, was sold for the legal necessity. But this burden by the trial court was wrongly cast upon the appellant/Rangammal to discharge, although, it is well-settled that the party who pleads has also to prove his case.

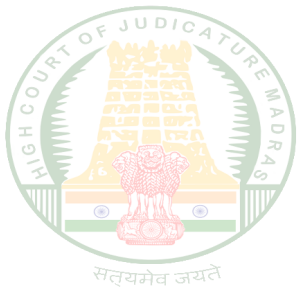
21. Section 101 of the Indian Evidence Act, 1872 defines 'burden of proof which clearly lays down that:



101. Burden of proof. - Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Thus, the Evidence Act has clearly laid down that the burden of proving fact always lies upon the person who asserts it. Until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom burden lies has been able to discharge his burden. Until he arrives at such conclusion, he cannot proceed on the basis of weakness of the other party.

28. When the plaintiff-respondent No.1- Kuppuswami came with a specific pleading for the first time in a partition suit that the appellant's share had been sold out by her de facto guardian Kumara Naicker without even the permission of the court, it was clearly the plaintiff/respondent No.1 who should have discharged the burden that the same was done for legal necessity of the minor in order to discharge the debt which the deceased mother of the appellant was alleged to have been owing to some one. When the plaintiff/respondent No.1 failed to discharge this



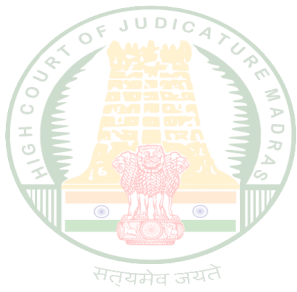
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burden, the question of discharge of burden to disprove the sale deed by the 2nd defendant/appellant-Rangammal do not arise at all as per the provisions of [Evidence Act](#).

31.Application of [Section 101](#) of the Evidence Act, 1872 thus came up for discussion in Subhra Mukherjee case and while discussing the law on the burden of proof in the context of dealing with the allegation of sham and bogus transaction, it was held that party which makes allegation must prove it. But the court was further pleased to hold wherein the question before the court was "whether the transaction in question was a bona fide and genuine one" so that the party/plaintiff relying on the transaction had to first of all prove its genuineness and only thereafter would the defendant be required to discharge the burden in order to dislodge such proof and establish that the transaction was sham and fictitious. This ratio can aptly be relied upon in this matter as in this particular case, it is the plaintiff/respondent No.1-Kuppuswami who relied upon the alleged sale deed dated 24.2.1951 and included the subject-matter of the property which formed part of the sale deed and claimed partition. This sale deed was denied by the defendant/appellant on the ground that it was bogus and a sham



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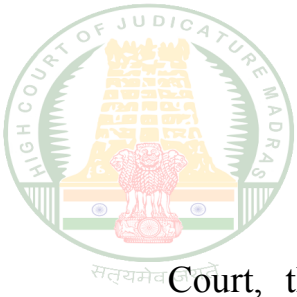


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*transaction which was executed admittedly in 1951
when she was a minor.”*

Hence, the rulings relied on by the appellant in **1996 (1) CTC 661 (DB)** and **2002 (3) MLJ 43 (DB)** rendered by the High Court. Whereas, the reliance placed by plaintiff in **2011 (12) SCC 220** is rendered by the Hon'ble Supreme Court and hence, the plaintiff proved that the sales were made by the 1st defendant for illegal and immoral activities.

29.The learned counsel for the plaintiff further argued that the plaintiff specifically pleaded in his plaint about the invalidity of the sale deed dated 21.11.2002. The defendants 1, 3 and 9 filed written statements. The 6th defendant filed a written statement and an additional written statement. The 6th defendant filed a suit for recovery of possession in O.S.No.305 of 2011 and the same was dismissed for default, thereafter, the 6th defendant did not take steps for restoration of the said suit. The appellant/9th defendant has purposely not included the written statement of the 6th defendant in the typed set for appeal. So, the transaction dated 21.11.2002 is illegal, as substantiated. The trial Court has framed an issue including the invalidity of the sale deed dated 21.11.2002. When both parties clearly understood and addressed the



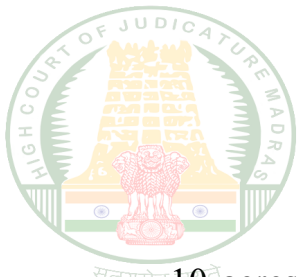
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Court, the omission of a prayer for the sale deed dated 21.11.2002 by typographical omission, which is a small mistake, is not fatal to the suit.

The sale deed dated 22.12.2009 executed by the 6th defendant in favour of defendants 7 and 8 was specifically questioned and the defendants 7 and 8 remained exparte. So, the omission of the sale deed dated 21.11.2002 in the prayer is totally irrelevant. The trial Court has properly discussed the case and decided that all these sale deeds are null and void. Therefore, the finding of the trial Court is correct and the appeal may be dismissed.

30.In reply, the learned counsel for the appellant/9th defendant submitted that the plea of the plaintiff, stating that the question of partial partition does not arise as the partition deed Ex.A.2 dated 17.04.1998, is not correct. Because the plaintiff himself in the plaint averred that the Ex.A.2 partition would not bind him and in re-examination, plaintiff/P.W.1 clearly deposed that he has not accepted Ex.A.2. He deposed as “**வா.சா.ஆ.2 பாகப்பிரிவினை பத்திரத்தை உண்மை என்று நான் ஏற்றுக்கொள்ளவில்லை.**” The trial Court held that the Ex.A.2 partition is not binding on the plaintiff while answering issue No.4. So, the plaintiff admitted that Ex.A.2 is not accepted. The suit is filed for 3 acres 81 cents, when the plaintiff admitted that his father was allotted



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10 acres 81 cents in Ex.A.1 dated 27.04.1984. The plaintiff has not included 2 acres in the partition. The 6th defendant, who purchased the property in 2002, has filed a written statement and specifically contended about the non-inclusion of property allotted to the plaintiff's sister. So, the suit is hit by partial partition. The 6th defendant has also pleaded that he took possession of the property covered under the deed dated 21.11.2002 and a patta was also issued to him. Thereafter, the 6th defendant sold the property to defendants 7 and 8, who in turn gave power to defendants 9 and 10 and they sold them as house plots. Further, the plea of alienation by his father for illegal or immoral activities has to be proved by the plaintiff and the initial burden lies on him and not on the purchasers. Unless the sale deed dated 21.11.2002 is proved invalid, the prayer sought in this suit could not be granted to the plaintiff. Therefore, the appeal may be allowed.

31.Both parties have made rival arguments in respect of their respective cases, relying on citations. I have carefully perused the material records and considered the citations. On hearing both sides and on perusing the material records, it is clear that the suit properties and other properties originally belonged to the family of 1st defendant and his brothers Kandasamy and



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Nallasamy and that they entered into a registered partition deed dated 27.04.1984 through which the land measuring 8 acres 61 cents in S.No.634 and land measuring 1 acre 81 cents in S.No.635 of Oddanchatram Village, totalling 10 acres 42 cents along with pathway right and water well etc., were allotted to the 1st defendant. The said partition deed is marked as Ex.A.1. It is the case of the plaintiff that his father/1st defendant had sold the suit properties for his personal lavish expenses and not for the benefit of the joint family and without the knowledge of the family, so the sales made by the 1st defendant are null and void, and he sought partition. The defendants denied the version of the plaintiff and contested the suit. The trial Court held that the 1st defendant sold properties towards spending money on playing cards and so the sales are null and void and granted partition. Now, the 9th defendant challenges the finding of the trial Court.

32.The plaintiff has examined himself as P.W.1 and examined one Natrayan as P.W.2. They stated in their evidence that the father of the plaintiff, namely R.Krishnan, has sold out the family properties and utilized the sale consideration for his personal illegal and immoral activities and not for the benefit of the family. The plaintiff's counsel argues that the purchasers from



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the father Krishnan have to prove that the sale consideration was given for the benefit of the family and that the initial burden lies on them. This argument is not acceptable. Because it is a settled principle that the litigant who moves the Court has to prove his case first, and then the opposite party has to rebut the same. Section 101 of the Indian Evidence Act says that the initial burden lies on the litigant who files the suit and the opposite party (defendant) is not required to prove anything until the plaintiff successfully establishes a *prima facie* case. This has been clearly held by the Hon'ble Supreme Court in **Rangammal case ((2011) 12 SCC 220)**, relied on by the plaintiff's side. The plaintiff has marked the sale deeds dated 24.03.1997 and 31.03.1997 executed in favour of defendants 2 to 5 by the father of the plaintiff. A perusal of the recitals in Ex.A.3 reads as follows:

“தங்களுக்கு ரூபாய் 2,80,000-00க்கு கிரையம் செய்து
கொடுத்து தொகையைப் பெற்றுக் கொண்டதற்கு விபரம்:-

(1) மன்னர் திருமலை மாவட்டம், ஒட்டன்சத்திரம்
வட்டம், ஒட்டன்சத்திரம் கிராமம், தும்மிச்சம்பட்டிபுதூரில்
வசிக்கும் பழனியப்பகவுண்டர் அவர்கள் மகன்
எஸ்.பி.வீரப்பன் அவர்களிடமிருந்து ரொக்கம் பெற்றுக்
கொண்டு எழுதிக்கொடுத்திருக்கும் புரோநோட்டுக்
கடனுக்காக மேற்படியார் திண்டுக்கல் சப்-கோர்ட்டில் ஓ.எஸ்.
637/95 நம்பராக டிக்கிரி பெற்றிருக்கும் வகைக்கு நாளது
தேதி வரை மேற்படியாருக்கு டிக்கிரிக்காக கோர்ட் செலவு



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வகையறா உட்பட சர்வதக்கமாக செல்லாக வேண்டியது
ரூபாய் 57,050-00.

(2) மன்னர் திருமலை மாவட்டம், ஒட்டன்சத்திரம்
வட்டம், ஒட்டன்சத்திரம் கிராமம், காந்திநகரில் வசிக்கும்
வீரப்பகவுண்டர் அவர்கள் மகன் வி.ராமமூர்த்தி
அவர்களிடமிருந்து சென்ற 3.10.1996 தேதி நான் ரூபாய்
75,000-00 ரொக்கம் பெற்றுக் கொண்டு
எழுதிக்கொடுத்திருக்கும் புரோநோட்டுக் கடனுக்கு நாளது
தேதி வரை மேற்படியாருக்கு வட்டிக்கு செல்லானது போக
அசலுக்கு செல்லாக வேண்டிய ரூபாய் 75,000-00.

(3) மன்னர் திருமலை மாவட்டம், ஒட்டன்சத்திரம்
வட்டம், ஒட்டன்சத்திரம் கிராமம், தும்மிச்சம்பட்டிபுதூரில்
வசிக்கும் வெ.மலையப்பகவுண்டர் அவர்கள் மகன்
எம்.பழனிச்சாமி அவர்களிடமிருந்து சென்ற 15.10.1996ந்
தேதி நான் ரூபாய் 75,000-00 எழுபத்தி ஐந்தாயிரம்
ரொக்கம் பெற்றுக் கொண்டு எழுதிக்கொடுத்திருக்கும்
புரோநோட்டுக் கடனுக்கு நாளது தேதி வரை
மேற்படியாருக்கு வட்டிக்கு செல்லானது போக அசலுக்கு
செல்லாக வேண்டிய ரூபாய் 75,000-00.

(4) மன்னர் திருமலை மாவட்டம், ஒட்டன்சத்திரம்
வட்டம், ஒட்டன்சத்திரம் கிராமம், தும்மிச்சம்பட்டிபுதூரில்
வசிக்கும் காலஞ்சென்ற வெள்ளையப்பகவுண்டர் அவர்கள்
மகன் வெ.மலையப்பகவுண்டர் அவர்களிடமிருந்து சென்ற
3.11.1996ந் தேதி நான் ரூபாய் 50,000-00 ஐம்பதாயிரம்
ரொக்கம் பெற்றுக் கொண்டு எழுதிக் கொடுத்திருக்கும்
புரோநோட்டுக் கடனுக்கு நாளது தேதி வரை
மேற்படியாருக்கு வட்டிக்கு செல்லானது போக அசலுக்கு



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செல்லாக வேண்டிய ரூபாய் 50,000-00.

மேற்கண்ட விபரப்படி கோர்ட் டிக்கிரிக்கும், புரோநோட்டுகளுக்கும் செல்லாக வேண்டிய தொகைகளை தாங்களே எனக்காக மேற்படியார்களுக்கு தொகை செலுத்தி டிக்கிரிக்கு தகுந்த ஆதரவு பெற்றும் பிராம்சரி நோட்டுகளுக்கு செல்லுடன் வாபஸ் பெற்றுக் கொள்வதாகவும் அவாலத்து செய்து கொண்ட வகையில் எனக்கு செல்லானது ரூபாய் 2,57,050-00. மைனர்களடங்கிய குடும்ப முன்னேற்ற செலவிற்காகவும், விவசாய அபிவிருத்தி செலவிற்காகவும் நாளது தேதி நான் தங்களிடமிருந்து அடியிற்கண்ட சாட்சிகள் முன்பாக ரொக்கம் பெற்றுக் கொண்டது ரூபாய் 22,950-00. ஆக மேற்கண்ட விபரப்படி கிரையத் தொகை ரூபாய் 2,80,000-00 இரண்டு லட்சத்து எண்பதாயிரமும் எனக்கு செல்லாகி விட்டபடியால் கிரையச் சொத்தையும் இன்றே தங்களுக்கு சுவாதீனம் கொடுத்து தாங்களும் சுவாதீனம் அடைந்து கொண்டபடியால் நாளது தேதி முதல் மேற்படி சொத்தை கிரைய பாத்தியத்துடன் சர்வ சுதந்திர பாத்தியமாய் ஆண்டனுபவித்துக் கொள்வீர்களாகவும், கிரைய சொத்தைப் பொறுத்து இனிமேல் எனக்கோ, என்னுடைய வாரிசுகளுக்கோ எவ்வித பாத்தியமும் பின்தொடர்ச்சியுமில்லை. கிரைய சொத்தைப் பொறுத்து எவ்வித வில்லங்கமும் இல்லையென்று உறுதி கூறுகிறேன்.



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33.The recitals in Ex.A.4 which would read as follows:

“சொத்துக்களில் இதனடியில் விவரிக்கப்பட்டுள்ள விவசாய நிலத்தை மட்டும் நான் தங்களுக்கு ரூபாய் 28,00,000-00க்கு கிரையம் செய்து கொடுத்து தொகையைப் பெற்றுக் கொண்டதற்கு விபரம்:-

(1) மன்னர் திருமலை மாவட்டம், ஒட்டன்சத்திரம் வட்டம், ஓடைப்பட்டி கிராமம், வெங்கிடாபுரத்தில் இருக்கும் பி.முத்துச்சாமிக்கவுண்டர் அவர்கள் மகன் எம்.செல்லமுத்து அவர்களிடமிருந்து சென்ற 14.4.1994ம் தேதி நான் ரூபாய் 50000.00 ரொக்கம் பெற்றுக்கொண்டு எழுதிக்கொடுத்த புரோநோட்டு கடனுக்கு நாளது தேதிவரை மேற்படியாருக்கு வட்டிக்கு செல்லானது போக அசலுக்கு செல்லாக வேண்டியது ரூபாய் 50000.00

(2)மன்னர் திருமலை மாவட்டம், ஒட்டன்சத்திரம் வட்டம், ஓடைப்பட்டி கிராமம், வெங்கிடாபுரத்தில் இருக்கும் பழனிமலைக்கவுண்டர் அவர்கள் மகன் செல்லக்குமார் கவுண்டர் அவர்களிடமிருந்து சென்ற 7.10.1994ம் தேதி நான் ரூபாய் 45000.00 ரொக்கம் பெற்றுக்கொண்டு எழுதிக்கொடுத்திருக்கும் புரோநோட்டு4- கடனுக்கு நாளது தேதிவரை மேற்படியாருக்கு வட்டிக்கு செல்லானது போக அசலுக்கு செல்லாக வேண்டியது ரூபாய் 45000.00

3)மன்னர் திருமலை மாவட்டம், ஒட்டன்சத்திரம் வட்டம், ஓடைப்பட்டி கிராமம், வெங்கிடாபுரத்தில் இருக்கும் பழனிச்சாமிக்கவுண்டர் அவர்கள் மகன் கிருஷ்ணசாமிகவுண்டர் அவர்களிடமிருந்து சென்ற 12.11.1994ம் தேதி நான் ரூபாய் 45000.00 ரொக்கம் பெற்றுக்கொண்டு எழுதிக்கொடுத்திருக்கும் புரோநோட்டு



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கடனுக்கும் நாளது தேதிவரை மேற்படியாருக்கு வட்டிக்கு செல்லானது போக அசலுக்கு செல்லாக வேண்டியது ரூபாய் 45000.00

4)மன்னர் திருமலை மாவட்டம், ஒட்டன்சத்திரம் வட்டம், சிந்தலப்பட்டி கிராமம் கஸ்பா சிந்தலப்பட்டியில் இருக்கும் பொன்னுச்சாமிக்கவுண்டர் அவர்கள் மகன் குப்புச்சாமி அவர்களிடமிருந்து சென்ற 25.12.1994ம் தேதி நான் ரூபாய் 40000.00 ரொக்கம் பெற்றுக்கொண்டு எழுதிக்கொடுத்திருக்கும் புரோநோட்டு கடனுக்கு நாளது தேதிவரை மேற்படியாருக்கும் வட்டிக்கு செல்லானது போக அசலுக்கு செல்லாக வேண்டியது ரூபாய் 40000.00

5)மன்னர் திருமலை மாவட்டம், ஒட்டன்சத்திரம் வட்டம், ஒட்டன்சத்திரம் கிராமம் விஸ்வநாதபுரத்தில் இருக்கும் கருப்பணகவுண்டர் அவர்கள் மகன் கிட்டான் அவர்களிடமிருந்து சென்ற 20.01.1994ம் தேதி நான் ரூபாய் 40000.00 ரொக்கம் பெற்றுக்கொண்டு எழுதிக்கொடுத்திருக்கும் புரோநோட்டு கடனுக்கு நாளது தேதிவரை மேற்படியாருக்கு வட்டிக்கு செல்லானது போக அசலுக்கு செல்லாக வேண்டியது ரூபாய் 40000.00. மேற்கண்ட விபரப்படி புரோநோட்டுகளுக்கு செல்லாக வேண்டிய தொகைகளை தாங்களே எனக்காக மேற்படியார்களுக்கு தொகை செலுத்தி புரோநோட்டுகளை செல்லுடன் வாபஸ் பெற்றுக்கொள்வதாக சுவாலித்து செய்து கொண்ட வகையில் எனக்கு செல்லானது ரூபாய் 2,60,000.00 நாளது தேதி நான் தங்களிடமிருந்து மைனர்களடங்கிய குடும்ப முன்னேற்ற செலவிற்காகவும் விவசாய அபிவிருத்தி செய்வதற்காகவும் அடியிற்கண்ட



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சாட்சிகள் முன்பாக ரொக்கம் பெற்றுக்கொண்டது ரூபாய் 20000.00 ஆக மேற்கண்ட விபரப்படி கிரயத்தொகை ரூபாய் 2,80,000.00 இரண்டு லட்சத்து எண்பதாயிரம் எனக்கு செல்லாகிவிட்டபடியால் கிரையச்சொத்தையும் இன்றே தங்களுக்கும் சுவாதீனம் கொடுத்து தாங்களும் சுவாதீனம் அடைந்து கொண்டபடியால் நாளது தேதி முதல் மேற்படி சொத்தை கிரைய பாத்தியத்துடன் சர்வசுதந்திர பாத்தியமாய் ஆண்டனுபவித்துக்கொள்வார்களாகவும்....”.

34.From the contents, it is clear that there were debts for the family upon pronotes and also a Court decree in the suit in O.S.No.635 of 1995 and also for the benefit of minor children and for development of agriculture. The plaintiff has not produced any material to dispute or disprove the above recitals. While so, the fact that the 1st defendant has not been subjected to cross-examination by other defendants would prove that the above alienations were made for family necessities and to clear the debts. It is a settled principle that the plaintiff cannot take advantage of defendants who remained ex-parte, he has to prove his case on his own stand. The trial Court has not considered the above facts and relied only on the evidence of P.W.2. A perusal of the evidence of P.W.2 shows it is not trustworthy, as rightly argued by the appellant/9th defendant. He deposed as “நானும் முதல் பிரதிவாதியும் சிநேகிதர்கள் என்றால் சரியல்ல. ஒரே ஊரை சேர்ந்தவர்கள்



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....என்னை இவ்வழக்கில் சாட்சி சொல்ல வாதிதான் அழைத்து வந்தார். முதல் பிரதிவாதியின் நண்பர்கள் யார் என்று எனக்கு தெரியாது. ஆனால் அவருக்கு கெட்ட பழக்கங்கள் இருந்தது எனக்கு தெரியும். இந்த வழக்கிற்கு பிறகு நானும் முதல் பிரதிவாதியும் இதுவரை பேசிக்கொள்ளவில்லை...”.

35.From the evidence of P.W.2, it is clear that he has not clearly deposed as to what kind of bad habits the 1st defendant was into, and the sale consideration of the above sale deeds being a huge one during those years would not be met for illegal activities. Hence, the plaintiff has not proved his case that the alienations were made for personal activities of the 1st defendant until disproves the contents contained in Ex.A.3 and Ex.A.4 which shows the pronote debts and decree amount in the original suit. Ex.A3 and Ex.A.4 are registered documents, which were registered before the Sub Registrar at the time of registration. So, the contents of the documents would be deemed genuine until the same is disproved. In this case, the plaintiff has not disproved the contents of Ex.A.3 and Ex.A.4.

36.This Court held that a Kartha/Father Manager is having enormous powers of alienation with regard to Hindu Joint Family either for discharging his own debt or for the benefit of the estate and the same is binding upon other



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members of Hindu Joint Family as held in **Mariamammal and Subbuthai in S.A(MD)No.255 of 2010** reported in **2013 (5) CTC 49**, this Court held in paragraph Nos.53 and 55 as follows:

"53.In (1996) 8 Supreme Court Cases 54 (Sri Narayan Bal and others Vs. Sridhar Sutar and others), the Hon'ble Apex Court has held that "Karthha of Hindu joint family is having unfettered right of alienation of joint family property and the same is binding upon other members."

55. From the conjoint reading of the decisions referred to supra, it is made clear that a kartha/father manager is having enormous powers of alienation with regard to Hindu Joint family either for discharging his own debt or for the benefit of the estate and the same is binding upon other members of Hindu joint family. Further even if a sale is effected by a Manager without legal necessity, the same is nothing but voidable and not void."

The 1st defendant, being the head of his family consisting of the plaintiff and one daughter, Lakshmi Praba, has enormous powers of alienation with regard to the Hindu Joint Family either for discharging his own debt or for the benefit of the estate and the same is binding upon other members of the



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Hindu Joint Family. The trial Court has not considered all these aspects and concluded only based on oral evidence of P.W.2, which is not sustainable in the eye of law.

37.Next, the appellant's case is that the suit is hit by partial partition.

It is an admitted fact that, as per Ex.A.1, the plaintiff's father obtained 10 acres 81 cents in suit survey numbers. The suit property is only to the extent of 3 acres 81 cents. Even as per Ex.A2, the plaintiff's sister Lakshmi Praba was given 2 acres 50 cents, and the remaining extent of 4 acres 50 cents is available. The plaintiff has not added the said portion by stating that it was under litigation and he was given money towards his share. But the plaintiff has not produced any material to show which suits are pending and have ended to what extent of the property. But, he clearly admitted in his evidence that "மீதி 4 ஏக்கர் 11 செண்ட் பற்றி இவ்வழக்கில் எதுவும் குறிப்பிடப்படவில்லை. மேற்கண்ட 4 ஏக்கர் 11 செண்ட்டில் ஏதேனும் ஒரு பகுதியோ அல்லது முழுவதுமாகவோ விற்பனை செய்யப்பட்டதா என்பது பற்றி எனக்கு தெரியாது. அந்த 4 ஏக்கர் 11 செண்ட்டு பொறுத்து தாவா எதுவும் இல்லை.....". So, it is clear that there are 4 acres 11 cents available for the plaintiff and the 1st defendant. Though the learned counsel for the 1st respondent/plaintiff has submitted about the march of law regarding partial partition by relying on the



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ruling 2022 SCC Online SC 240 and 2026 (1) CTC 314, it is a settled principle that every case has to be dealt with according to the facts and circumstances of each case.

38. Even in the ruling in the **P.Arunachalam case (2022) 5 CTC 204**, it is clearly observed as follows:

“But, before addressing it, it is necessary to categorise the situations where issue of partial partition may arise:

a) Where the co-sharers or co-owners, as the case may be, do not know about the existence or availability of properties other than those litigated upon.

b) Where the plaintiff is in actual physical possession or in exclusive management of the partible properties, holding them also for the benefit of the other co-sharers.

c) Where the plaintiff is not in actual physical possession of the estate, enjoys it constructively with the co-sharer in possession, or where the defendant is in an identical position as the plaintiff in situation (b).

d) When a suit is laid or defended by an alienee of a co-sharer or a co-owner.



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In this case, the alienee has defended the suit as partial partition. So, the argument advanced by the learned counsel for the 1st respondent/plaintiff in this aspect is not acceptable. The plaintiff himself admitted that there is more extent available other than the suit property.

39.Further, the plaintiff himself admits that he received money from a litigant to pass a decree in favour of that litigant in respect of some portion by admitting the sale deed executed by his father. P.W.1 deposed in his cross examination that “கோவிந்தராஜ் என்பவர் வா.சா.ஆ.1ல் கண்ட சொத்துக்கள் குறித்து 1ம் பிரதிதவாதிக்கு எதிராக அ.வ.12/2009 என்ற வழக்கை இந்நீதிமன்றத்தில் தாக்கல் செய்திருந்தார் என்றால் சரிதான். அந்த வழக்கில் வக்கீல் சொன்னவாறு தீர்ப்பாணை செய்வதற்கு சம்மதம் என்று எழுதிக்கொடுத்து பணம் பெற்றுக்கொண்டேன் என்றால் சரிதான்..”. So, the plaintiff objects to certain sales while admitting certain sales by his father, and it is not an acceptable one under the legal doctrine “approbate and reprobate” that the plaintiff cannot simultaneously accept and reject the same transaction or instrument made by his father/1st defendant. So, the argument of the appellant/9th defendant that the plaintiff and 1st defendant collusively filed the suit only to grab money, feeling a raise in the land value cannot be brushed

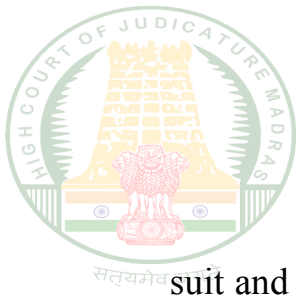


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aside as there is no substance. Moreover, as per Ex.A.2, there are other properties available for the enjoyment of the plaintiff and 1st defendant. The plaintiff has also admitted that he has not added all properties in this partition suit. So, the suit is hit by partial partition as rightly submitted by the appellant/9th defendant.

40.The next issue raised by the appellant/9th defendant is that without setting aside the earlier sale deeds, the plaintiff cannot seek any relief regarding the property covered under those sale deeds. A careful perusal of the plaint averment, makes it clear that his father/1st defendant executed sale deeds dated 24.03.1997, 31.03.1997, 21.11.2002 and 13.02.2009. But the plaintiff sought relief to declare them as null and void against the sale deeds dated 24.03.1997, 31.03.1997 and 13.02.2009. The sale deed dated 21.11.2002 was executed in favour of the 6th defendant by the 1st defendant. The 6th defendant in turn sold the property to defendants 7 and 8 under a sale deed dated 13.02.2009. The defendants 9 and 10, who are power agents of defendants 7 and 8, converted them into house plots and sold them to 33 persons. The plaintiff has not sought for cancellation of sale deed dated 21.11.2002. Admittedly, the plaintiff became a major in 2009 and he filed the

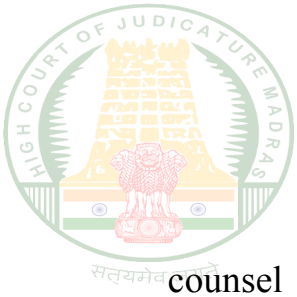


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suit and pending suit, he filed an amendment petition in 2013. Even at the time of filing the amendment petition in 2013, knowing the fact of subsequent alienation to defendants 11 to 16, the plaintiff has not sought any relief regarding the sale deed dated 21.11.2002. Therefore, it is very clear that the suit in respect of the sale deed dated 21.11.2002 is barred by limitation as rightly submitted by the appellant's counsel relying on decision in Sankaranarayan case reported in **1956 (2) MLJ 411, Balu @ Balakrishnan case** reported in **2001(3) MLJ 15** and judgment of this Court passed in **A.S.No.183 of 2016** dated 19.04.2023.

41.There is no strong contra case or argument advanced by the 1st respondent/plaintiff's counsel except the plea that the omission to seek a prayer regarding sale deed dated 21.11.2002 by a typographical omission is not fatal to the suit. This argument has no merit. Therefore, this Court is of the considered opinion and holds that the suit is a barred one until the sale deed dated 21.11.2002 is challenged, then the sale deed dated 13.02.2009. Because the plaintiff became major in 2009 and though he omitted to seek relief against the sale on 21.11.2002, he has not cured the same while filing amendment petition in 2013, even till this date as rightly argued by the learned



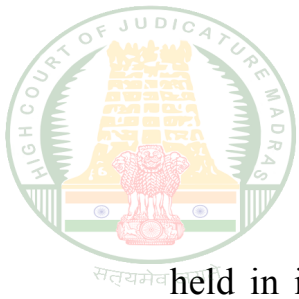
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counsel for the appellant/9th defendant. As regards other sales dated 24.03.1997 and 31.03.1997, the plaintiff has failed to prove that the sales were made for illegal or immoral activities of the 1st defendant and not for the benefit of family, while the contents of those sale deeds clearly show that for clearing debts, including Court decree amount and for the benefit of family and minor, the sales were done.

42.The next point, is whether the suit is bad for non joinder of necessary parties namely the plaintiff's sister Lakshmi Praba and subsequent purchasers.

It is the definite case of the appellant/9th defendant that the plaintiff has not accepted the Ex.A.2 partition deed executed in favour of his sister. Whereas the plaintiff submitted that he admits the Ex.A.2 partition. But a perusal of the plaint averments reveals he clearly pleaded that “வாதி இளவராகயிருந்த போது ஏற்பட்ட 17.4.1998 தேதிய பாகப்பிரிவுனை பத்திரத்தில் கண்டவிவரங்கள் வாதியைக் கட்டுப்படுத்தாது....” The evidence of P.W.1 in re-examination clearly shows as “வா.சா.ஆ.2 பாகப்பிரிவினைப் பத்திரத்தை உண்மை என்று நான் ஏற்றுக்கொள்ளவில்லை வா.சா.அ.2 ஐ தொடர்ந்து ஏற்பட்ட வா.சா.ஆ.2 முதல் வா.சா.ஆ.4 கிரையப் பத்திரங்களும் உண்மையானவை அல்ல என்பதை காட்டுவதற்காக தாக்கல் செய்திருக்கிறேன்....”. The trial Court, after contest



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held in issue No.1 that the Ex.A.2 partition deed will not bind the plaintiff.

The plaintiff has not objected to the same in the appeal, but at the time of argument he admits the said partition, which is not acceptable in law. The defendants 9 and 10 have clearly stated in their statement that on execution of power of attorney by the defendants 7 and 9, they have sorted the property into house plots and sold 33 plots to various purchasers. The plaintiff has not taken steps to add those subsequent purchasers while impleading a few subsequent purchasers, who are in possession of the same. Therefore, this Court holds that the suit is bad for non-joinder of necessary parties.

43.The last one is the law of equity submitted by the appellant/9th defendant. There is no dispute that the father of the plaintiff/1st defendant has got 10 acres 42 cents under Ex.A.1 partition deed from properties of his Hindu Undivided Family. The suit is laid only for 3 acres 81 cents. Even for the sake of argument, if the plaintiff's sister was given 2 acres 50 cents, still there were 7 acres 92 cents available in the suit survey number for the family consisting of the 1st defendant and the plaintiff. While applying equity, the plaintiff and the 1st defendant are entitled to 3 acres 96 cents each in the suit survey number. Even if the plaintiff is entitled to half share from the family property, the suit

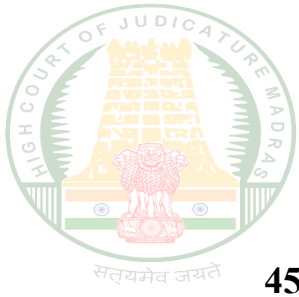


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property comes below half share of the father/1st defendant and can be allotted to him, which in turn can be allotted to alienees under the Law of Equity as rightly argued by the learned appellant's counsel relying on **Adivi Naidu case** reported in **1995 (6) SCC 150**. There is nothing put forth by the 1st respondent/plaintiff's side against the said principle of Law of Equity.

44.Therefore, from the above facts and circumstances, the trial Court has not properly appreciated the evidence and has come to the conclusion that the alienations were made by the 1st defendant only for his illegal activity of playing cards and, based on the said conclusion, decreed the suit. The finding of the trial court is not sustainable in law. The trial Court has not considered and discussed other aspects while answering other issues, but simply answered the 1st issue and decided in favour of the plaintiff. The trial Court erred grave mistake in deciding the case while rival contentions were put forth upon immovable properties. Therefore, this Court holds that the judgment and decree of the trial Court are vitiated by misconception and the same warrant interference and hence, the same has to be set aside. Thus, this appeal succeeds. The points are answered accordingly.



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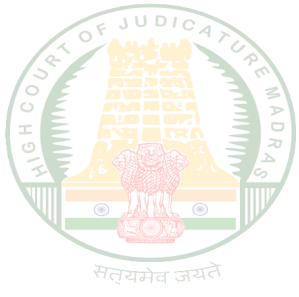
45.In the result, this Appeal Suit is allowed. The judgment and decree dated 06.03.2020 passed in O.S.No.55 of 2011 on the file of the Additional District Court (Fast Track Court), Palani are set aside and the suit in O.S.No.55 of 2011 on the file of the Additional District Court (Fast Track Court), Palani is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

29.07.2026

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
VSD

To

- 1.The Additional District Court (FTC),
Palani.
- 2.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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A.S(MD)No.128 of 2020

P.VADAMALAI, J.

VSD

**Pre-Delivery Judgment made in
A.S(MD)No.128 of 2020
and
C.M.P(MD)Nos.4567 of 2020 and 6804 of 2021**

29.07.2026