IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.04.2024

PRONOUNCED ON : 30 .04.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.S.No. 197 of 2021

Mr.R.Raja Kumar ... Plaintiff

Vs.

1. Mrs.R.Thaivanai Ammal
2. Mr. R.Muthusamy
3. Mr.R.Abhiram ...Defendants

Prayer : Plaint filed under Order VII Rule 1 CPC read with Order IV Rule 1 of OS Rules, to pass a Judgment and Decree to against the defendant:

a) for partition and separate possession of the suit properties described in schedule – A, B, C, D and E to the plaint, into three equal shares and allot one such share to the plaintiff, and

b) for Rendition of Account and payment of one Third Share out of the income derived from the Landed properties described in Schedule-A and B to the plaint from the date of suit towards future mesne profit.

For plaintiff	:	Mr. N.S.Manoharan Senior Counsel for Dr.S.Ambigai Dass
For DD 1 & 2	:	Mr. T.Raja Mohan
For third Defendant:		Mr.R.Thirugnanam

ORDER

The suit had been filed seeking partition and separate possession of the properties mentioned in Schedules A, B, C, D and E to the plaint in to three equal parts and allot one part to the plaintiff and direct accounts to be rendered and payment of $1/3^{rd}$ share out of the properties described in Schedules A and B to the plaint from the date of the suit towards future mesne profits and for costs of the suit.

2. The plaintiff is the son of late M.Rathinaswamy Nadar. The first defendant is the wife of late M.Rathinaswamy Nadar. The second defendant is another son. The third defendant is the son of the second defendant.

3. It had been stated that the native place of the plaintiff is at Porayar in Mayiladuthurai. The ancestors of the parties were industrialists and were very prosperous for generations and owned vast extent of lands in and around Porayar and in Chennai. They also owned lot of jewelleries and silverware. The father of the plaintiff M.Rathinasamy Nadar owned vast extent of lands in Melamaruthur, Kidangal, Akkur Pandaravadi, Mamakudi and Porayar. They were allotted to him under a partition deed dated 12.09.1956 entered by him with his brothers. The father of the plaintiff also purchased lands from and out of the income derived from the ancestral properties. Thereafter, under a deed of partition dated 06.03.1960 between him and his minor sons, namely, the plaintiff and the second defendant, the joint family properties were further divided. The properties allotted to the father of the plaintiff are listed in item Nos. 1 to 52 of A Schedule.

4. It had been further stated that the father of the plaintiff also acquired immovable properties at No.78, Ormes Road, and part of No. 80 and 81 Purasawakkam High Road, Kilpauk Chennai under a partition deed dated 26.06.1972 entered between him and his brothers. Thereafter, another partition deed was entered on 25.07.1972 between the plaintiff, the second defendant and their father. The father of the plaintiff was allotted part of the property at Door No. 8, Ormes Road, and Part of No. 80 and 81

Purasawakam High Road, measuring 1 ground and 362 sq.ft.,. This property was disposed of even during the lifetime of the father. The share of the father in No.80 and 81 Purasawakkam High Road had been given in Schedule B to the plaint.

5. It had been further stated that the father of the plaintiff acquired more than 4,000 shares of Tamil Nadu Mercantile Bank Limited., Thoothukudi, during the partition between him and his brothers in 1956. The number of shares further enlarged to more than one lakh shares consequent to the issue of bonus shares. The father of the plaintiff transferred 54,110 shares to the third defendant and it is claimed that it was done so under coercion of the second and third defendants. It had been contended that the shares which belonged to the father were ancestral or acquired owing to ancestral acquisition. It is contended that the transfer of shares to the third defendant is null and void owing to coercion of the second and third defendants. It is also contended that the transfer of shares beyond the 1/3 rd share of the father is not binding on the plaintiff. The 54,110 shares in Tamil Nadu Mercantile Bank Limited has been described in Schedule -C to the plaint.

6. It had been further stated that the father of the plaintiff was paid a sum of Rs.5,09,792/- as compensation for land acquired for widening of road in Akkur Pandaravadi and the amount is lying to the credit of his account in Corporation Bank Limited., now called Union Bank of India in Kellys Corner Branch. This amount is described in Schedule -D along with another sum of Rs.75,000/- which was already there in the said account.

7. The plaintiff further stated that the ancestral jewelleries , gems and silverware had been described in Schedule – E and they were in the custody of the father of the plaintiff and now in the custody of the second defendant. The value is said to be Rs.1,36,30,000/-.

8. The plaintiff further stated that his parents resided with the second defendant at Chennai for over 15 years. The father of the plaintiff was diabetic and required amputation on four fingers in the right foot due to gangrene and was immobile. It is further stated that the father died intestate on 26.06.2020 leaving behind the first defendant, the plaintiff and the second defendant as his surviving legal heirs. It is stated that the plaintiff is entitled to 1/3rd undivided share in the A, B, C, D and E Schedule properties. It is stated that the plaintiff approached the second defendant for partition and separate possession, but he did not comply with the request. When he approached the first defendant, she stated that she cannot state anything contrary to the second defendant.

9. It was under those circumstances that the plaintiff had issued a legal notice dated 23.12.2020. The second defendant had issued a reply on 02.01.2021 declining the demand for partition. He stated that the properties in the village were subject matter of partition between the plaintiff, second defendant and the father under a deed of partition dated 06.03.1960. The plaintiff claimed that he is now seeking a partition of the properties allotted to the father under the said partition deed.

10. The second defendant in his reply notice further stated that the property at Plot No. 80 and 81 Purasawakkam High Road, Kilpauk, Chennai, had also been settled by the father in favour of the third defendant even in the year 2007 under a settlement deed dated 25.06.2007. The plaintiff disclaimed knowledge about such settlement deed. It was also stated that the settlement deed was fraudulent and against the free will and desire of the father. It was also contended that the father and also the first defendant were under the custody of the second defendant for over 15 years. It was contended that owing to their old age and ill health, the second defendant exercised coercion and undue influence. It had been further stated that the gift made under the settlement deed in favour of the third defendant without delivery of possession or acceptance is null and void.

11. The plaintiff further stated that with respect to the shares, the contention of the second defendant was vague. He stated that the father had deposed of some shares, transferred some shares in favour of the defendants. But however, the second defendant did not disclose the details but stated that there were no shares available.

12. With respect to the jewels, it is the contention of the second defendant that they are not available. The plaintiff claimed an equal share in the said jewels.

13. It was under those circumstances, since the demand for partition was refused, the plaintiff had filed the suit seeking partition and separate possession and also for rendition of accounts.

14. The first and second defendants filed a common written statement. They stated that the lands in Schedule A of the plaint had already been partitioned by a partition deed dated 06.03.1960 between the plaintiff, the second defendant and their father. It had been stated that the plaintiff was alltotted land with coconut plantation in S.No. 106 measuring 1 acre and 21 cents at Porayar village and 38.75 Acres at Kidangal and Mamakudi Villages. It had been stated that the partition deed had been acted upon. With respect to the lands allotted to the father, which had been listed as serial Nos. 1 to 56 in the A Schedule, it had been stated that 21 items had been taken over by the Government under the Land Ceiling Act and one item had been settled in favour of the second defendant by a settlement deed dated 18.11.2016 and six items had been settled in favour of the third defendant by a settlement deed dated 04.04.2016 and that 24 items had been leased out to various third parties. The details of each one of these items of properties had been given in the written statement. It had also been stated that one item, namely, 0.75 cents of land in Akkur Pandaravadi village had been acquired for road extension. The compensation amount of Rs.5,84,792/- had been deposited by the Government in Corporation Bank, Kellys Branch. It had been stated that this item had been given in schedule -D and all the parties are entitled to an equal share in the same.

15. With respect to the 24 items of land leased out to various third parties, it had been claimed that the plaintiff, first and second defendants are entitled to an equal share in each one of those lands.

16. With respect to the property at No.80 and 81 Purasawakkam High Road, Kilpauk, Chennai, it had been contended that, by a partition deed dated 25.07.1972 registered among the first defendant, the plaintiff and their father, the larger extent of the property was divided into three parts and 1 ground and 362 sq.ft. which is shown as item No.2 in schedule B was allotted to the father and 1881 sq.ft., 2250 sq.ft, had been allotted to the second defendant and the further extent of 1886 sq.ft., and 2230 sq.ft., were allotted to the plaintiff. It had been stated that the deed of partition was fully acted upon and there had been mutation of ownership of right and title in the respective names.

17. With respect to the land allotted to the father measuring 1 ground and 362 sq.ft., it had been contended that the father had settled the said property in favour of the third defendant by a settlement deed dated 25.06.2007. It had been stated that the plaintiff had full knowledge of such settlement. It had also been pointed out that the plaintiff is residing as a neighbour and therefore cannot plead ignorance of the settlement deed. It had been further stated that the tenant had directly transferred the lease amount to the account of the father at Corporation Bank. It had been further stated that subsequently all the records had been changed in the name of the third defendant. It had been contended that owing to the settlement deed, the third defendant had become the absolute owner of the said property and that the property was not available for partition.

18. With respect to the shares of Tamil Nadu Mercantile Bank Limited, it had been stated that they were originally owned by M.Rathinasamy Nadar, who had disposed some of the shares and transferred 50 +40 shares in favour of the third defendant by documents dated 15.10.2014 and 24.08.2015 respectively. The transfer was also effected by the Bank and necessary entries were also made in the relevant records. It had been stated that 45,000 bonus shares were allotted to the third defendant by letter dated 23.04.2018 and that as on the date of filing the written statement, the third defendant possessed 50,090 shares. It had been contended that they are the exclusive assets of the third defendant and are not available for partition.

19. With respect to the jewels, it had been stated that the statement is false and it had been stated that they are the subject matter of another suit and therefore, the plaintiff is not entitled for any share in the same.

20. The first and second defendants further stated that the plaintiff had not even visited his parents for the past 15 years. It had been stated that one of the property had actually been sold by the father and help was given to the plaintiff for construction of the house where he now resides. It had also been stated that the plaintiff who had full knowledge of the settlement deed dated 25.06.2007, had not sought any relief to set side the same and had not valued the suit with respect to that particular document.

21. It had also been stated that the first and second defendants are not in possession of any of the properties in the name of the father and that they do not get any income and therefore, the relief sought for rendition of accounts would not lie. In view of these reasons, it had been stated that the suit should be dismissed.

22. The third defendant has filed a separate written statement and stated that six items of the property at Kidangal and Mamakudi Villages were settled in his favour by his grandfather M.Rathinasamy Nadar by document dated 04.04.2016. It had been stated that the settlement was an absolute settlement and possession had already been handed over to the third defendant. The patta and other revenue records had also been changed to the name of the third defendant. The third defendants claimed that he had been in possession of the land, doing cultivation from the year 2016. It had been stated that the plaintiff had knowledge of this settlement and that the suit is barred by the law of limitation for not seeking relief in relation to that particular property.

23. With respect to the premises at Door Nos. 80 and 81 Purasawakkam, Kilpauk, Chennai, measuring 1 ground and 362 sq.ft., which had been given in Schedule B of the plaint, it had been stated that the grandfather had settled the property by settlement dated 25.06.2007 in favour of his grandson, the third defendant. It had been specifically stated that the plaintiff had full knowledge of the execution of the document in the year 2007 itself. The plaintiff was actually a neighbour to that particular property. It had been further stated that M.Rathinasamy Nadar had retained life interest in the said property and had leased out the same and that the rental income was credited directly to the account of M.Rathinasamy Nadar in Corporation Bank. It had been further stated that after the death of M.Rathinasamy Nadar, the third defendant had mutated the revenue records and he is the absolute owner of the said property. It had therefore been stated that partition cannot be granted for the B schedule property.

24. The third defendant further stated with respect to the shares of Tamil Nadu Mercantile Bank Limited that his grandfather had transferred 50 +40 shares on 15.10.2014 and 24.08.2015 respectively. The transfer had been duly implemented by the bank and affirmed by letters dated 15.10.2014 and 24.08.2015 respectively. After that transfer of shares, Tamil Nadu Mercantile Bank had issued 45000 bonus shares by letter dated 26.05.2016. It is stated that the third defendant was the owner of 50090 shares. It had been stated that they are not available for partition. The third defendant further stated that the plaintiff had not paid the proper Court fees since they were out of possession in all the properties. It was contended that the suit should be dismissed.

25. On the basis of the above pleadings, the following issues were framed:-

> *"1). Whether the defendants are liable to account for the schedule -A lands allotted to the father of the*

plaintiff and 2nd defendant, under partition dated 06.03.1960?;

2) Whether the unilateral transfer, of the shares of Tamil Nadu Mercantile Bank Limited., allotted to the father of the plaintiff and the second defendant under a partition with his brothers in or about 1956, in favour of the third defendant, by the father of the plaintiff and 2nd defendant, is null and void?;

3) Whether the plaintiff is entitled to the relief of partition and separate possession and rendition of account, as prayed for?;

4) Whether the suit is maintainable since the deeds of settlement (1) Doc.No. 949/2003, (2) doc. No. 2785 /2007, (3) Doc.No.275 of 2016 and (4) Doc.No. 932/2016 were not challenged and proper Court fee paid for such relief?;

5) whether the plaintiff is entitled to seek for rendition of accounts for the Schedule -A and B properties?

6) Whether the plaintiff is entitled for partition in respect of the suit properties?

7) Whether the plaintiff is entitled for any future mesne profits?

8) Whether the suit for partition of the properties already settled by way of registered deeds of settlement in favour of the third defendant by the predecessor in title is maintainable in law?

9) Whether the suit is maintainable since the deeds of settlement (1) Doc.No.4088/1972, (2) Doc.No. 2785/2007, (3) Doc.No. 275 of 2016 were not challenged and proper court fee paid for such relief?

10) Whether the suit is barred by limitation?

11) Whether the plaintiff is entitled for partition in respect of the property already settled and C Schedule property?"

26. During the course of trial, the wife of the plaintiff, Tmt. R.Geethabai was examined as PW-1. She marked Exs.P-1 to P-8. Ex.P-1 is the authorisation letter, Ex.P-2 is the copy of the partition deed dated 12.09.1956, Ex.P-3 is the copy of the partition deed dated 26.06.1972, Ex.P-4 is the copy of the partition deed dated 25.07.1972, Ex.P-5 is the letter dated 30.07.2020, Ex.P-6 is the copy of the settlement deed dated 25.06.2007, and Exs.P-7 and P-8 are the notices exchanged between the parties.

27. During the course of cross examination of DW-1, the plaintiffs also marked Ex.P-9 which is the statement of account for the period 01.04.2020 to 05.06.2021 in Corporation Bank, Kellys Road Branch, Chennai and Ex.P-10 which is the certificate under Section 65 B of the Indian Evidence Act 1872.

28. The second defendant R.Muthusamy was examined as DW-1. He filed his proof affidavit and marked Exs.D-1 to D-15. Ex.D-1 is the copy of the partition deed dated 06.03.1960 and Ex.D-2 is the copy of the settlement deed dated 18.11.2016 and Ex.D-3 is the copy of the settlement deed dated 04.04.2016. Ex.D-6 is the copy of the settlement deed dated 25.07.1972 and Ex.D-7 is the copy of the settlement deed dated 25.06.2007. Exs. D-8 and D-9 are copies of the Income Tax Returns. Ex.D-11 is the letter issued by Tamil Nadu Mercantile Bank Limited., dated 15.10.2014 and Exs.D-12 and D-13 are also letters by the Tamil Nadu Mercantile Bank and Exs. D-14 and 15 are the notices exchanged between the parties.

29. The third defendant was examined as DW-2 and he marked Ex.D-16, the letter issued by the Tamil Nadu Mercantile Bank Limited., dated 11.01.2023.

30. Heard arguments advanced by Mr.N.S.Manoharan, learned Senior Counsel for Dr.S.Ambigai Dass, learned counsel for the plaintiff and Mr.T.Raja Mohan, learned counsel for the first and second defendants and Mr.R.Thirugnanam, learned counsel for the third defendant.

31. The learned Senior Counsel Mr.N.S.Manoharan in his arguments pointed out the facts of the case. The learned Senior Counsel stated that the father of the first and second defendants, Rathinaswamy Nadar came from an affluent family for many generations and was also one of the founder members of the Tamil Nadu Mercantile Bank Limited. The learned Senior Counsel stated that the family was possessed of substantial immovable properties in and around various villages in Mayiladuthurai. He also stated that there were substantial gold and silver jewelleries in the family. The learned Senior Counsel stated that originally in the year 1956 there was a partition between Rathinaswamy Nadar and his brothers and properties had fallen to the share of Rathinaswamy Nadar. Subsequently, after the birth of the plaintiff and the second defendant, there was another partition relating to the landed properties in Mayiladuthurai. The learned Senior Counsel further pointed out that properties were also acquired in Chennai and there was also a partition among Rathinaswamy Nadar and his two sons, namely, the plaintiff and the second defendant with respect to the properties at Chennai also. He further pointed out that there were shares allotted from Tamil Nadu Mercantile Bank Limited., and out of those shares, 90 shares in two separate sets of 50 and 40 had been settled by Rathinaswamy Nadar in favour of the third defendant, who was the son of the second defendant. The learned Senior Counsel pointed out that the plaintiff was practically ousted from the family. Rathinaswamy Nadar had a few fingers in his foot amputated owing to high diabetes. He was immobile and ill towards the later period of his lifetime and was practically under the custody of the second defendant.

32. It is the contention of the learned Senior Counsel that exercising undue influence, the second and third defendants were able to obtain a settlement deed executed by Rathinaswamy Nadar with respect to the properties at Mayiladuthurai and also at Chennai. Since these documents had been obtained under undue influence, the learned Senior Counsel asserted that there was no necessity to seek any relief that they should be declared as null and void. The learned Senior Counsel further stated that the shares from Tamil Nadu Mercantile Bank which had been transferred to the third defendant, are very valuable. They fetched bonus shares. It is contended that the third defendant had benefitted to about 54000 shares of the Tamil Nadu Mercantile Bank Limited. The learned Senior Counsel further stated that even with respect to his share in the property at Chennai, Rathinaswamy Nadar had executed a settlement deed in favour of the third defendant. Pointing out all these facts, the learned Senior Counsel was emphatic that on the death of Rathinaswamy Nadar, the properties which had been allotted to him in the partition between him and the plaintiff and the second defendant should be again divided among the plaintiff, the first defendant and the second defendant. The suit had thus been laid for that purpose.

33. The learned Senior Counsel further stated that the contention of the defendants in the written statement that among the properties mentioned in schedule -A the agricultural lands were practically not available for partition cannot be accepted and contended that the second defendant must render accounts for use and occupation and for the amounts received from the said property. With respect to the schedule B which was land and building at Chennai, the learned Senior Counsel stated that the settlement deed executed in favour of the third defendant should be ignored as the same is not binding on the plaintiff. The learned Senior Counsel stated that owing to land acquisition, an amount was also credited to the account of Rathinaswamy Nadar in Corporation Bank now called Union Bank of India and stated that the said amount should also be equally divided among the plaintiff, the first and second defendants. The learned Senior Counsel stated that the family being an old family, were possessed of substantial gold, diamond and silver jewellery which had been given in schedule E and stated that they should also be subjected to partition. The learned Senior Counsel brushed aside the contention that the defendants were not in possession of the said items in schedule-E. The learned Senior Counsel was insistent in his arguments that the suit should be decreed as sought for.

34. The learned counsel for the first and second defendants Mr.T.RajaMohan, however disputed the contentions raised. According to him, out of 56 items of property given in schedule-A to the plaint, 21 properties had been acquired by the Government. It was contended that Rathinaswamy Nadar had settled six items of land and 1 item of land in favour of the third and second defendants respectively. It was also stated that

24 items of land had been given to lessees/third parties, who were in possession and the learned counsel stated that the defendants are not aware about the details of the said lessees and if at all they could be determined, he stated that the said lands could be subjected to partition. With respect to the land and building at Chennai, the learned counsel contended that Rathinaswamy Nadar during his life time had executed a settlement deed in favour of the third defendant and therefore stated that since there is no relief sought to set aside that particular settlement deed, the property is not available for partition. The learned counsel also stated that the amount available in the bank, could be divided among the plaintiff, first and second defendants. With respect to the gold, silver and diamond jewelleries, the learned counsel stated that they are not available and therefore no decree could be passed granting partition of the same. With respect to the shares of Tamilnad Mercantile Bank, the learned counsel stated that the shares had been transferred to third defendant even during the life time of Rathinaswamy Nadar and therefore stated that there cannot be any partition of the same. He stated that share transfer had been effected in the records and the third defendant is the absolute owner as on date. The learned counsel therefore contended that the suit for partition should be dismissed except with respect to the Schedule-D item, the amount lying in the bank and with respect to the

lands which had been leased out to various third parties.

35. The learned counsel for the third defendant Mr.R.Thirugnanam, contended that six items of land given in Schedule-A had been settled in favour of the third defendant by a settlement deed dated 04.04.2016 and thereafter, the revenue records had also been mutated in favour of the third defendant. The learned Counsel pointed out that in the absence of any relief sought to set aside that particular settlement deed, the lands could never be the subject matter of partition. With respect to the shares, the learned counsel again pointed out that the shares had been transferred during the life time of Rathinaswamy Nadar and the records in the Bank had also been mutated to the name of the third defendant. With respect to the land in Schedule-B namely property at Chennai, it was contended that a settlement deed had been executed by Rathinaswamy Nadar on 25.06.2007 and it was contended that the document is binding on all the parties. It is again stated that since no relief has been sought to set aside that particular document, the settlement deed had become final and had been acted upon and the revenue records have also been changed in the name of the third defendant. It was therefore contended that the suit should be dismissed.

36. Mr.N.S.Manoharan, learned Senior Counsel in his reply stated that there is a clear averment in the plaint that the settlement deeds are voidable and therefore contended that relief to set aside the document need not be sought . The learned Senior Counsel stated that the defendants were in possession of the lands at Mayiladuthurai and that they must disclose the names of the tenants/lessees and it was also contended that they had been receiving the rental income from the said lands and therefore stated that the account should be rendered by them.

37. With respect to the shares of the Tamilnadu Mercantile Bank Limited once again it was reiterated that they were available and that the third defendant had benefitted from the initial transfer of shares owing to which alone bonus shares have been allotted by the Bank. The learned Senior Counsel insisted that the gold jewellers were very much available and the defendants had deliberately screened them away from the purview of the Court. The learned Senior Counsel asserted that the suit for partition should be decreed.

<u>Issue Nos. 4, 8 & 9:</u>

38. All these three issues seek to examine whether the suit is maintainable since the plaintiff had not chosen to challenge the settlement deeds in Document No. 932 of 2016 executed by M.Rathinaswamy Nadar in favour of the second defendant and Document No.2785 of 2007 executed by M.Rathinaswamy Nadar in favour of the third defendant and Document No. 275 of 2016 executed by M.Rathinaswamy Nadar in favour of the third defendant and document No. 932 of 2016 executed by M.Rathinaswamy Nadar in favour of the second defendant and document No. 4088 of 1972 partition deed among M.Rathinaswamy Nadar, the plaintiff and the second defendant and document No. 2785 of 2007. It had also been contended that proper Court Fees had not been paid. These issues have been framed in view of the fact that the first, second and third defendants in their written statements have contended that M.Rathinaswamy Nadar during the course of his life time had settled by document No. 932 of 2016 dated 18.11.2016 lands in S.No. 3/2 measuring 2.52 acres in Porayar Village in favour of the second defendant and had also settled by document No. 275 of 2016 dated 04.04.2016 six items of property namely, land in S.No. 527/2 measuring 1.12 acres and in S.No. 528/2 measuring 0.09 cents and in S.No. 523/1 measuring 2.72 acres and in S.No. 522/2 measuring 2.83 cents in Kidangal Village and lands in S.No. 38/1 measuring 1.29 acres and in S.No. 39/2 measuring 3.43 acres in Mamakudi Village in favour of the third defendant. It was also contended that M.Rathinaswamy Nadar during his life time had also settled the property at No.80 & 81 Purasawakkam High Road, Kilpauk, Chennai, measuring 1 ground and 362 sq.ft., in favour of the third defendant by settlement deed dated 25.06.2007 registered as document No. 2785/2007. None of these documents have been questioned and challenged and no relief has been sought to set aside these documents. It is contended on behalf of the defendants that in the absence of substantial relief seeking to set aside these documents, the suit is not maintainable.

39. It is the contention of the plaintiff that M.Rathinaswamy Nadar, the father of the plaintiff and the second defendant had been allotted the lands at Kidangal, Mamakudi Village and Porayar Village by a deed of partition entered into by M.Rathinaswamy Nadar and his brothers by a partition deed dated 12.09.1956. Thereafter, there was yet another partition deed dated 06.03.1960 between M.Rathinaswamy Nadar, the plaintiff and the second defendant and that the properties mentioned in Schedule-A had been allotted to the share of M.Rathinaswamy Nadar. It is further contended that M.Rathinaswamy Nadar and the first defendant lived with the second defendant at Chennai for over 15 years because of their age and ill-health. It is further contended that M.Rathinaswamy Nadar was highly diabetic and four fingers had been amputated in his right foot. He thereafter became immobile. He had died intestate at Chennai on 06.06.2020. It is stated that taking advantage of his ill-health and age, the settlement deeds had been obtained by undue influence by the second and third defendants.

40. The learned Senior Counsel for the plaintiff, in view of the above facts contended that the documents are void and therefore the plaintiff need not seek any relief to set aside the said documents. In the plaint, it had been very specifically stated that the documents had been executed under coercion and undue influence.

41. Section 14 of the Indian Contract Act 1872, defines free consent as follows:-

> *"**Free Consent** – consent is said to be free when it is not caused by-*
>
> *1) Coercion, as defined in Section 15, or*
>
> *2) Undue influence as defined in Section 16, or*

3) .....
4) ....
5) .... ”

42. Section 15 of Indian Contract Act, 1872 defines Coercion as follows:-

> *“**Coercion** is the committing or threatening to commit, any act forbidden by the Indian Penal Code (45 of 1860), or the unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.*
>
> *Explanation.- It is immaterial whether the Indian Penal Code (45 of 1860) is or is not in force in the place where the coercion is employed.”*

43. Section 16 of Indian Contract Act, 1872 defines Undue Influence is as follows:-

> *“**16. Undue influence defined.**-- (1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will*

of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another--

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872 (1 of 1872). "

44. Section 19 of Indian Contract Act, 1872 is as follows:-

*"**Voidability of agreements without free consent.***

When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to a contract whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception.—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with *ordinary diligence.*

Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

45. Section 19-A of Indian Contract Act, 1872 is as follows:-

"Section 19-A . Power to set aside contract induced by undue influence – When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just."

46. A careful reading of the above provisions would clearly show that if a contract is induced by coercion then Section 19 of the Contract Act provides that the agreement is voidable. It is voidable at the option of the party whose consent was obtained by coercion. When a contract is induced by undue influence then under Section 19-A of the Contract Act, the contract is voidable at the option of the party, who was so influenced.

47. It is seen that M.Rathinaswamy Nadar died on 06.06.2020. The settlement deeds had been executed in the years 2007 and 2016. There are no records produced that at that particular point of time, the father was incapacitated to such an extent that undue influence or coercion could be exercised on him to execute the settlement deeds. There is also no document produced to show that continuously from that year onwards, he was not in a position to challenge the said documents as being voidable. In the plaint, it had been stated that since according to the plaintiff, the said settlement deeds had been obtained by coercion and undue influence, they are void.

48. This statement in the plaint is not correct. The documents are voidable. If the documents are voidable, then if the person whose consent is alleged to have been obtained under coercion or undue influence alone can claim to avoid the documents. A third party to the agreement cannot ignore the documents. The documents are not void. The settlement deeds had created a right on the second and third defendants. They had acted on the said settlement deeds. They had mutated the revenue records in their names. They had also put up construction in the property at Chennai. They had collected rents from the landed properties at the villages in Mayiladuthurai. The plaintiff had kept quite all these years. If he claims that the documents were voidable then he should have immediately protested and then within the period of limitation namely three years from the date of the documents, he should have sought to set aside the documents. Having failed to do so, the plaint itself suffers for not seeking any relief to set aside the said documents. Even if it is to be sought, the plaint would be hopelessly barred by law of limitation. It is only because of that reason that the plaintiff had deliberately not chosen to challenge the settlement deeds. The settlement deeds are binding on M.Rathinaswamy Nadar and on the second and third defendants. They had taken possession.

49. It had been contended by the learned Senior Counsel that possession had not been delivered but there is no evidence to that effect.. As a matter of fact, the plaintiff did not enter into the witness box. Even though the competency of wife to depose on his behalf cannot be questioned, still it is the plaintiff, who can assert with authority about undue influence or coercion or even about the medical condition of his father. There is no credible reason given as to why he had avoided entering into the witness box.

50. During the cross examination of PW-1, the answers were as follows:-

> *"Q38: In para 9(c) of the written statement landed properties item 1 to 6 in Kidangal Village and Mamakudi Village have been settled by M.Rathinaswamy Nadar in favour of third defendant under Settlement deed Doc.No.275/2016. Do you know about that?*
>
> *A: I do not know.*
>
> *Q39: Para 9(d) written statement Item 1 to 24 were given on lease to third parties by M.Rathinaswamy Nadar. Do you about that?*
>
> *A: I do not know.*
>
> *Q40: Schedule B property had been settled by M.Rathinaswamy Nadar in favour of third defendant under registered settlement deed Doc.No. 2785/2007. Do you about that?*
>
> *A: I do not know.*
>
> *Q6: I put it to you that the lands in Kidangal and Mamakudi Village mentioned in the Serial Nos. 1 to 6 para 5 of the written statement of third*

defendant were settled by Rathinaswamy under settlement deed dated 04.04.2016 Doc.No. 275 of 2016 in favour of third defendant?

A: I do not know

Q7: I put it to you that your husband knew about the execution of the said settlement deed in favour of the third defendant?

A; My husband do not know.

Q8: I put it to you that subsequent the said settlement deed patta Nos. 8191 and 8829 were issued in favour of the third defendant by the Tashildar Tarangambadi Taluk in respect of the said lands?

A: I am not aware.

Q12: I put it to you that your father in law executed settlement deed dated 25.06.2007 namely, Ex.P6 in favour of third defendant?

A: I am not aware.

Q13: I put it to you that your husband namely the plaintiff knew about the execution of Ex.P-6?

A: My husband was not aware"

51. It is thus seen that the witness was hardly helpful to the Court.

52. The suit filed without seeking to set aside these documents is bad and I hold it is a speculative suit.

53. In ***2019 20 SCC 633 [Murugan and Others Vs. Kesava Gounder (dead) through Legal representatives and others],*** the Hon'ble Supreme Court had held with respect to a sale deed of an immovable property by a natural guardian in contravention of 8(1) & (2) of the Guardian and Wards Act that if it is voidable then it is valid till it is set aside.

> *"24. ....When a registered sale deed is voidable, it is valid till it is avoided in accordance with law. The rights conferred by a registered sale deed are good enough against the whole world and the sale can be avoided in case the property sold is of a minor by a natural guardian at the instance of the minor or any person claiming under him. A document which is voidable has to be actually set aside before taking its legal effect. ....."*

54. Thus, the suit filed without seeking to set aside the settlement deeds is not maintainable. The issues are answered against the plaintiff.

<u>Issue Nos. 1, 3, 5 & 7:</u>

55. These issues relate to rendition of accounts for the Schedule A lands and Schedule B properties. The properties in Schedule A consists of 56 items of land in Mayiladuthurai. It is contended by the defendants that 21 items had been acquired by the Government under the Land and Ceiling Act. The learned Senior Counsel for the plaintiff contended that the defendants had not given any further details except for stating that the lands had been acquired by the Government. It must be however noted that the plaintiff and the first defendant stand on the same footing. The plaintiff cannot throw the burden of the first defendant to produce the documents. It is the plaintiff, who had filed the suit. He must disclose through correct facts before the Court if the lands had been acquired by the Government. If acquired, he must disclose the same. He cannot state that the burden is on the first defendant to explain when the acquisition of lands were made. They are both sons of the same father and therefore, they both have equal responsibility over the lands which had been acquired. The contention that the Gazette Publication should be produced would not take the plaintiff anywhere. He also has the necessary responsibility to examine whether the acquisition had been published in the Gazatee. It is therefore held that the 21 items of land in Schedule-A which are said to have been acquired by the Government cannot be the subject matter of partition.

56. One item of property and six items of property have been settled in favour of the first and second defendant respectively by M.Rathinaswamy Nadar. It had also been held with respect to the issue Nos. 4, 8 & 9 that those lands cannot be subjected to partition since the plaintiff had not sought to set aside the settlement deeds executed by M.Rathinaswamy Nadar. Therefore the second and third defendants are not liable to render accounts for those lands.

57. There is one item of land which had been taken over by the Government for road extension. Compensation had been paid by the Government for this acquisition. Once that amount is sought to be divided, the plaintiff cannot seek division of the lands which had already been acquired.

58. There are 24 items which had been retained by M.Rathinaswamy Nadar and given to third parties on lease. The plaintiff should come to Court by giving actual details of the names of the lessees and the area of the lands.

In the plaint, the fact that the lands had been leased out to third parties had not been stated. When the plaintiff seeks partition of the lands, he must come forward with the details of the lessees. He cannot call upon the defendants to give that information. It will be impossible for the Court to appoint an Advocate Commissioner to seek those details. An Advocate Commissioner, as an Officer of the Court cannot be used to gather information on behalf of the plaintiff. It had been very specifically contended by the defendants that they are not aware of further details. The plaintiff has also not produced any further details. Merely giving the details of the lands would not suffice. It is also not disclosed whether the lands are actually available for partition. Without the specific information about the lessees and the rights which had accrued to them, the Court can never given a finding that the lands are available for partition. When the Court cannot declare that the lands are available for partition, the Court cannot also declare that the second and third defendants are liable to render accounts.

59. It must also be kept in mind that the land in Schedule B has already been settled in favour of the third defendant and since the settlement deed had not been challenged, the third defendant cannot be directed to render accounts.

60. In view of the fact that the second and third defendants are not liable to render accounts, the plaintiff is also not entitled for future mesne profits. In view of these reasons, issue Nos. 1, 3, 5 & 7 are answered against the plaintiff.

Issue No.2:

61. This issue relates to transfer of shares of Tamilnadu Mercantile Bank Limited allotted to M.Rathinaswamy Nadar in favour of the third defendant. This transfer was on 15.10.2014 of 50 shares and on 24.08.2015 of 40 shares. Very specifically it had been stated by the third defendant that the transfers had been accepted by the Bank and the shares have been transferred in the names of the third defendant. Ex.D-11 is the copy of the letter dated 15.10.2014 issued by Tamilnadu Mercantile Bank Limited to the third defendant relating to 50 shares and Ex.D-12 dated 24.08.2018 issued by Tamilnadu Mercantile Bank Limited to the third defendant relating to 40 shares. Ex.D-13 is the letter dated 23.04.2018 issued by Tamilnadu Mercantile Bank Limited, to the third defendant about allotment of 5,000 bonus shares. Ex.D-16 is the letter dated 11.01.2023 of Tamilnadu Mercantile Bank Limited confirming the 90 shares in the name of the third defendant and for issue of 45,000 bonus shares to the third defendant.

62. While seeking partition of these shares, the plaintiff must have sought a direction against the Tamilnadu Mercantile Bank Limited that either the transfer of shares in the name of the third defendant or the allotment of bonus shares are null and void. He should have raised a dispute relating to the same. Unless the shares are re-transferred in the registers of the Tamilnadu Mercantile Bank Limited to the name of the father of the plaintiff, the plaintiff cannot seek partition of the share or value of the share. The allotment had been made in accordance with law. There is no pleading that illegality was committed by the Bank in transferring the shares to the third defendant.

63. PW-1 was asked about the shares in her cross examination:-

> *"Q43: Do you know that these share have been transferred in the third defendant by M.Rathinaswamy Nadar himself?*
>
> *A: I do not know.*

Q18: I put it to you that your father in law transferred 50 +40 shares of Tamil Nadu Mercantile Bank in favour of third defendant on 15.10.2014 and 24.08.2015?

A: We are not aware.

Q19: I put it to you that 45,000 bonus shares were issued to the third defendant?

A: I do not know. "

64. Again she was not at all helpful.

65. The plaintiff could state that his father was coerced and influenced to so transfer 90 shares to the third defendant but again such transfer under coercion or undue influence would be a voidable transaction at the instance of the father of the plaintiff and not at the instance of the plaintiff. He should seek a declaration that such transfer is null and void and further seek a declaration against Tamilnadu Mercantile Bank Limited to retransfer and reallot the shares to the name of Rathinaswamy Nadar and thereafter seek partition of that. Having failed to do so, the plaintiff cannot now file a suit seeking partition and separate possession of the shares which are exclusively now owned by the third defendant.

66. In view of these reasons, issue No.2 is answered against the plaintiff.

<u>Issue No.10:</u>

67. This issue is whether the suit is barred by limitation. The plaintiff seeks partition of properties which had been settled in the years 2007 and 2016 and of share certificates which had been transferred in the years 2014 and 2015. The plaint had been originally presented on 22.04.2021. By any stretch of imagination, even if the period of Covid -19 pandemic is taken in to consideration, three years, which is the limitation to question transfer or to set aside any document has long passed. On that fundamental principle of law of limitation, I hold that the suit is barred by limitation.

68. The issue is answered against the plaintiff.

Issue Nos. 6, 9 & 11:

69. With respect to E Schedule properties, it is the clear case of the defendants that the gold and silver jewelleries are not available. It is the burden of the plaintiff to prove existence of the gold and silver jewelleries. The plaintiff cannot throw the burden on the first and second defendant to disclose availability or otherwise of the gold and silver jewelleries. A speculation that they are available with the first defendant or with the second defendant would not suffice to seek partition of those jewelleries. The Court cannot give a decree for partition without there being definite evidence of the properties which are sought to be partitioned actually being available.

70. In view of this reasoning, I hold that the property in Schedule E is not available for partition.

71. With respect to the amount available in Corporation Bank/Union Bank of India, to an amount of Rs.5,84,792/- which is given in Schedule D, I hold that the plaintiff is entitled to 1/3rd of the same.

72. In view of the discussions above, I hold that

(i) The plaintiff is not entitled for partition and separate possession of the properties given in Schedule A, Schedule B and Schedule C and Schedule E. The suit is dismissed with respect to the aforementioned properties.

(ii) The plaintiff is entitled for partition and separate possession of the properties given in Schedule D, the amount of Rs.5,84,792/- lying to the credit of Corporation Bank / Union Bank of India in the name of M.Rathinaswamy Nadar, even though the account Number had not been given in the Schedule by the plaintiff.

Issue Nos. 6, 9 & 11 are answered accordingly.

73. In the result,

(1). The suit is partly decreed and a preliminary decree is passed that the plaintiff is entitled for 1/3rd share in the property given in Schedule D which is the amount of Rs.5,84,792/- in Corporation Bank/Union Bank of India to the credit of M.Rathinaswamy Nadar, the father of the plaintiffs;

(2). The suit is dismissed with respect to the relief sought for partition and separate possession of the properties mentioned in Schedule A, Schedule B, Schedule C and Schedule E;

(3) The suit is dismissed with respect to the relief sought for rendition of accounts by the defendants;

(4) In view of the relationship among the parties, costs are not granted.

Vsg .04.2024

Index:Yes/No
Web:Yes/No **(½)**

Speaking/Non Speaking Order

1. **List of Witnesses examined on the side of the Plaintiff:-**

   1. P.W.1 – R.Geetha Bai

2. **List of witnesses examined on the side of the defendants:-**

   1. DW1- Mr.R.Muthusamy
   2. DW2- R.Abhiram

3. **List of Exhibits Marked on the side of the Plaintiff:-**

1. Ex.P1 = oringal authorisation letter dated 10.12.2021;
2. Ex.P2 = certified copy of partition deed, dated 12.09.1956;
3. Ex.P3 = certified copy of partition deed dated 26.06.1972;
4. Ex.P4 = certified copy of partition deed dated 25.07.1972;
5. Ex.P5 = original letter dated 30.07.2020;
6. Ex.P6 = print out copy of settlement deed dated 25.06.2007
7. Ex.P7 = the office copy of notice sent by plaintiff dated 23.12.2020;
8. Ex.P8 = original reply notice sent by 2nd defendant to plaintiff dated 02.01.2021.
9. Ex.P9 = statement of account for the period 1.04.2020 to 05.06.2021 in Corporation Bank, Kellys Road Branch, Chennai.
10. Ex.P10 = Certificate under Section 65B of Indian Evidence Act, 1872.

List of Exhibits Marked on the side of the defendants:-

1. Ex.D-1 = certified copy of the partition deed dated 06.03.1960 Doc.No. 271/1960;

2. Ex.D-2 = print out copy of certified copy of settlement deed dated 18.11.2016 Doc.No.932/2016 (Certificate under Section 65B Indian Evidence Act submitted);

3. Ex.D-3= print out copy of certified copy of settlement deed dated 04.04.2016 Doc.No. 275 of 2016 (Certificate under Section 65B Indian Evidence Act submitted).

4.Ex.D-4= Online print out copy of patta No. 819 (Certificate under Section 65B Indian Evidence Act submitted).

5. Ex.D-5= Online print out copy of patta 8829 (Certificate under Section 65B Indian Evidence Act submitted);

6. Ex.D-6= Certified copy of Settlement Deed dated 25.07.1972 Doc.No. 4088 of 1972.

7. Ex.D-7= online certified copy of settlement deed dated 25.06.2007 Doc.2785 of 2007 (Certificate under Section 65 B Indian Evidence Act submitted);

8. Ex.D-8= copy of Income Tax return for the year 2018-19;

9. Ex.D-9 = copy of Income Tax return for the year 2020-2021 ;

10. Ed.D-10 = name transferred notice issued by the Commissioner of Chennai dated 24.02.2021;

11. Ex.D-11= letter issued by Tamil Nadu Mercantile Bank Ltd., dated 15.10.2014;

12. Ex.D-12= letter of Tamil Nadu Mercantile Bank Ltd., dated 24.08.2015;

13. Ex.D-13 = letter dated 23.04.2018 issued by Tamil Nadu Mercantile Bank;

14. Ex.D-14 = copy of notice dated 23.12.2020 issued by the plaintiff's counsel; and

15. Ex.D-15 = reply notice dated 02.01.2021 issued by the defendants 1 and 2.

16. Ex.D-16= letter issued by TamilNadu Mercantile Bank Limited dated 11.01.2023.

30.04.2024

vsg

(½)

C.V.KARTHIKEYAN, J.
Vsg

Pre-Delivery Judgment madein

C.S.No. 197 of 2021

30.04.2024

(½)