



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 29.04.2024

Pronounced on: 07.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.S.No.114 of 2009

- 1.V.Jeeva (Deceased)
- 2.A.Daniel (Deceased)
- 3.James Stephen
- 4.A.Christina
- 5.A.Regina
- 6.A.Alphonsa
- 7.M.Balakrishnan
- 8.B.Vincent
- 9.K.Reeta
- 10.S.Allis
- 11.Paul Essaikial
- 12.B.Sathrock
- 13.E.Yesumani
- 14.B.Rajkumar
- 15.D.Vasanth
- 16.Minor Thoshann Harrish
- 17.Minor Karunya

....Plaintiffs

[2nd plaintiff, rep. as Power of Attorney of 3 to 6 plaintiff was deleted as per order dated 14.02.2022 in A.No.514 of 2022]

[Plaintiffs 7 to 14 brought on record as LR's of the deceased 1st plaintiff as per order dated 10.07.2017 in A.No.2875 of 2017]



[Plaintiffs 15 to 17 are brought on record as legal heirs of the deceased 2nd plaintiff as per order dated 12.01.2022 in A.No.81 of 2022]

[Plaintiffs 16 and 17 are minors and 15th plaintiff is appointed as a guardian as per order dated 12.01.2022 in A.No.80 of 2022]

Vs.

- 1.R.Devi
- 2.R.Padmanaban
- 3.R.Gopi
- 4.R.Krishnaraj
- 5.R.Shanthamoorthy
- 6.R.Subbulakshmi
- 7.R.Muthulakshmi
- 8.R.Komala
- 9.V.Devi
- 10.V.Ramesh
- 11.V.Ramachandra
- 12.S.L.Sudharshan
- 13.N.Karthikeyan
- 14.Palani
- 15.Mohan (Deceased)
- 16.Kumar
- 17.N.Munianathan
- 18.Ravi
- 19.Nagarajan
- 20.Narasimman
- 21.P.Srinivasan
- 22.Selvi
- 23.Minor Praveen
- 24.Minor Prasanth
- 25.Bharathi Devi
- 26.Mahalakshmi



27.Minor Yuvaraj
28.Sampath
29.B.Rangabashyam
30.Manivannan
31.Mugundan
32.Prema Bai
33.Devika.M
34.Abinash.M
35.Lavanya.M

...Defendants

[D22 to D28 impleaded as per order dated 17.02.2011 in A.No.4553 of 2010 in C.S.No.114 of 2009 and delay condoned by the order dated 23.03.2011 in A.No.1721 of 2011 in C.S.No.114 of 2009]

[D29 impleaded as per order dated 02.09.2014 in A.No.3937 of 2013 and amendment carried out as per order dated 10.09.2014 in A.No.5615 of 2014]

[Defendants 30 & 31 impleaded as per order dated 06.01.2016 in A.No.7593 of 2015]

[D32 impleaded as per order dated 14.02.2022 in A.No.515 of 2022]

[Defendants 33 to 35 are brought on record as legal heirs of the deceased 15th defendant as per order dated 08.03.2022 in A.No.5183 of 2022]

PRAYER: Civil Suit is filed under Order XXIV read with Order IV Rule 1 of



the Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure praying for a Judgment and Decree for the following reliefs:-

a) for partition and separate possession of the suit property by allotting 1/5th share to the 1st plaintiff and 1/5th share to the plaintiffs 2 to 6 by metes and bounds;

b) for permanent injunction restraining the defendants their men, servants and agents and anybody claiming through them from alienating and encumbering the suit property till partition is made by metes and bounds;

c) directing the defendants to pay the plaintiff the cost of the suit.

For Plaintiffs : Mr.S.William

For Defendants

For D1 to D14,
D16, D18, D19,
D22 to D28 : Exparte

For D15, D17,
D20, D29 to D31,
D33 to D35 : No appearance

For D32 : Unserved

For D21 : Mr.A.Palaniappan

JUDGMENT



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The plaintiffs have sought for the relief of partition and also permanent injunction.

2.The brief facts, narrated and set out in the plaint, as necessary for adjudication of the present suit are as follows:

The plaintiffs contend that the Schedule 'A' property originally belonged to Mrs.Amma Kannu Ammal, she having purchased the same through one Sri.Lakshmanan by a Sale Deed dated 30.04.1912, registered vide Doc.No.645 of 1912 on the file of the Sub-Registrar Office, Sembium. According to the plaintiffs, the said Amma Kannu Ammal died intestate on 13.12.1946. Her husband Munian also died intestate on 19.07.1950, leaving behind their only son, M.Velu. The said M.Velu became absolutely entitled to schedule 'A' property. 'B' schedule property also belonged to said M.Velu who subsequently died intestate on 25.10.1976, leaving behind his sons and daughters, namely V.Jeeva, the 1st plaintiff, V.Rajagopal, V.Veeraraghavan, V.Seetha and V.Ramachandran, each entitled to 1/5th share in the suit property. The daughter V.Seetha died on 09.03.2001 and her husband Arul Doss also died on 07.08.2007. The said V.Seetha was succeeded by A.Daniel, A.James Stephen, A.Christina, A.Regina, A.Alphonsa who are the plaintiffs 2 to 6.



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3. The son, V. Rajagopalan was succeeded by the 1st defendant, his wife and the defendants 2 to 8, his children. Similarly, the other son, V. Veeraraghavan was succeeded by his wife, the 9th defendant, and their adopted son, the 10th defendant. Though the plaintiffs are entitled to 2/5th share in schedule 'A' and 'B' properties, despite repeated representations and remainders, the defendants 1 to 11 did not come forward to divide the schedule 'A' and 'B' properties. The plaintiffs issued a lawyer's notice on 04.09.2008, calling upon the defendants 1 to 11 to come forward to divide the suit property by metes and bounds. The plaintiffs also contend that they came to know that a portion of the schedule 'A' property was sold to 12 to 21 defendants by V. Rajagopal, V. Veeraraghavan and V. Ramachandran. The purchasers have been impleaded as defendants 12 to 21 and notices were also sent to them on 04.09.2008 and 27.09.2008. The said alienation would not bind the plaintiffs. It is also stated that the 11th defendant sent a reply with false allegations and contended that the plaintiffs had relinquished their rights in the suit properties. Thus, the suit came to be instituted.

4. Written statement filed by the defendants 15, 17, 20 and 21, 30 and 31, briefly:

The defendants denied the claims of the plaintiffs. The defendants admitted the relationship between the parties. However, the defendants contend



that the plaintiffs have suppressed the execution of an irrevocable Power of Attorney dated 14.01.1992 in favour of M/s. Emerald Promoters Pvt., Ltd., represented by P. Srinivasan, the 21st defendant. The said Power of Attorney was also registered in Doc.No.58 of 1992 on the file of the SRO, Anna Nagar and in and by the said power, the 21st defendant was empowered to deal with the property, including develop the same and also alienate the suit schedule property in the form of plots. The said Power of Attorney covered schedule 'A' of the suit property. The 1st plaintiff, V. Jeeva, the mother of the plaintiffs 2 to 6 was a signatory to the said Power of Attorney and therefore, the plaintiffs are bound by the same. According to these defendants, pursuant to the Power of Attorney, the 21st defendant executed Sale Deeds in favour of various third party bonafide purchasers for consideration, who have already taken possession. The defendants denied the alleged notices said to have been issued by the plaintiffs. The suit has not been valued properly. The plaintiffs are estopped from claiming any right from the suit property.

5. These defendants have also filed an additional written statement where they have taken the plea of the suit being bad for non-joinder of necessary parties. The defendants 30 and 31 filed separate written statement where they have contended that the suit is liable to be dismissed in so far as the schedule 'B' property is concerned. These defendants have supported the case of



the plaintiffs in so far as schedule 'A' property is concerned, contending that their father along with his brothers, V.Rajagopalan and V.Veeraraghavan had sold the entire schedule 'A' of the property without knowledge and consent of these defendants and hence, the said alienations would not bind the defendants 30 and 31. The defendants 30 and 31 are entitled to 1/15th share each in 'A' schedule property and 1/9th share each in 'B' schedule property. The defendants 30 and 31 therefore prayed for dismissal of the suit in so far as 'B' schedule of the property is concerned.

6.On the above pleadings, the following issues were framed on 14.10.2014:

“1.Whether the plaintiffs are entitled to a decree for partition claiming 2/5 share in the suit properties?

2.Whether the plaintiffs are entitled to a decree for permanent injunction restraining the defendants from alienating or encumbering the suit properties till the partition asked for is made?

3.Whether the sale deeds executed by late V.Rajagopal, late Veeraraghavan and the 11th defendant V.Ramachandran in favour of defendants 12 to 21, late Nagarajan and 28th defendant is valid and bind the plaintiffs?

4.To what other reliefs, the parties are entitled to?”

7.Mr.A.Daniel, the 2nd plaintiff who examined as P.W.1 and he was



cross-examined by the learned counsel for the defendants 15, 17, 20 21 and 29.

On the side of the defendants, P.Srinivasan, the 21st defendant examined himself as D.W.1 and he was cross-examined by the learned counsel for the plaintiffs.

Mr.Mukundan, 31st defendant examined himself as D.W.2 and he was cross-examined by the contesting defendants, namely the defendants 15, 17, 20, 21 and 29.

8.The following exhibits were marked on the side of the plaintiffs:

Ex.P1 is the certified copy of the Sale Deed dated 30.04.1912 executed in favour of Amma Kannu Ammal. Ex.P2 is the office copy of the notice dated 04.09.2008 sent by the plaintiffs to the defendants 1 to 13. Ex.P3 is the original reply notice dated 22.09.2008 sent by the 11th defendant. Ex.P4 is the office copy of notice dated 27.09.2008 sent by the plaintiffs to the defendants 1 to 21. Ex.P5 is the original receipts dated 05.09.2008 for sending the notice dated 04.09.2008. ExP6 is the original receipts dated 27.09.2008 for sending the notice dated 27.09.2008. Ex.P7 is the original acknowledgement card dated 09.09.2008 signed by the 1st defendant. Ex.P8 is the original acknowledgement card dated 09.09.2008 signed by the 2nd defendant. Ex.P9 is the original acknowledgment card dated 09.09.2008 signed by the 3rd defendant. Ex.P10 is the original acknowledgment card dated 09.09.2008 signed by the 4th defendant. Ex.P11 is the original acknowledgment card dated 09.09.2008



signed by the 5th defendant. Ex.P12 is the original acknowledgment card dated 09.09.2008 signed by the 6th defendant. Ex.P13 is the original acknowledgment card dated 09.09.2008 signed by the 7th defendant. Ex.P14 is the original acknowledgment card dated 09.09.2008 signed by the 8th defendant. Ex.P15 is the original acknowledgment card dated 09.09.2008 signed by the 9th defendant. Ex.P16 is the original acknowledgment card dated 17.09.2008 signed by the 10th defendant. Ex.P17 is the original acknowledgment card dated 09.09.2008 signed by the 11th defendant. Ex.P18 is the original acknowledgment card dated 09.09.2008 signed by the 13th defendant. Ex.P19 is the original Returned cover dated 10.10.2008. Ex.P20 is the original Returned cover dated 29.09.2008. Ex.P21 is the original Returned cover dated 07.10.2008. Ex.P22 is the original Returned cover dated 29.09.2008. Ex.P23 is the original Returned cover dated 07.10.2008. Ex.P24 is the original Returned cover dated 29.09.2008. Ex.P25 is the certified copy of Sale Agreement dated 26.06.1991 under Doc.No.3170 of 1991. Ex.P26 is the certified copy of the Sale Deed dated 18.01.1994 under Doc.No.209 of 1994. Ex.P27 is the certified copy of the Sale Deed dated 18.01.1994 under Doc.No.210 of 1994. Ex.P28 is the certified copy of the Sale Deed dated 18.01.1994 under Doc.No.211 of 1994. Ex.P29 is the certified copy of the Sale Deed dated 18.01.1994 under Doc.No.212 of 1994. Ex.P30 is the certified copy of the Sale Deed dated 18.01.1994 under Doc.No.213 of 1994. Ex.P31 is the certified copy of the Sale



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Deed dated 18.01.1994 under Doc.No.231 of 1994. Ex.P32 is the certified copy of the Sale Deed dated 18.01.1994 under Doc.No.232 of 1994. Ex.P33 is the certified copy of the Sale Deed dated 18.01.1994 under Doc.No.233 of 1994. Ex.P34 is the certified copy of the Sale Deed dated 18.01.1994 under Doc.No.234 of 1994. Ex.P35 is the certified copy of the Sale Deed dated 18.01.1994 under Doc.No.235 of 1994. Ex.P36 is the Encumbrance Certificate dated 17.06.2008 for the suit property for the period from 01.01.1987 to 16.06.2008. Ex.P37 is the certified copy of Sale Deed dated 07.01.1994 under Doc.No.1934 of 1994.

9.I have heard Mr.S.William, learned counsel for the plaintiffs and Mr.A.Palaniappan, learned counsel for the 21st defendant. The defendants 1 to 14, 16, 18, 19, 22 to 28 were set exparte by this Court on 25.04.2012. The defendants 29, 33 to 35, though served suit summons, have not chosen to file written statement.

10. Issues 1 and 3:

As both these issues concern the right of the plaintiffs to seek partition, they are taken up together. The defendants do not dispute the relationship between the parties or even tracing of title to the suit schedule properties. According to the plaintiffs, the 1st plaintiff was the daughter of the original owner of the property. Therefore, the legal heirs of the 1st plaintiff are jointly



entitled to 1/5th share in the suit schedule properties. The defendants 2 to 10 are legal representatives of two of the deceased sons, namely, V.Rajagopal and V.Veeraraghavan and the 11th defendant, V.Ramachandran is one of the sons of late Amma Kannu Ammal.

11.The issue that arises for consideration in the suit is as to whether the alienations made by late V.Rajagopal and V.Veeraraghavan and the 11th defendant V.Ramachandran are valid and whether they would bind the plaintiffs and the defendants 30 and 31. Also, the further question that arises for consideration is whether the plaintiffs are entitled to any share in the schedule 'A' and 'B' properties.

12.In answer to the plaint allegations, the defendants have categorically submitted that the legal heirs of late Amma Kannu Ammal had executed an irrevocable Power of Attorney in favour of the 21st defendant, who subsequently chose to deal with the suit properties in furtherance of the said Power of Attorney and therefore, the plaintiffs have no right to claim partition and consequently, the relief of permanent injunction.

13.The irrevocable Power of Attorney dated 14.01.1992 is a registered instrument and the same has been registered in Document No.58 of 1992 on the



file of the SRO, Anna Nagar. On going through the same, I find that the said Power of Attorney relates to the suit schedule 'A' property. Under Ex.D1 and D2 dated 26.04.1991 two similar Power of Attorneys have also been executed and registered on the file of the SRO, Anna Nagar. Under Ex.D5 dated 14.01.1992, the earlier Power of Attorney dated 14.01.1992 was cancelled.

14.It is the specific case of the 21st defendant, developer that the irrevocable Power of Attorney under Ex.D6 was acted upon and the entire land measuring 1.5 acres was plotted out and developed as a residential layout and the entire layout was sold as plots to various third party purchasers under Ex.P27 to Ex.P37.

15.The 2nd plaintiff, who was examined as P.W.1, has reiterated the averments in the plaint in his proof affidavit and he has marked Ex.P1 to Ex.P37 as documents on the side of the plaintiff. In cross-examination, the 2nd plaintiff has denied the suggestion that the mother, V.Seetha and the 1st plaintiff had signed the Power of Attorney. It is also stated that he has not seen any of the Sale Deeds in favour of the third parties. He further stated that the 1st plaintiff, V.Jeeva and her mother never went to the SRO, Anna Nagar to execute the registered Power of Attorney. P.W.2 also states that the 21st defendant has divided the suit properties into several plots and all the plots were sold on 18.01.1994 under Ex.P26 to P.37. He has also further stated that in all Sale



Deeds, Ex.P26 to Ex.P37, the Power of Attorney is referred and that all the Sale Deeds mentioned that possession of the plots were handed over to the purchasers. He has further stated that the promoter, namely M/s.Emerald Promoter Pvt., Ltd., has not been arrayed as defendant in the suit and only the Managing partner of the Company, P.Srinivasan was added as 21st defendant.

16.D.W.1, P.Srinivasan, the 21st defendant has reiterated the averments in his written statement and additional written statement in his proof affidavit. He has marked Ex.D1 to Ex.D11 on his side. Ex.D1 is the original deed of irrevocable Power of Attorney dated 26.04.1991 registered as Doc.No.635/1991. Ex.D2 is the original deed of irrevocable Power of Attorney dated 26.04.1991 registered as Doc.No.634/1991. Ex.D3 is the original letter dated 10.05.1991 issued to V.Rajagopal and others. Ex.D4 is the original letter of certificate dated 19.06.1991 issued to V.Rajagopal. Ex.D5 is the original cancellation deed dated 14.01.1992 registered as Doc.No.57/1992. Ex.D6 is the original irrevocable General Power of Attorney dated 14.01.1992 in favour D.W.1 (P.Srinivasan) registered as Doc.No.58/1992. Ex.D7 is the original plan issued by Special Officer, Town Planning dated 15.03.1992. Ex.D8 is the certified copy of extract of land register issued by Assistant Director of Survey and Land Records dated 16.05.1994. Ex.D9 is the photocopy of extract of land register issued on 15.03.1992 by Special Officer, Town Planning, Chennai-78.



Ex.D10 is the photocopy of the order dated 25.06.2002 by the Commissioner for Land Administration. Ex.D11 is the photocopy of the extract of Town Survey field Register dated 15.03.1992 issued by Special Officer, Town Planning, Chennai-78.

17.In cross-examination by defendants 30 and 31, he has stated that M/s.Emerald Promoters Pvt., Ltd., was a private limited company and the Company was subsequently closed. He has further stated that he has purchased the suit property by way of Power of Attorney from the plaintiffs and the defendants. He further stated that no CMDA approval was obtained for laying out of the plots and the plots were sold out as unapproved layout only. While being cross-examined by the learned counsel for the plaintiffs, D.W.1 has stated that he has no dispute with regard to 'B' schedule property and only insofar as schedule 'A' property, the 21st defendant had formed the layout and sold various plots to the third parties. He has also admitted that Ex.D9, Adangal reveals that patta has been obtained to the name of 16 persons and not merely the sons of the late Amma Kannu Ammal. It is also admitted that in Ex.D6, Power of Attorney, there is no mention of the daughters of late Amma Kannu Ammal. He has further stated that in the Sale Deeds executed by him as power agent to various third parties buyers, there is no mention that the sons, V.Rajagopal and V.Ramachandran and V.Veeraraghavan got absolute ownership under the



registered Settlement Deed dated 09.03.1974. It is further stated that the Sale Deeds were executed on 18.01.1994 and the entire 'A' schedule property was sold and nothing was left out.

18.The 31st defendant who examined himself as D.W.2, while being examined by the contesting defendants 15, 17, 20, 21 and 29, stated that he came to know about the pendency of the suit only in the year 2013 and not earlier. He has further stated that his brother, Manivannan attained the age of majority in the year 1998 and no application was filed to implead the 30th and 31st defendants within three years from the date of attaining majority. He has further stated that his father had executed a Power of Attorney in favour of the P.Srinivasan, 21st defendant in the year 1992. He has further stated that Ex.P25, Sale Agreement was executed only by the three sons, namely V.Rajagopal, V.Veeraraghavan and V.Ramachandran and not by the daughters, namely V.Jeeva, V. Seetha and V.Subbulakshmi. On being shown Ex.P25, he has however stated that the Sale Agreement was executed by 18 persons who have subsequently executed the Power of Attorney in favour of the 21st defendant. It is further stated that he and Manivannan, 30th defendant were minors and they were not intended by their father in Ex.D6. It is also admitted that he came to know about the Sale Deeds is executed by M/s.Emerald Promoters Pvt., Ltd., in the year 2000 and impleading application was filed only on 02.11.2015, thereby



categorically admitting that the application to implead themselves was not filed within three years of attaining majority.

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19. Keeping the above oral evidence adduced by P.W.1, D.W.1 and D.W.2 in mind, I have examined the irrevocable Power of Attorney dated 14.01.1992. The 1st plaintiff, the mother of the plaintiffs 2 to 6 are signatories to the said registered Power of Attorney. The Power of Attorney is a comprehensive registered instrument and authorized the 21st defendant, the Managing Director of M/s. Emerald Properties Pvt., Ltd., P. Srinivasan who has been arrayed as the 21st defendant to plot out the schedule 'A' property and also to deal with the plots by way of sale etc. In furtherance of this Power of Attorney, the 21st defendant has plotted out the schedule 'A' property and conveyed plots to various third party purchasers in and by registered Sale Deeds dated 18.01.1994 under Ex.P26 to P37. In all the Sale Deeds, in favour of the third party purchasers, the vendors are none else than all the legal heirs of late M. Velu, whose title is never called in question by any of the parties. However, it is also mentioned that the vendors are represented by their power agent, P. Srinivasan. However, in all the Sale Deeds, vide Ex.P26 to Ex.P37, namely only the sons, namely V. Rajagopal, V. Veeraraghavan and V. Ramachandran have been shown as vendors, represented by their Power of Attorney agent, P. Srinivasan. The daughters of Amma Kannu Ammal have not been shown as vendors to any of the Sale Deeds. It is also mentioned in the



preamble to the Sale Deeds that after the death of M.Velu, his only sons, namely the vendors became entitled to schedule 'A' property absolutely by way of intestate succession. The Sale Deed also mentions that the vendors are the sons of late, M.Velu and they are the only children of Kuppammal and Velu and they have been in absolute possession and enjoyment of the suit property.

20. According to the learned counsel for the plaintiffs, it is a clear fraud played by the brothers on the sisters and therefore, when admittedly the Power of Attorney recognized the right and interest of the sisters and they had not joined the execution of the Sale Deeds, the Sale Deed would not bind them and would rather on the other hand invalidate the transfers and alienations said to have been made in favour of the third parties.

21. Per contra, A.Palaniappan, learned counsel for the 21st defendant would submit that merely because the Sale Deeds were executed on the premise that the sons alone were the legal heirs of said M.Velu, admittedly, the Power of Attorney document was referred to in all the Sale Deeds and it was one and only Power of Attorney which had been executed jointly by the 1st plaintiff as well as the mother of the plaintiffs 2 to 6 along with their brothers and therefore, it cannot not be stated that there has been any suppression. Further, according to Mr.A.Palaniappan, learned counsel, the entire schedule 'A'



property had admittedly been sold way back in the year 1994 itself and the suit filed after lapse of 14 years is hopelessly barred by limitation.

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22.I have carefully considered the rival submissions alongside the pleadings and evidence adduced by the parties.

23.No doubt, in the Sale Deed executed in favour of the third party purchasers, the daughters, who are the legal representatives, have not been shown as vendors. However, I find that there is a clear reference to the Power of Attorney executed jointly by not only the sons, but also the 1st plaintiff and the other daughter, V.Seetha, in favour of the 21st defendant. It is only on the strength of this Power of Attorney, all the Sale Deeds have been effected and the third party purchasers have also been put in possession. This factum was not disputed even by P.W.1 in his cross-examination. In fact, P.W.1 categorically admits that he was fully aware of the execution of the irrevocable Power of Attorney and also the factum of plotting out the lands in the form of a layout. If really the daughters, namely, the 1st plaintiff and her sister, V.Seetha had any claim or grievance in so far as the Sale Deeds executed by the power agent without mentioning their names, though the entire property came to be alienated, they should have promptly chosen to question the actions of the



Power of Attorney within a period of three years.

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24. Admittedly, the 1st plaintiff never chose to take any action against the Power of Attorney or as against the brothers or much less the third party purchasers for a period clearly over 12 years. The plaintiffs have now been also able to establish they have been in joint and constructive possession of the schedule 'A' property. On the contrary, it has come out as evidence that even as early as in the year 1994, the plots were laid out and individual plots were sold to innocent third party buyers who were also put in physical possession of their respective plots and no extent of schedule 'A' property was available thereafter.

25. Section 27 of the Limitation Act, in my considered opinion would assume significance and relevance in the facts of the present case and the same is extracted hereunder:

“27. Extinguishment of right to property.-

At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.”

26. Therefore, testing the facts of the present case in the light of Section 27 of the Limitation Act, the daughters, namely V.Jeeva and V.Seetha had a



period of just 12 years to question the actions of the power agent and also their three brothers. On the date of execution of the Power of Attorney, namely on 14.01.1992, the daughters were fully aware of the fact that there was a conscious decision to part with possession of the property in favour of the developer and therefore, the daughters cannot feign ignorance. Merely because subsequently the Sale Deeds in favour of the third party purchasers did not reflect their names, in view of the fact that the very same Power of Attorney under which they had also empowered the 21st defendant to deal with the property finds a specific mention in all the Sale Deeds and also in view of the fact that the entire schedule 'A' property was plotted out and sold to third party purchasers who were admittedly put in physical possession of their respective plots, the sisters clearly slept over their rights and with the lapse of 14 years, their rights clearly stand extinguished and they are not entitled to seek any relief much less the relief of partition.

27. Moreover, the plaintiffs are also guilty of suppression of material facts. Having executed the Power of Attorney, the 1st plaintiff at least ought to have disclosed the said factum of execution of the Power of Attorney in favour of the 21st defendant, even if the plaintiffs 2 to 6 can plead ignorance of the factum of their mother having executed the Power of Attorney. However, they have joined hands to file a single plaint. The plaintiffs ought to have disclosed



the factum of execution of the registered Power of Attorney empowering the 21st defendant to develop the schedule 'A' and plot out the same and also sell the plots to the third party purchasers. The said suppression of fact is material in nature and even on this ground, the plaintiffs are dis-entitled to the relief. The issues 1 and 3 are accordingly answered and the plaintiffs are not entitled to claim any right or interest in the schedule 'A' property by way of partition and separate possession. Consequently, the said reliefs cannot be granted to the plaintiffs.

28. In so far as 'B' schedule property is concerned, the property is a house property. The case of the plaintiffs is that the said property was belonging to late M. Velu, their father and grandfather respectively and in view of the intestate demise, the same is available for partition and they are entitled to a 2/5th share, the 1st plaintiff's being entitled to 1/5th share and the plaintiffs 2 to 6 are jointly entitled to a 1/5th share. Though written statement as well as additional written statement have been filed by the defendants, there is no specific denial of the entitlement of the plaintiffs with regard to schedule 'B' property. Though the defendants 30 and 31 in their written statement contended that they, along with the legal heirs of V. Rajagopal and V. Veeraraghavan, have been in possession and enjoyment of 'B' schedule property and the plaintiffs' rights stood ousted, no document has been exhibited on the side of the



defendants to establish such contentions. Even though D.W.2, the 31st defendant has supported the case of the plaintiffs, I find that it is only on an imaginary claim that the property belonged to a Hindu Undivided Joint Family and that as per Hindu Undivided Joint Family, the defendants 30 and 31 are also entitled to 1/15 share each. I do not see any merit in the contentions because admittedly, the property belonged to Amma Kannu Ammal, a female Hindu and therefore, the arguments advanced on behalf of the legal heirs of V.Ramachandran, namely, the 11st defendant, who himself did not set up such a plea, cannot take any different stand and seek rights as coparceners.

29.D.W.2 despite being examined, no document has been exhibited to establish the said contentions. Therefore, in so far as the schedule 'B' property is concerned, the plaintiffs are entitled to the relief of partition and separate possession.

30.Issue No.4:

In so far as the issue No.4 is concerned, having found that the plaintiffs are not entitled to the relief of partition, consequently, they are also not entitled to the relief of permanent injunction which is dependent on relief of partition. Accordingly, the relief is also available to the plaintiffs.

31.In the result,



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(i) The suit is partly decreed in so far as 'B' schedule property is concerned and the suit is dismissed in so far as schedule 'A' property is concerned.

(ii) In so far as schedule 'B' property is concerned, a preliminary decree is passed granting $1/5^{\text{th}}$ share to plaintiffs 7 to 14, legal representatives of the deceased 1st plaintiff and the plaintiffs 2 to 6 shall be entitled to remaining $1/5^{\text{th}}$ share jointly, out of which, 2nd plaintiff having died his legal heirs, namely plaintiffs 15 to 17 are jointly entitled to a $1/3^{\text{rd}}$ of $1/25^{\text{th}}$ share and the plaintiffs 3 to 6 shall be entitled to $1/25^{\text{th}}$ share each.

(iii) There shall be no order as to costs.

07.06.2024

ata

List of Witness on the side of the plaintiffs:

P.W.1 – A.Daniel

List of Exhibits on the side of the plaintiff:

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description</i>
1.	Ex.P1	Certified copy of the Sale Deed dated 30.04.1912 executed in favour of Amma Kannu Ammal.
2.	Ex.P2	Office copy of the notice dated 04.09.2008 sent by the plaintiffs to the defendants 1 to 13.
3.	Ex.P3	Original reply notice dated 22.09.2008 sent by the 11 th defendant.
4.	Ex.P4	Office copy of notice dated 27.09.2008 sent by the plaintiffs to the defendants 1 to 21.
5.	Ex.P5	Original receipts dated 05.09.2008 for sending the notice



dated 04.09.2008.

6.	Ex.P6	Original receipts dated 27.09.2008 for sending the notice dated 27.09.2008.
7.	Ex.P7	Original acknowledgement card dated 09.09.2008 signed by the 1 st defendant.
8.	Ex.P8	Original acknowledgement card dated 09.09.2008 signed by the 2 nd defendant.
9.	Ex.P9	Original acknowledgment card dated 09.09.2008 signed by the 3 rd defendant.
10.	Ex.P10	Original acknowledgment card dated 09.09.2008 signed by the 4 th defendant.
11.	Ex.P11	Original acknowledgment card dated 09.09.2008 signed by the 5 th defendant.
12.	Ex.P12	Original acknowledgment card dated 09.09.2008 signed by the 6 th defendant.
13.	Ex.P13	Original acknowledgment card dated 09.09.2008 signed by the 7 th defendant.
14.	Ex.P14	Original acknowledgment card dated 09.09.2008 signed by the 8 th defendant.
15.	Ex.P15	Original acknowledgment card dated 09.09.2008 signed by the 9 th defendant.
16.	Ex.P16	Original acknowledgment card dated 17.09.2008 signed by the 10 th defendant.
17.	Ex.P17	Original acknowledgment card dated 09.09.2008 signed by the 11 th defendant.
18.	Ex.P18	Original acknowledgment card dated 09.09.2008 signed by the 13 th defendant.
19.	Ex.P19	Original Returned cover dated 10.10.2008.
20.	Ex.P20	Original Returned cover dated 29.09.2008.
21.	Ex.P21	Original Returned cover dated 07.10.2008.
22.	Ex.P22	Original Returned cover dated 29.09.2008.
23.	Ex.P23	Original Returned cover dated 07.10.2008.
24.	Ex.P24	Original Returned cover dated 29.09.2008.
25.	Ex.P25	Certified copy of Sale Agreement dated 26.06.1991 under Doc.No.3170 of 1991.
26.	Ex.P26	Certified copy of the Sale Deed dated 18.01.1994 under



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		Doc.No.209 of 1994.
27.	Ex.P27	Certified copy of the Sale Deed dated 18.01.1994 under Doc.No.210 of 1994.
28.	Ex.P28	Certified copy of the Sale Deed dated 18.01.1994 under Doc.No.211 of 1994.
29.	Ex.P29	Certified copy of the Sale Deed dated 18.01.1994 under Doc.No.212 of 1994.
30.	Ex.P30	Certified copy of the Sale Deed dated 18.01.1994 under Doc.No.213 of 1994.
31.	Ex.P31	Certified copy of the Sale Deed dated 18.01.1994 under Doc.No.231 of 1994.
32.	Ex.P32	Certified copy of the Sale Deed dated 18.01.1994 under Doc.No.232 of 1994.
33.	Ex.P33	Certified copy of the Sale Deed dated 18.01.1994 under Doc.No.233 of 1994.
34.	Ex.P34	Certified copy of the Sale Deed dated 18.01.1994 under Doc.No.234 of 1994.
35.	Ex.P35	Certified copy of the Sale Deed dated 18.01.1994 under Doc.No.235 of 1994.
36.	Ex.P36	Encumbrance Certificate dated 17.06.2008 for the suit property for the period from 01.01.1987 to 16.06.2008.
37.	Ex.P37	Certified copy of Sale Deed dated 07.01.1994 under Doc.No.1934 of 1994.

List of Witness on the side of the Defendants:

D.W.1 – P.Srinivasan

D.W.2 – Mukundan

List of exhibits marked on the side of the defendants:

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description</i>
1.	Ex.D1	Original deed of irrevocable Power of Attorney dated 26.04.1991 registered as Doc.No.635/1991.



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2.	Ex.D2	Original deed of irrevocable Power of Attorney dated 26.04.1991 registered as Doc.No.634/1991.
3.	Ex.D3	Original letter dated 10.05.1991 issued to V.Rajagopal and others.
4.	Ex.D4	Original letter of certificate dated 19.06.1991 issued to V.Rajagopal.
5.	Ex.D5	Original cancellation deed dated 14.01.1992 registered as Doc.No.57/1992.
6.	Ex.D6	Original irrevocable General Power of Attorney dated 14.01.1992 in favour D.W.1 (P.Srinivasan) registered as Doc.No.58/1992.
7.	Ex.D7	Original plan issued by Special Officer, Town Planning dated 15.03.1992.
8.	Ex.D8	Certified copy of extract of land register issued by Assistant Director of Survey and Land Records dated 16.05.1994.
9.	Ex.D9	Photocopy of extract of land register issued on 15.03.1992 by Special Officer, Town Planning, Chennai-78.
10.	Ex.D10	Photocopy of the order dated 25.06.2002 by the Commissioner for Land Administration.
11.	Ex.D11	Photocopy of the extract of Town Survey field Register dated 15.03.1992 issued by Special Officer, Town Planning, Chennai-78.

07.06.2024

P.B.BALAJI, J.,

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Pre-delivery judgment made in
C.S.No.114 of 2009

07.06.2024