

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.07.2019

PRONOUNCED ON : 19.08.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.862 of 2009

1. Rajalakshmi
2. Samiyathal

...Appellants

Vs.

1. Palanisamy
2. Umadevi

...Respondents

Prayer: First Appeal filed under Section 96 of Civil Procedure Code, against the judgment and decree of the First Additional District Judge, Erode in O.S.No.155 of 2006 dated 30.07.2008.

For Appellants : Mr.A.K.Kumarasamy, Senior Counsel
for M/s.S. Kaithamalai Kumaran

For Respondents: Mr. S. Parthasarathy, Senior Counsel
for M/s. A. Sundaravadanam.

JUDGMENT

Aggrieved over the judgment and decree dated 30.07.2008 passed in O.S.No.155 of 2006 on the file of the First Additional District Court, Erode, the plaintiffs have preferred the appeal.

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

3. Suit for declaration and partition.

4. The case of the plaintiffs, in brief, is that the plaintiffs and the first defendant are the daughters and the son of Ramasamy Gounder through his first wife Arukkaniammal. Arukkaniammal died on 09.02.2005. Ramasamy Gounder died on 30.09.2005 leaving behind the plaintiffs and the first defendant as his legal heirs. Ramasamy Gounder, during the life time of

Arukkaniammal, had married one Jayalaxmi for his whims and fancies and through her, he had begotten the second defendant. Ramasamy Gounder had some ancestral lands and out of the income from the abovesaid ancestral properties, he purchased various items as detailed in the plaint and put up the construction therein and enjoying the same and thus, according to the plaintiffs, all the suit properties are the ancestral joint family properties of Ramasamy Gounder and his children, namely, the plaintiffs and the first defendant. Further according to the plaintiffs, the marriage of Ramasamy Gounder with Jayalaxmi is void ipso jure and cannot be recognised in the eyes of law and hence the second defendant is not entitled to any share in the coparcenary property except in the father's share. At the instigation of the second defendant and her mother, according to the plaintiffs, Ramasamy Gounder had levied the suit in O.S.No.506 of 2001 against them for the relief of permanent injunction and the abovesaid suit was contested by the plaintiffs and the same ended in dismissal. The first defendant has been projected as a mentally retarded deaf and dumb person in the abovesaid suit and the same was brought to the knowledge of the court by the plaintiffs in the abovesaid suit. Further it is stated that Ramasamy Gounder had not even informed the death of the plaintiffs' mother to the plaintiffs at the instigation of his second wife and according to the plaintiffs, the second defendant and her mother, in order to grab the joint family properties of Ramasamy Gounder and the first defendant, who is mentally retarded, stealthily planned and fraudulently created the sale deeds dated 24.08.2005 and 29.09.2005 in favour of the second defendant by assigning false reasons and the abovesaid sale deeds are fraudulently created by the second defendant and her mother with the active indulgence by Ramasamy Gounder and his associates and the suit properties are very valuable lands and no consideration has been passed under the abovesaid sale deeds. Hence, the above sale deeds are void, inoperative and unenforceable and their father has also no locus standi to sell the properties of the first defendant, who is mentally retarded, deaf and dumb without obtaining the necessary permission of the court. Further, it is stated that as per the amended Hindu Succession Act 39 of 2005, the plaintiffs are also entitled to obtain each 1/4 share in the suit properties along with their father and brother and thus according to the plaintiffs, in all, after the demise of Ramasamy Gounder, the plaintiffs and their brother, namely, the first defendant are each entitled to 5/16 share in the suit properties whereas the second defendant is entitled to 1/16 share in the suit properties and it is also stated that a police complaint was launched falsely against the plaintiffs by the second defendant and her mother due to enmity and inasmuch by way of the abovesaid impugned sale deeds, the second defendant in collusion with her mother having obtained the same by practicing fraud and mis representation, are

attempting to prevent the plaintiffs from obtaining their shares in the suit properties and enjoying the same and hence it is put forth by the plaintiffs that they had been necessitated to seek for appropriate reliefs.

5. The defendants resisted the plaintiff's suit contending that the relationship between the parties is not in dispute and according to them, inasmuch as the first defendant is a mentally retarded person and Arukkaniammal could not beget any more child, according to them, Ramasamy Gounder had contracted the second marriage with Jayalaxmi and admitted that the suit properties are the ancestral properties belonging to Ramasamy Gounder and the first defendant in equal moieties and put forth the case that the plaintiffs had been always hostile towards their father and brother and during the life time of Ramasamy Gounder, the plaintiffs had attempted to trespass into the properties, hence, Ramasamy Gounder filed a suit in O.S.No.506 of 2001 to protect his possession and enjoyment of his suit properties. Ramasamy Gounder had never been under the influence of his second wife Jayalaxmi as put forth by the plaintiffs. The plaintiffs were given in marriage with all customary seers, jewels, cash, etc., and the death of Arukkaniammal, which is a natural one and due to old age, however, the plaintiffs preferred a false complaint as if her death is suspicious. However, after enquiry, the police had closed the matter and disputed the fact that Ramasamy Gounder sustained fracture injury and lost his consciousness for the last 15 days prior to his death and also disputed the case of the plaintiffs that the sale deeds dated 24.08.2005 and 29.09.2005 had been secured by the second defendant and her mother fraudulently and on misrepresentation as put forth in the plaint. According to the defendants, Ramasamy Gounder sold his half share in the suit properties in favour of the second defendant for a valid consideration by way of the sale deed dated 24.08.2005 and since then it is only the second defendant, who is in the possession and enjoyment of the said share and Ramasamy Gounder knowing the ill health of his son, the first defendant and also noting that no income are deriving from the properties, accordingly considering the abovesaid factors, on 13.09.2005 entered into the registered sale agreement with reference to the share of the first defendant in respect of the suit properties with the second defendant, as the family manager and the curator of mentally retarded first defendant, agreeing to sell the half share of the suit properties of the first defendant to the second defendant for a valid consideration and pursuant to the same, executed a sale deed in favour of the second defendant on 29.09.2005 in respect of the abovesaid half share belonging to the first defendant qua the suit properties and the abovesaid sale deed is beneficial to the interest of the first defendant and the plaintiffs are not entitled to question the abovesaid

sale deeds in any manner and the attempts made by the plaintiffs to secure the custody of the first defendant ended in vain and as per the orders of the court, the first defendant was left only with the custody of the second defendant's mother and the second defendant and the same has also been confirmed by the High Court. The plaintiffs are not entitled to claim any share in the suit properties as per the amended Hindu Succession Act 39 of 2005. The plaintiffs are not entitled to seek the relief of declaration and in any event, the plaintiffs have to file the suit impugning the sale deeds and the court fees paid by the plaintiffs is incorrect, the plaintiffs are not in the joint possession and enjoyment of the suit properties and hence the suit is liable to be dismissed.

6. On the basis of the abovesaid pleas set out by the by the respective parties, the following issues were framed by the trial court for consideration.

- 1) Whether the suit in O.S.No.506/2001 on the file of I Additional District Munsif, Erode binding on the plaintiff's?
- 2) Whether the suit properties are the joint family properties of the first defendant and Ramasamy Gounder?
- 3) Whether the sale deeds dated 24.03.2005 and 29.09.2005 are binding on the plaintiffs?
- 4) Whether the second defendant is the bonafide purchaser of the suit properties?
- 5) Whether the suit is valued properly?
- 6) Whether the plaintiffs are entitled to the relief of declaration in respect of the sale deeds dated 24.08.2005 and 29.09.2005?
- 7) Whether the plaintiffs are entitled to the relief of partition as prayed for in the suit?
- 8) To what relief the parties are entitled to?

7. In support of the plaintiff's case P.Ws.1 to 7 were examined and Exs.A1 to A23 were marked. On the side of the defendants D.Ws.1 to 3 were examined and Exs.B1 to B21 were marked. Ex.C1 was also 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 dismiss the plaintiffs' suit. Impugning the judgment and decree of the trial court, the first appeal has been preferred by the plaintiffs.

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

1. Whether the plaintiffs are entitled to obtain the reliefs of declaration in respect of the sale deeds dated 24.08.2005 and 29.09.2005 as prayed for?
2. Whether the sale deeds dated 24.08.2005 and 29.09.2005 are true, valid and binding on the plaintiffs?
3. Whether the plaintiffs are entitled to obtain the partition and separate possession of their shares in the suit properties as put forth in the plaint?
4. To what relief the plaintiffs / appellants are entitled to?
5. To what relief the defendants are entitled to?

Points Nos. 1 to 3

10. The plaintiffs and the first defendant are the daughters and the son of the deceased Ramasamy Gounder and Arukkaniammal. Arukkaniammal is the first wife of Ramasamy Gounder. It is found and also not in dispute that Ramasamy Gounder had married Jayalaxmi during the life time of Arukkaniammal and through the said wedlock, the second defendant had been born to Ramasamy Gounder and Jayalaxmi. Insofar as the validity of the marriage between Ramasamy Gounder and Jayalaxmi, as held by the trial court, the said issue is not necessary to be gone into in this matter as the second defendant is seeking title, right and interest in respect of the suit properties not in her capacity as the legal heir of Ramasamy Gounder and on the other hand, based her claim of title to the suit properties only through the sale deeds dated 24.08.2005 and 29.09.2005. Therefore, it is found that the abovesaid issues are found to be not relevant to determine the controversies involved between the parties in the present matter.

11. As regards the nature of the properties, it is found that the defendants have clearly admitted in the written statement that the suit properties are the ancestral properties belonging to Ramasamy Gounder and his son Palanisamy, the first defendant. Now according to the plaintiffs, by virtue of the amended Hindu Succession Act 39 of 2005, they are also entitled to claim share in the ancestral properties and thereby it is put forth by the plaintiffs that, after the demise of Ramasamy Gounder, they are entitled to each 5/16 share in the suit properties along with the first defendant, who according to them is also entitled to 5/16 share. Further it is stated by the

plaintiffs that the second defendant is entitled to 1/16 share in the suit properties.

12. As could be seen from the available materials on record, the first defendant is found to be a mentally retarded person and also a deaf and dumb person. Furthermore, it is found that the relationship between the plaintiffs and their father Ramasamy Gounder is not cordial. It is also seen that Ramasamy Gounder had levied the suit against the plaintiffs for the relief of permanent injunction in O.S.No.506 of 2001 to restrain them from interfering with the possession and enjoyment of the suit properties. No doubt, the said suit had ended only in dismissal. Furthermore, it is seen that the plaintiffs had endeavoured to secure the custody of the first defendant, their brother. However, the plaintiffs had failed in the said attempts and it is found that as per the orders of the competent court, the first defendant having expressed his wish and desire to be with Jayalaxmi, the second defendant's mother, the wife of Ramasamy Gounder, accordingly it is found that he had been left in the custody of Jayalaxmi and the same is also found to be upheld by the High Court. The abovesaid factors are not controverted by the plaintiffs. Therefore, the claim of the plaintiffs as if the first defendant's interest is not being looked after and attended to by Jayalaxmi and her daughter, the second defendant, as such, cannot be believed and accepted in any manner. Furthermore, as could be seen from the available materials, the relationship between the plaintiffs and Ramasamy Gounder having become strained and inimical, it is noted that the plaintiffs had not even attended the death of their mother Arukkaniammal. Though the plaintiffs would claim that they had not been informed of their mother's death, when they are found to be the close residents of their parents, as rightly determined by the trial court, to say that the plaintiffs are not aware of the death of their mother and thereby unable to attend her death ceremony, as such, cannot be believed and accepted in any manner. All the abovesaid factors, in toto, would only go to disclose that the relationship between the plaintiffs with Ramasamy Gounder on one part and the first defendant on the other part is not smooth and cordial.

13. According to the plaintiffs, the suit properties being the ancestral family properties belonging to Ramasamy Gounder and as the plaintiffs are also having share in the same, it is their case that Ramasamy Gounder is not entitled to alienate the suit properties in favour of the second defendant and on the other hand as Ramasamy Gounder had executed two sale deeds dated 24.08.2005 and 29.09.2005 in favour of the second defendant qua the suit properties by conveying both his undivided half share as well as the first defendant's undivided half share qua the suit properties in favour of the second defendant and as

according to the plaintiffs, the abovesaid sale deeds are not true and they had been secured by the second defendant in collusion with her mother fraudulently and by misrepresentation and it is put forth by the plaintiffs that no consideration had been passed under the abovesaid sale deeds and further also put forth the case that Ramasamy Gounder has no locus standi to convey the undivided half share of the first defendant to the second defendant by way of the sale deed dated 29.09.2005, and accordingly impugning the abovesaid sale deeds, the plaintiffs have come forward with the present suit seeking for the relief of declaration qua the same, as according to the plaintiffs, the abovesaid sale deeds are void, inoperative and unsustainable. It is found that prior to the execution of the sale deed dated 29.09.2005, the agreement of sale had been entered into by Ramasamy Gounder with the second defendant in respect of the sale of the undivided half share of the first defendant qua the suit properties. The abovesaid sale agreement has been marked as Ex.A7 and the sale deeds dated 24.08.2005 and 29.09.2005 have been marked as Exs.A6 and A8. By way of the pleadings set out in the plaint, it is found that the plaintiffs would mainly focus their case for impugning the sale deeds on the footing that the same had been obtained by the second defendant in collusion with her mother fraudulently and by way of misrepresentation by taking advantage of the ill health of Ramasamy Gounder and by influencing him one way or the other. As regards the abovesaid case projected by the plaintiffs, challenging the same, according to the defendants, Ramasamy Gounder for legal necessity and other needs, as set out in the sale deeds concerned, had alienated the suit properties in favour of the second defendant and valid consideration had been passed by the second defendant to Ramasamy Gounder for the same and therefore, according to the defendants, the plaintiffs are not entitled to challenge the abovesaid sale deeds and therefore, it is put forth that the abovesaid sale deeds are true, valid and binding on the plaintiffs and further it is stated that Ramasamy Gounder, as the manager of the family and the curator of his son, the first defendant is entitled to alienate the half share belonging to the first defendant for valid needs and the same cannot be impugned by the plaintiffs.

14. As regards the valid execution of the sale deeds impugned in the matter, the defendants have examined D.Ws.2 and 3, the attestors and as assessed and analysed by the trial court, it is found that both D.Ws.2 and 3 have clearly deposed about the scribing of the abovesaid documents by the scribe and the execution of the abovesaid documents by Ramasamy Gounder in favour of the second defendant and the witnessing of the same by them respectively and the registration of the abovesaid documents and also deposed about the execution of the sale agreement marked as Ex.A7 by Ramasamy Gounder in favour of the

second defendant as regards the half share of the first defendant qua the suit properties as the family manager and the curator of the first defendant and also the passing of the consideration under the same and also deposed about the sale deed dated 29.09.2005 executed following the sale agreement for valid consideration and the passing of the consideration and as rightly found and determined by the trial court, the evidence tendered by D.Ws. 2 and 3 with reference to the abovesaid sale transactions and the sale agreement are found to be totally acceptable, convincing and trustworthy and corroborative to each other and despite the cross examination by the plaintiffs, nothing has been culled out from them to disbelieve their version with reference to the same. When D.Ws.2 and 3 have clearly spoken about the execution of the abovesaid documents by Ramasamy Gounder in a fit state of mind and health and Ramasamy Gounder is found to be not suffering from any serious ailments other than blood pressure and when the materials available on record go to show and the doctor who had been examined in the matter as P.W.4 had also admitted that Ramasamy Gounder was in a position to converse with the others during the period of treatment and he was able to walk and accordingly when it is found that Ramasamy Gounder was able to speak normally and walk as usual, merely because he was found to be suffering from blood pressure and diabetes, which are normal, and to say that on account of the abovesaid ailments Ramasamy Gounder was not in a fit state of mind and thereby without his full consent or volition, the abovesaid impugned sale deeds had been secured by the second defendant in collusion with her mother, as such, cannot be believed and the same had been rightly considered and determined by the trial court on the appreciation of the materials placed on record.

15. It is mainly focused by the plaintiffs' counsel that the reasons given in the impugned sale deeds for selling the suit properties are not true and according to him, when Ramasamy Gounder is found to be possessed of sufficient bank balance and owning considerable properties, to say that he had been necessitated to alienate the suit properties for family needs and medical expenses, etc., cannot at all be true and in this connection, the plaintiffs had endeavoured to examine one or two bank officials and by way of their evidences, attempted to bring home that Ramasamy Gounder was having sufficient amount in his bank account and on that score contended that the reasons given in the sale deeds for the alienation of the suit properties cannot at all be believed and accepted. However, as rightly held by the trial court, merely because a man is possessed of sufficient balance in his bank account, that factor alone cannot be held that he would not have the necessity and desire to alienate the properties belonging to him. When it is found, in

toto, that the relationship between the plaintiffs and Ramasamy Gounder had become totally strained and estranged and when the first defendant is a mentally retarded son and being looked after by the second defendant and her mother and, Ramasamy Gounder, as rightly contended, would have thought it fit to ensure that his properties are properly protected and hence accordingly is found to have chosen to alienate the suit properties as the manager of the family and when it is admitted that at the time of alienation of the suit properties by Ramasamy Gounder, the properties had not been divided and admittedly Ramasamy Gounder is the manager of the family and accordingly in that capacity it is found that Ramasamy Gounder, considering the practical aspects and needs, in all, had chosen to alienate the suit properties, both his share as well as the share of his son, particularly considering that the interest of his son, the first defendant, should only be looked after by the second defendant and her mother, in all, proceeded to alienate the suit properties for the reasons stated in the sale deeds and considering the abovesaid background, as held by the trial court and furthermore, when the execution of the abovesaid sale deeds and passing of the sale consideration thereunder had also been spoken to by D.Ws. 2 and 3 clearly and their evidence having not been shaken in any manner by the plaintiffs and the alleged solvency of Ramasamy Gounder would not be the ground from preventing him to alienate the suit properties to the second defendant, in such view of the matter, it is found that the trial court is justified in upholding the alienations made by Ramasamy Gounder in favour of the second defendant by way of the sale deeds marked as Exs.A6 and A8. When Ex.A8 sale deed is preceded by the sale agreement dated 13.09.2005 marked as Ex.A7 and only pursuant to Ex.A7 sale agreement, Ex.A8 sale deed had been brought about, in such view of the matter, merely because Ramasamy Gounder had died on 30.09.2005 on that score alone, we cannot hold that Ex.A8 sale deed would not have been executed by Ramasamy Gounder in a fit state of mind and health and the same would have been obtained by the second defendant by practicing fraud and misrepresentation. When, as abovenoted, Ramasamy Gounder was able to speak normally and walk normally even during the last course of his treatment as deposed by the doctor examined in the matter and when he is found to be only suffering from blood pressure and diabetes, etc., which are nowadays prevalent in almost all the human beings, in such view of the matter, as held by the trial court, the plaintiffs without any basis or convincing reasons, had come forward with the suit impugning the sale transactions effected by Ramasamy Gounder in favour of the second defendant.

16. According to the plaintiffs, even assuming for the sake of arguments, the sale deeds dated 24.08.2005 and 29.09.2005 are

true and according to them inasmuch as they are entitled to obtain their lawful share in the suit properties by virtue of the amended Hindu Succession Act 39 of 2005, it is their contention that the abovesaid sale deeds would be valid only to the extent of the share of Ramasamy Gounder and the share of the first defendant qua the suit properties and not valid in respect of their lawful share in the suit properties and therefore, according to them, to that extent, the abovesaid sale deeds are not valid and binding upon them. When as above noted and also rightly held by the trial court Ramasamy Gounder had alienated the suit properties by way of Exs.A6 and A8 sale deeds in his capacity as the manager of the joint family as well as the curator of his son, the first defendant and when the abovesaid sale deeds are found to be true and valid and when it is not the case of the plaintiffs that Ramasamy Gounder had been engaged in any illegal or immoral activities and furthermore, when Ramasamy Gounder is found to have alienated the suit properties only for valid reasons and for the upkeep of the family and the interest of his son, the first defendant, in such view of the matter, the alienation made by the family manager would be binding upon his children, both the plaintiffs and the first defendant in toto and even if the abovesaid alienations are effected by the family manager for his own interest, even then, the same being found to be legally binding upon his children, the plaintiffs and the first defendant, in such view of the matter, as rightly put forth by the defendants' counsel, when the plaintiffs have impugned the sale deeds in question by contending that they had been secured by the second defendant by practicing fraud and misrepresentation and in such view of the matter, considering the abovesaid factors, according to the defendants' counsel, the plaintiffs having not sought for the relief of the cancellation of the abovesaid sale deeds as per law, within the period of limitation as provided under Article 109 of the Limitation Act, according to him, no relief of partition could be granted to the plaintiffs as prayed for and it is put forth that the plaintiffs have lost their claim of right of partition over the suit properties and in this connection, placed reliance upon the decisions reported in AIR 1971 Supreme Court 776 (Raghubanchmani Prasad Narain Singh vs. Ambica Prasad Singh (dead) by his legal representatives and others) and 2011-2-L.W 928 (Visvanathan vs. Ramanujam & others). In AIR 1971 Supreme Court 776, it has been held that the alienation by the manager of the joint Hindu family even without legal necessity is only a voidable transaction and not a void transaction. Therefore, when the alienations made by Ramasamy Gounder are found to be true and effected in the capacity as the manager of the joint hindu family and when as abovenoted, the abovesaid alienations had been effected only for legal necessity as set out in the abovesaid sale deeds and when the reasons projected by the plaintiffs for challenging the alleged necessity are found to be

unacceptable as abovenoted, in such view of the matter, when the plaintiffs have miserably failed to establish that the abovesiad alienations had been brought about by the second defendant by practicing fraud and misrepresentation, even assuming for the sake of arguments that the plaintiffs would be entitled to claim any share in the suit properties and the plaintiffs having not come forward seeking the relief of setting aside of the abovesaid sale deeds as per law by affixing necessary court fees, in such view of the matter, as contended by the defendants' counsel, the plaintiffs' claim of partition is found to be barred by limitation and the alienations effected by Ramasamy Gounder not being the void transactions and only voidable transactions and not challenged within the time allowed by law by the plaintiffs and the same are also binding upon the plaintiffs as above pointed out, in such view of the matter, the plaintiffs are found to be not entitled to seek the relief of declaration and the consequential relief of partition as prayed for by them. In the decision reported in 2011 2 LW 928, it has been held that the alienation made by the father having been impugned on the ground of undue influence, coercion or by playing fraud, being only voidable transaction and the same having not been sought to be set aside within the stipulated period of 12 years as contemplated under Article 109 of the Limitation Act, the party impugning the same held to be not entitled to seek any reliefs and the position of law outlined in the decision is as follows:

Limitation Act (1963), Article 109 / Alienation by father in respect of the ancestral property within the period of twelve years, setting aside of, Contract Act (1872), Section 19.

Appellant / plaintiff has not produced title deed, which is said to have been executed in his favour by his father - Transfer of the Mill and the land by the father in favour of the appellant / plaintiff has been admitted by the first respondent / defendant - First respondent / first defendant being a Hindu governed by Mithakshara law, the alienation of their father in respect of the ancestral property should have been set aside within the period of twelve years from the date of passing of possession of the mill and the land to the appellant / plaintiff - Second Appeal allwed.

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33. Admittedly, the appellant / plaintiff has not produced title deed, which is said to have been executed in his favour by his father. However, the transfer of the mill and the land comprised in R.S.Nos.291/2 and 291/3 by the father in favour of

the appellant / plaintiff has been admitted by the first respondent / defendant. He has raised this contention in his written statement before the trial court. When a specific fact has been admitted, it need not be proved through a documentary evidence. Even in accordance with the contentions of the first respondent / first defendant, the document was obtained from their father by the appellant / plaintiff by undue influence, coercion or by playing fraud. Be it as it may. The documents can only be termed as voidable one and it at all the first respondent / first defendant wanted to set aside the sale it should have been done within the stipulated period of twelve years as contemplated under Article 109 of the Limitation Act. As the first respondent / first defendant being a Hindu governed by Mithakshara law, the alienation of their father in respect of the ancestral property should have been set aside within the period of twelve years from the date of passing of possession of the mill and the land to the appellant / plaintiff.

17. In the light of the abovesaid position, when the sale deeds dated 24.08.2005 and 29.09.2005 are found to have been truly executed by Ramasamy Gounder and the abovesaid transactions are found to be executed by Ramasamy Gounder in his capacity as the family manager for valid reasons and interest and the defendants have also established the passing of the consideration under the same and the abovesaid transactions are binding upon the plaintiffs and the abovesaid transactions being only voidable and not void transactions as put forth by the plaintiffs and the plaintiffs having not impugned the said sale transactions by way of seeking the cancellation of the abovesaid sale deeds in the manner known to law and when the relief with reference to the same has become time barred as above pointed out , in all, it is found that, as held by the trial court, the plaintiffs are not entitled to seek and obtain the reliefs prayed for in the suit.

18. For the reasons aforesaid, I hold that the plaintiffs are not entitled to seek the relief of declaration in respect of the sale deeds dated 24.08.2005 and 29.09.2005 as prayed for and I further hold that the abovesaid sale deeds are true, valid and binding upon the plaintiffs and I, therefore, hold that the plaintiffs are not entitled to seek partition and separate possession of their shares in the suit properties as claimed in the plaint and accordingly, the points number 1 to 3 are answered against the plaintiffs and in favour of the defendants.

Points Nos. 4 and 5

In conclusion, the judgment and decree dated 30.07.2008 passed in O.S.No.155 of 2006 on the file of the First Additional District Court, Erode, are confirmed and resultantly, the first appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

bga

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1. The First Additional District Judge, Erode.
 2. The Section officer, V.R. Section, High Court, Madras
- +1cc to Mr.S. Kaithamalai Kumaran, Advocate SR.No.70069
+1cc to Mr.A.Sundaravadanam, Advocate SR.No.71336

A.S.No.862 of 2009

SSV(CO)
GMY(31/10/2019)

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