



AS No. 270 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 18-03-2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit No. 270 of 2024

1.Eswari
2.Vijaya
3.Meena

.. Appellants

Versus

1.Paunammal
2.Murugesan
3.Sadhasivam
4.Srinivasan

.. Respondents

Appeal Suit is filed under Section 96 r/w. Order 41, Rule 1 of Civil Procedure Code praying to set aside the judgment and decree dated 01.11.2023 in O.S.No.86 of 2018 on the file of Additional District Judge, Fast Track Court, Vellore.

For Appellants	:	Mr. M. Prem Kumar
For Respondent 1	:	No appearance
For Respondents 2 to 4	:	Mr. K.A. Ravindran

JUDGMENT

This Appeal Suit is filed against the judgment and decree dated 01.11.2023 made in O.S. No. 86 of 2018 on the file of Additional District Judge, Fast Track Court, Vellore.

2. The Appellants herein are the Plaintiffs and the Respondents are

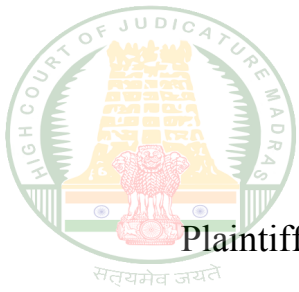


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the Defendants. Hereinafter the parties are referred to as Plaintiffs and Defendants.

2. The brief facts, which are necessary to decide the Appeal Suit, are as follows:-

2.1. The suit is filed for partition and separate possession of Plaintiff's 3/7 share in the suit properties and for permanent injunction. The Plaintiffs and Defendants 2 to 4 are the daughters and sons of Late. Damodharan. The first Defendant is the wife of Damodharan and mother of Plaintiffs and Defendants 2 to 4. According to the Plaintiffs, in the family partition between Damodharan and his brothers, Damodharan was allotted the suit property and he was in possession and enjoyment of the same. It is stated that Damodharan died intestate on 01.01.2006 leaving behind the Plaintiffs and Defendants as his legal heirs. After the death of Damodharan, a part of the property was sold by the Plaintiffs along with Defendants 1 to 4 to one Poosamy. However, the sale proceeds was not divided equally. While the Plaintiffs were paid pittance, the Defendants have taken a lion's share out of it. Subsequently, the first Defendant/mother of the Plaintiffs and the Defendants 2 to 4 executed settlement deed independently in favour of the Defendants 2 to 4. It is the grievance of the Plaintiffs that they were not given equal share and they were paid less than what was paid to Defendants 2 to 4. Even the claim of the



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Plaintiffs for dividing the suit properties by metes and bounds was not considered by the Defendants. It is also the claim of the Plaintiffs that the mother, first Defendant as one of the legal heirs of deceased Damodharan is entitled to only 1/7 share of the properties left by Damodharan. She cannot execute settlement entirely settling the property in favour of the Defendants 2 to 4. Therefore, the Plaintiffs have filed the suit for partition and for allotment of 3/7 shares to them in the suit property.

2.2. The suit was resisted by the Defendants through a written statement filed by the third Defendant. According to the third Defendant, a portion of the suit property was sold to Poosamy, and the entire sale consideration received thereof was taken wholly by the Plaintiffs and the Defendants did not receive any share out of it. The first Defendant had executed the settlement deed in favour of the Defendants 2 to 4 on her own with her full consent and she is free to execute a settlement deed in favour of a person of her choice. The Plaintiffs have got married before 1980 and therefore, they have no right, claim or interest in the suit property. The Plaintiffs and Defendants are not in joint possession of the suit property and therefore, the suit is liable to be dismissed.

2.3. Based on the above pleadings between the parties *inter se* issues were framed by the trial Court. During trial, the first Plaintiff examined herself as P.W-1 and marked Ex.A-1 to Ex.A-6. The Defendants 2 to 4 were



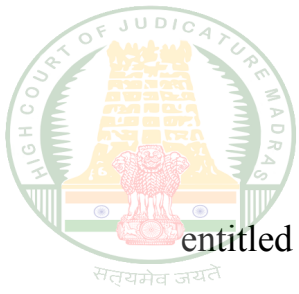
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examined as D.W-1 to D.W-3 and the Sub Registrar, Pallikonda, was examined as D.W-4 and Ex.B-1 to Ex.B-3 were marked, which are the settlement deeds executed in favour of the Defendants 2 to 4 as well as the sale deed executed by first Defendant mother in favour of the first Plaintiff alone was marked as Ex.B-4.

2.4. After full trial, based on appreciation of evidence, the learned Additional District Judge, Fast Track Court, Vellore, by judgment dated 01.11.2023 in O.S.No.86 of 2018 dismissed the suit and refused to grant a preliminary decree for partition.

2.5. Aggrieved by the dismissal of the suit, this Appeal Suit had been preferred by the Plaintiffs.

3. The learned Counsel for the Appellants submitted that Appellants herein, as Plaintiffs 1 to 3, filed the suit in O.S.No.86 of 2018 seeking the relief of partition. It is the contention of the learned Counsel for the Appellants that the father of the Plaintiffs died in 2006. The first Defendant along with the Plaintiffs and Defendants 2 to 4 joined together and executed a sale deed in favour of one Poosamy. Subsequently, the mother executed settlement deeds in favour her sons - Defendants 2 to 4 in which the Plaintiffs are the attesting witnesses. It is the contention of the Plaintiffs that the mother is not competent to execute the settlement deed in respect of the entire suit property as she is



entitled to only 1/7 share in the suit properties. But she had executed settlement deed for the entire properties ignoring the share of the Plaintiffs. It is the submission of the learned Counsel for the Appellants that after full trial, the learned Additional District Judge, Fast Track Court, Vellore by judgment dated 01.11.2023 erroneously dismissed the suit without taking note of the pleadings in the plaint.

4. The learned Counsel for the Appellants invited the attention of this Court to the discussion of evidence by the learned Additional District Judge, Fast Track Court, Vellore, in O.S.No.86 of 2018 from page 11 to page 19 of the judgment. According to the learned Counsel for the Appellants, the observations made by the learned Additional District Judge, Fast Track Court, Vellore, are against the decision of the Hon'ble Supreme Court recognising the right of the daughters to get a share in the joint family property. It is the contention of the learned Counsel for the Appellants that the father of the Plaintiffs died intestate. Therefore, the mother has right over 1/7 share in the properties. However, she had executed settlement deed in favour of her sons ignoring the share of the daughters. Therefore, the judgment dated 01.11.2023 of the learned Additional District Judge, Fast Track Court, Vellore in O.S.No.86 of 2018 dismissing the suit is to be set aside and the suit is to be decreed granting 1/7 share to each of the Plaintiff.



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Per contra, the learned Counsel for the Respondents vehemently objected to the line of argument made by the learned Counsel for the Appellants by contending that the Plaintiffs, with their eyes wide open, have signed the settlement deeds as attestors. Out of the sale proceeds, the share of the Plaintiffs was given and only after receiving the share, they have signed as attesting witnesses in the settlement deed. The first Defendant is the mother, who had executed the settlement deed independently in favour of the Defendants 2, 3 and 4. Not satisfied with the share given to the first Plaintiff, the Plaintiffs have instituted the suit. During trial, the Defendants have summoned the Sub Registrar concerned who had spoken about the shares given to the daughters before getting their signature as attesting witness. It is the contention of the learned Counsel for the Respondents that the Plaintiffs 2 and 3 had not supported the claim of the Plaintiffs and therefore, they did not enter into the witness box to deposit in this case. The learned Additional District Judge, Fast Track Court, Vellore had on proper appreciation of evidence and relying on the judgments of the Hon'ble Supreme Court as well as the evidence of the parties rightly rejected the claim of the Plaintiffs and dismissed the suit. Therefore, interference of this Court is not warranted and the Appeal Suit is liable to be dismissed.



6. In support of his contentions, the learned Counsel appearing for the Respondents 2 to 4 relied on the decision of this Court in **S.A.(MD) No.136 of 2010, dated 23.01.2014 [Thangamani vs. Ganesan]** wherein it has been observed as follows:

“8.6. The Hon'ble Supreme Court also has held that, a party to a document cannot be an attesting witness, for, the object of attestation is protection against fraud and undue influence ([Harish Chandra vs. Bansidhar](#) AIR 1965 SC 1738). In English Law also attestation implies that the attesting witness was present at the execution and can testify that the deed was executed voluntarily by the proper person (Freshfield vs. Reed 1842 9 M&W 404).

8.7. Having seen the meaning of the word 'attestation' and who could be an attesting witness, then it would be necessary to look into the mode of proof of an attested document. Proof of an attested document must be in accordance with [Sections 68 to 71](#) of the Indian Evidence Act. Mere attestation does not operate as estoppel for the attestation does not fix an attesting witness with the knowledge of the contents of the document. Attestation does not by itself implies consent, though there may be circumstances which show that the attesting witness had knowledge of the contents of the documents attested and consented to. It was held in the case of [Alamelu Ammal and others vs. Govindasamy Naicker](#) 2003 (2) MLJ 99 that where a person having a tangible interest in the property affected by a deed attest the deed, his attestation will tantamount to proof of consent. In the above judgment, the judgment of the Division Bench of the Madras High Court reported in 1977 TNLJ 174, Kanakavalli Ammal Vs. Ulaganatha Pillai, has been relied upon where under it has been held as follows:-

"It is an accepted principle of law that mere attestation of a document would not by itself impute knowledge of the contents or the recitals therein. But this principle cannot be taken to be axiomatically true, for there are attestation and attestations and they vary in accordance with the circumstances and facts of each case. If in a given case the attestation by a person interested in the property which is dealt with under the challenged document attests it under circumstances and events which would impute knowledge of the recitals therein, then the said attester having approbated the document and the transaction by such an active participation and involvement, cannot reprobate later to suit her or his convenience."

....
8.12. While dealing with the question as to, whether the attestations



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of the next presumptive reversioners are sufficient proof, under the circumstances, of their consent to and ratification of the alienations of the respective properties, the Madras High Court considered the ordinary course of conduct of Indians, when they take attestation from a person having interest in the property. The decision reported in [Kandasami Pillai v. Rangasami Nainar](#) (1912) 23 M.L.J. 301, at p. 306 is relied upon, wherein, it is said that, "having regard to the ordinary course of conduct of Indians in this Presidency, attestation by a person who has or claims any interest in the property covered by the document must be treated prima facie as a representation by him, that the title and other facts relating to title, recited in the document, are true and will not be disputed by him as against the obligee under the document."

8.13. In the case of [Vadrevu Ranganayakamma v. Vadrevu Bulliramayya](#) (1879) 5 C.L.R. 439 at p. 447, the Privy Council said "But it frequently occurs in Indian documents that a man signs as a witness to show that he is acknowledging the instrument to be correct."

8.14. Hon'ble Justice Sadasiva Aiyar said "I may respectfully add that, in my pretty long experience as a Judicial Officer, if the attester of a document has an existing interest in the property dealt with in the document, it has been always the case that his attestation has been taken in order to bind him as to the correctness of the recitals therein."

8.15. In [Gopaul Ghunder Manna v. Gour Monee Dossee](#) (1866) 6 W.R. (C.R.) 52, the learned Judges clearly decided that a reversioner attesting a conveyance by a Hindu widow cannot impeach the sale afterwards, thus treating the attestation as tantamount to assent. In short, they say that the effect of his being an attesting witness to the conveyance shows the acquiescence on his part in the act of the widow.

8.16. In [Matadeen Roy v. Mussodun Singh](#) (1868) 10 W.R. (C.R.) 293, the implication of attestation made by one brother made in a document executed by another brother. The observations made are; "When the Plaintiff put his name as a witness to his brother's signature to a deed conveying the whole of the property, the court might reasonably infer that he knew that his brother was selling the whole of the property. If he knew that his brother was selling the whole of the property and his own, and allowed him to do so without objection, it would be evidence against him either that the whole property did belong to his brother or that he was acquiescing in his brother's act of selling the whole." This again is a clear authority for the proposition that attestation by a person, who has an interest, raises the prima facie presumption that he knows the contents and acquiesces in the disposition of the property by the deed he attests."

7. By placing reliance on the above decision of this Court, the learned Counsel for the Respondents-Defendants submitted that the dismissal



of the suit by the trial Court is proper and seeks for confirmation of the same.

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Points for determination:

(i) Whether the judgment and decree dated 01.11.2023 made in O.S.No. 86 of 2018 by the learned Additional District Judge, Fast Track Court, Vellore, is against the law, weight of evidence and the probabilities of the case?

(ii) Whether the Plaintiffs are entitled to the relief of partition by passing a preliminary decree?

8. Heard the learned Counsel for the Appellants Thiru.M.Prem Kumar and the learned Counsel for the Respondents 2 to 4 Thiru.K.A.Ravindran and perused the materials placed on record.

10. Perused the plaint, written statement, deposition of the first Plaintiff as P.W-1, documents marked on the side of the Plaintiffs as Ex.A-1 to Ex.A-6, the depositions of Defendants 2 to 4 as D.W-1 to D.W-3, the deposition of the Sub Registrar, Pallikonda as D.W-4. Also, Perused the documents under Ex.B-1 to Ex.B-4 and the judgment of the learned Additional District Judge, Fast Track Court, Vellore in O.S.No.86 of 2018, dated 01.11.2023.

11. On perusal of the judgment, it is found that the first Plaintiff had



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in her examination-in-chief filed an affidavit stating the facts mentioned in the complaint. She was confronted in the cross-examination with the averments raised in the written statement by the Defendants. However, P.W-1 feigned ignorance regarding the execution of settlement deed by her mother in favour of the Defendants individually. To the pointed question that she is an attesting witness to the settlement deed, she had maintained that she had not at all attended the Sub Registrar Office. Therefore, the Sub Registrar was examined as D.W-4 who had adduced evidence based on the records available with the Sub Registrar Office, Pallikonda. He had stated that the parties to the documents - the settlor and settlee were identified by Eswari/first Plaintiff. During trial, the Defendants 2 to 4 deposed evidence as D.W-1 to D.W-3 and marked the settlement deed executed by their mother in their favour individually as Ex.B-1 to Ex.B-4. The learned Counsel for the Plaintiffs objected to marking the documents because if they are marked, it would expose the first Plaintiff who had attested the document as witness identifying the mother and brothers - the person who executed the settlement and the person who is a beneficiary under the settlement deed.

12. During the course of cross-examination, when P.W-1/first Plaintiff was cornered with the facts mentioned in the written statement, she claims that she is illiterate and is unaware of those details. When she was



confronted with the fact that the mother of the Plaintiffs and Defendants 2 to 4, the first Defendant, had executed a sale deed in her favour without receiving any sale price from her, she deposed that their father during his life time executed an oral sale which was converted as a sale deed only by their mother which is Ex.B-4.

13. It is the contention of the learned Counsel for the Defendants that the first Plaintiff had impleaded her sisters as co-Plaintiffs but they did not come forward to support the claim of the first Plaintiff as they do not have any grievance against their mother. The first Plaintiff in the suit had not included the property that was given to her by the first Defendant/mother in the suit for partition. She had not included that property which was conveyed to her by her mother. Only in the written statement, when it was pointed out, she had amended the plaint by including the properties sold under Ex.B-4. Ex.B-4 was marked during the cross examination of P.W-1. In the cross-examination, she admits that she had put up construction and residing in the property conveyed to her by her mother. She denied the suggestion that the mother had conveyed the property under Ex.D-4 to her without receiving any sale price from her. She had in her evidence that she had already paid Rs.10,000/- to her father when her father was alive through oral sale. Later, the same property was conveyed to her under Ex.B-4. The said explanation of the first Plaintiff is not found



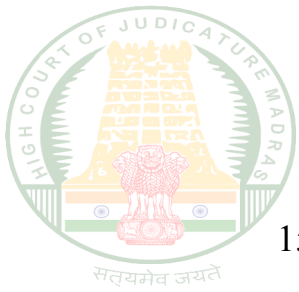
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acceptable by the learned Additional District Judge, Fast Track Court, Vellore.

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Therefore, the learned Additional District Judge, Fast Track Court, Vellore felt that the Plaintiffs do not have a clear case and that they have suppressed those facts. In the light of the cross-examination of the first Plaintiff as P.W-1, the learned Additional District Judge, Fast Track Court, Vellore had arrived at a conclusion that the claim of the Plaintiffs is not supported with evidence from her own side. The learned Additional District Judge, Fast Track Court, Vellore also observed that no independent witness was examined to prove the contention regarding dividing the sale proceeds equally among the legal heirs of Damodharan. Therefore, the evidence of the first Plaintiff as P.W-1 was not considered worth acceptable by the learned Additional District Judge, Fast Track Court, Vellore.

14. The first Plaintiff who has knocked the door of the Court seeking a preliminary decree for partition, shall place all relevant materials fairly before the Court. Here the first Plaintiff had suppressed very many facts. Therefore, the learned Additional District Judge, Fast Track Court, Vellore in the course of judgment, on appreciation of evidence, arrived at a conclusion that the evidence of the first Plaintiff as P.W-1 does not support her case for partition and therefore, rejected her claim.



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15. If what had been argued by the learned Counsel for the Plaintiffs as Appellants before this Court had been true, the other sisters of the first Plaintiffs also could have joined her in deposing evidence. They did not come forward to support the first Plaintiff. Also the conduct of the first Plaintiff in not showing the property conveyed to her by her mother in the plaint schedule and subsequently, amending the plaint to include the same is found unfair on the part of the first Plaintiff. When she seeks partition, the properties of Late. Damodharan, who died intestate, had to be included in the schedule of properties. She had not done so. Her evidence to the effect that she had not visited the Sub Registrar office is found unacceptable in the light of the evidence of the Sub Registrar, Pallikonda. To avoid future complications, the mother of the Plaintiff as well as Defendants 2 to 4 have obtained signature of the Plaintiff before the Sub Registrar concerned. After attesting the documents and after receiving the share as compensation, she had affixed her signature as attesting witness. Therefore, the learned Additional District Judge, Fast Track Court, Vellore, found that the pleadings in the plaint and the evidence of the first Plaintiff would attract the principle of promissory estoppel under Section 115 of the Indian Evidence Act. After having received the share of money, the first Plaintiff filed the suit seeking partition is found unacceptable.

16. As far as the right of the first defendant to execute the settlement



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deed, it is contended by the counsel for the appellants that the first defendant cannot execute the sale deed more than what she is entitled to. In other words, it is stated that the first defendant has right only 1/7 share in the properties and she cannot execute more than her share. This submission cannot be accepted in the light of the fact that the first Plaintiff has signed as witness and received her share, whether it was meagre or more. When she has received and acknowledged her share given by her mother, she cannot turn around and contend that she was discriminated by giving her lesser share. In fact, if the Plaintiffs 2 and 3 have entered the witness box, it would have thrown much light on the fact as to whether the amount paid as share to the Plaintiffs is lesser or higher. Be that as it may. When the first Plaintiff has consciously signed as an attesting witness and the settlement deed was executed in her presence, she cannot have any more qualm or grievance over the share which the first defendant had given to her sons, the Defendants 2 to 4. In such view of the matter, this Court is of the view that the judgment passed by the learned Additional District Judge, Fast Track Court, Vellore in dismissing the suit is proper.

17. In the light of the above discussion, the points for determination framed in this appeal are answered against the Plaintiffs and in favour of the Defendants. Consequently, the Plaintiffs are not entitled to preliminary decree



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for partition of 1/7 share each as claimed in the plaint.

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In the result, this **Appeal Suit is dismissed as having no merit.** The judgment and decree dated 01.11.2023 made in O.S. No. 86 of 2018 on the file of Additional District Judge, Fast Track Court, Vellore is confirmed. No costs.

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Index : Yes/No
Speaking/Non-speaking order
SRM

SATHI KUMAR SUKUMARA KURUP, J.,

SRM

To

1. The Additional District Judge,
Fast Track Court, Vellore.
2. The Section Officer,
V.R. Section,
High Court Madras.



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Judgment in
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