



AS.No.108 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2025

CORAM

THE HONOURABLE MR.JUSTICE M. JOTHIRAMAN

AS.No.108 of 2021
and CMP.No.6876 of 2021

B.Chandran (died)

1.C.Prabhu

2.C.Baktha Singh

G.Govindan (died)

Devaki (died)

3.C.Leelipushpam

4.C.Ranjith Singh

... appellants / defendants 2, 3, 6 & 7
V.

1. B.Gajendran (died)

2.G.Padma

3.G.Manimaran

4.Malarvizhi

(R2 to R4 are brought on record as LR's of deceased 1st respondent/plaintiff in CMP.Nos.18544, 18545, 18546 & 18547 of 2021 dated 28.02.2023)

... respondents / plaintiff

Prayer : This First Appeal is filed under Order 41 r/w.Section 96

Code of Civil Procedure 1908 against the judgment and decree dated

21.02.2019 passed in OS.No.5526 of 2013 on the file of the XVIII



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Additional Judge, City Civil Court, Chennai.

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For Appellants : Mr.S.Arulanda

For Respondents : Mr.B.Kuppu Singh for R2 to R4

J U D G M E N T

Unsuccessful defendants 2, 3, 6 & 7 have preferred the appeal.

The parties are herein after referred to as per their litigative status before the trial Court.

2. The is filed for declaring the release deed dated 18.07.2001 in Doc.No.1771 of 2001 on the file of the Sub Registrar Office, Mylapore and for partition seeking $\frac{1}{4}$ th share to the plaintiff. The trail Court decreed the suit as prayed for.

3. The Brief case of the plaintiff is as follows :-

The plaintiff is the brother of the first defendant. The second and third defendant are sons of the first defendant. The fourth defendant is the building promoter. The suit property belongs to the plaintiff's father late.VP.Balasundaram, who died in the year 1985, apart from the first defendant, one Mr.B.Kothandapani and Miss.Govindammal are the



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legal heirs of the deceased VP.Balasundaram. The defendants 1 to 3 with an ulterior motive to grab the lawful share of the plaintiff in the suit property had fabricated and forged the release deed dated 18.07.2001 purported to have been executed by the plaintiff in favour of the late first defendant in Doc.No.1771 of 2001. The second and third defendant have affixed their signatures as witnesses for the above said fraudulent transaction. As per the said release deed, the plaintiff's 1/4th share in the property has been released in favour of the first defendant for a consideration of Rs.1Lakh. The plaintiff was not aware of the above transaction till second week of May 2003, since the suit property was in the common enjoyment of the plaintiff and first defendant. During the second week of May 2003, when the plaintiff found that the suit property has been demolished and new construction has been started by the fourth defendant. The plaintiff has lodged a police complaint before the Deputy Commissioner of Police, Central Crime Branch, Egmore Chennai against the defendant 1 to 3 and the investigation is still pending. In the meantime, the defendants are trying to create an encumbrance over the suit property and the defendants have started putting up an unauthorised construction in the suit property.



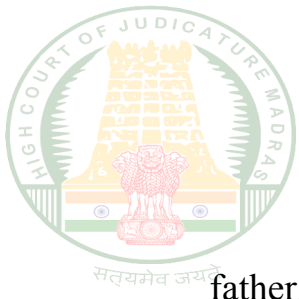
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4. The brief case of the defendants 1 to 3 are as follows :-

The alleged co-owners Kothandapani and Govindammal have not been made as parties to the suit. The suit itself is bad for mis-joinder of necessary parties. Mr.VP.Balasundaram/father of the plaintiff and the first defendant owned properties including the suit property and other properties, apart from agriculture lands at Mangadu and Poonamallee. VP.Balasundaram had three sons, and one daughter. The said VP.Balasundaram settled a portion of the property bearing Door No.8 (New No.29/11), Robertson Lane, measuring about 2336 Sq.ft in favour of Mr.B.Gothandapani, by virtue of settlement deed dated 10.11.1965. Similarly, Mr.VP.Balasundaram settled the land situated at Door No.21, New Door No.12/30, Robertson Lane comprised in S.No.4156 covered by Patta number 251 of 1924 in favour of the plaintiff.

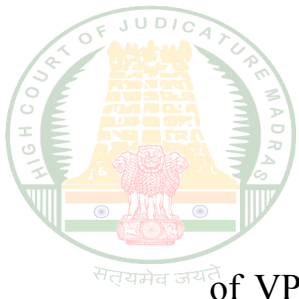
4(i). The father had settled the properties in favour of the plaintiff and Kothandapani, he allotted property measuring about 845 Sq.ft to the first defendant. The property was allotted to the first defendant by his



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father, as agreed by other family members, including the plaintiff and the first defendant wanted release of the shares of his other brothers and sister through documents. As the family arrangement was acted upon, the execution of document was only a formality, as per the request of the first defendant, his sister/Govindammal @ Hannah Balasundram and Mr.B.Kothandapani executed release deed in favour of the first defendant vide Doc.No.730 of 1999 on 31.03.1999. The plaintiff also released his share in the suit property in favour of the first defendant through Release deed dated 18.07.2001, the first defendant is in possession and enjoyment of the property, right from 1965. The first defendant wanted to develop the property and hence he demolished the old superstructure and started putting up a new construction in the suit property through 4th defendant. For making construction, the defendant raised money by selling 132 sq.ft undivided share in the suit property in the rear side of the suit property to one Mr.C.K.Ramu on 16.06.2003. The release deed dated 18.07.2001 could be termed as a forged document and having executed the release deed in favour of the first defendant and the suit has been filed with malafide motive to blackmail the first defendant and to extract money. The plaintiff would have kept quiet for more than 28 years after the death



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of VP.Balasundaram for claiming his alleged share in the suit property.

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The plaintiff has miserably failed to make other brothers and sisters as parties to the suit proceedings and hence the suit itself is bad for non joinder of necessary parties. The first defendant has been paying the property tax, water charges and electricity charges etc., and the first defendant has alienated a flat in the first floor at the rear side along with one 132 sq.ft undivided share of the suit property together with all the common right. The said flat was sold by the first defendant only to raise funds for the construction made by him. There is no cause of action for the suit and the suit is undervalued for the purpose of court fee and hence the suit is liable to be dismissed.

5. The second and third defendant have also filed additional written statement. The plaintiff has also filed reply statement.

6. Based on the Pleadings, the trial court framed the following issues :-

1. Whether the plaintiff is entitled to the relief of declaration against the defendants?

2. Whether the plaintiff is entitled to get 1/4th share



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the suit properties?

3. Whether the plaintiff is entitled to get permanent injunction against the defendants in respect of his share?

4. Whether the plaintiff is not entitled to get any relief as per release deed dated 18.07.2001?

5. To what relief?

7. On the side of the plaintiff, the plaintiff was examined himself as PW1 and Ex.A1 to Ex.A4 were marked. On the side of the defendants, the 3rd defendant was examined as DW1 and marked Ex.B1 to Ex.B12.

Findings of the trial court :

8. The suit property was allotted to V.P.Balasundram as a result of partition among his brother by way of release deed executed by the Legal heirs of the V.P.Paranjothi, the brother of V.P.Balasundram. The defendants 1 to 3 having admitted that the suit property belonged to V.P.Balasundaram, the property tax and the electricity bill still stands in



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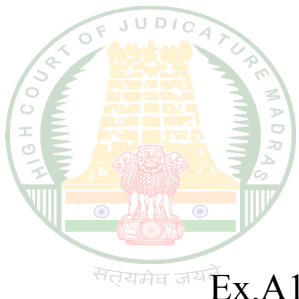
the name of V.P.Balasundram. The defendants 1 to 3 had not filed any documents to show that the property tax was paid in the name of first defendant, subsequent to the alleged oral allotment by V.P.Balasundram in favour of the first defendant or subsequent to the disputed release deed dated 31.03.1999 executed by Govindammal and Kothandapani or subsequent to the disputed release deed said to have been executed by the plaintiff under Ex.A1. From the recitals found in Ex.A1, it reveals that the V.P.Balasundaram had died intestate and there is no mention of V.P.Balasundram allotting the suit property orally to the first defendant and with regard to the release deed/Ex.A1 being executed only for formality. The 3rd defendant namely DW1 had categorically admitted that the legal heirs of the deceased V.P.Balasundram had equal rights in the suit property. The witness in Ex.A1 namely defendants 2 and 3 had not been present at the time of execution of Ex.A1 and has not seen the plaintiff affixing the signature under Ex.A1 and not signed in the presence of the plaintiff. The suit is not bad for non-joinder of necessary parties and the plaintiff has proved the release deed under Ex.A1 is a forged one.



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9. The learned counsel appearing for the appellants/defendants 2, 3, 6 and 7 would submit that the trial Court ought to have held while executing the Gift deed under Ex.B3 dated 24.08.1960 in favour of B.Kothandapani, the donor had stated that his other properties be divided and given to each of his son share and it was arranged and agreed between the donor and his sons accordingly. The trial Court has failed in not considering the fact that the first defendant was allotted a suit schedule property of his father during his lifetime and the first defendant along with his family has been living with the concurrence of the plaintiff and Kothandapani in the suit property for a very longtime. The trial Court ought to have held that the release deed executed by the plaintiff under Ex.A1 in favour of the first defendant is only a formality as the suit schedule property was already allotted to the first defendant even before execution of Ex.B3 and Ex.B5. He would further argued that the trial Court has failed to consider the fact that PW1 having admitted the signature found in the plaint, vakalat and proof affidavit are not of him. But the Trial Court erred in holding that the unadmitted signatures found in the vakalat and deposition of cross examination do not tally with the signatures of certified copy of the release deed under

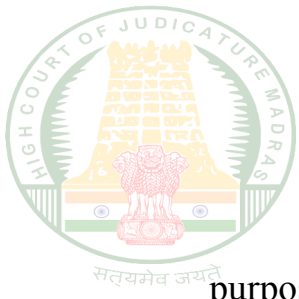


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Ex.A1. He would submit that the trial Court ought to have dismissed the suit, as the suit in OS.No.65 of 2004 is pending on the file of the District Court, Kancheepuram filed by the first defendant and others against the plaintiff in respect of Mangadu property.

10. Per contra, the learned counsel for the respondent/plaintiffs would submit that the plaintiff has proved the release deed executed under Ex.A1 is forged one and the defendants 1 to 3 admitted in the written statement that 132 sq.ft undivided share has been sold to 3rd parties and the encumbrance being proved and therefore the plaintiff is entitled for 1/4th share. The learned counsel further submit that the plaintiff's father late V.P.Balsundram had died intestate and the said V.P.Balasundram has not allotted the suit property orally to the 1st defendant/Chandran. He would submit that 3rd defendant/DW1/ Bakthasingh who is the second son of the 1st defendant in his evidence categorically admitted that at the time of execution of release deed in Ex.A1, the second defendant/Prabhu and DW1 have not present and they had not seen the plaintiff affixing his signature in Ex.A1 and therefore, the plaintiff has proved that Ex.A1 release deed is created one for the



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purpose of the suit. The judgment and decree of trial Court does not suffer from any infirmity.

11. Points for determination arises in this appeal is that (i)whether the Ex.A1 release deed dated 18.07.2001 is created one? and (ii)Whether the plaintiff is entitled to get 1/4th share in the suit schedule properties?

12. This Court has considered the submissions made on either side and perused the materials available on record.

13. It is not in dispute that the suit schedule property originally belong to late V.P.Balasundaram. The said V.P.Balasundaram had three sons and one daughter namely the plaintiff/Gajendran, 1st defendant/Chandran, Kothandapani and Govindamal @ Hinnah Balasundram. During the pendency of this appeal, the plaintiff/Gajendran died and his legal heirs have been brought on record. According to the plaintiff, on 18.07.2001, the 1st defendant/Chandran had forged and fabricated a release deed, as if executed by the plaintiff in favour of the 1st defendant/Chandran. Per contra, it is the specific case of



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the defendants 1 to 3 is that the plaintiff has received a sum of Rupees one lakh as consideration and executed the release deed under Ex.A1 in favour of the 1st defendant.

14. DW1/3rd defendant/Bakthasingh in his cross examination categorically admits that the suit property belonged to V.P.Balasundram and also admits that the property tax, electricity bill were still stands in the name of V.P.Balasundram and they have not filed nay documents to show that the property tax was paid in the name of the 1st defendant. DW1 further admitted that the legal heirs of the deceased V.P.Balasundaram have equal rights in the suit property.

15. At this juncture, whether the initial burden lies on the plaintiff with regard to Ex.A1, has been discharged or not has to be decided. It is pertinent to refer Sections 101, 102 and 103 of Indian Evidence Act, 1872 :-

*“Section **101. Burden of proof** Whoever desires any Court to give judgment as to any legal*



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right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Section **"102. On whom burden of proof lies.**

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Section **103. Burden of proof as to particular fact.** *The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."*

16. On perusal of Ex.A1 release deed dated 18.07.2001, shows that



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the defendants 2 and 3 who are the sons of the 1st defendant had signed as witnesses. DW1 in his cross examination categorically admits that defendants 2 and 3 had not been present at the time of execution of Ex.A1 and had not seen the plaintiff affixing his signature in Ex.A1 and had not signed in Ex.A1 in the presence of the plaintiff and not aware whether the consideration of Rs.1 Lakh mentioned in Ex.A1 was paid to the plaintiff by his father/1st defendant.

17. DW1 also admits that consideration in respect of release deed said to have been executed by the other legal heirs of V.P.Balasundaram namely, Kothandapani and Govindammal not dispersed by his father/1st defendant. It is pertinent to mention that the said Kothandapani and Govindammal did not come forward to challenge the same in a manner known to law. Though the defendants 2 & 3 have filed an additional written statement and pleaded that a suit for partition in OS.No.65 of 2004 is pending on the file of the District Court, Kancheepuram with regard to the properties situated at Managadu, Tiruvallur district between the legal heirs of V.P.Balasundram and the plaintiffs and defendants had not chosen to file any documents to that effect.



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18. PW1/plaintiff in his cross examination held on 19.06.2018 admits that the signatures found in the plaint, vakalat and proof affidavit was not that of him. However, PW1 in his further cross examination held on 09.07.2018 deposed that he has wrongly stated that the signature found in plaint, vakalat and proof affidavit was not that of him in his previous cross examination. The initial burden lies on the plaintiff has been discharged and the burden shifts on the side of the defendant, that the Ex.A1 release deed was acted upon and the same is not discharged by the defendants. Therefore, Ex.A1 release deed is not binding on the plaintiff.

19. The defendants admitted in their written statement that 132 sq.ft of undivided share has been sold to one Mr.C.K.Ramu on 16.06.2003, shows that the suit schedule property is not partitioned in a manner known to law and the Ex.A1 release deed is created one and not acted upon. Therefore, the plaintiff is entitled for 1/4th share in the suit schedule property. This Court do not find any reason to interfere with the impugned judgment and decree of the Court below. There is no merit in



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this appeal and the same is liable to be dismissed. The points are answered accordingly.

20. In the result, the first appeal stands dismissed and the judgment and decree passed in OS.No.5526 of 2013 dated 21.02.2019 on the file of the XVIII Additional City Civil Court, Chennai is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

13.06.2025

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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To

The XVIII Additional Judge, City Civil Court, Chennai.



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M. JOTHIRAMAN, J.

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