



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022
IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.11.2025

Pronounced on : 28.11.2025

CORAM:

THE HONOURABLE DR. JUSTICE **G.JAYACHANDRAN**
and
THE HONOURABLE MR. JUSTICE **MUMMINENI SUDHEER KUMAR**

A.S.Nos.708, 817 of 2010 & 579 of 2022

and

C.M.P.No.22118 of 2022

A.S.No.708 of 2010

D.Singaravelu

... Appellant

Versus

1. Vedavalli
2.M.Parameshwari
3.T.Kavitha
4.R.Soundara Valli
5.Amudha
6.Chandra
7.Ananthagopal
8.K.Dhakshinamurthy
9.K.Selvi

... Respondents

A.S.No.817 of 2010

1/52



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

Ananthagopal

.. Appellant

Versus

1.Vedavalli
2.M. Parameshwari
3.T. Kavitha
4.R.Soundara Valli
5.Amudha
6.Chandra
7.K. Dhakhinamurthy
8.K. Selvi
9.D.Singaravelu

.. Respondents

A.S.No.579 of 2022

K. Selvi

.. Appellant

Versus

1.Vedavalli
2.M.Parameswari
3.T.Kavitha
4.R.Soundaravalli
5.Amutha
6.Chandra
7.Ananthagopal
8.K.Dakshinamoorthy
9.D.Singaravelu

.. Respondents



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

COMMON PRAYER: Appeal Suits have been filed under Section 96 of C.P.C., read with Order 41 Rule 1 of C.P.C., to set aside the Judgment and Decree passed in O.S.No.6 of 2007 dated 30.03.2010 on the file of the Court of Additional District Judge, Puducherri, Karaikkal.

For Appellant in A.S.No.817/2010 : Mr.A.Muthukumar

For Appellant in A.S.No.708/2010 : Mr.S.Hariharan
For Mr.T.Thiyagarajan

For Appellant in A.S.No.579/2022 : Mr.P.Vennitharan

For R1 to R6 in A.S.Nos.708,
817 of 2010 & 579/2022 : Mr.R.Natarajan

For R7 in A.S.Nos.708/2010
579/2022 : Mr.A.Muthukumar

For R8 in A.S.No.817/2010
and For R9 in A.S.No.708/2010 : Mr.P.Vennitharan

For R7 & R9 in A.S.No.817/2010 : No appearance

For R8 in A.S.No.708/2010 : No appearance



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

Pillai died intestate on 4.8.1990, leaving the plaintiffs and the first defendant. According to the customary Hindu Law in Pondicherry and Karaikal, after the death of Krishnasamy, all his legal heirs succeeded his estate equally being the co-owners. The plaintiffs and the first defendant are in possession and enjoyment of properties as tenants in common as each co-sharers having a definite share of 1/7 in the properties.

3 (ii). It is also the case of the plaintiffs that after the death of Krishnasamy Pillai, the first defendant who is the only male heir in the family approached the plaintiffs and asked them to authorize him with a power to carry on business of his father at Mahe, Seychelles and to manage the properties and bank accounts. Since the 3rd and the 6th plaintiffs were minors, all other plaintiffs gave a general power of attorney in favour of the first defendant on 17.9.1990 which was notarized by Thiru S. Ameerudeen, Advocate, Karaikal. It is the further case of the plaintiffs that after a five



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

days, the first defendant again approached the 1st plaintiff and other plaintiffs

WEB COPY

that the power deed given by the plaintiffs was insufficient to maintain the bank account of Krishnasamy Pillai and he required an another power deed. The plaintiffs honestly believed the first defendant as he will not breach the trust and faith reposed upon him, except the 3rd and 6th plaintiffs all the other plaintiffs and Marimuthammal signed in the document and put their thumb impression as directed by the first defendant and the same was obtained by the first defendant fraudulently and by misrepresentation and the same is not binding on the plaintiffs.

3(iii). The plaintiffs came to know about the alleged release deed dated 8.10.1990 only on 20.11.2006 when the second defendant entered into the suit property and tried to make some improvements in the property and the first plaintiff lodged a complaint at Kottucherry Police Station against



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

the 2nd defendant. On enquiry, the plaintiffs were informed that they

executed a release deed on 8.10.1990 in favour of the first defendant. Even

after the alleged execution of the release deed, the plaintiffs and the first

defendant are in possession and enjoyment of the suit properties as tenants in

common and the release deed is not binding on the plaintiffs. Hence the

plaintiffs have filed the suit for partition and separate possession of their 1/7

share and for mesne profit.

4. Per contra, it is the case of the defendants that the plaintiffs have no interest or right over the properties in view of the release deed dated 8.10.1990 executed by the plaintiffs 1, 2, 4 and 5. The plaintiffs 3 and 6 were minors at that time. The release deed was executed by the plaintiffs voluntarily and the recitals found in the deed also true and in accordance with the power of attorney and release deed, patta for the suit properties



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

were transferred in favour of the first defendant. The bank locker and bank

account were also transferred in the name of the first defendant.

5. It is also the case of the first defendant that the release deed registered before the Sub-Registrar, Karaikal on 8.10.1990 and the same was authenticated by the Court of Law at Mahe Seychelles for the purpose of dealing with the property at Seychelles. The plaintiffs have no right to ask for partition. The allegation that the release deed was obtained from the plaintiffs without disclosing the nature and contents of the document and the same was obtained by misrepresentation are denied. The plaintiffs are not in possession of the suit properties. As such the plaintiffs have to pay the Court Fee u/s 37(1) of the Pondicherry Court Fees and Suits Valuation Act. Further, the suit is barred by limitation.



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

6. Based on the plaint averments and the written statements,

the following issues have been framed by the trial Court:

1. Whether the plaintiffs are having interest
or right over the suit properties?

2. Whether the alleged release deed dated
08.10.1990 was made from and out of
misrepresentation made by the first defendant?

3. Whether the alleged release deed dated
08.10.1990 is a void document?

4. Whether the first defendant acquired right
over the suit property under the alleged release
deed dated 8.10.1990?

5. Whether the sale deed executed in the



WEB COPY



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

name of D3 and D4 is sham and nominal and

valid?'

6. Whether the D3 and D4 are bonafide purchasers of the properties described in the sale deeds?

7. Whether the plaintilfs have paid proper court fee or suit?

8. Whether the suit is barred under Limitation Act?

9. Whether the plaintiffs are entitled to a partition of their share in the suit properties as prayed in the plaint?

7. Findings of the trial Court:

The trial Court after appreciating the oral and documentary evidences



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

held that the plaintiffs are having interest or right over the suit properties, as

the alleged release deed dated 08.10.1990 was made from and out of

misrepresentation by the first defendant and so, the said release deed is void document. Therefore, the first defendant has not acquired any right over the suit properties under the alleged release deed dated 08.10.1990. The reasoning for his conclusion issue wise are as below:-

7(ii). The alleged sale agreement between the first and the second defendant is not proved and in order to defeat the rights of the plaintiffs, such arrangement was entered into between the first and the second defendant and the same will not bind the plaintiffs. As such the third and the fourth defendants are not the bonafide purchasers.

7(iii). The plaintiffs can seek the relief of partition without a prayer



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022
for cancellation of the document and they can simply ignore it, in view of
the decisions of the High Courts and Supreme Court.

7(iv). The first plaintiff in her pleadings and in the oral evidence has stated that she came to know about the release deed dated 08.10.1990 only in the year 2006. When the first defendant attempted to sell away the property and when she lodged a complaint before the Kottucherry Police Station and when the second defendant told about the release deed and subsequently the first plaintiff got a copy of the Sub-Registrar office on 30.11.2006. Hence the contention of the first defendant that the suit is time barred is unsustainable. As far as the other plaintiffs are concerned, it is not the case of the first defendant that the other plaintiffs 2 to 6 came to know about the release deed earlier to the filing of the suit.



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

7(v). Having held that Ex.B26 obtained by misrepresentation, fraud

undue influence and further, the first plaintiff had clearly deposed in her evidence that she is residing in the suit property in joint possession as one of the tenants or co-owners of the suit property. Paying court fee for partition of the suit property under Section 37(2) of the Act is proper.

7(vi). Since the alleged release deed dated 08.10.1990 executed by the plaintiffs are sham and nominal and the same was obtained by the first defendant by misrepresentation, fraud and undue influence from the plaintiffs, the plaintiffs are entitled to preliminary decree for partition of the suit properties as prayed for in the plaint. In the result, preliminary decree is passed for partition, allotting 6/7 shares to the plaintiffs 1 to 6 jointly in suit schedule properties.

A.S.No.708 of 2010



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

8. This appellant, who is the 4th defendant in the suit, was not a

party at the time of instituting the suit. He and the 3rd defendant, K.Selvi were impleaded later, as they had purchased the property from the 1st defendant, Ananthagopal, pursuant to the sale agreement dated 10.11.2006.

On being aggrieved by the judgment of the trial Court, holding him as not a boanfide purchaser for value, he has filed the appeal. His case before the trial Court was that the possession of the property was handed over to him on the date of the agreement. He purchased the property only after due scrutiny of the title documents, including the release deed executed by the plaintiffs along with Marimuthammal in favour of the 1st defendant. The plaintiffs, being the members of the joint family, had relinquished their rights over the properties left by Krishnasamy Pillai after his demise and therefore, they have no right or interest in the suit property and they were never in joint possession or enjoyment of the suit property. They were never tenants in common or co-owners of the property subsequent to the



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

release deed dated 08.10.1990.

WEB COPY

In this regard, the trial Court framed Issue Nos.5 and 6 as follows:

5. Whether the sale deed executed in the name of D3 and D4 is sham and nominal and valid?'

6. Whether the D3 and D4 are bonafide purchasers of the properties described in the sale deeds prior to the institution of the suit?

9. The case of the 4th defendant is that he purchased Item Nos.6, 7, 10 & 16 of the suit property before institution of the suit by the plaintiffs. Possession was handed over to him and they an under his absolute enjoyment. The plaintiffs are never in possession or joint enjoyment as claimed. No proof produced by them to show their possession. Claiming to be a bonafide purchaser for value, he plead that his purchase should not be disturbed. The sale agreement reflects that the 4th defendant purchased the

15/52



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

property through the power agent of the 1st defendant. The power of attorney by name Sivan Arul, who was examined as DW.1.

10. With respect to the present appellant, who is the 4th defendant, he was examined as DW.7. The sale agreement marked as Ex.B33 dated 28.02.2007, shows a sale consideration of Rs.22,32,000/-. This sale document executed by the power agent, Sivan Arul [DW.1] on behalf of the 1st defendant, Ananthagopal. The 4th defendant, examined as DW.7, stated that he had purchased the property from Sivan Arul for the sale consideration of Rs.22,32,000/-. However, in his cross-examination, he admitted that he had no proof to show that he possessed Rs.22,32,000/- on the date of purchase of the land. Therefore, the trial Court has held that the evidence adduced by the 4th defendant did not inspire any confidence to hold him to be a bonafide purchaser for value.



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

11. In the appeal, it is contended that the appellant purchased the property based on the release deed [Ex.B26] dated 08.10.1990. It is further submitted that without seeking declaration that the said release deed is null and void, the consequential purchase made from the 1st defendant through his power agent, based on the release deed, cannot be nullified. The execution of release deed Ex.B26, a registered instrument, is the admission of the plaintiffs. Therefore, it cannot be said to be invalid in the absence of a specific prayer for a declaration and the payment of the necessary Court fee.

12. According to the appellant, the trial Court erred in holding that the plaintiffs can ignore the release deed [Ex.B26] a registered instrument dated 08.10.1990, since it was obtained by misrepresentation. Further, the document, having been registered in the year 1990 and acted upon for many years, was nullified on a suit filed in the year 2006, unmindful of the law of limitation and the statutory presumption under Section 114 of the Evidence



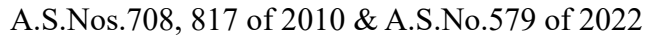
A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

Act. When it is pleaded by the plaintiffs that their signatures in the release

deed were obtained by misrepresentation, the burden lies on the plaintiffs to prove the plea of misrepresentation. However, the Court below had wrongly shifted the burden on the defendants instead of the plaintiffs, who had pleaded misrepresentation. Thus, the trial Court has miserably failed to apply the law of evidence in its proper perspective.

13. The plaintiffs, being educated and residing abroad, cannot take the plea that they were not aware of the contents of the document they signed, because there is no jurat in the document stating that the contents of the document were read over to the defendants. Further, their deliberate *absentia* from entering the witness box to testify their plea of misrepresentation ought to have drawn adverse inference.

14. The trial Court fall into error by accepting the plea of the



15. It is also contended that the possession of the property having

and to be with the appellant, the court fee paid under Section 37(2) of the

Cherry Court Fees Act is erroneous and the Court should have



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

dismissed the suit on the ground that the suit not laid with proper court fees.

WEB COPY

A.S.No.817 of 2010

16. The 1st defendant is the appellant. The trial Court Judgment and the preliminary decree is challenged by this appellant on the ground that the plaintiffs had categorically admitted the execution of the release deed, [Ex.B26], but without making any prayer for declaring it as null and void on the ground of misrepresentation or fraud. In the suit for partition, a duly registered document cannot be nullified. In such circumstances, the relief granted in the suit for partition is not maintainable. The reasoning given by the trial Court for not appreciating this question of law nullifying Ex.B26, even in the absence of any prayer for such reliefs are perverse in nature.

17. The trial Court failed to consider that Ex.B26 had been acted



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

upon and third party interests has come into existence. The plea of the plaintiffs that they were not aware of the release deed for 16 years is itself false and contrary to their admission. While so, the trial Court ought not to have held that Ex.B26 was obtained by misrepresentation. Hence, non-est even without seeking relief to that effect.

A.S.No.579 of 2022

18. This appeal has been filed by the 3rd defendant, K.Selvi who purchased Item Nos.1 to 3 of the suit property from the 1st defendant through his power agent. On behalf of 3rd defendant, her husband Kandasamy has mounted the witness box and was examined as DW.6. In the cross-examination of DW.6, it had come to light that he was not aware of the sale price paid by his wife, the 3rd defendant, for the property. He further conceded that he did not know the source of the funds used by his wife to



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

pay the said sale consideration. Therefore, the trial Court has held that the 3rd

defendant is not a bonafide purchaser for value. It is also relevant to note that the 3rd defendant herself was not examined.

19. The trial Court has held that she is not a bonafide purchaser and she has not mounted the witness box to prove her bonafides or the passing of consideration. Instead her husband mounted the witness box, on behalf of the appellant, but he was unable to produce evidence or information about the financial capacity of this appellant to purchase the property for the value stated in the document or to prove the actual passing of consideration.

20. Challenging the said findings, the appeal has been filed on the ground that the appellant had purchased the property for valuable consideration, bonafide, based on the registered release deed in favour of her vendor. While so, the learned Judge, in a very casual and summary manner and without proper appreciation of the facts and evidence, concluded that



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

the appellant is not a bonafide purchaser and further held that the sale transaction in favour of the 3rd defendant as sham and nominal.

21. As the consequence of the admission of the 1st plaintiff that she was aware of the release deed in the year 2001, the limitation period commenced from that date not in the year 2006. Therefore, the suit filed in the year 2006 for partition is hopelessly barred by limitation. The trial Court ought to have taken this admission for reckoning limitation and ought to have dismissed the suit illumine on the ground of limitation, particularly when the relief sought in the suit is not maintainable without prayer for declaring the release deed void.

22. The trial Court had erroneously entertained the suit and also nullified a duly registered document even without the relief of declaration sought by the plaintiffs. Extracting minor contradictions from the testimony



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

of the witnesses, who were asked to depose about the document executed 18 years ago, is absolutely an act of perversity, especially when there is no reason to suspect the due execution of the release deed signed by the plaintiffs in the presence of Sub-Registrar, the learned Judge allowed the suit for partition.

23. In order to buttress the arguments, the learned counsel Mr.A.Muthukumar appearing for the appellant in A.S.No.817 of 2010 (1st defendant in the suit) had relied upon the following judgments :-

- 1. *N.Karuppanna @ Karuppa Gounder Vs. C.Nacimuthu Gounder (died) and others* reported in 2024(6) CTC 667**
- 2. *Jamila Begum (D) through L.Rs -vs- Shami Mohd (D) through L.Rs and anothers* reported in 2019 (3) CTC 810**
- 3. *Celestine -vs- Ebisal and others* reported in 2019 (5) CTC 686**
- 4. *P.Kaliammal and others Vs. V.Rathinammal and another* reported in 2017(2) CTC 160**



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

5. ***Karuppaiah Vs. Karthick*** reported in ***2017(3) CTC 483***

WEB COPY

6. ***Thayammal -vs- Ponnusamy*** reported in ***(2008) 8 MLJ 647***

7. ***Mary and others Vs.Adaikkalasamy and others*** reported in ***2008(7) MLJ 238***

8. ***C.Anthonysamy Vs. V.Rajagopal Padayachi and another*** reported in ***2002(3) CTC 211***

9. ***Vishwambhar and others Vs. Laxminarayana (Dead) through L.Rs and another*** reported in ***2001(3) CTC 316 (SC)***

10. ***Anjali and 6 others -vs- Arumuga Chettiar and another*** reported in ***2000 (II) CTC 154***

11. ***K.M.Madhavakrishnan vs. S.R.Sami and others*** reported in ***1980 (II) MLJ 398***

12. ***Vidyadhar Vs. Manikrao and another*** reported in ***AIR 1999 SC 1441***

24. On behalf of the successful plaintiffs 1 to 6, who are the respondents 1 to 6 in all the three appeals, Mr.R.Natarajan, learned counsel



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

by way of defending the trial Court judgment contended that Ex.B26 though a registered document, can never be considered as a valid document, in the eye of law, as suspicious circumstances under which the Ex.B26 executed being well found through the evidence of DW.1 to DW.5.

25. The 1st defendant, Ananthagopal who is the appellant in A.S.No.817 of 2010 and the beneficiary of the release deed was examined as DW.4. He admitted that on the date of release deed, Chandra and Kavitha were minors and no permission of the competent court was obtained for releasing their right in the property, this admission besides the other reasons sufficient to hold Ex.B26 as void and non-est. He further admitted that he did not go to the registrar office for registration of the release deed. However, evidence available to show he was present and induced the plaintiffs to sign Ex.B26.



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

26. The witnesses, who had spoken about the registration of the

document, did not depose whether the contents of the deed read over to the signatory or not. DW.1, the power agent of the 1st defendant, who sold the suit properties to the defendants 3 and 4, deposed that he and his maternal uncle, one Subramania Pillai were present in the Sub Registrar's office at the time of execution of the release deed.

27. Based on the release deed obtained by misrepresentation, the 1st defendant got an *exparte* order at Seychelles and transferred the properties of Krishnasamy Pillai in his name. DW.2, one of the witnesses to the release deed, deposed that the parties had signed in the office of the Advocate Ameerudeen and thereafter, the document was taken to the Sub Registrar's office. Whereas, the 1st plaintiff had deposed that she had signed the



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

document under the misrepresentation by her son that her signature was required for administering the property at Seychelles.

28. DW.2 is one of the attesting witness could not recollect whether DW.1 was present at the Sub Registrar's office, when the release deed got registered. DW.3, Kesavalu, the scribe of the document, in contrary to the evidence of DW.2, had deposed that the document was prepared in his office and the signatures of the parties were obtained there itself. About his credential, certain questions were asked in cross-examination and he admitted that he had previously arrested and a case was pending against him for offences relating to forgery of documents and cheating.

29. The release deed prepared in a stamp paper valued at Rs.22.50 and dated 04.10.1990. While the instrument Ex.B26 is dated 08.10.1990.



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

Whereas, DW.3 had deposed that only on his instructions the stamp paper for value of Rs.22.50 was purchased on the date on which he prepared the document. This has discredited the witness, who has spoken about the due execution of the release deed, Ex.B26. Further, the release deed does not contain any schedule of the property nor was prior permission of the Court to deal with the property in which minors had an interested in the property.

30. The trial Court has rightly held Ex.B26 not a valid document. In respect of the alienation of the suit property in favour of the defendants 3 and 4, the learned counsel for the respondent submitted that the purchasers *pendenti lite* has failed to prove passing of consideration and bonafideness while so, the trial Court has rightly allowed the suit for partition.

31. To buttress his submission, the learned counsel for the respondents 1 to 6 has relied upon following judgments:



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

1. ***Sakkarathayammal and 3 others vs. Shanmugavel Chettiar and 7 others*** reported in (1990) 1 LW 475.

2. ***Kallathil Sreedharan Vs. Komath Pandyala Prasanna***
reported in 1996 6 SCC 218

3. ***Thirumalai Vadivu Ammal (died) and 4 others*** reported in 1999 II CTC 275

4. ***Krishna Mohan Kul Alias Nani Charan Kul and another -vs- Pratima Maity and others*** reported in 2004 (9) SCC 468

5. ***Suguna and another Vs. Viinod G.Nehemiah and others*** reported in 2008(2) CTC 433

6. ***Venigalla Koteswaramma -vs- Malyampati Suryamba and others*** reported in (2021) 4 SCC 246

7. ***Ponnusamy Vs. Govindan and another*** reported in 2022(2) CTC 770

32. Discussion:-



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

Before going into merits of these appeals, certain facts admitted or not

controverted need to be recapitulated for convenience and better appreciation. They are:-

(i) Late Krishnasami Pillai had the suit properties as well as few more properties in Mahe, Sey chelles, while he died on 04.08.1990.

(ii) The said Krishnasami Pillai died leaving behind his mother, Marimuthammal, wife Vedavalli and five daughters (two among them minors) and one son. On the date of his death, except one daughter, others were spinsters not married.

(iii) The only son was with the father assisting him in the business and managing the properties both in Karaikkal District of Pondicherry and in Mahe, Seychalles.

(iv) On the death of Krishnasami Pillai. General power of attorney was given to the son by other legal heirs vide document dated 17.09.1990.

This deed of power authorise the son to deal with movables, immovables in



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

India and abroad as well the “General Merchant Business at Mahe, Seychelles.

(v) The sole witness for the plaintiffs had deposed that she came to know about the release deed Ex.B26 in the year 2001, when she was in Seychelles to attend the house warming ceremony conducted by her son and she questioned about it to her son, who said she can do whatever she want. In view of the release given by the plaintiffs, he had become the owner of the properties.

(vi) The suit for partition filed on 28.02.2007 stating the cause of action for the suit arose at Karaikkal on 10.11.2006, 21.11.2006, 28.11.2006, 30.11.2006 and subsequent days.

33. With this factual background, this Court has formulated the point for determination in these batch of appeals as under:-

(i) Whether After execution of release deed, the suit for partition simplicitor without relief for cancellation of the registered release



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

deed is maintainable?

WEB COPY

(ii) Whether the suit for partition is barred by limitation ?

(iii) Whether, the reasoning given by the trial court to hold the registered release deed Ex.B-26 dated 08.10.1990 as not valid in law, suffers any irrationality and contrary to principles established under law?

(Whether the trial court right in holding the defendants 3 and 4 (appellants in A.S.Nos.708 of 2010 and A.S.No.579 of 2022) are not bonafide purchasers for valuable consideration ?

34. The cardinal knot in this case is the validity of the alleged release deed Ex.B26 apparently executed by the female legal heirs of Krishnasami Pillai in favour of the sole male heir.

35. The execution of the deed Ex.B26 and its registration at SRO, Karaikkal is not disputed but under challenge on the ground it was obtained



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

by fraud and misrepresentation beside also on the ground it is invalid

because the release includes the interest of minors. In the absence of Court permission, minors interest in the properties cannot be alienated. The Trial Court apply the doctrine of *non-est* factum had nullified the deed Ex.B26 without prayer or relief to declare Ex.B26 as void. In this regard, it is profitable to refer the dictum laid by the Courts and also relied by the respective counsels.

36. The law and interpretation, indicates, registration of an instrument is a solemn act of Sovereign. Hence, the due registration is a matter of presumption. Anything contrary need to be pleaded and proved. Further, law as a force, in case of minors interest any transaction not in the interest of the minor and without leave of the Court, same is voidable at the instance of the minor within three years on attaining majority. In general, declaration of any document alleged to be voidable can be sought within



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

three years from the date of knowledge. An instrument can be held void *ab*

initio and *non-est* if there is exemplified pleadings to the effect and in exceptional cases, even if relief not brought to declare the instrument as void; if pleadings and evidence satisfies, the Court finds that the signature without accompanying the mind, Courts are empowered to declare the instrument void without specific prayer seeking a declaratory relief. What law under Order VI Rule 4 of C.P.C., required is pleading of misrepresentation, fraud, breach of trust or undue influence must contain dates and particular exemplified.

37. The dictum of Courts as extracted below sufficient to fortify the above observations:

Celestine -vs- Ebisal and others reported in 2019 (5) CTC 686

Be that as it may, learned counsel for respondents pressed into service [P.Kaliammal Vs. V.Rathinammal](#) reported in 2017 (2) CTC 160 authored by a learned Single Judge of this



WEB COPY



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

Court. Learned counsel for respondents pressed into service P.Kaliammal case to exhort that exemplified pleadings are imperative whenever fraud is pleaded. Learned counsel for respondents also pointed out that this principle is adumbrated in Order VI Rule 4 CPC. Rule 4 of Order VI CPC reads as follows :

"4.Particulars to be given where necessary.--
In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading."

27. In P.Kaliammal case, this principle has been reiterated by a learned Single Judge of this Court. This is articulated in paragraph 7 of P.Kaliammal case and the same read as follows :

"7.Order 6, Rule 4, CPC specifically mandates the Plaintiff who pleads misrepresentation, fraud, breach of trust, wilful default or undue influence, those particulars must be necessarily exemplified with dates."

28. I am in full agreement with the view of the learned Single Judge in P.Kaliammal case and the principle that exemplified pleadings are



WEB COPY



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

required whenever fraud is pleaded and that this principle is indisputable.

Lalli Parshad v. Karnal Distillery Co. , the reason of the rule in Order 6, Rule 4 is given as follows:

A plea that a transaction is vitiated because of undue influence of the other party thereto, gives notice merely that one or more of a variety of insidious forms of influence were brought to bear upon the party pleading undue influence, and by exercising such influence, an unfair advantage was obtained over him by the other. But the object of a pleading is to bring the parties to a trial by concentrating their attention on the matter in dispute, so as to narrow the controversy to precise issues, and to give notice to parties of the nature of testimony required on either side in support of their respective cases. A vague or general plea can never serve this purpose; the party pleading must therefore he required to plead the precise nature of the influence exercised, the manner of use of the influence, and the unfair advantage obtained by the other. This rule has been evolved with a view to narrow the issue and protect the party charged with improper conduct from being taken by surprise. A plea of undue influence must to serve that dual purpose, be precise and all necessary particulars in support of the plea must be embodied in the pleading; if the particulars stated in the pleading



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

are not sufficient and specific the Court should, before proceeding with the trial of the suit, insist upon the particulars, which give adequate notice to the other side of the case intended to be set up.

***K.M.Madhavakrishnan vs. S.R.Sami and others* reported in 1980
(II) MLJ 398**

Whenever a person of full age and understanding puts his signature to a legal document without taking the trouble of reading it or without asking

the document to be read and explained to him but signs it relying on the word of another as to its character, content or effect, he cannot be heard to say that it is not his document.

17....A contract may be avoided or set aside at the instance of one of the parties on the ground that it was obtained by undue influence. 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. 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)



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

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 ([section 16](#) of the Indian Contract Act). But in all cases in which the party pleading relies on any misrepresentation, fraud or undue influence, particulars (with dates and items if necessary) shall be stated in the pleading, (vide Order 6, Rule 4). Justice requires one to define the accusation that he brings against the other.

In *Ningawwa -vs- Byrappa* reported in *A.I.R. 1968 SC 956* the Hon'ble Surpeme Court referred to the well established principle that a contract or other transaction induced or tendered by fraud is not void, but only voidable at the option of the party defrauded. The transaction remains valid until it was avoid.

In this Judgment Court said

“The legal position will be different if there is a fraudulent misrepresentation not merely as to the contents of the document but as to its character. The authorities make a clear distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof. With reference to the



WEB COPY



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

former, it has been held that the transaction is void, while in the case of the latter, it is merely voidable.”

In Bismillah v. Janeshwar Prasad reported in ***1990 (1) SCC 207***,

“12. The common law defence of *non est* factum to actions on specialties in its origin was available where an illiterate person, to whom the contents of a deed had been wrongly read, executed it. Under a mistake as to its nature and contents, he could say that it was not his deed at all. In its modern application, the doctrine has been extended to cases other than those of illiteracy and to other contracts in writing. In most of the cases in which this defence was pleaded the mistake was induced by fraud; but that was not, perhaps a necessary factor, as the transaction is “invalid not merely on the ground of fraud, where fraud exists, but on the ground “that the mind of the signor did not accompany the signature in other words, that he never intended to sign and therefore, in contemplation of law never did sign, the contract, to which his name is appended.”



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

Krishna Mohan Kul Alias Nani Charan Kul and another -vs- Pratima Maity and others reported in ***2004 (9) SCC 468***

WEB COPY

13. In judging the validity of transactions between persons standing in a confidential relation to each other, it is very material to see whether the person conferring a benefit on the other had competent and independent advice. The age or capacity of the person conferring the benefit and the nature of the benefit are of very great importance in such cases. It is always obligatory for the donee/beneficiary under a document to prove due execution of the document in accordance with law, even dehors the reasonableness or otherwise of the transaction, to avail of the benefit or claim rights under the document irrespective of the fact whether such party is the defendant or plaintiff before the court.

Natarajan -vs- Veeran reported in 2000 (II) M.L.J 111

“The general rule of law is that a party of full age and understanding is normally bound by his signature to a document whether he reads it or understands it or not. Enquiry does not save people from the consequences of their own folly but will save them from being victimized by other people. But, if however, a party has been misled into executing a deed or signing a document essentially



WEB COPY



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

different from that which he intended to execute or sign, he can plead non est factum in an action against him and the deed or writing is completely void in whomsoever hands it may come. The doctrine of non est factum does not apply unless there is a misrepresentation inducing a mistaken belief as to the class or character of the supposed document and not a misrepresentation simply as to its contents. On the other hand, a mistake as to the contents of a deed or document is not sufficient.”

....

22. In my view some sanctity must be attached to the duty performed by the District Registrar. This should be particularly so when only against an order of refusal by the District Registrar to register a document, a suit to set it aside or for a direction to the Registrar to register the document, is provided under Sec. 77 of the Act. So far as direction for registration is concerned, the civil Court is not expressly given powers under the Act to adjudicate upon what the Registrar has done. In Sec. 31 of the Specific Relief Act, 1863, a provision for cancellation of a written instrument by the civil Court is given to have the written instrument adjudged void or voidable at the instance of the person aggrieved. Even here, it is not specifically mentioned that a document which had been accepted as having been duly executed by the Registrar could be reopened on the ground that there was no execution. It is only under these



WEB COPY



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

circumstances I am inclined to take the view that some sanctity should be attached to the registration ordered by the District Registrar. The District Registrar exercised quasi judicial functions while examining the question whether the document had been executed. This can be looked at from another point of view also. Sec. 114, Illustration (e) of the Evidence Act enjoins the Courts to presume certain judicial and official acts as having been regularly performed. The District Registrar in the instant case was exercising quasi-judicial functions and it must be held that he had done it properly and that he had regularly performed it. Unless it is established that he had not performed his judicial or Official Act regularly, the position regarding due execution of the document should be held to be final.

Thus, from the above judgments, the person who claim a duly registered document as void, the presumption under Section 114 illustration (e) of Evidence Act, stare at them. Hence, an exemplified pleading regarding fraud and misrepresentation is required beside prayer to declare it as void. In this case both are in shortage.



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

WEB COPY

38. The learned counsel for the respondents 1 to 6 rely on

Venigalla Koteswaramma -vs- Malyampati Suryamba and others reported

in (2021) 4 SCC 246, which says,

38. It remains trite that partition is really a process in and by which, a joint enjoyment is transformed into an enjoyment in severalty. [Vide CED v. Kantilal Trikamlal, (1976) 4 SCC 643, para 16 : 1977 SCC (Tax) 90]. A partition of property can be only among those having a share or interest in it. A person who does not have a share in such property cannot obviously be a party to partition. In a suit for partition, the court is concerned with three main issues:

(i) whether the person seeking division has a share or interest in the suit property/properties;

(ii) whether he is entitled to the relief of division and separate possession; and

(iii) how and in what manner, the property/properties should be divided by metes and bounds?

Etymologically, the expression “declaration”, for the purpose of a suit for partition, essentially refers to the declaration of



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

plaintiff's share in the suit properties.

.....

39.1. As noticed, the plea regarding execution of the agreement for sale by Annapurnamma on 5-11-1976 and will on 15-6-1978 came up only in the written statement filed by Defendant 4. Examination of the record makes it clear that only after taking of such pleas by Defendant 4 in his written statement that the legatee under the will (Ext. B-9) and the vendee in the agreement (Ext. B-10) were added as Defendants 14 and 15 respectively. Such pleas were refuted by the plaintiff by amendment of the plaint as also by way of further pleadings in rejoinder. The plaintiff denied the execution of will and agreement by Annapurnamma and submitted that Defendants 14 and 15 were having no right in the property and their claims were liable to be ignored. The plaintiff did not seek any relief of declaration, whether against the will or against the agreement; and in our view, she was not required to seek any such declaration.

39. As the facts narrated in the case above and relied by the respondents, the factum of the disputed document came to light only through the written statement, therefore the plaintiffs, who had no knowledge about the instrument, did not challenge the validity of the instrument. Therefore,



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

this judgment on facts cannot be applied to the case in hand, when the 1st

plaintiff admit knowledge about the Ex.B26 in the year 2001 itself and rest of the plaintiffs in their plaint admit about the registered release deed prior to filing the suit.

40. In the given factual matrix, suit for partition, ignoring the release deed executed in the year 1990 (08.10.1990) is badly hit by Order II Rule 2 of C.P.C. The trial Court failed to take note of the fact that the plaintiffs have consciously omitted to seek declaration, since that relief is beyond the period of limitation. Hence, they have laid suit for partition claiming that they are in joint possession and enjoyment. However, the evidence on record clearly exposes the falsify in their case regarding knowledge about Ex.B26 and the alleged possession.

41. The trial Court judgment also suffers infirmity by discrediting



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

the attesting witnesses to Ex.B26, who were asked to give evidence after 16

years from the date of execution of the instrument. The contradiction

referred to is insignificance in view of the legal presumption and the dictum

of other Court in *Natarajan Vs. Veeran* (cited supra) and the judgment in

Jamila Begum (D) through L.Rs -vs- Shami Mohd (D) through L.Rs and

anothers reported in 2019 (3) CTC 810

Under Articles 58 and 59 of the Schedule to the Limitation Act, 1963 in a suit filed for any declaration is to be filed within three years when the right to sue accrues. Under Article 59 of the Limitation Act, suit filed to cancel or set aside the instrument or decree, the suit has to be filed within three years from the date when the facts entitling the plaintiff to set aside or cancel the instrument or decree became first known to him. Plaintiff Shami Mohd. has admitted in his evidence that he got knowledge about the execution of the sale deed dated 21-12-1970 on the third day of death of his father on 17-5-1971. The suit must have been filed within three years of the date of knowledge or the date of the sale deed but the suit was filed on 12-7-1978. In the case in hand, the suit filed challenging



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

the validity of the mortgage deed dated 21-11-1967 and sale deed dated 21-12-1970 is beyond the period of limitation of three years as prescribed under Articles 58 and 59 of the Schedule to the Limitation Act and barred by limitation.

42. The yet another point canvassed to support Ex.B26 is not valid to the minority of two plaintiffs at the time of release deed. The straight answer comes from the decision of the Full Bench of this Court in *Sankaranarayana Pillai and another v. Kandasamia Pillai, 1956 (II) M.L.J. 411*, wherein, it is held that case that when the minor was co-nominee a party to a sale deed or other document of alienation by a guardian which he seeks to set aside, it is not enough for him to merely sue for possession but he must have also prayed for cancellation of the document and pay due Court fee for the said prayer.

43. This preposition of law reiterated by the Hon'ble Supreme Court in *Ram Cachan Misra and others* reported *1997 (1) SC 504* and followed by this Court in *Anjali and 6 others -vs- Arumuga Chettiar and*
48/52



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

another reported in **2000 (II) CTC 154.**

WEB COPY

44. Thus, the trial Court erred both on facts and law in entertaining the suit for partition without proper pleading and prayer regarding the release deed. His finding on the issue on limitation despite PW.1, first plaintiff who is the mother of the other plaintiffs admitting her knowledge about Ex.B26 in the year 2001 is absurd to say the least. As a consequence of upholding the validity of the release deed Ex.B26, the subsequent transfer of suit properties by the first defendant in favour of 3rd and 4th defendants are held valid.

45. We therefore, find that the trial Court judgment suffers irrational reasoning and willful omission to apply the law. Hence, the impugned judgment and decree in O.S.No.6 of 2007 is set aside. A.S.No.708 of 2010, A.S.No.817 of 2010 and A.S.No.579 of 2022 are allowed. Consequently, the connected Civil Miscellaneous Petition is closed. No



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

order as to costs.

WEB COPY

[Dr.G.J., J.] & [M.S.K., J.]

28.11.2025

Index :Yes/No.

Speaking order/non speaking order

Neutral citation :Yes/No.

rpl

To

1.The Additional District Judge, Puducherry, Karaikkal

2.The Section Officer, V.R.Section, High Court of Madras, Chennai.



WEB COPY



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

Dr.G.JAYACHANDRAN., J.
and
MUMMINENI SUDHEER KUMAR., J.

rpl



WEB COPY



A.S.Nos.708, 817 of 2010 & A.S.No.579 of 2022

Judgment in
A.S.Nos.817, 708 of 2010 & A.S.No.579 of 2022

28.11.2025