

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.09.2019

PRONOUNCED ON : 01.11.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

A.S.No.1096 of 2009

1.Munisamy
2.Narasimmaiah
3.Puttamma
4.Narasappa
5.Akkaiah
6.Narayana Sri Narayana
7.Nagesh
8.D.Narayanappa MSC-CFSC
9.Narasimmaiah @ Abbaiah
10.Ganesha
11.Sarojamma
12.Lakshamma
13.Bhagya
14.Narasamma
15.Nagarathina @ Kariyamma
16.Kantha
17.Madevan
18.Nagaveni
19.Balaji
20.Lakshamma
21.Praveen (minor)
22.Rajesh (minor)

... Appellants/

Defendants 4 ot 7,9 to 11,13 to 27

(rep.by mother & natural guardian
Lakshamma for appellants 21 & 22)

Vs.

1.Puttamma
2.Jayamma
3.M.Manjesh
4.R.Rajesh
5.R.Mamtha

... Respondents/Plaintiffs

Prayer:- First Appeal has been filed under Section 96 CPC r/w. Order 41 Rule (1) & (2) of the Civil Procedure Code against the judgment and decree dated 24.04.2009 passed in O.S.No.55 of 2004 on the file of the Additional District and Sessions Court, Krishnagiri.

For Appellants : Mr.S.Mukund
for M/s.Sarvabhauman Associates

<https://hcservices.ecourts.gov.in/hcservices/>
For Respondents: Mr.V.Raghavachari

JUDGMENT

Aggrieved over the judgment and decree dated 24.04.2009 passed in O.S.No.55 of 2004 on the file of the Additional District and Sessions Court, Krishnagiri, the first appeal has been preferred by the defendants 4 to 7, 9 to 11 and 13 to 27.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.Suit for partition, declaration, past and future mesne profits and permanent injunction.

4.The case of the plaintiffs in brief is that the first plaintiff is the wife of the deceased Narasimmaiah S/o. the deceased Narasappa. The second plaintiff is the daughter of the deceased Narasimmaiah. The first plaintiff is being maintained by the plaintiffs 2 & 3 and the third plaintiff is the son-in-law of the deceased Narasimmaiah. The plaintiffs 4 to 6 are the children of the plaintiffs 2 & 3. The first plaintiff's husband Narasimmaiah died in 1987 and her father-in-law died in 1957 and her mother-in-law died in 1981. The first plaintiff's husband Narasimmaiah is the 5th son of the deceased Narasappa. The defendants 2 to 4 are the brothers of the deceased Narasimmaiah. The deceased Narasappa had ancestral properties described in the plaint "A" schedule and out of the same, Narasappa had acquired the properties described in the plaint "B" & "C" schedules. The first plaintiff is entitled to share, which her husband is entitled to receive and the 4th defendant Muniswamy is a Teacher and the educated person in the joint family and he was acting as a Kartha of the family. The various properties had been acquired out of the income derived from the plaint "A" and "B" schedules in the names of various members of the family and however, those properties had been treated as the joint family properties and enjoyed as such. Thus, the first plaintiff has got right in the joint family properties. The plaintiffs 1 & 2 have been induced by playing fraud and misrepresentation by the defendants 1 to 5, 7, 8, 10 & 11 in the obtainment of relinquishment deed dated 30.06.1993 and the plaintiffs 1 & 2 were taken to the sub-registrar office on an understanding that the properties are to be given for the purpose of offering a security for the obtainment of loan and got their signatures and the document was registered and the contents are not known to the plaintiffs, and only recently, they came to know that the deed of relinquishment had been prepared and registered by the defendants 1 to 5, 7, 8, 10 and 11 and therefore, issued a legal notice. Hence, the relinquishment said to have been executed by the plaintiffs 1 and 2 have no effect in the eyes of law and not binding upon the plaintiffs. The second plaintiff's children are minors and therefore, there is no question of relinquishment by the mother to the extent of the right of the minors qua the joint family

properties. The relinquishment deed dated 30.06.1993 is not binding on the plaintiffs 1 & 2 as well as the minor plaintiffs. Hence, the plaintiffs demanded partition of their lawful shares in the suit properties and as they have not been considered by the defendants, the legal notice was issued and the defendants refuted their claim of partition by projecting the relinquishment deed, which as abovestated is non-est in the eyes of law. The relinquishment deed has been prepared by valuing the properties at Rs.2,50,000/- and the plaintiffs came to know about the contents, after the obtainment of the certified copy of the same on 04.03.1997 and the total worth of the properties estimated is at Rs.20,47,650/- whereas in the relinquishment deed, the value has been mentioned as Rs.2,50,000/-. Therefore, the properties had been under valued in the relinquishment deed and there is no clear mention as to any partition having been effected and the right of the plaintiffs has also not mentioned in the deed. The first son of Narasappa had died and his wife Alammal has been made as party and she also having died, her legal heirs has been impleaded as parties. The defendants have failed to account the incomes derived from the joint family properties and the plaintiffs are entitled to 1/5th share in the suit properties and hence, according to the plaintiffs, they had been necessitated to levy the suit against the defendants for appropriate reliefs.

5.The defendants resisted the plaintiffs' suit contending that the suit laid by the plaintiffs is not maintainable either in law or on facts. The defendants would put forth the case that the details of the family had not been properly given by the plaintiffs and they have also not given the description of the suit properties properly. Further, according to them, the plaintiffs have included the various properties, which do not belong to the family at all. The plaintiffs have purposely included the properties in the suit purchased by the defendants and the deceased Muni Narasappa in the plaint "A" schedule and they are the separate properties of the defendants. Narasappa died in the year 1958 and not in 1987. Narasimmaiah died in 1959 and not in the year 1967 as averred in the plaint. Nagamma, the first plaintiff's mother-in-law died in 1989 and not in 1981. The defendants 2 to 4 had another brother by name Chikkanna, who died in the year 1951 and his widow Ammaiah @ Thimmamma released her right of partition in the family ancestral properties by way of a Registered Release Deed dated 22.12.1958 in favour of the deceased Muni Narasappa, who acted as the family head, after the death of their father. The plaintiffs have purposely suppressed the abovesaid details. The plaintiffs have not clearly stated as to how the suit properties are the joint family properties by giving the description of the same and the pleadings with reference to the same are very very vague. The deceased Narasappa left behind about 6 or 7 acres of unyielding dry lands and after his demise, the defendants 2 to 4 and their brother Muni Narasappa had purchased the various

properties out of their own resources, income and savings without assistance from their ancestral properties and the plaintiffs are not entitled to claim any share belonging to the defendants independently. The plaintiffs 1 & 2 expressed that as they are living in distant place and not able to manage the ancestral properties and hence, requested the defendants to give them cash in lieu of their shares in the ancestral properties and accordingly, the defendants and the other legal heirs of the deceased Muni Narasappa and the plaintiffs 1 & 2 entered into a family partition arrangement with respect to the family ancestral properties and the family arrangement was effected by the Panchayatdars of the Village and pursuant to the same, the plaintiffs 1 & 2 received a cash consideration of Rs.50,000/- from the defendants and executed a release deed dated 30.06.1993 and the third plaintiff, who is the husband of the second plaintiff, has also attested to the same and the said relinquishment deed is registered as per law and therefore, the case projected by the plaintiffs that the abovesaid document had been secured by the defendants by inducing fraud and misrepresentation that the said document is taken only as a security for a loan is false and on the other hand, the plaintiffs 1 & 2 have voluntarily and with their full knowledge and consent of the contents for the transaction executed the relinquishment and received the cash consideration in lieu of their shares and therefore, the plaintiffs have no locus standi to challenge the relinquishment deed. Furthermore, the plaintiffs' suit is barred by limitation and merely because, the details of the properties are not given in the relinquishment deed that would not in any manner vitiate the said document and there was no dispute or controversy among the parties as regards the identity of the family ancestral properties and therefore, there was no need to fix the location or the details of the survey numbers of the ancestral properties in the relinquishment deed. The notice issued by the plaintiffs has been properly responded by the defendants giving true facts. Inasmuch as the plaintiffs 1 & 2 have relinquished their rights in the ancestral properties, they are not entitled to claim any share subsequently by way of the present suit and the plaintiffs are not entitled to claim any share in the properties acquired by the defendants independently and separately out of their own resources and income. The plaintiffs are not in the possession and enjoyment of the plaint schedule properties or not in the joint possession and enjoyment of the plaint schedule properties. The case of the plaintiffs that the properties described in the plaint schedule standing in the name of the defendants had been acquired out of the income derived from the ancestral properties is false. The plaintiffs are not entitled for the rendition of the accounts as put forth in the plaint and hence, according to them, the plaintiffs are not entitled to claim the reliefs prayed for in the suit and the suit is liable to be dismissed.

6. On the basis of the abovesaid pleas set out by the respective parties, the following issues and the additional issue were framed by the trial Court for consideration:

"(1). Whether the plaintiffs are entitled to claim of partition in the plaint schedule, if so, the share to which, the plaintiffs are entitled to?

(2). Whether all the plaint schedule properties are the ancestral properties?

(3). Whether it is true that the 4th defendant had acted as the Kartha of the joint family and purchased the properties for the joint family?

(4). Whether the relinquishment deed dated 30.06.1993 has been obtained by committing fraud and misrepresentation?

(5). Whether the plaintiffs are entitled to claim past and future mesne profits as claimed in the plaint?

(6). To what relief the plaintiffs are entitled to?"

Additional issue

"(1). It is true to say that the newly added properties bearing S.Nos. 370, 370/2, 484 in A schedule properties and S.Nos. 492, 484, 493, 373/3, 486, 378/4, 378/5, 463/1, 313, 475/1, 372, 373/1, 476, 494, 469, 468 and 491 in respect of B schedule properties are self acquired properties of defendants?

7. In support of the plaintiffs' case, PWs 1 to 6 were examined and Exs. A1 to A8 were marked. On the side of the defendants, DWs 1 to 3 were examined and Exs. B1 to B21 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to declare that the plaintiffs are entitled to 1/5th share in the plaint "A" & "B" schedule properties and also further declared that the relinquishment deed dated 30.06.1993 is null and void and relegated the question of determination of the mesne profits, which the plaintiffs are entitled to obtain, by way of a separate proceeding under Order 20 Rule 12 CPC and accordingly, granted the preliminary decree in favour of the plaintiffs with costs. Impugning the same, the first appeal has been preferred by the defendants.

9.The following points arise for determination in this first appeal:

"(1).Whether the plaintiffs are entitled to obtain partition and separate possession of 1/5th share in the plaint schedule properties as put forth in the plaint?

(2).Whether the relinquishment deed dated 30.06.1993 is null and void as claimed by the plaintiffs?

(3).Whether the plaintiffs are entitled for past and further mesne profits as put forth in the plaint?

(4).To what relief the plaintiffs are entitled to?

(5).To what relief the defendants/appellants are entitled to?"

10.Point Nos.1 to 3

The relationship between the parties is not in dispute. According to the plaintiffs, the plaint "A" Schedule properties are the ancestral properties belonging to the parties and out of the income derived from the ancestral properties, the plaint "B" & "C" schedule properties had been acquired and thus, according to the plaintiffs, all the plaint schedule properties are the ancestral properties. The abovesaid case of the plaintiffs has been repudiated by the defendants. According to defendants, the plaintiffs have included the various properties purchased by the defendants and their deceased brother viz., Muni Narasappa independently out of their own resources and income and disputed the claim of the plaintiffs that those properties had been acquired out of the income derived from the ancestral properties and therefore, according to the defendants, the plaintiffs are not entitled to claim any share in all the properties described in the plaint schedules and on that score alone, the plaintiffs' suit is liable to be rejected.

11.The prime question that involves in this suit is whether the plaint schedules properties are the ancestral properties belonging to the plaintiffs and the defendants as put forth by the plaintiffs. It is found that the defendants have admitted the existence of the ancestral properties. According to the defendants, the deceased Narasappa left behind 6 or 7 acres of land and also put forth the case that those lands are not income yielding lands and therefore, those lands did not constitute the source for the acquisition of the other properties acquired by the defendants independently.

From the materials placed on record, it is found that the 4th defendant Muniswamy is the only educated person in the family and it is he, who has been managing the family as the Kartha. In this connection, DW3 examined on behalf of the defendants has clearly admitted that it is only the 4th defendant, who is the educated person in the family and it was he, who is having the world knowledge at the time of the demise of the father Narasappa and it was only the 4th defendant, who has been acquiring the properties for the family as well as selling the properties on behalf of the family and such properties had been acquired in the name of Muniswamy, the 4th defendant and also in the name of the other defendants and would also state that in the lands left behind by Narasappa, the ancestor, the Well was available with water and they were irrigating the lands and also admitted that only out of the income derived from the said lands, other lands had been purchased. Furthermore, he has also admitted that the parties had been enjoying all the properties jointly and all the properties had been maintained only by the 4th defendant, who is also employed as a Teacher. Therefore, from the abovesaid evidence adduced by DW3 and coupled with the fact that the defendants having also not disputed the existence of the ancestral properties and when it is found that the ancestral properties are capable of yielding income with the existence of water supply, through well source, in all, it is found that the ancestral properties belonging to the family constituted the source for the acquisition of the other properties in the names of the other family members.

12. From the materials placed on record, it is found that the 4th defendant has been acting as the Kartha of the family, after the demise of Narasappa, as he is the only educated person in the family and all the properties had been acquired only through him and it is he, who had been maintaining the accounts. Though it is found that the 4th defendant is also engaged as a Teacher, however, considering the fact that out of the teacher's avocation, the 4th defendant has been earning only a monthly income of Rs.90/- and though the 4th defendant would claim that his brother has been engaged in cattle business and deriving income independently, however, with reference to the avocation of cattle business by his brother, no proof whatsoever worth acceptance having been adduced on the part of the defendants and when it is found that the income derived by the 4th defendant through his teacher's avocation being insufficient for the acquisition of the properties, in all, it is found that the family members inclusive of the 4th defendant and his brothers had been acquiring the various properties as detailed in the plaint as well as in the written statement only out of the income derived from the ancestral properties and therefore, the case projected by the defendants that the various properties had been acquired by them independently and separately out of their own resources and income, as such, cannot be believed and accepted, particularly, when there is no proof pointing to

the same on the part of the defendants.

13.As abovenoted, when it is found that it is only the 4th defendant, who has been managing the family, after the demise of his father Narasappa and during his Karthaship, the various properties had been acquired, though in the name of the individual family members, however, when there is no proof on the part of the defendants that they had independent source of income and as abovenoted, when the income derived by the 4th defendant as a Teacher is found to be very meagre and insufficient for the acquisition of the various properties and the various properties had been acquired during the Karthaship of the 4th defendant and as rightly held by the trial Court, it is for the defendants, who have to establish that the various properties acquired in the names of the family members had been purchased out of the independent resources and income of the various family members and not out of the ancestral nucleus. However, as abovenoted, on the part of the defendants, there is no proof placed by them worth acceptance that they had independent sources of income and resources for the acquisition of the various properties. On the other hand, when as above pointed out, the ancestral nucleus was capable of yielding income, in such view of the matter, the presumption would only be that all the properties belonging to the family had been acquired out of the income derived from the ancestral nucleus and the abovesaid point has been correctly assessed and determined by the trial Court based on the materials available on record as well as by applying the principles of law pointing to the same in the proper perspective. Furthermore, it has not been established by the defendants that the various properties stated to have been acquired by them in their individual names had been enjoyed by them independently and not as the joint family properties. On the other hand, as abovenoted, their witness DW3 himself has admitted that all the properties had been enjoyed jointly by the family members and the accounts had been maintained only by the 4th defendant as the Kartha. In the light of the abovesaid factors, the trial Court is found to be justified in holding and determining that all the plaint schedules properties are the ancestral and jointly family properties belonging to the family members.

14.The plaintiffs have laid the suit seeking for partition. It is found that the plaintiffs have also put forth the case that the defendants by exercising fraud and misrepresentation had obtained the relinquishment deed from the plaintiffs 1 & 2 in respect of the family properties and on the promise that their signatures are required for the purpose of furnishing security for the loan and thereby, according to the plaintiffs, their signatures had been obtained by the defendants and subsequently, the plaintiffs came to know that the fraud had been committed by the defendants in the obtainment of their signatures in the relinquishment deed and therefore, according to the

plaintiffs, inasmuch as their signatures had been obtained without disclosing the nature and contents of the document, in such view of the matter, according to them, the relinquishment deed dated 30.06.1993 is non-est in the eyes of law and not binding upon them and on the basis of the said relinquishment deed, the defendants are not entitled to repudiate their claim of shares in the family properties.

15.Per contra, according to the defendants, inasmuch as the plaintiffs 1 & 2 had decided to stay away from the suit village and accordingly, represented that they be given cash in lieu of their shares in the family properties and following the same, it is put forth that a family arrangement had been effected in the presence of the Panchayatars amongst the family members qua the family ancestral properties and accordingly, the plaintiffs 1 & 2 had been given Rs.50,000/- in lieu of their shares and therefore, according to the defendants, the case of the plaintiffs that the relinquishment deed had been secured from them by exercising fraud and misrepresentation is false and therefore, according to the defendants, inasmuch as the plaintiffs had relinquished their claim of shares in the ancestral properties, the plaintiffs are not entitled to seek any share in the family properties by way of the present suit and therefore, the suit is liable to be dismissed.

16.The copy of the relinquishment deed dated 30.06.1993 has been marked as Ex.A1 and the original deed has been marked as Ex.B1. From the materials placed on record, it is not in dispute that the parties knew only Telugu. Therefore, as rightly held by the trial Court, the plaintiffs 1 & 2 being illiterate ladies and only knew Telugu language, in the normal course, if at all any relinquishment deed had been obtained from the plaintiffs 1 & 2 with their knowledge and after disclosing the contents thereof to them, the document in question would have been prepared only in the language known to the plaintiffs 1 & 2 and the other parties. However, it is found that the relinquishment deed has not been written in Telugu language and also not written in English, but it has been written in Tamil. Therefore, when it is found that the plaintiffs 1 & 2 are not aware of the Tamil Language and they being illiterate ladies, in such view of the matter, the obtainment of the relinquishment deed by writing contents thereof in Tamil language, create a serious suspicion in the genuineness of the said document. According to the plaintiffs, their signatures had been obtained by the defendants by representing that they are required for the purpose of offering security for the loan. In such view of the matter, as abovenoted, when the only educated person in the family being the 4th defendant and the 4th defendant has been managing the family, the plaintiffs being illiterate ladies and accordingly, they seem to have fallen prey to the directions given by the 4th defendant and the other defendants and accordingly, meekly and without any resistance had acceded

to put their signatures in the document shown to them and inasmuch as the contents of the relinquishment deed has been written in Tamil language, it is obvious that the plaintiffs 1 & 2 are not put to knowledge about the contents of the same and in such view of the matter, the case of the plaintiffs that the relinquishment deed had been obtained from them by committing fraud and misrepresentation cannot be easily discarded.

17. According to the defendants, the plaintiffs 1 & 2 represented that as they had settled away from the suit Village and not able to look after the family properties, thereby requested them to give cash in lieu of their shares and hence the relinquishment deed has come to be effected. However, as could be gathered from the materials placed on record, it is found that during the execution of the relinquishment deed, the first plaintiff was residing in the suit village and even the second plaintiff prior to the marriage was residing only in the suit village, therefore, the very case of the defendants that the plaintiffs 1 & 2 represented to relinquish, their shares on account of staying away from the suit village, as such, cannot be believed and accepted. The abovesaid aspects of the plaintiffs' case had been rightly assessed and determined by the trial Court.

18. By way of obtainment of the relinquishment deed from the plaintiffs 1 & 2, it is seen that the defendants have admitted that the plaintiffs have a lawful entitlement in the ancestral properties. We have already discussed and held that all the plaint schedule properties are the ancestral and joint family properties and also determined that the claim of the defendants that the properties standing in their individual names are their separate properties has not been established by them. Therefore, it is found that the relinquishment deed, if at all to be accepted a true document, would have been secured only in respect of the family properties belonging to the family. In other words, the relinquishment deed would have been secured only in respect of the plaint schedule properties as such. The plaintiffs have valued the plaint schedule properties in toto at Rs.20,47,650/-, the suit has come to be laid by the plaintiffs in the year 1997 itself. Furthermore, the defendants have not seriously controverted the value of the properties given by the plaintiffs in the plaint. The defendants have also not placed any materials to hold that the value given by the plaintiffs qua the plaint schedule properties is on the higher side. Therefore, when it is found that the value of the family properties is more than Rs.20,00,000/- and on the other hand, on a perusal of the release deed, when it is found that the total value of the ancestral properties had been fixed only at Rs.2,50,000/-, as held by the trial Court, it is very obvious that the defendants have deliberately undervalued the ancestral properties so as to deprive the lawful shares of the

plaintiffs and obtained the relinquishment deed from the plaintiffs by offering them a lesser amount towards their lawful shares. In such view of the matter, it is found that as held by the trial Court, the value of the ancestral properties described in the relinquishment deed is found to be totally undervalued and in such view of the matter, the claim of the defendants that the plaintiffs had been given Rs.50,000/- in lieu of their shares in the ancestral properties, as such, cannot be believed and accepted. The abovesaid factors only go to probabalise that inasmuch as the plaintiffs' signatures had been obtained for the purpose of giving security towards the loan transaction, it is found that the sum of Rs.50,000/- has been shown as the consideration qua the alleged relinquishment of the shares on the part of the plaintiffs.

19.The family of the parties is found to be owning various properties. Now, according to the defendants, on the representation of the plaintiffs 1 & 2 to take cash in lieu of their shares by executing the relinquishment deed, a partition arrangement had been effected in the family in the presence of the Panchayatars. If that be so, even as per the case of the defendants, prior to the relinquishment deed, the family properties had been partitioned in the presence of the panchayatars. If that be so, the defendants would have determined as to what are the family properties belonging to the family and what are the shares allotted to the various family members and the value thereof and accordingly, the defendants would have also ascertained the value of the shares allotted to the plaintiffs in the family properties. When according to the defendants, the family arrangement had been effected prior to the relinquishment deed, in such view of the matter, if the abvoesaid case of the defendants has any semblance of truth, as rightly found and determined by the trial Court and also contended by the plaintiffs' counsel, necessary recitals to that effected would have been incorporated in the relinquishment deed that a family arrangement had been effected amongst the family members for ascertaining the shares, to which the family members are entitled to in the family properties and the allotment of the shares which had been given to the various sharers. However, nothing has been averred in the relinquishment deed qua the so called family arrangement said to have been effected in respect of the family properties amongst the family members. Therefore, the abovesaid case of the defendants also falls to the ground when it is found that the same has been projected falsely with a view to lend a colour of truth to the relinquishment deed.

20.If really, the plaintiffs had intended to relinquish their shares in the family properties and when according to the defendants, the partition arrangement had been effected prior to the same, necessarily, the defendants, particularly, the 4th defendant, who has been managing the family and the

only educated person in the family, would have been in the know of things about the availability of the family properties, the value of the same and the allotment of the various shares to the family members and the value of the shares allotted to the various sharers. In such view of the matter, if the relinquishment deed had been lawfully obtained from the plaintiffs 1 & 2, as rightly held by the trial Court, the relinquishment deed would have contained the list of the family properties belonging to the family and the value thereof as well as the allotment of the various shares in the family properties to the various family members and the value of the respective shares allotted to the family members. However, in the relinquishment deed, nothing has been averred as regards the nature and extent of the family properties with reference to the survey numbers, extent, classification and the value thereof and on the other hand, it has been very very vaguely stated that the relinquishment deed had been secured with reference to all the family properties. It is thus found that the very nature of the relinquishment deed obtained from the plaintiffs 1 & 2 is found to be totally bereft of particulars, particularly, as regards the properties in respect of which the plaintiffs 1 & 2 had agreed to release their shares as put forth by the defendants. Therefore, on the ground that the description of the properties had not been given in any manner in the relinquishment deed, on that score alone, it is found that the document appears to be totally devoid of particulars and void and in such view of the matter, when by way of the relinquishment deed, one is unable to ascertain as regards which properties the plaintiffs 1 & 2 had agreed to release their shares, in such view of the matter, the release deed is found to be unenforceable as such and therefore, the plaintiffs cannot be said to have released their shares in the family properties based on the so-called relinquishment deed obtained from them.

21. In the light of the abovestated various suspicious circumstances surrounding the relinquishment deed and as abovenoted, when the plaintiffs are found to be illiterate ladies and everyone in the family has been acting only at the dictates of the 4th defendant, the manager and the only educated person, in such view of the matter, when there is a cloud of suspicion over the relinquishment deed both as regards the actual execution of the same by the plaintiffs 1 & 2 knowing the contents of the same as well as the properties with reference to which they had agreed to relinquish their shares and when the value of the properties has also been found to be not given properly and undervalued in toto and when the reasons given for the relinquishment of the shares on the part of the plaintiffs is also found to be untrue and in such view of the matter, the case of the plaintiffs that they had been duped by the defendants in the obtainment of their signatures in the relinquishment deed on the false misrepresentation that their signatures are secured for the purpose of obtaining security towards the loan transaction and

in such view of the matter, in the light of the abovesaid suspicious circumstances surrounding on the relinquishment deed, the same cannot be held to be lawfully secured from the plaintiffs and in such view of the matter, as rightly contended by the plaintiffs, the relinquishment deed cannot be held to be true and valid and binding upon them and accordingly, the trial Court is also found to be justified in upholding the abovesaid case of the plaintiffs and when there is no material projected on the part of the defendants to deviate from the abovesaid determination of the trial Court, it is found that the trial Court is justified in holding that the relinquishment deed is null and void.

22.The argument has been put forth by the plaintiffs' counsel that the relinquishment deed had been obtained from the plaintiffs during the year 1993 and the suit laid in the year 2004 with reference to the same, the suit is barred by limitation. However, when from the materials available, it is found that the suit had been levied by the plaintiffs in the year 1997 itself and also the plaintiffs had pleaded that they had come to know about the true nature of the document in which their signatures had been obtained subsequently and therefore, when the suit had been levied by the plaintiffs within the time stipulated under law from the date of knowledge, in all, it is found that the plaintiffs' suit is not barred by limitation as sought to be projected by the defendants' counsel.

23.The plaintiffs being entitled to their lawful shares in the family properties, i.e. the plaint schedule properties and the relinquishment deed dated 30.06.1993 being found to be a null and void document, in such view of the matter, the plaintiffs are entitled to seek the past and future mesne profits from the defendants and therefore, the trial Court is found to be justified in directing the determination of the mesne profits by relegating the same by way of separate proceeding under Order 20 Rule 12 CPC.

24.The counsel for the plaintiffs, in support of his contentions, placed reliance upon the decision reported in 2019 (1) R.C.R.(Rent) 278 (Deepak Tandon & Anr. Vs. Rajesh Kumar Gupta). The principles of law outlined in the abovesaid decision are taken into consideration and followed as applicable to the case at hand.

25.For the reasons aforestated, the plaintiffs are entitled to obtain the partition and separate possession of 1/5 share in the plaint schedule properties. The plaintiffs are also held to be entitled to the past and future mesne profits as claimed in the plaint. Further, I hold that the relinquishment deed dated 30.06.1993 is null and void as claimed by the plaintiffs. Accordingly, the point Nos.1 to 3 are answered in favour of the plaintiffs against the

26.Point Nos.4 & 5

In the light of the abovesaid discussions, the judgment and decree dated 24.04.2009 passed in O.S.No.55 of 2004 on the file of the Additional District and Sessions Court, Krishnagiri, are confirmed and resultantly, the first appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

sms

To

The Judge, Additional District and Sessions Court,
Krishnagiri.

Copy to

The Section Officer, V.R.Section, High Court, Madras.

+1cc to M/s.Sarvabhauman Associates, Advocate SR.No. 90657

+1cc to Mr.V.Ragavachari , Advocate SR.No. 90814

A.S.No.1096 of 2009

A.SK(30/09/2020)