



A.S.No.308 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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CORAM:

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

A.S.No.308 of 2011

Judgment reserved on 28.03.2024	Judgment pronounced on 30.07.2024
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1.Chakravarthy

2.Sheeba

...

Appellant

Vs.

1.Joseph (died)

2.George

(both represented by their

Power of Attorney agents

1.Lilly Raghavayya

2.Peter Raghavayya

3.Prabhu (died)

4.Raja

5.Anand Venkatarangam

6.Ashok Venkatarangam

(RR5 & RR6 are brought on record
as LRs of deceased R1)

7.Vinod S.C.Venkatarangam

8.Alfred M.P.Venkatarangam

1 / 31



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9.Jerusha Diamond Margaret Venkatarangam
(RR7 to RR9 are brought on record
as LR's of deceased R3 respectively
vide order of court dated 05.01.2024
made in CMP Nos.27399, 27400, 27401
27404, 27405 & 27406/2023 in
A.S.No.308 of 2011)

...

Respondents

Prayer: This First Appeal is filed under Section 96 read with Order 41 of Civil Procedure Code against the judgment and decree of the Additional District Judge, Fast Track Court No.1, Chengalpattu in O.S.No.521/2004 dated 30.11.2010.

For Appellant : Mr.K.S.Jeyaganeshan
for Mr.P.Navaneetha Krishnan

For Respondent : Mr.V.Raghavachari,
Senior Counsel for
Mrs.V.Srimathi for R4

Mrs.Lita Srinivasan
for R2, R5 to R9

R1 & R3 – died

J U D G M E N T

Parties are referred to as per their ranking before the Trial Court, for the sake of convenience.



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2. The unsuccessful plaintiffs are the appellants herein. The suit is filed for preliminary decree of partition by dividing the suit property into three equal shares by metes and bounds and allot 1/3rd share to the plaintiffs.

3. The brief facts necessary for determination of the appeal are as follows -

3(a) The plaint proceeds on the basis that the father of the plaintiffs and the father of the defendants 1 to 3 are the sons of late Frank Vernon Venkatarangam. The plaintiffs are brothers and sisters and they are sons and daughter of late V.E.P.Venkatarangam. The defendants 1 & 2 are sons of W.V.Venkatarangam. The third defendant is the son of K.V.Venkatarangam.

3(b) As per pleadings, the suit property belongs to grandfather of plaintiffs namely Frank Vernon Venkatarangam. After his demise, the suit property was in possession by father of plaintiffs and defendants. The Power of Attorney of defendants 1 & 2 alongwith 3rd defendant tried to alienate the suit property including the share of the plaintiffs without their consent and



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knowledge and defendants 1 & 2 are collecting rent of Rs.700/- per mensem from the suit property. The plaintiffs approached the defendants for partition of the suit property but they did not turn up instead, entered into sale agreement with the 4th defendant Raja who was subsequently impleaded vide I.A.No.472 of 2004 dated 31.01.2006. Since the sale deed is binding upon the plaintiffs, they issued legal notice Ex.A1 on 05.01.2003 calling upon the defendants for partition. As they failed to either reply to the notice or to divide the suit property, the present suit has been filed.

4. Written statement was filed by defendants 1 and 2 through their Power of Attorney. 3rd defendant adopted the said written statement.

5. The 4th defendant – agreement holder also filed separate written statement .

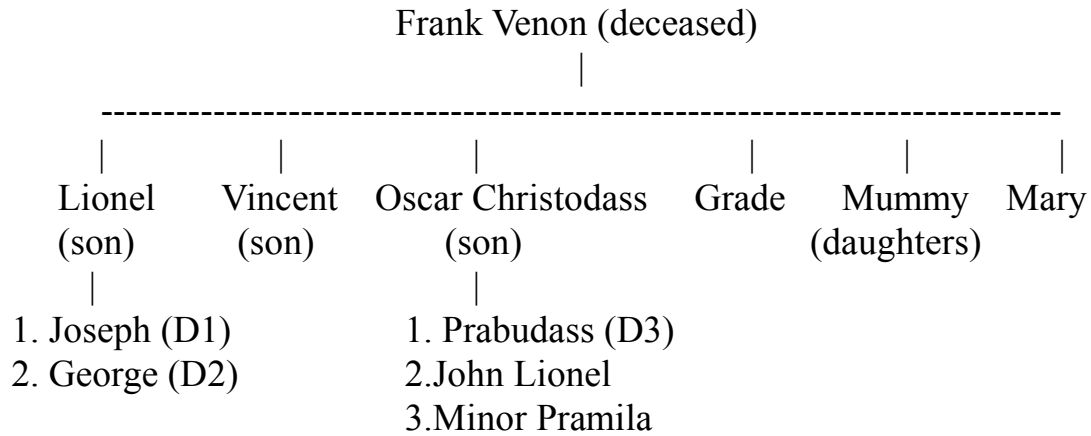
6 (a) The genealogy as per the defendants 1 & 2 based upon the written statement is hereunder.



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GENEALOGY



6(b) The summand substance of the written statement filed by defendants 1 & 2 are to the effect that there was a registered released deed Ex.B1 dated 18.04.1949 by which Vincent and Oscar Christodass released their interest in the suit property in favour of Lionel after receiving Rs.1,000/- each for the consideration and from the date of Ex.B1 - release deed, Lionel and his heirs were in absolute possession and enjoyment of the suit property. During registration of Ex.B1 – release deed, Oscar Christodass signed for himself and as guardian for his heirs. Written statement further proceeds on the basis that Vincent married Dorothy through whom he had no children.



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Thus, the claim of the plaintiffs that they are heirs of Vincent is highly false.

Hence, the plaintiffs are stranger to the family of Frank Vernon. Lilly Ragavayya and her son Peter Raghavayya are the general Power of Attorney to defendants 1 & 2. The suit property was leased by the defendants 1 & 2 to the 4th defendant Raja and his son Sam Daniel.

6(c) It is further stated that even assuming that the plaintiffs are children of Vincent, Vincent himself released his interest in the suit property in favour of Lionel and on the date of the alleged legal notice, the defendants 1 & 2 were in Canada. Hence, as a utter stranger, plaintiffs have no right over the suit property and its rent.

6(d) In the additional written statement, it is stated that the 4th defendant has not purchased any portion of the suit property and hence he is unnecessary party to the above suit.

7. In the written statement filed by the impleaded 4th defendant, it is stated that two sale deeds were executed by defendants 1 & 2 in favour of the



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4th defendant on 19.05.2000 for a total extent of 0.38 cents by paying a sum of Rs.28,00,000/-. Since the plaintiffs instituted the suit, the sale deeds could not be enforced and had the sale deeds been executed, the 4th defendant ceased to be the tenant.

8. On the above pleadings, the following issues were framed for trial.

- (i) Whether the plaintiff is entitled for partition as prayed for ?
- (ii) Whether the defendants are entitled to the suit property ?
- (iii) To what relief ?

9. On the side of the plaintiffs, two witnesses were examined as PW1 & PW2 and four documents were marked as Exs.A1 to A4. On the side of the defendants, one witness was examined as DW1 and eight documents were marked as Exs.B1 to B8.

10. After hearing the parties at length and also the genealogy tree filed before the Trial Court, genealogy tree filed by the respective parties for the purpose of determination, the short genealogy as filed by both sides is



extracted hereunder.

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William Vernon Venkatarangam

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Son	Son		Son
Vincent Edward Frank Venkatarangam (died on 27.08.91)	Lionel William Vernon Venkatarangam (died on 30.11.1983) Release deed dated 18.04.1949 (Doc.No.657 of 1949)		Oscar Christodass Burton Venkatarangam
Claim to be Son & Daughter	Son	Son	Son
Chakravarthy Venkatarangam 1st Plaintiff Sheeba Venkatarangam 2nd Plaintiff	Joseph Venkatarangam 1st Defendant (died on 29.08.2019)	George Venkatarangam (2nd defendant)	Prabhudoss Frank Stephen Venkatarangam 3rd defendant (died on 24.05.2021)
	Sons Anand Venkatarangam 5th Defendant Ashok Venkatarangam 6th defendant		Two sons & daughter Vinod SC Venkatarangam 7th defendant Alfred M.P.Venkatarangam 8th defendant Jerusha Diamond Margaret Venkatarangam 9th Defendant



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11. The following points arise for determination in this appeal -

- (i) Whether the plaintiffs are the son and daughter of Vincent Edward Frank Venkatarangam ?
- (ii) Whether Ex.B1 – release deed in favour of the father of the defendants 1 & 2 executed by the father of the plaintiffs and the father of third defendant is true and valid ?
- (iii) Whether Ex.B1 is proved in the manner known to law ?
- (iv) Whether the defendants 1 & 2 are in possession and enjoyment of the suit property ?
- (v) Whether the 4th defendant is a necessary party to the suit ?

12. From the pleadings and evidence of PW1 & PW2 and DW1, the admitted factual matrix touching upon the title of the property is as under -

12(a) The suit property originally belonged to Frank Vernon Venkatarangam who acquired the same from his father Pasupullaty. Frank Vernon Venkatarangam had three sons namely Lionel, Vincent, Oscar Christodass and three daughters. The 2nd plaintiff is the sister of first plaintiff



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and they are the legal heirs of Vincent. The first and second defendants are the sons of Lionel. The third defendant is the son of Oscar Christodass. The fourth defendant is said to be in possession and enjoyment of the suit property at present on the strength of sale agreement executed by the power agent Peter Raghavaiah who is the power agent of the defendants 1 and 2. He is defending the suit on behalf of the first and second defendants on the strength of the power of attorney deed Ex.B3 dated 03.03.2007 executed in his favour. After the death of Frank Vernon Venkatarangam, his three sons Lionel, Vincent and Oscar Christodass had been in possession and enjoyment of the suit property as legal heirs.

12(b) As per the plaint as well as the evidence of PW1, the plaintiffs are the son and daughter of Vincent and that their father and father of defendants 1 to 3 had been in possession and enjoyment of the suit property and that after the death of Frank Vernon Venkatarangam, their father never executed any release deed in favour of the father of the defendants 1 and 2 and that the alleged released deed is a void document. The power of attorney of the defendants who are in Canada, on line with contents of the written



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statement deposed that the plaintiffs are not the son and daughter of the Vincent and that no documents have been produced to prove their above contention.

12(c) It is further contended that Vincent and Oscar Christodass relinquished their interest in the suit property in favour of their brother Lionel through registered release deed Ex.B1 after receiving a sum of Rs.1000/- each from Lionel and therefore Vincent and Oscar Christodass had no right in the suit property after execution of release deed. The plaintiffs, even assuming for argument sake that they are the legal heirs of Vincent, are not entitled to any share in the suit property. At this conjuncture, it remains to be stated that both PW1 & PW2 (father -in-law of first plaintiff) has admitted that DW1 is one of the power agent of the defendants 1 & 2 and he is the son of Lilly Raghavaiah, who is the other power agent of the defendants 1 & 2. The said Lilly Raghavaiah is none other than the own sister of Grace Adhilaskhmi who is the mother of the defendants 1 & 2, assumes significance.



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13. This Court, in the decision reported in **CDJ 2009 MHC 3227**

(S.Natarajan v. V.Thirumavalavan) has held as follows -

6. that for the acts done by the power of attorney holder as a power agent, he can very well depose. Further, the power of attorney holder can conduct the case on behalf of the principal. Hence, this Court is of the opinion that the power of attorney cannot give evidence over the matter which is exclusively to the personal knowledge of the principal.

7. the petitioner, power of attorney holder is also an attester. It is made clear in such a case, as an attester he can very well depose as a witness in the suit.(emphasis supplied)

14. In view of the above, this Court has no hesitation to hold that DW1 would depose as a Power Agent in respect of the act committed by him as power agent of the defendants 1 & 2. As he happened to be son of attester of the document, he could very well depose as witness in such suit.

15(a) In the instant case, he is the son of the attester of Ex.B1 which is discussed infra. The defendants, both in the written statement as well as in the evidence would contend that the plaintiffs are not the son and daughter of Lionel.



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15(b) Mrs.Lita Srinivasan, learned counsel strongly objected that they cannot be termed as “legitimate son of Lionel”. This court has given its anxious consideration. My attention was drawn to the admission of DW1 during the cross examination wherein he had admitted that the first plaintiff is the son and the second plaintiff is the daughter of Vincent through his second wife "Vimal Agnes".

16. It remains to be stated that though DW1 has taken a different stand in the chief examination, he had admitted the relationship in the cross examination assumes significance.

17(a) The first plaintiff who is the PW1 has not specifically denied in his proof affidavit about the averment of the defendants 1 to 3 regarding the execution of the release deed by Ex.B1. PW2 has stated in his proof affidavit that the father of the plaintiffs used to tell him that he had share in the suit property and that he had not executed any deed or document in respect of the suit property. PW2 is none other than the father-in-law of the first plaintiff.



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17(b) It is seen from the evidence of PW2 that he came into association with the family of the plaintiff only from 29.12.1985, the date of marriage of his daughter with the first plaintiff. Ex.B1 is said to have been executed in the year 1949. Therefore, there is no occasion for PW2 to have knowledge about the execution or non-execution of Ex.B1. Therefore, the evidence of PW2 in this regard cannot be believed.

18(a) It also remains to be stated that though the 1st plaintiff who was examined as PW1 claimed that he is the son of Lionel, for the best reasons known, he has not disclosed the name of his mother either in the pleadings or in the proof affidavit. Such practice adopted by the plaintiff is deprecated. During the cross examination, he has admitted that he and his mother knew about the execution of the release deed by his father and his Junior Paternal Uncle Christodass in favour of Lionel. He has also admitted in his evidence that when he had been 16 years old, his father told him about the execution of release deed. He has also admitted in his evidence that prior to the marriage of his mother with his father, the release deed had been executed on 18.04.1949.



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18(b) The above said admitted evidence of PW1 shows that he himself had been aware of the execution and existence of the release deed, Ex.B1. So also in the pleadings as well as in the chief examination, DW1 has stated that the plaintiffs are illegitimate children. However, in the cross examination, he had admitted as stated supra and such attitude of DW1 who is the common relative for both is also deprecated.

19. This Court is at pain to say that both the parties are putting defamatory language against each other regarding the status of the plaintiffs. In view of the admission made by DW1 in the cross examination that one Dorothy is the first wife of Vincent and after her death, Vimala Agnes is his second wife and that the plaintiffs were born to Vincent through Vimala Agnes, got married after the death of first wife. Hence, in view of the specific admission of DW1 disclosure statement made by PW1 in the cross examination, the Trial Court has rightly come to the conclusion that the first and second plaintiffs are the son and daughter of Vincent and second wife Vimala Agnes.



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20. As a legal heir of Vincent, the plaintiffs seek 1/3rd share. The claim of partition was resisted by the defendants by projecting Ex.B1-release deed executed by the father of the plaintiffs and father of the third defendant namely Vincent Edward Frank Venkatarangam and Oscar Christodass Burton Venkatarangam in favour of Lionel William Vernoon Venkatarangam viz. fathers of defendants 1 & 2. The genealogy tree which was submitted by both the parties, after a great fight between both the parties in the open court and after verification, it is held that the plaintiffs are born through Vincent Edward Frank Venkatarangam through second wife Vimala Agnes and not through the first wife Dorothy.

21. The learned counsel appearing for the plaintiffs has elaborately argued regarding certain alleged corrections and over-writing their names and also contended that in so called Ex.B1-release deed, the signature of Vincent Edward Frank Venkatarangam differs and Ex.B1-release deed was not proved in the manner known to law and hence argued that it is a forged document. Heard the argument of Mrs.Lita Srinivasan in this regard.



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22. This is a suit of partition nature. Plaintiffs claim to be the legal heirs of one branch by name Vincent. Defendants 1 & 2 are the sons of Lionel. Third defendant is the son of Oscar Christodass. It is projected by the defendants 1 & 2 both in the written statement as well as in the evidence as DW1 that under Ex.B1-release deed dated 18.04.1949, the father of the plaintiffs and the father of the 3rd defendant had released the share in favour of the father of defendants 1 & 2 for consideration of Rs.1,000/- each (at the relevant point of time) and hence, they are not entitled for any share. It is contended by the plaintiffs/appellants that the release deed executed by the father of the plaintiffs and the father of the 3rd defendant in favour of the father of the defendants 1 & 2 is in the year 1941 and hence Ex.B1 is a forged one.

23. As far as plaintiffs are concerned, their father Vincent Edward Frank Venkataragam never executed any release deed in favour of the father of the defendants 1 & 2 and further, the father of the 3rd defendant is not entitled to execute the release deed for himself and on behalf of the minor 2nd



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defendant and his minor children and thus, the alleged Ex.B1 – release deed is a void document.

24. The learned counsel would further contend that the signature of Vincent Edward Frank Venkatarangam differs in the last page of the release deed and other pages. During the argument, one of the party has produced Ex.B1-original release deed which is obtained from the Court below by substituting Ex.B2 – certified copy issued by the court itself. This Court had the benefit of going through Ex.B1 – original release deed.

25. As stated supra, the contention of the plaintiffs/appellants is that the defendants 1 & 2 failed to examine the scribe of the release deed to prove the signature in Ex.B1 and further failed to prove the alleged signature of Vincent Edward Frank Venkatarangam through any witness who knows the signature of Vincent Edward Frank Venkatarangam. Mrs.Lita Srinivasan, learned counsel for the defendants mainly relied upon the cross examination of PW1 and the statutory presumption under Section 90 of the Indian Evidence Act.



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26(a) On perusal of the pleadings and evidence, it is seen that DW1 has specifically stated in his proof affidavit that the first wife Dorothy died issueless and the plaintiffs are born to Vincent through their alleged mother Vimala Agnes. However, during cross examination, he has stated that after the death of Dorothy, Vincent married second time and that he heard about the fact from other. He has also deposed that only after the suit, he came to know about the marriage of Vincent with Vimala Agnes. He has also categorically admitted that it is true that the plaintiffs are the children of Vincent. Therefore, it is established from the admitted evidence of DW1 that the first plaintiff is the son and the second plaintiff is the daughter of Vincent, however, born through his second wife Vimala Agnes.

26(b) The first plaintiff who is PW1 has not specifically denied in his proof affidavit about the averment of the defendants 1 to 3 regarding the execution of the release deed by Ex.B1. PW2 has stated in his proof affidavit that the father of the plaintiffs used to tell him that he had share in the suit property and that he had not executed any deed or document in respect of the suit property. PW2 is none other than the father-in-law of the first plaintiff. It



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is seen from the evidence of PW2 that he came into association with the family of the plaintiff only from 29.12.1985, the date of marriage of his daughter with the first plaintiff. Ex.B1 is said to have been executed in the year 1949. Therefore, there is no occasion for PW2 to have known the execution or non-execution of Ex.B1. Therefore, the evidence of PW2 in this regard cannot be believed. Therefore, the Trial Court has rightly negatived and rejected the evidence of PW2 in this regard.

27. Coming to the arguments and the contentions of the defendants, my attention was drawn to the cross examination of PW1 wherein he had admitted that he and his mother knew about the execution of the release deed by his father and his Junior Paternal uncle Christodass in favour of Lionel. He has also admitted in his evidence that when he had been 16 years old, his father told him about the execution of the release deed. He has also admitted in his evidence that prior to the marriage of his mother with his father, the released deed had been executed on 18.04.1949. The above said admitted evidence of PW1 shows that he himself had been aware of the execution and existence of the release deed Ex.B1. Thus, this Court finds that admission of



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the defendants case by 1st plaintiff as PW1 in the cross examination, is the best piece of evidence as per Section 58 of Indian Evidence Act.

28. The learned counsel for the plaintiffs drew my attention to the evidence of DW1 that at the time of execution of Ex.B1-release deed, DW1 is only 10 years old and hence he would state that his evidence in this regard should be discarded. This Court has given anxious consideration for the said contention. Keeping in mind the law laid down by this Court in the above cited judgment in *Natarajan's case*, DW1 is none other than the close relative to both parties and son of the attesor of the release deed. On the oral evidence of DW1 and Ex.B1 – release deed, I find that in Ex.B1 – release deed, one Ragavaiah and George Venugopal have put their signatures as witness. The said Ragavaiah is none other than the father of DW1. The other attesor George Venugopal is the father of the mother of DW1 (maternal grandfather of DW1). The evidence of DW1 about the death of his father in the year 1957 and also the death of his maternal grandfather George Venugopal has not been denied or refuted by the plaintiffs.



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29. Admittedly, the year of execution of Ex.B1 is of the year 1949 and the suit was filed in the year 2003, after a lapse of 54 years from the date of execution of Ex.B1-release deed and the same was put to challenge. The scribe who prepared Ex.B1 is no more. Attestors of the document are also no more.

30. At the risk of repetition, however for the sake of clarity, it is stated that in Ex.B1 – release deed, one Ragavaiah and George Venugopal have put their signatures as witness. The said Ragavaiah is none other than the father of DW1. The other attestor George Venugopal is the father of the mother of DW1. The evidence of DW2 about the death of his father in the year 1957 and also the death of his maternal grandfather George Venugopal has not been denied or refuted by the plaintiffs. The evidence of DW1 is that the scribe who prepared Ex.B1 is also no more. The categorical evidence of DW1 is that the signatures found as Raghavaiah and George Venugopal in Ex.B1 belong to his father and maternal grandfather respectively. He has categorically stated that he knew about their signatures. It is seen from his evidence that he is able to identify their signatures. Oscar Christodass had also put his



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signature in Ex.B2 in token of having relinquished his share in the suit property. DW2 who is the 3rd defendant and also who is the son of Oscar Christodass has also asserted in his evidence that he is conversant with the signature of his father and that the signature found as Oscar Christodass in Ex.B1 belongs to his father.

31. Besides, as per Section 90 of Indian Evidence Act, when any document which is 30 years old is produced from any custody, the court may presume that it is a genuine document. Admittedly, Ex.B1 is the original registered document. It was challenged after 54 years before the judicial forum. It is produced from the legal custody of defendants 1 and 2, son of the releasee under the release deed Ex.B1 and hence he is entitled for statutory presumption under Section 90 of the Indian Evidence Act. In view of the matter, various arguments advanced by the learned counsel for the plaintiffs has to be thrown out of the court at the threshold itself, in view of the statutory presumption.



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32. Admittedly, the scribe who prepared Ex.B1 is no more and attestors Raghavaiah and George Venugopal are also no more.. The said Raghavaiah is none other than the father of DW1. The other attestor George Venugopal is the father of the mother of DW1. The evidence of DW2 is about the death of his father in the year 1957. DW1 as a son could very well recognise the signatures of his father. DW1 is the son of the attestor. He had categorically admitted that the signatures found as Raghavaiah and George Venugopal in Ex.B1-release deed belongs to his father and maternal grandfather and he knows their signatures. Accordingly, the Trial Court has rightly come to the conclusion that his evidence passed the test of credibility and passed the essential ingredients for proving Ex.B1 – release deed as an ancient document. Hence, the learned counsel for the plaintiffs cannot harp upon to claim that attestor or scribe has to come to depose as witness since after 54 years, all of them are dead and it is sufficient that either the son of the attestor who is familiar with the signature of the attestor, their evidence is sufficient enough.



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33. In the instant case, even after lengthy cross examination of DW1 at his old age withstood the cross examination and answered all the meaningless questions put to him in the cross examination, assumes significance. In view of the specific evidence of DW1 who had identified the signatures of his father and maternal grandfather viz. the attestors to Ex.B1 (release deed), coupled with the fact that Ex.B1 was produced from the proper custody and the said document is a registered document, I have no hesitation to hold that Ex.B1 – release deed is an ancient document, falling within the category of Section 90 of Indian Evidence Act besides the evidence of DW1 can be treated as sufficient under Section 69 of the Indian Evidence Act, so as to prove the signature of the attestors found in Ex.B1.

34. Accordingly, the reason assigned by the Trial Court for accepting Ex.B1 appears to be just and proper and also found to be in consonance with the provisions of the Indian Evidence Act. Therefore, the plaintiffs cannot now question the validity and authenticity of Ex.B1 in respect of recitals and signatures found therein and hence I find that Ex.B1 is true and valid document and execution of Ex.B1 is proved in the manner known to law.



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35. As per Ex.B1, the father of the plaintiffs and father of the 3rd defendant had released their share to the father of the defendants 1 & 2, after receiving consideration. Thus, the findings rendered by the Trial Court that the defendants 1 & 2 have adduced convincing oral and documentary evidence regarding the execution of the release deed Ex.B1 by Vincent and Oscar Christodass, relinquishing their share in the suit property in favour of the father of the plaintiffs on 18.04.1949, it cannot be disputed that the father of the plaintiffs died on 27.08.1991 as evidenced from the death certificate Ex.B4 is very well founded and does not call for any interference by this Court. Furthermore, from the proceedings of the Commissioner, Panchayat Union, Chengalpattu, it is seen that the defendants 1 & 2 are in possession and enjoyment of the property and the property tax and water tax have been remitted, revenue records are computed and thus, the possession of the defendants 1 & 2 is also established.

36. The defendants 1 & 2 are in possession and enjoyment of the suit property from the date of death of their father Lionel and administered the property through Power of Attorney. Hence, I find that the father of the



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plaintiffs and the father of the 3rd defendant had already relinquished their share in respect of the suit property through Ex.B1 – release deed in favour of the father of the defendants 1 & 2. The plaintiffs have no right to claim suit property. In short, son cannot claim any share in the property when the father had already relinquished his entire share in the ancestral property even before the marriage of his mother. Hence, points 1, 2, 3 & 4 are answered in negation against the plaintiffs and in favour of the defendants.

37. On the 5th point of consideration, it is seen that DW1, in his proof affidavit had deposed regarding the lease of portion of the suit property to the 4th defendant and also lease of remaining portion of the property to one Sam Daniel. During the cross examination, he had stated that it is only a sale agreement to an extent of 25 cents and 30 cents and the same is marked as Exs.B7 & B8. These agreements have been entered into between DW1 as Power Agent of defendants 1 & 2 and above said persons before filing the suit. In this regard, whether the 4th defendant is necessary party or not is no longer resintegra.



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38. In the case of *Sk.Sattar Sk.Mohd. Choudhari Vs. Gundappa*

Amabadas Bukate, reported in AIR 1997 Supreme Court 998 and upheld in the case of *M/s.Karta Ram Rameshwar Dass Vs. Ram Bilas & Ors. reported in 2006(2) ALL MR 221 (SC)*, the Hon'ble Apex Court has laid down the law that, in a suit for partition, if the tenant failed to prove that the claim for partition was not bonafide, only then the tenant can be made a party. In a suit for partition filed by one co-sharer against another, if a tenant is made party, he can object to the claim for partition if it is shown that the same was not bonafide and made with an oblique motive to overcome the rigours of rent control laws which protected eviction of tenant except on grounds set out in the relevant statute. After a partition is effected or a decree for partition is passed, it would be open to the co-sharers to evict a tenant from that portion of tenanted premises which had fallen in their respective shares by filing separate proceedings for eviction under rent control laws on the grounds enumerated thereunder.

39. In the absence of 4th defendant not even attempting to raise a plea of the partition suit not being bonafide, he is not a proper and necessary party to



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the suit. The 4th defendant is not a necessary party to the suit. Thus, this point is answered against the plaintiffs and in favour of the defendants 1 & 2.

40. In view of the above, **this appeal suit is dismissed** confirming the judgment and decree of the Additional District Judge, Fast Track Court No.1, Chengalpattu in O.S.No.521/2004 dated 30.11.2010. No costs.

30.07.2024

Index : Yes/No

Neutral Citation : Yes/No

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To

1.The Additional District Judge,
Fast Track Court No.1,
Chengalpattu.

2.The Section Officer
VR Section,
High Court, Madras.



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RMT.TEEKAA RAMAN, J.

(rgr)

Pre-delivery Judgment in
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