



A.S.No.575 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated 24.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.575 of 2025

L.Ayyammal

... Appellant

Versus

1.E.Muthammal

2.L.Parvathy

3.N.Manian

4. D.Sandhamani

5.S.Valliammal

6.R.Vasanthamani

... Respondents

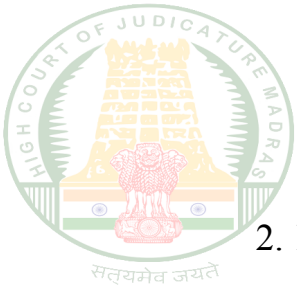
Prayer: Appeal filed under Order 41 Rule 1 read with Section 96 of Code of Civil Procedure, to set aside the judgment and decree dated 04.11.2024 in O.S.No.396 of 2018 on the file of I Additional District and Sessions Court, Tiruppur.

For Appellant : Mr.J.Antony Jesus

For Respondents : Mr.K.Myilsamy for R3

JUDGMENT

Challenging the decree and judgment of the Trial Court dismissing the suit for partition, the present suit has been filed.



A.S.No.575 of 2025

WEB ~~CO~~ ranking before the Trial Court.

2. For the sake of convenience, the parties are referred to as per their own ranking before the Trial Court.

3. The plaintiff is the daughter of the first defendant, 2 to 4 and 6th defendants are sisters of the plaintiff and the 5th defendant is the brother of the plaintiff.

4. It is the case of the plaintiff that the property was originally purchased by the first defendant/plaintiff's father on 03.06.1959 and he was in possession of the property and constructed 10 houses as well as two shops. At the time of construction of houses, all the defendants supported the first defendant physically and emotionally. The fifth defendant though being the son had not helped the first defendant in putting up the construction. The first defendant had sold more than 50% of the property and settled the debts of the family. Further, in the year 2006, the 5th defendant took the first defendant to Registrar Office and obtained sale deed in his name. The sale deed was obtained by fraud making the first defendant to believe that only he is going to avail loan facility from the bank. Thereafter, the fifth defendant demanded the tenants to pay the rents to him. Hence, the first



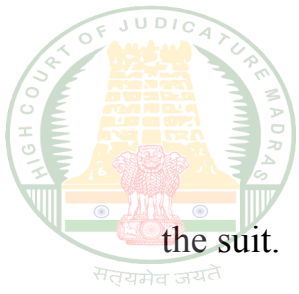
A.S.No.575 of 2025

WEB COPY

defendant has filed a suit in O.S.No.164 of 2006 on the file of Sub Court, Tiruppur to annul the document and later, in pursuant to the compromise, it was withdrawn, wherein, It is agreed between the parties that all of them are equally entitled to partition. Hence, the plaintiff has filed the suit for partition.

5. The first defendant filed written statement. According to him, believing the words of the fifth defendant that the document is a mortgage deed, he had executed the sale deed. Though he has filed a suit to annul the document in O.S.No.164 of 2006. Immediately, after the summons served on the fifth defendant, the 5th defendant agreed to settle the property and thereafter, the suit has been withdrawn. Hence, prayed for decree and judgment.

6. The fifth defendant disputed the entire aspects. According to him, the plaintiff was married 40 years back and the defendants 2 to 4 also married 35 years back. The plaintiff and the defendants 2 to 4 and 6 also executed release deed in his favour and the first defendant had sold the property for a valuable consideration and the alleged compromise was also disputed. Hence, according to him, he is the absolute owner of the property. Therefore, prayed for dismissal of



A.S.No.575 of 2025

the suit.

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7. Based on the above pleadings, the Trial Court framed the following issues for consideration:

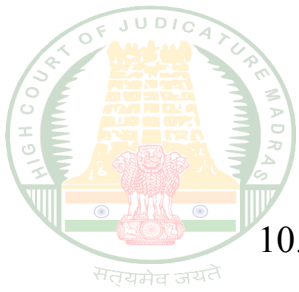
1. Whether the suit is barred by limitation?
2. Whether the plaintiff is entitled to the relief of partition as prayed for?
3. Whether the plaintiff is entitled to the relief of declaration of the sale deed dated 08.06.2006 as null and void?

4. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?

5. To what other reliefs the plaintiff is entitled to?

8. On the side of the plaintiff, the plaintiff was examined as PW1 and marked Exs.A1 to A5. On the side of the defendants, DW1 to DW5 were examined and marked Exs.B1 to B11.

9. Based on the oral and documentary evidences, the Trial Court dismissed the suit for partition. Hence, the unsuccessful plaintiff has filed the instant appeal.



A.S.No.575 of 2025

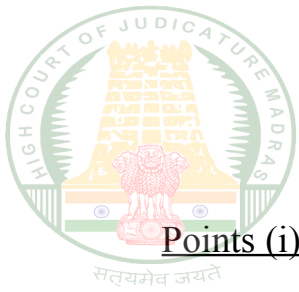
10. The learned counsel for the appellant submitted that the Trial Court has not gone into the entire issue and the documentary evidences has not been properly appreciated. The suit itself is for partition, when the first defendant himself has admitted that the sale deed is obtained fraudulently by the fifth defendant, the Trial Court ought not to have granted decree and judgment in his favour. Hence, seeks for allowing this appeal.

11. Mr.K.Myilsamy, learned counsel took notice for the third respondent and placed his submissions.

12. On hearing the learned counsel for either side and perusing the materials placed on record, this Court is inclined to dispose of the appeal at the admission stage itself.

13. In light of the above submissions, now the points arise for consideration are as follows:

- (i) Whether the sale deed dated 08.06.2006 is obtained fraudulently?
- (ii) Whether the plaintiff is entitled to partition as prayed for?



A.S.No.575 of 2025

Points (i) and (ii)

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14. The plaint proceeds as if the first defendant is the absolute owner of the property and the sale made in favour of the fifth defendant is by playing fraud on by the first defendant. It is not in dispute that the property is the absolute property of the first defendant. It is relevant to note that the sale deed was executed by the first defendant as early as 08.06.2006 and though the first defendant filed a suit in O.S.No.164 of 2006 to annul the sale deed, subsequently, the suit was dismissed as settled out of Court. Filing of the said suit is not disputed. Therefore, once the suit already filed in this regard is dismissed as settled out of Court, on the different cause of action, now to annul the very same sale deed by filing a second suit is totally barred under law. It is to be noted that the plaintiff has very conveniently filed the suit. If really the document has been obtained by playing fraud, the proper person to avoid such sale is only the executant of the document. When the first defendant has not chosen to prosecute the suit for the reasons best known to him, it is too late for the plaintiff/daughter to challenge such sale after a period of 12 years. Therefore, once the document has been consciously executed and any person challenging the document on the ground of fraud, undue influence, the suit ought to have been filed within a period of 3 years by the executant as



A.S.No.575 of 2025

contemplated under Article 58 of the Limitation Act, 1963. Having filed a suit and later the suit was dismissed as settled out of Court, now the plaintiff for the second time on a different cause of action has filed the subject suit to annul the document/sale deed, that too after a period of 12 years is certainly barred under law.

15. Further, on perusal of the entire evidences and materials, there is no specific pleadings as to the nature of the fraud played on the first defendant. Therefore, in the absence of any evidences with regard to the alleged fraud, merely on the basis of allegations of one of the daughter, i.e., plaintiff, the plaintiff is not entitled for partition.

16. Ex.B1 is also filed to show that the plaintiff and the defendants 2 to 4 and 6 have already executed a release deed in favour of the first and fifth defendants. Having released their rights under Ex.B1 and the first defendant has also executed a sale deed in favour of the fifth defendant in the year 2006, thus, the plaintiff has no right whatsoever to claim any share in the suit property. Accordingly, these points are answered.



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A.S.No.575 of 2025

N. SATHISH KUMAR, J.

17. In view of the above, I do not find any merits in this appeal and the judgment and decree dated 04.11.2024 in O.S.No.396 of 2018 on the file of I Additional District and Sessions Court, Tiruppur stands confirmed. Accordingly, this appeal stands dismissed. No costs.

24.04.2025

Index : Yes / No
Speaking/non speaking order
dhk

To,

1. The I Additional District and Sessions Judge,
I Additional District and Sessions Court
Tiruppur

2. The Section Officer
VR Section, Madras High Court

A.S.No.575 of 2025



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A.S.No.575 of 2025