



S.A.(MD)Nos.276 and 311 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 02.07.2024

PRONOUNCED ON:29.07.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

**S.A.(MD)Nos.276 and 311 of 2017
and
C.M.P.(MD)Nos.6058 and 6675 of 2017**

S.A.(MD)No.276 of 2017:

Vijayalakshmi : Appellant/1st Respondent/
Plaintiff

Vs.

1.K.Kalimuthu
2.K.Kuppusamy(died)

: Respondents 1 and 2/Appellants/
Defendants 3 and 4

3.Sumathi
4.Valliammal
5.Ponnuthai
6.Nagathal

: Respondents 3 to 5 /
Respondents 2 to 4/Defendants 1,5,6

7.N.Ananthi
8.K.Raja

: Proposed respondents 6 and 7

(cause title accepted vide order
dated 23.06.2017 in C.M.P.(MD)No.
5650 of 2017)



S.A.(MD)Nos.276 and 311 of 2017

PRAYER:- Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 27.03.2017 passed in A.S.No.42 of 2015 on the file of the Additional District Judge of Palani, reversing the Judgment and Decree, dated 04.06.2015, passed in O.S.No. 184 of 2010, on the file of the Subordinate Judge, Palani.

For Appellant : Mrs.N.Krishnaveni
Senior Counsel
for Mr.P.Thiagarajan

For Respondents :Mrs.Hema Sampath
Senior Counsel
for Mr.D.Venkatesh
for R.1, R.6 to R.8

: R.2 – died
: No Appearance for R.3 to R.5

S.A.(MD)No.311 of 2017:

1.J.Sumathi
2.Ponnuthai : Appellants/Respondents 2 and 4/
Defendants 1 and 6

Vs.

1.Vijayalakshmi : 1st Respondent/1st Respondent/Plaintiff

2.Kalimuthu
K.Kuppusamy(died)

3.Valliammal : Respondents 2 and 3 /
1st Appellant and 3rd Respondent/
Defendants 3 and 5



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4. Nagathal

5. N.Ananthi

6. K.Raja

: Respondents 4 to 6

(cause title accepted vide order
dated 11.07.2017 in C.M.P.(MD)No.
6286 of 2017)

PRAYER:- Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 27.03.2017 passed in A.S.No.42 of 2015 on the file of the Additional District Judge of Palani, reversing the Judgment and Decree, dated 04.06.2015, passed in O.S.No. 184 of 2010, on the file of the Subordinate Judge, Palani.

For Appellant : Mr.S.Micheal Heldon Kumar

For Respondents :Mrs.Hema Sampath
Senior Counsel
for Mr.D.Venkatesh
for R.4 to R.6

COMMON JUDGMENT

These Second Appeals are directed against the judgment and decree passed in O.S.No.42 of 2015, dated 27.03.2017, on the file of the Additional District Court, Palani, reversing the judgment and decree made in O.S.No.184 of 2010, dated 04.06.2015, on the file of the Subordinate Court, Palani.



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2. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original suit.

3. Admittedly, the plaintiff and the first defendant are the daughters of the defendants 2 and 6 and the defendants 2 to 4 are brothers and the fifth defendant is their sister. Pending suit, the second defendant had died and hence, his wife has been impleaded as sixth defendant. It is not in dispute that the suit properties and other properties were the ancestral properties of one Kandasamy gounder, father of the defendants 2 to 5, who obtained the suit properties vide partition deed dated 07.10.1944.

4. The case of the plaintiff is that when the plaintiff was demanding partition and allotment of her share, the second defendant had been postponing the same on some pretext or the other, that when the plaintiff was verifying the records for the purpose of partition, she came to know that there was a partition on 14.12.1988 between the defendants 2 to 4 which was an unequal partition, that the plaintiff also came to know that there was a sale in favour of the defendants 3 and 4 by the second defendant in respect of the properties allotted to the second



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defendant in the said unequal partition held on 14.12.1988, that when the same was enquired, the second defendant came to know about the unequal partition at that time only and informed that he never executed any sale deed in favour of the defendants 3 and 4, but only executed a lease deed, that the plaintiff, after coming to know about the fraud of the defendants 3 and 4, asked the defendants to revoke the earlier partition dated 14.12.1988, but the defendants 3 and 4 had refused the same and attempted to dispose of the suit properties behind the back of the plaintiff and that therefore, the plaintiff was constrained to file the above suit for partition and allotment of 4/36 shares to her.

5. The first defendant – sister of the plaintiff has filed a written statement supporting the case of the plaintiff. After the death of the second defendant, his wife was impleaded subsequently as the sixth defendant and she has also filed a written statement supporting the case of her daughter – plaintiff. It is pertinent to note that the second defendant – father of the plaintiff, though entered into appearance through his Counsel, has not chosen to file any written statement till his death.



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6. The defence of the main contesting defendants 3 and 4 is that as per the partition deed dated 14.12.1988, the second defendant was paid a cash of Rs.20,000/- and the properties described in the “A” schedule in the partition deed, that their sister Valliammal - 5th defendant was also paid a sum of Rs.6,000/- from the family funds referred in the “C” schedule and other properties were allotted to the share of the defendants 3 and 4, that the second defendant has purchased 2.46 acres in S.F.No. 22/3A1 and 0.72 acres in S.F.22/3A3 of Vedapatti Village, that the amount received by the second defendant under the partition deed dated 14.12.1988 was utilised to settle the loan incurred for purchasing the said properties, that the second defendant has sold 1.50 acres of land in S.No. 128/1A which was allotted to him in “A” schedule in the partition, in favour of the defendants 3 and 4, vide sale deed dated 03.03.1989, that the second defendant in the sale deed dated 03.03.1989 has accepted and acknowledged the earlier partition held on 14.12.1988, that the defendants 3 and 4 have been in possession and enjoyment of the said properties allotted to them in the partition and the property purchased from the second defendant, that mutations have also been effected in the



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revenue records, that since the second defendant has not challenged the partition deed and the sale deed executed in favour of the defendants 3 and 4, his daughters have no *locus standi* to challenge the same in the year 2010 and seek for reopening of the partition and that therefore, the suit is liable to be dismissed.

7. The learned Subordinate Judge, upon considering the pleadings of both parties, has framed the following issues:

- “1. Whether the plaintiff is entitled for partition and separate possession as claimed by her?
2. Whether the plaintiff is entitled the declaration as claimed by her?
3. Whether the suit is barred by limitation?
4. Whether the court fee paid on the plaint is correct?
5. To what other relief if any?”

8. During trial, the plaintiff has examined herself as P.W.1 and exhibited 3 documents as Exs.A.1 to A.3. The defendants 3 and 4 have examined the third defendant – Kalimuthu as D.W.1 and exhibited 10 documents as Exs.B.1 to B.10. The learned trial Judge, upon considering



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the evidence both oral and documentary and on hearing the arguments of both sides, has passed the judgment and decree, dated 04.06.2015 holding that the partition deed dated 14.12.1988 was not proved and as such, there was no partition on 14.12.1988 and that the sale deed dated 03.03.1989 was also not proved and the plaintiff is entitled to get a preliminary decree in respect of 4/36 shares in the suit properties and for declaration that the sale deed 03.03.1989 as null and void. Aggrieved by the said judgment and decree, the defendants 2 and 3 have preferred an appeal in A.S.No.42 of 2015 and the learned Additional District Judge, upon considering the materials available on record and on hearing the arguments of both sides, has passed the impugned judgment and decree dated 27.03.2017 allowing the appeal and thereby setting aside the judgment and decree passed by the trial Court and consequently dismissed the suit. Challenging the impugned judgment and decree passed by the first appellate Court, the plaintiff has preferred an appeal in S.A.(MD)No.276 of 2017 and the defendants 1 and 6 – sister and mother of the plaintiff have filed another appeal in S.A.(MD)No.311 of 2017.

9. It is evident from the records that when the appeal in S.A. (MD)No.276 of 2017 was admitted, this Court has formulated the



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Substantial Questions of Law, but the Second Appeal in S.A.(MD)No. 311 of 2017 is not yet admitted and as such, the Substantial Question of Law was not formulated. Since both the Second Appeals came to be filed challenging the judgment and decree passed in A.S.No.42 of 2015, on the file of the Additional District Court, Palani and that the appellants in S.A.(MD)No.311 of 2017 are sailing with the appellant in S.A. (MD)No.276 of 2017, the Substantial Questions of Law formulated in S.A.(MD)No.276 of 2017 can also be taken for S.A.(MD)No.311 of 2017 and the Substantial Questions of Law are as follows:

“(a) When the partition Deed itself reveals the in-equal partition, is it not for the persons affirming the Deed to prove that the partition is fair and equal?

(b) Whether non filing of statement by one of the parties to the document during his lifetime is fatal to the claim of the plaintiff?

(c) Whether one of the co-parcener, who was a minor is not entitled to question the partition deed?

(d) Whether the 1st Appellate Court is right in disposing of an Appeal without discussing all the evidence both oral and documentary?

(e) Whether the Judgment of the Appellate Court is not perverse?”



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10. The learned Senior Counsel for the appellants would submit that a very perusal of Ex.A.2 (Ex.B.4) partition deed dated 14.12.1988 would itself reveal the unjust and unequal partition, that though the joint family was owning more than 50 acres of lands, the second defendant was allotted with 1 ½ acres of land only, which property has also been recovered back through a sale deed, that the defendants 3 and 4 are duty bound to prove that the partition is fair and equal, that the second defendant was not even aware of the partition deed dated 14.12.1988 nor the sale deed dated 03.03.1989 alleged to have been executed by the second defendant in favour of the defendants 3 and 4, that the defendants 3 and 4 have obtained partition deed and sale deed from the second defendant fraudulently taking advantage that the second defendant is gullible and is a person accepting whatever done by his two brothers, that the second defendant has informed the plaintiff that he had only executed a lease deed and not a sale deed and that the plaintiff being a co-parcener as per the Hindu Succession (amendment) Act 2005, is entitled to get 4/36 shares in the suit properties and that though the trial Court has rightly decreed the suit as prayed for, the first appellate Court, by not considering the relevant aspects and by considering the irrelevant aspects, has allowed the appeal.



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11. The learned Senior Counsel for the contesting respondents/defendants would submit that their brother – second defendant has purchased more than 6 acres of land in Vedapatti Village on 03.10.1998 prior to the partition, that the second defendant alone has initiated steps for effecting the partition and agreed to receive Rs. 20,000/- and 1 ½ acres of land in “A” schedule, that the amount received by the second defendant under the partition was utilised by him to settle the loan incurred for purchasing the property at Vedapatti Village, that the second defendant has sold the property allotted to him in the partition in favour of the defendants 3 and 4, vide sale deed dated 03.03.1989, that the second defendant has not chosen to question either partition deed or sale deed for more than 20 years till his death in the year 2011, that though the second defendant has entered into appearance through his Counsel, he has not filed his written statement disputing the partition deed and the sale deed, that in the absence of any challenge by the second defendant, the plaintiff has absolutely no *locus standi* to question the same in the year 2010, that the plaintiff and the first defendant are not having any right or share in the properties, since the partition was effected between the defendants 2 to 5 on 14.12.1988, that though the



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plaintiff has invoked the provisions of the Hindu Succession (amendment) Act, 2005, the explanations to Section 6 of the Amendment Act saved the transactions and that therefore, the first appellate Court has rightly allowed the appeal and dismissed the suit of the plaintiff.

12. The Tamil Nadu Government has brought amendments to the Hindu Succession Act 1956, vide Act 1 of 1990 by inserting Sections 29-A to 29-C to the said Act, whereunder a daughter of a co-parcener in a joint Hindu family governed by Mitakshara law becomes a coparcener by birth, with the same rights and liabilities as a son, but subject to two restrictions, that the amended provision shall not apply to a daughter married before the date of commencement of Hindu Succession (Tamil Nadu Amendment) Act 1989 and shall also not apply to a partition which had been effected before the date of commencement of the Hindu Succession (Tamil Nadu Amendment) Act 1989.

13. It is pertinent to note that the Tamil Nadu Amendment Act came into force from 25.03.1989. Subsequently, the Central Government has brought amendments to the Hindu Succession Act, vide Act 39 of 2005, which came into force from 09.09.2005. In the amended Section 6



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of the Hindu Succession (Amended) Act, sub-section 5 contemplates that nothing contained in Section 6 shall apply to a partition which has been effected before the 20th day of December 2004 and as per the explanation to the above Section 6(5), partition means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by the decree of a Court.

14. A Full Bench of the Hon'ble Supreme Court, in the case of ***Vineeta Sharma Vs. Rakesh Sharma and others*** reported in **(2020)9 SCC 1**, after elaborate discussion on the subject, has specifically held that the protection of rights of daughters as coparcener is envisaged in the substituted **Section 6** of the Act of 1956 recognises the partition brought about by a decree of a court or effected by a registered instrument. The partition so effected before 20.12.2004 is saved. The Hon'ble Supreme Court has answered the reference in the following terms:

“(i) The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.



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(ii) *The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in [Section 6\(1\)](#) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.*

(iii) *Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.*

(iv) *The statutory fiction of partition created by proviso to [Section 6](#) of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class-I as specified in the [Schedule to the Act](#) of 1956 or male relative of such female. The provisions of the substituted [Section 6](#) are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.*

(v) *In view of the rigor of provisions of Explanation to [Section 6\(5\)](#) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the [Registration Act, 1908](#) or effected by a*



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decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.”

15. In the case on hand, admittedly the partition deed came to be executed on 14.12.1988, well before 25.03.1989 and 20.12.2004, the dates on which the Tamil Nadu Act 1 of 1990 and the Central Act 39 of 2005 came into force respectively. As rightly contended by the learned Senior Counsel appearing for the respondents, though the plaintiff has claimed her right by invoking Hindu Succession (Amendment) Act 2005. Ex.A.4(Ex.B.2) partition deed effected on 14.12.1988 came to be saved by the very Amendment Act itself and that therefore, the plaintiff is legally barred from challenging the registered partition deed dated 14.12.1988.

16. The learned Senior Counsel appearing for the plaintiff would submit that any partition which is unfair and unjust to minors or detrimental to their interest can be reopened even after long lapse of time



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and the onus is upon the party supporting partition to prove that it is just and fair and relied on the decision of the Hon'ble Supreme Court in the case of ***Ratnam Chettiar Vs. S.M.Kuppuswami Chettiar*** reported in ***(1976)1 SCC 214*** and the relevant passages are extracted hereunder:

*“16. Learned counsel for the respondents submitted that taking a broad view of the whole case the Court should hold that it was not a case of unfair or unjust partition, because both defendant Nos. 1 and 5 were persons who had shrewd business experience and had voluntarily accepted the partition of the properties which was by and large equal. The learned counsel relied on the decision of this Court in *Devarajan and Ors. v. Janaki Ammal and Ors(1)* where this Court observed as follows:*

*"Generally speaking, a partition once effected is final and cannot be reopened on the ground of mere inequality of shares, though it can be reopened in case of fraud or mistake or subsequent recovery of family property: [see *Moro Vishvanath v. Ganesh Vithal* (1873) 10 Bom. H.C.R. 444]. Further an allotment bona fide made in the course of a partition by common consent of the coparceners is not open to attack when the shares are not absolutely equal, or are not strictly in accordance with those settled by law. It is true that minors are permitted in law to reopen a partition*



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on proof that the partition has been unfair and unjust to them. Even so, so long as there is no fraud, unfair dealing or over-reaching by one member as against another, Hindu law requires that a bona fide partition made on the basis of the common consent of coparceners must be respected and is irrevocable."

19. Thus on a consideration of the authorities discussed above and the law on the subject, the following propositions emerge:

(1) A partition effected between the members of the Hindu Undivided Family by their own volition and with their consent cannot be reopened, unless it is shown that the same is obtained by fraud, coercion, misrepresentation or undue influence. In such a case the Court should require a strict proof of facts because an act inter vivos cannot be lightly set aside.

(2) When the partition is effected between the members of the Hindu Undivided Family which consists of minor coparceners it is binding on the minors also if it is done in good faith and in bona fide manner keeping into account the interests of the minors.

(3) Where, however a partition effected between the members of the Hindu Undivided Family which consists of minors is proved to be unjust and unfair and is detrimental to the interests of the minors the partition can certainly be



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reopened whatever the length of time when the partition took place. In such a case it is the duty of the Court to protect and safeguard the interests of the minors and the onus of proof that the partition was just and fair is on the party supporting the partition.

(4) Where there is a partition of immovable and movable properties but the two transactions are distinct and separable or have taken place at different times. If it is found that only one of these transactions is unjust and unfair it is open to the Court to maintain the transaction which is just and fair and to reopen the partition that is unjust and unfair.

17. In the above decision case, when a partition was entered into between two brothers, some of the plaintiffs and one of the defendants to the said suit were minors at the time of partition and later they have challenged the partition on the ground that the same was unjust and unfair and it was very much against the interest of the minors. In that factual situation, the Hon'ble Apex Court has held that where a partition effected between the members of the Hindu undivided family consisting of minors is proved to be unjust and unfair and is detrimental to the



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interests of the minors, the partition can certainly be reopened whatever the length of time when the partition took place.

18. The learned Senior Counsel would also rely on the decision of this Court in the case of ***P.Balasubramanian and others Vs. P.Sivaprakash and others*** reported in ***(2019)4 MLJ 74***, wherein a learned Judge of this Court has observed as follows:

“22.From the above arguments of the learned counsel appearing on either side, the only point for determination that arises in these appeals is: Whether the partition deed said to have been executed by Palanichamy Thevar exercising his powers as Kartha of a joint Hindu family is just and fair?

“23.The partition deed dated 20.09.2000 has been marked as Ex.A.2.Even though the perusal of the said document shows that the value of the 'A' schedule properties allotted to Palanichamy Thevar is several times more than the value of the other properties, I find that the market value of the properties set out in schedules B to I has not been set out in the document. The value shown is 20 times of the kist payable to those properties. The same cannot be treated as market value to come to a conclusion that the partition is



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unequal. Even in the evidence of D.W.1 except stating that the properties of very high value have been allotted to the Palanichamy Thevar and the partition is unequal, the said witness has not come forward with the details of valuation so as to enable the Court to decide on the fairness of the partition effected by Palanichamy Thevar.

24. Apart from the above, I find that the learned trial Judge has not framed an issue relating to the fairness of the partition. No doubt true, Palanichamy Thevar, the Kartha of a joint Hindu family has power to effect partition between his children but such a partition must be done to be fair and just partition. The Division Bench had extracted the observations of the judgment of this Court reported in A.I.R. 1957 Mad. 506 which read as follows:-

"Under the Mitakshara law the father has the undoubted right and privilege of effecting a partition between himself and his sons, whether they are majors or minors, without their consent. He may divide the properties physically or may only bring about a division in status. This division may be between himself and his sons or even between the sons inter se. The partition so made however, must be fair and equal."

19. No doubt, it is settled law that a Hindu father or kartha is having powers to impose partition on his major or minor sons, but the



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only condition or restriction is that the partition should be just and fair.

In the decisions above referred, the persons who challenged the partition were having rights / shares in the properties partitioned, but in the case on hand, neither the plaintiff nor the first defendant was having any right or share in the properties that were partitioned under Ex.B.4 (Ex.A.2), dated 14.12.1988 at that point of time. Since the plaintiff was not having any right in the properties at the time of Ex.B.4 (Ex.A.2) partition, as rightly contended by the learned Senior Counsel for the respondents, she cannot challenge the same on the ground that it is unfair and unequal.

20. The learned Senior Counsel appearing for the plaintiff would submit that the defendants 3 and 4 have taken Ex.B.4 (Ex.A.2) partition deed and Ex.B.10 sale deed fraudulently from the second defendant and even according to the second defendant, he had only executed a lease deed and not the sale deed as claimed by the defendants 3 and 4. But the learned Senior Counsel appearing for the defendants 3 and 4 would submit that the plaintiff has not raised any specific pleadings with regard to the fraud alleged to have been committed by the defendants 3 and 4 and that in the absence of any pleadings, no amount of evidence can be looked into.



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21. As rightly pointed out by the learned Senior Counsel appearing for the defendants 3 and 4, the plaintiff in paragraph No.7 of her plaint, after referring to Ex.B.4 (Ex.A.2) partition deed and Ex.B.10 sale deed and also the alleged statement of his father that he never executed any sale deed, but only executed a lease deed, has alleged that then only, she came to know about the fraud of the defendants 3 and 4. Except the above, the plaintiff has not elaborated anything further.

22. As rightly contended by the learned Senior Counsel for the respondents 3 and 4, it is settled position that a party pleading fraud or coercion or undue influence has to plead the same with sufficient particulars. At this juncture, it is necessary to refer the decisions relied on by the learned Senior Counsel for the plaintiff:

(i) ***AIR 1999 MADRAS 40 (S.Kaliyammal and others Vs. K.Palaniammal and others);***

“11. When the specific plea of the plaintiffs is that the husband of the defendants 3 and 4 has got the will executed by Nanjammal under fraud and undue influence, then



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naturally the burden is on the plaintiffs to establish the same. But unfortunately there is absolutely no evidence to prove the averments made in the plaint. In fact except the averments made in the plaint that the will was executed by Nanjammal by fraud and undue influence, there is no other material to come to the conclusion that the will has been executed under undue influence. Even in the evidence, P.W. 1 has stated as follows :--

(Vernacular matter omitted) Even as per the evidence it is admitted that the will has been executed by Nanjammal but it was only under fraud and undue influence.

12. In fact it may be worth to refer some of the judgments on this aspect. In the judgment reported in [Bishundeo v. Seogeni Rai](#), it has been held as follows (at page 283) :

"We turn next to the question of undue influence and coercion. Now it is to be observed that these have not been separately pleaded. It is true they may overlap in part in some cases but they are separate and separable categories in law and must be separately pleaded.

It is also to be observed that no proper particulars have been furnished. Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in



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evidence. General allegations are insufficient even to amount to an averment of fraud of which any Ct. ought to take notice, however strong the language in which they are couched may be, and the same applies to undue influence and coercion. See Order 6, Rule 4, Civil P.C."

15. I am of the opinion that, only when the execution of the will is denied by a party, then the burden is on the party who relies upon the will to prove the execution of the same. When the execution is not denied, it is unnecessary to compel the person who relies upon the document to let in evidence to establish the execution, since the admitted facts need not be proved. As already stated when the plaintiffs pleaded that the will has been executed by the said Nanjammal by fraud and undue influence, it the duty of the plaintiffs to establish the same. In the absence of any evidence to support the plea of the plaintiffs, it has to be held that the will executed by Nanjammal in favour of the defendants 3 and 4 is valid."

(ii) (2014)8 MLJ 417 (*Indiabulls Housing Finance Ltd., Vs.*

Uma Maheswari);

"19. It is also held by the Hon'ble Supreme Court and other High Courts that the fraud vitiates the entire



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transaction and once the respondent/plaintiff is able to prove fraud, the entire transaction becomes void and it goes to the very root of the case of the fourth defendant applicant herein and therefore, when the allegations of fraud are made out, the transaction becomes void and to set aside the void transaction, there is no proof of limitation. Hence, the contention of the applicant that the suit is barred under Articles 56, 58 and 69 of the Limitation Act cannot be accepted.”

23. Regarding the second decision above referred, there is no dispute about the legal position that fraud vitiates everything and once a party is able to prove fraud, the entire transaction becomes void and there is no limitation for setting aside the void transaction. Regarding the first decision, any party claims a right through a Will, which is denied by the other side, is duty bound to prove the execution and genuineness of the Will as mandated under Section 63 of the Indian Succession Act r/w Section 68 of the Indian Evidence Act. It is settled law that a Will has to be proved in terms of Section 63 of the Indian Succession Act r/w Section 68 of the Indian Evidence Act. It is also settled law that the person who claims any benefit under the Will (propounder) has to prove and the onus is on the propounder of the Will to satisfy the conscience of



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the Court that it is the last Will of a free and capable testator and that he has to remove the suspicious circumstances surrounding the Will. Hence, the above decisions cannot be made applicable to the case on hand.

24. Moreover as rightly contended by the learned Senior Counsel for the defendants 3 and 4, the only person competent to challenge Ex.B.4(Ex.A.2) partition deed and Ex.B.10 sale deed is the second defendant, who was a party to the said documents and who was alone having rights/shares in his branch of family in the properties left by his father Kandasamy Gounder at the relevant point of time. As already pointed out, though the second defendant entered into appearance through his Counsel, on the first hearing of the suit itself ie., on 12.10.2010, he has not filed any written statement till his death on 11.10.2011. Though the plaintiff has alleged that his father – second defendant has stated that he was not aware of the partition and never executed any sale deed, but only executed the lease deed, she has not taken any steps to examine her father before the trial Court. Moreover, the second defendant has also not chosen to depose before the trial Court.



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25. The plaintiff, in her evidence before the trial Court, would categorically admit that his father has not taken any steps to challenge Ex.B.4 (Ex.A.2) partition deed and Ex.B.10 sale deed. Even according to the plaintiff, her father had studied upto 5th standard and he knew how to read and write to some extent. It is pertinent to note that the second defendant, prior to partition, admittedly had purchased 6.18 acres of land in Vedapatti Village on 03.10.1988 and according to the plaintiff, the said lands are of fertile lands and the relevant portion of her evidence is extracted hereunder:

“30.10.1988ல் ுவடப்பட்ட கிராமத்தில் விவசாய பூமியை என் அப்பா வாங்கினார். ுத்தி நினைவில்லை. பாக கறாருக்கு 2 மாதம் முன்பு வாங்கினார். ுவடப்பட்ட கிராமத்தில் கிரையம் செய்த பூமி நன்கு செழிப்புள்ள பூமி. மொத்தம் ுவடப்பட்ட கிராமத்தில் மொத்தம் 6 ஏக்கர் 18 செண்ட் என் தாய் தந்தை றேவரும் 1988ல் கிரையம் பண்ணினார்கள் என்றால் சரி. அந்த கிரைய பத்திரத்திலுய அந்த பூமி வாய்க்கால் பாசனத்தாடு முன்று ுபாகம் விளையக்கூடியது என்று உள்ளது என்றால் சரி. “

26. The plaintiff would also admit

“ நேத வழக்கில் என் அப்பாவை 2ம் பிரதிவாதியாக ுசர்த்து சம்மன்



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அனுப்பியுள்ளம். சம்மனுடன் சர்த்து வழக்கு ஆவணங்களை அனுப்பியுள்ளம்.
நீத வழக்கு ஆவணங்களை பார்த்தும் கூட என் அப்பா 1988 பத்திரப்படி எந்த
எதிர்வாதமும் செய்யவில்லை.”

27. As rightly contended by the learned Senior Counsel for the defendants 3 and 4, the second defendant, who alone is competent to question the documents, has not challenged the same till his life time. Since the second defendant has not challenged the said documents, the plaintiff, who was not having any right or share in the properties at the relevant point of time, has absolutely no *locus standi* to question the same and that too after the lapse of more than 20 years. Considering the above, this Court has no hesitation to hold that decision of the first appellate Court, in setting aside the judgment and decree of the trial Court and consequently dismissing the suit cannot be found fault with.

28. As rightly pointed out by the learned Senior Counsels appearing on either side, the judgments authored by the learned trial Judge as well as the first appellate Judge are cryptic lacking proper discussion and reasoning and the manner in which they were written raises concern.



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29. Considering the above, the final decision arrived at by the first appellate Court cannot be found fault with. Hence, the Substantial Questions of Law are answered against the appellants. Consequently, this Court concludes that the Second Appeals are liable to be dismissed and further decides that the parties are to be directed to bear their own costs.

30. In the result, both the Second Appeals are dismissed and the judgment and decree passed by the first appellate Court dated 27.03.2017 in A.S.No.42 of 2015 on the file of the Additional District Court, Palani stands confirmed. Consequently, the connected Miscellaneous Petitions are also dismissed. The parties are directed to bear their own costs.

29.07.2024

NCC : Yes:No
Index : Yes : No
Internet : Yes : No
SSL

To

1. The Additional District Court, Palani.
2. The Subordinate Court, Palani.



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3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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