



A.S.No.584 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :10.06.2025

Pronounced on :18.06.2025

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Appeal Suit No.584 of 2025

and

C.M.P.No.10462 of 2025

1.Guruvammal
W/o Rathinapandian
No.14, Singara Garden, 2nd lane,
Old Washermenpet, Chennai 600 021.

Chandrasekar (died)

2.Annakili
W/o Vijayasankar,
No.52, Andiappan 4th Street,
Old Washermenpet, Chennai 600 013.

3.Jayanthi,
W/o Sekar,
No.9, Rettai Kuzhi Street,
Tondiarpet, Chennai 600 081.

4.Jayalakshmi,
W/o Thangaraj No.32E/1,
Munusamynayakar Street, Sathangadu,
Thiruvottiyur, Chennai 600 019.



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5.Lakshmi,
W/o Srinivasan,
No.32E/1, Munusamynayakar Street,
Sathangadu, Thiruvottiyur,
Chennai 600 019.

6.Bakiyalakshmi,
W/o Sundarrajan,
No.36, C.T.O.Colony 3rd Street,
Lakshmipuram West Tambaram,
Tambaram 600 045.

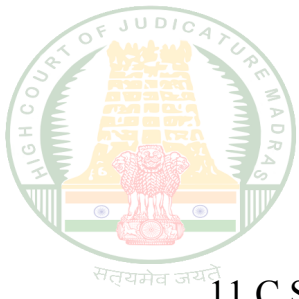
7.Maniyammal,
W/o Selvaraj,
No.2/2A, Singara Thottam 4th Street,
Old Washermenpet, Chennai 600 021.

8.Vijaya,
W/o Ganesan,
No.51A, South Rajakadi,
Sathangadu High Road,
Thiruvottiyur, Chennai 600 019.

9.Sengalaiyammal,
W/o Thangaraj,
No.3/16, Mettu Street,
1st Street, Kaladipet,
Chennai 600 019.

..Appellants/Respondent 1-10/Plaintiffs

10.C.Prabhavathy
W/o Chandrasekar



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11.C.Sudhakar
S/o Chandrasekar

12.C.Sumithra
S/o Chandrasekar

All residing at
No.1, Vanavan Nagar, 1st Street,
Puthagaram, Kolathur, Chennai 600 009.

..Appellants 10-12 are LR's of deceased 2nd Plaintiff

*(Accepted the cause title vide Court order
dated 17.04.2025 in C.M.P.No.9171 of 2025 in
A.S.SR.46812/2025 (NSKJ))*

/versus/

1.Durai
S/o Sakkarai Nadar,
No.13, N.N.Garden,
4th Lane, Old Washermenpet,
Chennai 21.

2.Jagadish,
S/o Durai,
No.13, N.N.Garden,
4th Lane, Old Washermenpet,
Chennai 21.

3.Manoshankar,
S/o Durai,
No.13, N.N.Garden, 4th Lane,
Old Washermenpet, Chennai 21.



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4.Srinivasan,
S/o Durai,
No.13, N.N.Garden,4th Lane,
Old Washermenpet, Chennai-21.

..Respondents 1-4/Petitioners/Defendants1-4

5.Gopi,
S/o Vadivelu,
No.97/2, Ellai Amman Koil Street,
Thiruvottiyur, Chennai 19

6.Anand,
S/o Vadivelu,
97/2, Ellai Amman Koil Street,
Thiruvottiyur, Chennai 19.

7.Devi,
D/o Vadivelu,
97/2, Ellai Amman Koil Street,
Thiruvottiyur, Chennai-19.

8.P.Rajasekar,
S/o Periyathambi,
No.13, N.N.Garden, 4th Lane,
Old Washermenpet, Chennai -21.

9.Viji,
W/o Thilak,
No.15/2, Singara Garden 3rd Street,
Old Washermenpet, Chennai 600 021.

10.Yuvaraj,
S/o Thilak,



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No.15/2, Singara Garden 3rd Street,
Old Washermenpet, Chennai 600 021.

11.Balasubramani
S/o Kathirvel
No.15/1, Singara Garden 3rd Street,
Old Washermenpet, Chennai 600 021.

12.Mohan,
S/o Kathirvel,
No.15/1, Singara Garden 3rd Street,
Old Washermenpet, Chennai 600 021.

13.Udhaya,
W/o Thangaraj,
No.22, Block, 151, 3rd Street,
Ezhil Nagar, Oggiam Thuraipakkam,
Kancheepuram 600 097.

14.Mageswari,
W/o Murugarajan,
No.1/1, Kalyanasundharam Street,
Muthulakshmi Nagar,
Chitlankkam, Chennai 600 064.

..Respondents 5-14/Respondents 5-14/
Defendants 5 – 14

Appeal Suit has been filed under Section 96 of Civil Procedure Code
praying to set aside the fair and decretal order dated 05.03.2025 passed in
I.A.No.7 of 2024 in O.S.No.4607 of 2023 passed by the Hon'ble XXI
Additional City Civil Court, Chennai.



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For Appellants :Mr.D.Manimaran

For Respondents :Mr.V.Raghavachari, Senior Counsel for
M/s S.Thamizharasi, for R1 to R4

JUDGMENT

The appellants are the plaintiffs in O.S.No.4607 of 2023 on the file of XXI Additional City Civil Court, Chennai. The suit for partition and declaration filed on the premise that the larger extent of land, which includes the suit property was owned by one Periya Piratti Ammal. During her life time, she executed a registered deed on 17.03.1928 in favour of Ayyavu Nadar and Nammalwar Nadar, who were sons of her brother Lakshmana Nadar, conferring a limited right of enjoyment till life and after their life time, to their male issues absolutely. The said deed though named as Settlement, in fact, it is a Will that neither probated nor acted upon. Further, after the death of Periya Piratti Ammal and her husband, consequence to the decree in the partition suit O.S.No.393 of 1947, Ayyavu Nadar and Nammalwar Nadar got the properties separated, in which the suit schedule property was allotted to Ayyavu Nadar. The vacant land measuring



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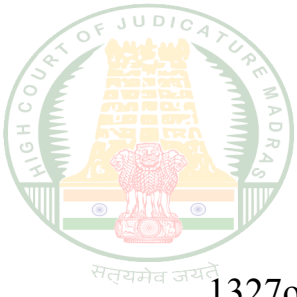
to an extent of 1893 sq.ft is the subject matter of the present suit.

2. In the plaint, it is averred that, Ayyavu Nadar died intestate leaving his son Sakkarai Nadar and three daughters namely, Dhanbakiyam, Rajeswari and Amaravathi. They all held the property jointly and enjoying the property. Whiles, a collusive suit for partition in O.S.No.3507 of 2011 was filed by some of the defendants suppressing material fact about the existence of the plaintiffs and defendants 9 to 14, who are also the descendants of Ayyavu Nadar. Decree was obtained on 17.07.2013 by playing fraud on the Court and by misrepresentation. For the said reason, the decree in O.S.No.3507 of 2011 is non est in law.

3. Based on this collusive decree, the following sale deeds were registered at SRO, Rayapuram, in favour of defendants 2 to 4.

(1) Document No:1110 of 2021, by the defendants 5 to 7 in favour of defendants 2 to 4 on 09.04.2021.

(2) Document No:3723 of 2010, dated 09.12.2010 and Document No:



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1327of 2021, dated 30.04.2021, by first defendant in favour of defendants 2 to 4.

(3) Document No:2142of 2021, dated 12.08.2021; by eighth defendant in favour defendants 2 to 4.

4. Therefore, the plaintiffs had prayed to declare these documents as null and void: and to divide the property and to allot 4/16 share to the plaintiffs 1 to 4 and 6/32 share to plaintiffs 5 to 10.

5. The suit is laid by the legal heirs of Amaravathi as plaintiffs 1 to 4, some of the legal heirs of Rajeswari as plaintiffs 5 to 10 jointly against the defendants 1 to 8, who are the legal heirs of Sakkarai Nadar, S/o Ayyavu Nadar, Defendants 9,10, 13 and 14, who are the legal heirs of Dhanabakkiyam, D/o Ayyavu Nadar, defendants 11 and 12, who are the legal heirs of Rajeswari, D/o Ayyavu Nadar.



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6. The sum and substance of the plaint averment is that, the deed dated 17.03.1928 executed by Periya Piratti Ammal, though carries the nomenclature as 'Settlement deed', in fact it is only a Will. Since the said deed is Will, it should have been probated before acting upon. The document not probated and also not acted upon. So, the restriction of devolution of the property on male descent alone had lost. The subsequent partition suit in the year 1947 (O.S.No.393 of 1947) between the beneficiaries of the Periyaperatiammal document had opened the devolution on all the legal heirs irrespective of gender. The subsequent partition suit between the male descendants, without impleading all the descendants of Ayyavu Nadar is non est in law. The transfer of the property in favour of the defendant 2 to 4 based on the non est document is null and void. The property left by Periyaperatiammal carries the character of ancestral property. Hence, all the descendants of Ayyavu Nadar are deemed to be in constructive possession and enjoyment of the suit property.



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7. The defendants 1 to 4 had filed application in I.A.No.7 of 2024 under Order VII, Rule 11 of C.P.C to reject the plaint contending that, the plaint does not disclose the cause of action. The suit is not properly valued and the suit is barred by Limitation.

8. The Court below, on considering the pleadings and the recital in the deed of Periyaperatiammal, dated 17.03.1928, held that the plaint suffers limitation. Though it is pleaded that the settlement deed of Periyaperatiammal executed on 17.03.1928 is not acted upon and not probated; and O.S.No.393 of 1947 between Ayyavu Nadar and his brother Nammalwar Nadar is filed without locus standi, the plaintiffs have not chosen to challenge the validity of these two documents. Further, after laying the suit claim mainly based on these two documents, the plaintiffs cannot approbate and reprobate. The statement in the plaint does not disclose clearly how the cause of action for the present suit accrued. Also, it has been observed that, by a clever drafting of plaint, an illusionary cause of



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action is projected to sustain a time barred and vexatious suit.

9. Being aggrieved by the rejection of the plaint, the plaintiffs have filed the appeal on the ground that,

Tmt.Periyaperatti Ammal in her deed dated 17.03.1928, vested the property for specific purpose, viz, to maintain the female heirs of Ayyavu Nadar. The said right has enlarged into absolute right devolving on her female descendants also. Nammalwar Nadar was appointed only as Trustee for the purpose of maintaining the children of Ayyavu Nadar. This suit, which is filed by the legal heirs of the beneficiaries cannot be barred at any point of time. There is no limitation prescribed to challenge a fraudulent deed. The validity of the settlement deed dated 17.03.1928 is accepted. Hence, that deed need not be challenged. As far as the partition decree in O.S.No.373 of 1947 concern, steps have been taken by the plaintiffs to challenge this decree by amending the plaint. The trial Court ought to have heard and disposed of the application to amend before the application for rejection of plaint entertained.



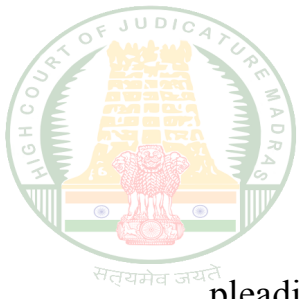
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10. Sakkarai Nadar, who had absolute right in the property did not alienate the property. All the female members were in constructive possession till the defendants came to demolish the building and denied the right of the defendants. The cause of action to maintain the suit arose on the date of the attempt to demolish the property.

11. The Trial Court erred in holding that daughters of Ayyavu Nadar did not lay any claim over the property during the life time of Ayyavu Nadar, ignoring the fact the cause of action for the suit arose only on the denial of share in the property.

12. The bundle of facts pleaded in the plaint is a mixed question of facts and law. The trial Court summarily tested those facts and rejected the plaint without trial. So long as the plaint discloses some cause of action, the trial Court ought not to have rejected the plaint stating the cause of action is fictitious. Instead of reading the plaint as a whole, by dissecting the



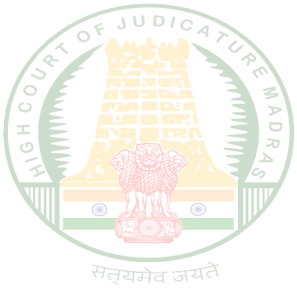
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pleadings, the Trial Court has erroneously held that the suit is barred by limitation.

13. The learned counsel appearing for the respondents argued that the sale deeds executed in respect of the defendants 2 to 4 are under challenge in this suit. These deeds were between 2010 and 2021. On 13.02.1928, the document of Periyapperatti ammal is the source of title upon which both the parties rely. Cause of action for the plaint arose only recently when the building on the property was attempted to be demolished on the strength of the documents executed between 2010 and 2021. Hence, the suit is well within limitation.

14. Point for determination:

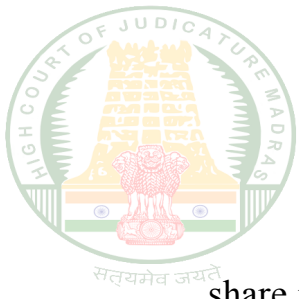
Whether the cause of action stated in the plaint is illusory and whether the plaint is barred by law of limitation ?



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15. The case of the plaintiffs is structured on the foundation of a registered document dated 17.03.1928 executed by Periya Peratti Ammal. The narration of the pleadings in the plaint commences with this document, with a comment that though this document carries the nomenclature of settlement, infact it is a Will and was not given effect to, after the demise of Periya Peratti Ammal. Therefore, it is necessary and essential to examine the recital of this document. Periya Peratti Ammal describing herself as settlor declared that she was affectionately disposed towards her nephews viz., Ayyavu Nadar and Nammalwar Nadar, sons of Lakshmana Nadar, and was desirous of effecting a settlement of the said property in the matter hereinafter setout. While reserving the right to enjoy the net income from the property, she has settled the property in *presenti* for the lifetime of Ayyavu Nadar and the Trustee Nammalwar Nadar. She had also mentioned in the document that after life time of the said Ayyavu Nadar, his male issue shall take half share in the said property absolutely and after the life time of the trustee Nammalwar Nadar, his male issue shall take absolutely other half



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share in the property.

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16.The most vital part of the document reads as below:-

“It is expressly understood that under this settlement neither the settlor nor the said Ayyavu Nadar nor the Trustee have any power to alienate or charge the property in any manner whatsoever, and that the absolute estate shall go only to the son of the said Ayyavu Nadar and the Trustee as foresaid, as are alive at the death of the said Ayyavu Nadar or of the Trustee respectively.”

17. Thus, in more than one place, Periya Piratti Ammal had without any ambiguity called herself as settlor and described the document as settlement deed. Furthermore, the deed concludes as below:-

“The settlor hereby authorize the Trustee from this moment to assume charge and manage the property and carry out the provisions of this settlement. The funeral of the settlor shall be performed on her death only by the trustee(Nammalwar Nadar).”



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18. The contention of the plaintiffs is that since the vesting of the property been postponed till the death of Peria Piratti Ammal, the document is not a settlement.

19. The litmus test is decide the character of a settlement deed are:-

- (1)Whether the settlor forfeits title to the property?
- (2)Whether the transfer is *in presenti*?
- (3)Whether the settlee accepted the settlement?

20. The law permits postponement of vesting the right absolutely till the lifetime of settlor. Reserving a life interest in the property *per se* will not turn the settlement into a Will if the entrustment for *presenti* is proved. In this document, Periya Piratti Ammal had extinguished her right in the property by stating she has no power to alienate the property in any manner whatsoever and got only the right to enjoy the net income from the property. It is also expressly declared that she authorises the trustee to



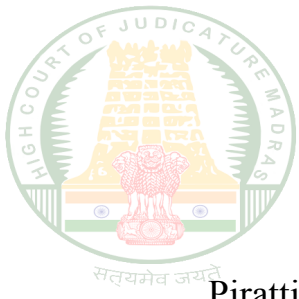
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assume charge and manage the property and carry out the provisions of this settlement.

21. Neither the recital nor the title to the document is ambiguous. When the document is clear about its nature nothing from outside shall need to be supplementary. Therefore, on a fallacious interpretation of the document, which is undoubtedly a settlement deed and without any challenge about its nature and validity, it is sought to be presumed as Will and to hold not acted upon, nor probated.

22. The very foundation of the plaintiffs' case is based on a fallacious presumption. After nearly 95 years, the plaintiffs cannot build up their case with a fallacious presumption, even without challenging the settlement document and the partition suit in O.S.No.393 of 1947. These two documents are infact the proof to hold that the settlement deed dated 17.03.1928 is duly acted upon. This partition suit in O.S.No.393 of 1947 been laid by Nammalwar Nadar (Trustee under the settlement deed of Periya



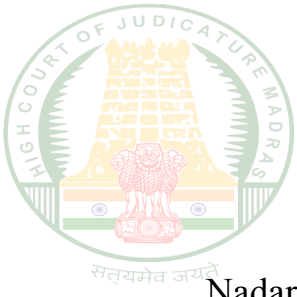
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Piratti Ammal) against Ayyavu Nadar, both are the beneficiary under the Will. On 12.03.1948, the City Civil Court at Madras had passed a decree of partition in O.S.No.393 of 1947. Thereafter, it has passed on from Ayyavu Nadar to Sakkarai Nadar.

23. The contention of the plaintiffs is that the partition suit in O.S.No.393 of 1947 is a collusive suit. Both Ayyavu Nadar and Nammalwar Nadar have no right in the property as per the deed of Periya Piratti Ammal. Therefore, the question of division does not arise.

24. As pointed out earlier, under the settlement deed of Periya Piratti Ammal, the property been vested with the male members of the Ayyavu Nadar family. The vesting was deferred till the lifetime of Periya Piratti Ammal, Ayyavu Nadar and Nammalwar Nadar (Trustee). Under the settlement deed, after deducting the expenses, half of the income derived from the property was given to the trustee(Nammalwar Nadar) and the other half income to Ayyavu Nadar. The only restriction imposed on Ayyavu



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Nadar is the right to alienate the property. The partition decree dated 12.03.1948 is only to ascertain the shares of Ayyavu Nadar and Nammalwar Nadar. The decree passed in the suit is only in terms of the settlement deed and not contrary to it. Here again, by a fallacious plaint that the decree passed in the partition suit is vitiated by fraud, the plaintiffs have come forward to seek for partition of the property left by Periya Piratti Ammal.

25. The Trial Court had rightly observed that by clever drafting, an illusory cause of action been projected in the plaint. Though it is contended that the application to amend the plaint and to challenge the decree passed in O.S.No.393 of 1947 are filed and pending. The Court failed to take the application for consideration is without any basis. No evidence placed before this Court in support of the said contention. Even assuming the plaintiffs had filed the application to amend the plaint to the effect of challenging the partition decree of the year 1948, that will not cure the inherent defect in the plaint, namely the plea of hold the settlement deed of Periya Piratti Ammal as Will. The recital in the document is clearly and



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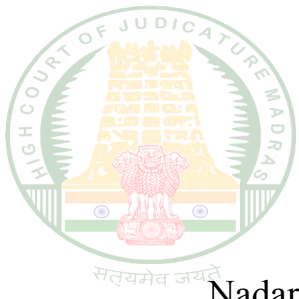
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without any ambiguity. It satisfies the ingredients required for a settlement.

The plaint suffers from the inherent defect of non disclosure of cause of action.

26. The Genealogy tree admitted by both parties shows that Ayyavu Nadar and Nammalwar Nadar are the sons of Periya Piratti Ammal's brother. They got life interest in the suit property through the settlement deed of Periya Piratti Ammal. As per the deed, after their life time, the property shall vest with the male members of Ayyavu Nadar family. Sakkarai Nadar is only the male member born to Ayyavu Nadr.

27. Therefore, after the death of Ayyavu Nadar, as per the settlement deed the property inherited by Sakkarai Nadar absolutely. Through him his sons had inherited the property, since the male descendants alone are entitled for any share in the property. After vesting of the property absolutely on Sakkari Nadar, S/o Ayyavu Nadar, who had inherited the property from his father Ayyavu Nadar, it has been dealt with by Sakkari



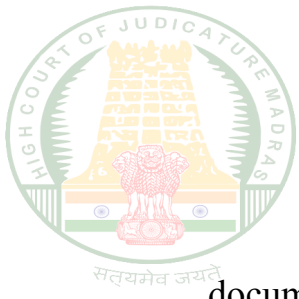
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Nadar as his absolute property.

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28. We find, the family members of Sakkari Nadar filed for a partition suit in O.S.No.3507 of 2011 and got a decree on 17.07.2013. After the partition, the descendants of Sakkarai Nadar dealt the property independently and thus, the settlement deed and sale deeds were executed to and in favour of the defendants 2 to 4.

29. Conveniently, the plaintiffs though claiming right over the property through Periya Piratti Ammal, want to ignore the settlement deed executed by her, which restricts the inheritance of her property to the male member of Ayyavu Nadar. Nowhere in the plaint, the defendants had stated how the female members of the family were jointly enjoying the property along Sakkarai Nadar. After the settlement deed was acted upon and the beneficiary shared their life interest by way of partition decree without violating the terms of the settlement deed, Sakkarai Nadar became the absolute owner of the property for his legalheirs to inherit. While these two



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documents namely, settlement deed of Periya Piratti Ammal dated 17.03.1928 and the partition deed between the life interest holder dated 12.03.1994 remains unchallenged, and allowed to act upon by the parties. After lapse of about 95 years, the present suit is filed for partition of the property left by Periya Piratti Ammal. Under document dated 17.03.1928 the intervening transfers cannot be challenged in isolation without challenging the settlement deed followed by the partition deed, which confers absolute rights on the vendors of the defendants 2 to 4. Therefore, the finding of the trial Court is upheld.

30. The records prove that the legal heirs of Sakkarai Nadar had become the absolute owner. They have been in enjoyment of the property and had divided it through the partition suit in O.S.No.3507 of 2011 dated 17.07.2013. Though much have been said about the legality of these documents, their validity has not been challenged in the manner known to law. But, wherever convenient, these documents are relied by the plaintiff to stake claim. Therefore, as rightly observed, the plaintiff cannot



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appropriate or reappropriate the same documents.

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31. It is the contention of the plaintiffs that the four transactions which happened in the year 2021. This will not provide “cause of action” for the plaintiffs to lay the suit. Admittedly, the right to convey the property was derived by the vendors through the partition decree passed in O.S.No.3507 of 2011, which was preceded by another partition decree in O.S.No.393 of 1947 and the settlement deed dated 17.03.1928. Making a bald allegation that the partition deed is non est in law, the present suit is filed. Hence, the trial Court has rejected the suit for want of cause of action and on the ground of limitation.

32. The facts and circumstances as narrated above, it is clearly proved that this is a vexatious suit filed without any real cause of action.

33. The contention of the plaintiffs that the deed dated 17.03.1928 is not a settlement deed, is without any valid ground. The said contention is



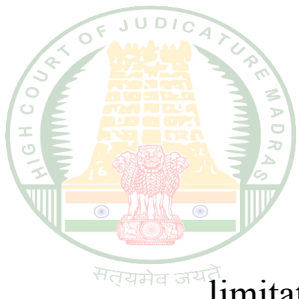
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contrary to the proven fact. Based on the settlement deed the beneficiary and the trustee had acted upon it and left the property for the male descendants of Ayyavu Nadar as per the terms of the settlement deed.

34. For an effective implementation of the settlor's intention, Ayyavu Nadar and Nammalwar Nadar had divided the property with the help of the Court decree. After the lifetime the property had vested in Sakkarai Nadar, who is the sole male descendants of Ayyavu Nadar. The legal heirs of Sakkari Nadar, by virtue of the partition decree in O.S.No.3507 of 2011, had divided the property and have been enjoying the same. Thereafter they executed the settlement deed and sale deeds of the respective shares to and in favour of defendants 2 to 4.

35. Thus, it is very clear that the settlement of Periya Piratti Ammal was duly acted upon and the property properly been dealt with at different stages, excluding the female descendants of Ayyavu Nadar. In view of this, the trial Court has rightly dismissed the suit for want of cause of action and



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limitation, since the suit challenges only the latest transfer, without challenging the earlier transactions and the partition decree passed by the Court. Being a vexatious litigation, making a preposterous claim without any semblance of right, it has been rightly rejected and the appeal against the said order is liable to be dismissed as devoid of merits.

36. In the result, **this Appeal Suit is dismissed**. The fair and decretal order passed by the XXI Additional City Civil Court, Chennai in I.A.No.7 of 2024 in O.S.No.4607 of 2023, dated 05.03.2025 is hereby confirmed. Consequently, connected Miscellaneous Petition is closed. No costs.

18.06.2025

Index:yes

Internet:yes

Speaking order/non speaking order

Neutral citation:yes/no

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To

1.XXI Additional City Civil Court, Chennai .

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

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DR.G.JAYACHANDRAN,J.

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Pre-delivery judgment made in
Appeal Suit No.584 of 2025
and
C.M.P.No.10462 of 2025

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