



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 19.06.2025

Pronounced on : 25.07.2025

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

S.A.No.38 of 2009

1.S.Kadirvel (Died)
2.S.Devaki
3.S.Subbulakshmi

...Appellants

A1 died, A3 is brought on record as
LRs of the deceased A1 vide order
dated 05.06.2025 in
C.M.P.Nos.16653, 16654 & 16655 of
2018 in S.A.No.38 of 2009.

Vs

1.S.Mani
2.Sellappan (Died)
3.S.Palanivelu
4.Raja Gounder (Died)

...Respondents

R2 & R4 died, petitioners are
exempted from bring on record the
legal representatives of the deceased
R2 & R4 vide order dated 05.06.2025
in C.M.P.No.6301 of 2020 in
S.A.No.38 of 2009.

The Second Appeal filed under Section 100 of CPC, against the



judgment and decree made in A.S.No.117 of 2005 dated 21.08.2008 on the file of the Sub Court, Namakkal reversing the judgment and decree passed in O.S.No.144 of 2004 dated 20.09.2004 on the file of the Additional District Munsif Court, Namakkal.

For Appellants : Mr.T.Dhanyakumar
For R1 : Mrs.S.Radha Gopalan,
Senior Counsel
For Mr.Srinivasa Rao

JUDGMENT

The plaintiffs in O.S.No.144 of 2004 on the file of the Additional District Munsif Court, Namakkal, are the appellants herein.

2.The said suit had been filed by them seeking to set aside a sale deed dated 29.08.1986 relating to the property described in Item No.1 of the suit schedule executed by the 1st defendant in favour of the 2nd and 3rd defendants regarding the undivided 2/3 share of the plaintiffs and for a direction to divide the entire property into three equal shares by metes and bounds and to allot one share to each of the two plaintiffs and to pass final decree and determine the mesne profits and for costs of the suit. The learned Additional District Munsif, Namakkal, by judgment dated 20.08.2004 decreed the suit.



This necessitated the 2nd defendant to file A.S.No.117 of 2005 before the Sub Court, Namakkal. By judgment dated 21.08.2008, the Appeal Suit was dismissed with respect to item No.1 property.

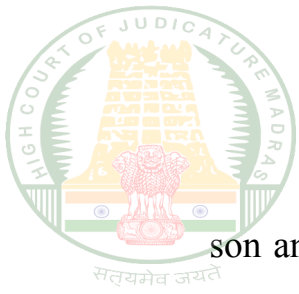
3.Challenging that judgment, the plaintiffs have filed the present Second Appeal. Pending the appeal the 1st appellant died and his legal representatives had been brought on record as further appellants. Pending the appeal, the 2nd and 4th respondents also died but by order dated 05.06.2025 in C.M.P.No.6301 of 2020, the appellants were exempted from bringing on record the legal representatives of the deceased 2nd and 4th respondents.

4.The Second Appeal had been admitted on the following Substantial Question of Law:

“Whether the Lower Appellate Court is right in holding that the alienees have proved antecedent debts which is the consideration for Ex.A1 and further erred in placing the onus on the plaintiffs to prove the antecedent debts?”

O.S.No.144 of 2004 (Additional District Munsif Court, Namakkal):-

5.The plaintiffs S.Kadirvel and S.Devaki are brother and sister and



son and daughter of the 1st defendant, Sellappan. The 2nd and 3rd defendants

S.Mani and S.Palanivelu were also sons of the 1st defendant. The plaintiffs

have stated that since they were not taken care by the 1st defendant, the suit

was filed. It had been contended that the 1st defendant was leading an

irresponsible and reckless life. The 4th defendant had been impleaded as a

party since it is contended that he also has an interest in the suit properties. It

had been contended in the plaint that it came to the knowledge of the

plaintiffs that the 1st defendant had sold the ancestral properties to the 2nd and

3rd defendants for consideration of Rs.47,000/- by stating existence of debts.

It was contended that the sale price is meager. It had been stated that said

sale deed had been executed only to rob the 1st defendant of his property and

to make unlawful gain by the 2nd and 3rd defendants. It was further contended

that there was no necessity for sale of the properties. A notice had been

issued prior to the issuance of the suit. It was under those circumstances that

the suit had been filed seeking to set aside the sale deed dated 29.08.1986

relating to 1st item of suit schedule property executed by the 1st defendant in

favour of the 2nd and 3rd defendants with respect to undivided 2/3 share of the

property and also to direct division of all the suit properties into three equal

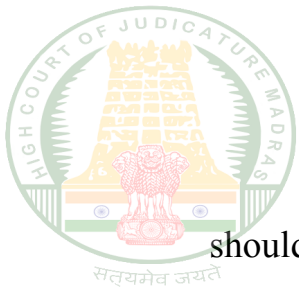
shares and to allot one part each to the plaintiffs.



WEB COPY 6.The 2nd defendant had filed a written statement admitting the relationship. The averments stated in the plaint had been denied. It had been contended that the sale deed would bind the plaintiffs and that it had been executed for valid and adequate consideration. It had been stated that there was no cause for institution of the suit and therefore, the suit should be dismissed.

7.The 2nd defendant filed an additional written statement wherein, it had been stated that the 1st defendant after having sold another property which was not valuable, had later purchased another property and since there was an existing debt, therefore there was necessity to sell the item No.1 property to the 2nd and 3rd defendants.

8.Further additional written statement was filed by the 2nd defendant wherein, he had stated that the properties were not ancestral in nature but acquired through partition by the 1st defendant and also that the paternal grandfather Ranganna Gounder had also executed a Will and that the suit had actually been instigated by the 1st defendant. It was stated that the suit



should be dismissed.

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9. On the basis of the pleadings, the learned Additional District Munsif, Namakkal had framed the following issues for trial:

“1. Whether the sale deed executed by the 1st defendant in favour of the 2nd and 3rd defendants dated 29.08.1986 should be set aside?

2. Whether the plaintiffs are entitled to an undivided 1/3 share in the suit properties?

3. Whether the plaintiffs have cause to institute the suit?

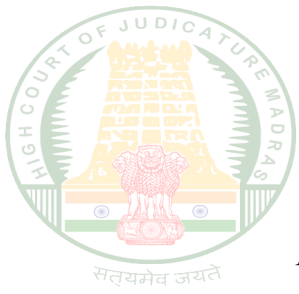
4. To what reliefs are the plaintiffs entitled to?”

10. The following additional issue was also framed:

“Whether the 2nd plaintiff had any legal right to claim any share in the suit properties?”

11. A further additional issue was also framed:

“Whether the contentions of the defendants that partial



partition cannot be sought is correct?"

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12. During trial, the 1st plaintiff, examined himself as PW-1 and another witness Sankar was examined as PW-2. On the side of the defendants, the 2nd defendant S.Mani, examined himself as DW-2 and examined three other witnesses namely, M.Manivannan, Parimala and Kaaliappan as DW-2 to DW-4. The plaintiffs marked Exs.A1 to A4 which included the copy of the sale deed dated 29.08.1986 and the copy of the notices exchanged between the parties as Exs.A2 to A4. The defendants marked Exs.B1 to B8. They included a copy of the sale deed dated 27.08.1986 and a copy of a sale deed dated 25.05.1967 as Ex.B2 and documents relating to the school register as Exs.B3 to B8.

13. The learned Additional District Munsif, Namakkal, on appreciation of the oral and documentary evidence had observed that the the 1st item of suit property had been sold by the 1st defendant in favour of the 2nd and 3rd defendants for a total consideration of Rs.47,000/-. The learned Additional District Munsif, further held on examination of Exs.B3 to B8, that the said documents had been signed by the 1st defendant and they related to the



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school certificates and therefore, it has to be presumed that the 1st defendant had been taking care of the plaintiffs. It had also been observed that the burden to prove that the sale deed dated 29.08.1986 executed by the 1st defendant in favour of the 2nd and 3rd defendants was executed in a bonafide manner was on the 2nd and 3rd defendants. It was also observed that there was an existing debt, to discharge which the sale deed had been executed. It was also observed that the 2nd and 3rd defendants had failed to prove that they were bonafide purchasers for a valuable consideration. It was therefore held that the plaintiffs are entitled for a share in the 1st item of suit property. In view of the above conclusion reached, the suit was decreed as prayed for. A preliminary decree was granted, granting an undivided 2/3 share in favour of the plaintiffs with respect to suit schedule properties.

A.S.No.117 of 2005 (Sub Court Namakkal):

14.This judgment of the learned Additional District Munsif Namakkal was put to challenge in A.S.No.117 of 2005 before the learned Sub Judge, Namakkal, by the 2nd defendant. The learned Sub Judge, by judgment dated 21.08.2008, reappraised the evidence adduced. He found that as a fact one of the witnesses to the sale deed dated 29.08.1986 was the mother of the



plaintiffs. He further held that the 1st defendant had existing debts which was reflected even in Ex.A1 sale deed. He further held that in the absence of pleadings that the debts were incurred for unlawful purposes by the 1st defendant, it had to be presumed that they were obtained only for a bonafide reason. The first Appellate Court accepted the findings of the trial Court that the plaintiffs were being taking care of by the 1st defendant, but further held that the consequent findings of the trial Court that the sale deed had not been executed with bonafide intention was not correct and should be reversed. Holding as above, the Appeal Suit was allowed and the suit was dismissed so far as item No.1 property is concerned.

S.A.No.38 of 2009:

15.Challenging that finding, the plaintiffs have filed the present Second Appeal. As stated, pending the Appeal the 1st appellant died and his legal representative had brought on record as the 3rd appellant. The 2nd and 4th respondents also died, but the 2nd respondent was the father of the two appellants and also of the 1st and 3rd respondents. The 4th respondent also died but he was not directly involved with any right with respect to the suit schedule properties.



WEB COPY 16.The Second Appeal had been admitted on the following Substantial

Question of Law:

“Whether the Lower Appellate Court is right in holding that the alienees have proved antecedent debts which is the consideration for Ex.A1 and further erred in placing the onus on the plaintiffs to prove the antecedent debts?”

17.The parties would be referred as they were referred in the trial Court as plaintiffs and the defendants. The appellants were plaintiffs in the suit and the respondents were the defendants in the suit.

18.The suit in O.S.No.144 of 2004 had been filed by the plaintiffs who are brother and sister and children of the 1st defendant seeking to set aside a sale deed dated 29.08.1986 said to have been executed by the 1st defendant with respect to the 1st item of suit property in favour of the 2nd and 3rd defendants. It must also be mentioned that the 2nd and 3rd defendants are also the sons of the 1st defendant. It is the contention of the plaintiffs that the 1st defendant had led an irresponsible life and taking advantage of the same,



the 2nd defendant had coerced him to execute the sale deed of the 1st item of suit property in his favour. It was contended that the 1st item of suit property was an ancestral property and that the plaintiffs therefore had an undivided 2/3 share on the same. It was therefore contended that the sale deed should be set aside and the property should be partitioned and 2/3 share of the plaintiffs should be granted to them. The suit had been decreed by the learned Additional District Munsif, Namakkal.

19. This judgment of the trial Court was taken on first appeal in A.S.No.117 of 2005 by the 2nd defendant. The first Appellate Court gave a divergent view holding that the conclusion of the trial Court that the plaintiffs were taken care of by the father / 1st defendant could be true but differed with the conclusion that there were no existing debts necessitating sale of the property. It had been very specifically observed that there were existing debts for the 1st defendant and to satisfy the said debts, the 1st item of suit property had been sold for the benefit of the two plaintiffs who were minors at that time to protect them from the existing debt. It was also observed that one of the witnesses to the sale deed was the mother of the plaintiffs. A finding was therefore returned that the sale deed cannot be



interfered with and the suit will have to be dismissed.

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20.A careful perusal of the records shows that in Ex.A1 which is the sale deed dated 29.08.1986, which had been executed by the 1st defendant on his behalf and on behalf of the minor plaintiffs, it had been stated that there were existing debts. It had been stated that as follows:

“எங்களுக்கு பாத்தியப்பட்டு இருப்பதை எங்கள்
நன்மையைக்கோரி எங்களுக்கு ஏற்பட்டுள்ள
அண்டிமாண்டு கடன்களை கட்டி தீர்த்தும் மற்ற
சொத்துக்களை கடன் வில்லங்கத்திலிருந்து மீட்கும்
நல்ல எண்ணத்துடன் அடியில் கண்ட சொத்தை
ரூ.47000.00 க்கு சுத்தக்கிரயம் செய்து.”

A rough translation would be that the property is sold for the benefit of all to clear the debts as mentioned, for a consideration of Rs.47,000/-.

21.Thereafter, the details of promissory notes had also been stated.

They were,



i).Promissory note dated 02.02.1984 for Rs.15,000/- in favour of

Karuppan S/o. Rasianna Gounder which had accrued to a sum of Rs.17,000/-

ii.Promissory note dated 15.10.1985 for Rs.15,000/- in favour of

J.P.Ramasamy Gounder S/o.Kuppanna Gounder, in which the interest portion had been paid but the principal is still due.

iii).Promissory note dated 10.07.1985 for Rs.15,000/- in favour of

K.Balan S/o.Kandasamy Gounder.

22.It is thus seen that the sale deed was one of necessity. It was to discharge the existing loans with the family. One of the witnesses to the document was the mother of the plaintiffs. It is thus seen that the antecedent debts existed which had been proved by the recitals in Ex.A1.

23.I hold that the first Appellate Court had correctly held that the antecedent debt was existing and reflected in Ex.A1. As a matter of fact, this document had been produced on the side of the plaintiffs and the certified copy had been marked as Ex.A1.



24.Ex.B1 is the registered copy of the sale deed dated 27.08.1986 in favour of the 1st defendant and executed by P.Muthusamy. It had been very specifically pleaded by the 2nd defendant in his additional written statement that this property had been purchased by the 1st defendant. The facts are also in accordance with the same. I find no reason to differ from the views of the first Appellate Court and I hold that Ex.A1 had been executed to discharge the debts which had been mentioned in the said document itself.

25.In view of the said findings, I hold with respect to the substantial question of law, that the first Appellate Court was right in holding that the alienees had proved the antecedent debt which was the consideration for Ex.A1 sale deed. The first Appellate Court was also correct in holding that since the plaintiffs were under the care and protection of their parents, their claim that the 1st defendant did not take care of them was contrary to the pleadings and evidence.

26.In view of the above discussions, I hold that the Second Appeal will necessarily have to suffer an order of dismissal and accordingly, the same is dismissed, however taking into consideration the relationship among



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the parties, without costs.

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25.07.2025

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Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

To,

- 1.The Sub Court Namakkal.
- 2.The Additional District Munsif Court Namakkal.
- 3.The Section Officer, VR Section, Madras High Court.

C.V.KARTHIKEYAN,J.

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Pre-Delivery Judgment made in
S.A.No.38 of 2009

25.07.2025