



A.S.No.581 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 17.02.2025

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

A.S.No.581 of 2022

and

C.M.P.No.22265 of 2022

1. Ramasamy
2. Rajkannu
3. Saraswathi

... Appellants/Defendants 1 to 3

-VS-

1. Palaniammal
2. Rajeswari
3. Dhanalakshmi
4. Thangavel

... Respondents 1 to 3/Plaintiffs

... 4th Respondent/4th Defendant

Prayer: Appeal Suit is filed under Section 96 r/w Order XLI Rule 1 of CPC, 1908 to set aside the judgment and decree in O.S.No.242 of 2013 dated 24.03.2022 on the file of the Hon'ble I Additional District Judge, Salem and dismiss the said suit as prayed for by the Appellants.

For Appellants : Mr.P.Rajendran

For R1 to R4 : Mr.B.N.Chandra Shekhar

J U D G M E N T

Aggrieved over the preliminary decree dividing the suit property into two equal shares by metes and bounds and allotting the



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plaintiffs and 4th defendant together one such share, the present appeal came to be filed.

2. The parties are arrayed as per their own ranking before the Trial Court.

3. The case of the plaintiffs is that one Kuppu Udayar had two wives, namely, Thangayammal and Ramayee. Thangayammal had a daughter by name Valliammal, who died leaving behind plaintiffs 1 to 3 as surviving legal heirs. Ramayee, the other wife of Kuppu Udayar had one son called Ramasamy, who is the 1st Defendant. The defendants 2 and 3 are the son and daughter of the 1st defendant respectively.

4. According to the plaintiffs, Kuppu Udayar died on 30.12.1983 and Valliammal, one of the wives of Kuppu Udayar and mother of plaintiffs died on 26.08.2004 and the suit property is the ancestral property of the plaintiffs and the 1st defendant and they are in joint possession and enjoyment of the same. The plaintiffs and the 4th defendant



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are together entitled to half share and the 1st defendant is entitled to half share in the suit property. As the 1st defendant had not come forward to effect partition and he made arrangement to alienate and encumber the suit property, the suit in O.S.No.242 of 2013 has been filed before the I Additional District Court, Salem.

5. In the written statement, while admitting the relationship, it is stated that Kuppu Udayar died on 30.12.1983, leaving behind the 1st defendant and his sister Valliammal. It is the specific case of the 1st defendant that on 22.08.1994, Valliammal had executed a Release Deed, relinquishing her half right over the suit schedule mentioned property in favour of the 1st defendant after receiving a consideration of Rs.40,000/-. Ever since the date of execution, of the said Release Deed, the 1st defendant is in absolute possession and enjoyment of the property and the plaintiffs had suppressed the material facts of the Release Deed. Hence, it is denied that they are in joint possession and enjoyment of the property.

6. The 2nd defendant has also filed a written statement as that of the 1st defendant, stating that the 1st defendant had executed a Settlement



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Deed dated 19.08.2013 in Doc.No.4044 of 2013 in respect of the half share, which was earlier relinquished by Valliammal and the remaining half share was partitioned among the legal heirs of the 1st defendant on 19.08.2013 and registered as Doc.No.4823 of 2013 on the file of SRO, Ayodhiyapattinam and both the deeds had already been acted upon.

7. The 3rd defendant has also filed a written statement adopting the same narration of facts as that of the 2nd defendant.

8. The 4th defendant filed a written statement after the 1st defendant was examined in the case. According to the 4th defendant, he and his wife were not living in a place shown in the Release Deed, which is 10 kms away from that place, as they had vacated the place mentioned in the alleged Release Deed several years before 1994. According to him, he and his wife Valliammal did not go to the office of the Sub Registrar, Ayodhiyapattanam on 22.08.1994 or on any other date to register any such document. Thus, Valliammal did not execute any Release Deed in favour of the 1st defendant at any point of time.



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9. The Trial Court, on the basis of the aforesaid pleadings,

framed the following issues:

i) Whether the plaintiffs are entitled to preliminary decree as prayed for?

ii) Whether the plaintiffs have suppressed the Release Deed dated 22.08.1994?

iii) Whether the 1st defendant is the absolute owner as per Patta No.52?

iv) Whether the settlement deed dated 19.08.2013 executed by the 1st defendant in favour of the 2nd defendant is valid and binding on the plaintiffs?

v) Whether the partition deed dated 19.08.2013 is valid and binding on the plaintiffs?

vi) Whether the plaintiffs are entitled for permanent injunction as prayed for? And

v) As to what other relief?

10. Subsequently, the following additional issues were framed by the Trial Court:

i) Whether the Release Deed dated 22.08.1994 is true and valid?

ii) Whether the thumb impression contained in the Release Deed belongs to Valliammal?



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11. On the side of the plaintiffs, 3rd plaintiff was examined as

WEB COPY P.W.1 and Ex.A1 to Ex.A9 were marked. On the side of the defendants, 1st defendant was examined as D.W.1 and Ex.B1 to Ex.B6 were marked. One independent witness Ponnusamy was examined as D.W.2 and Ex.B7 was marked through him. The 2nd defendant was examined as D.W.3 and Ex.B8 to Ex.B11 were marked and 4th defendant was examined as D.W.4.

12. The Trial Court, after considering the entire evidence, held that the 1st defendant has not proved the Release Deed and granted partition in respect of the half share. Challenging the said finding, the instant appeal has been filed.

13. Learned counsel for the appellants would mainly submit that the Release Deed (Ex.B6) was executed by Valliammal, who is the daughter of Kuppu Udayar in favour of Ramasamy (D1) on 22.08.1994. According to him, the document is the registered document and one of the witnesses to the document has clearly proved the execution of the document and the said Release Deed has not been questioned all these years and

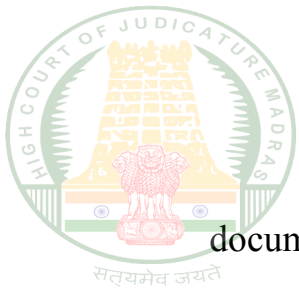


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therefore, the plaintiffs cannot seek for partition. According to him, the Trial Court has placed burden on the 1st defendant to establish the document, viz., Ex.B6, especially when the said document has not been denied in the plaint and no reply statement whatsoever has been filed to question the document. To the contrary, the Trial Court shifted the burden on the 1st defendant to prove the document by way of expert evidence. When one of the attesting witnesses had clearly spoken about the execution of the document, which is a registered document, the Trial Court is wrong in placing the burden on the defendants. He would further submit that even P.W.1 in the proof affidavit did not deny the execution and registration of Ex.B1, which is the certified copy of the Release Deed dated 22.08.1994 and in the absence of challenge to the Release Deed, the plaintiffs are not entitled to partition.

14. Per contra, learned counsel for the respondents would contend that 4th defendant, who is one of the witnesses said to have been attested in the Release Deed, clearly unearthed the fact that the Release Deed had not been executed by his wife and once the execution of



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document itself is denied, the Trial Court is right in placing the burden on the defendants to establish the factum of execution. He would further contend that as the defendants failed to prove the execution, the said document cannot be considered and the decree and judgment of the Trial Court, disbelieving the document and granting partition, cannot be faulted with. It is the contention of the learned counsel for the respondents that Ex.A5, a release deed executed by the plaintiffs and 4th defendant in favour of one Jamunarani in connection with joint family property and in the said document, the 1st defendant is one of the attesting witnesses. When a person has signed the document, admitting the character of the property, he cannot later take a different stand.

15. In the light of the above, the points for consideration in this appeal are as follows:

- i) Whether the Release Deed dated 22.08.1994 is true and valid and binding on the plaintiffs?
- ii) Whether the defendants 1 to 3 proved the execution of the Release Deed dated 22.08.1994?



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iii) Whether the Trial Court is right in placing the burden on

the defendants to prove the Release Deed dated 22.08.1994, particularly when the execution of the document has been duly proved in the manner known to law and the same has not been questioned all these years?

iv) Whether a person signing as an attesting witness in one of the documents will be estopped from going behind the contents of the document?

16. The fact that Kuppu Udayar was the original owner of the property is not disputed and that he had two wives, namely, Thangayammal and Ramayee. The plaintiffs' mother Valliammal was born through Thangayammal. The 1st defendant was born through Ramayee and the defendants 2 and 3 are the son and daughter of the 1st defendant and the relationship of the parties is not in dispute.

17. It is the contention of the plaintiffs in their entire pleadings that though the suit property is a joint family property, the 1st defendant is effecting partition, besides executing a settlement deed in favour of the 2nd defendant. That apart, a partition deed came to be executed between them.

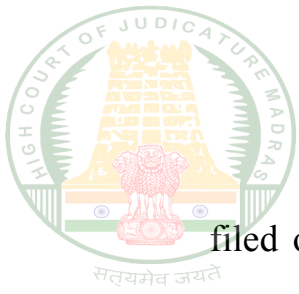


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Whereas, it is the specific stand of the defendants 1 to 3 that Valliammal had executed a Release Deed in respect of her share after receiving Rs.40,000/- consideration in favour of the 1st defendant and after the death of Valliammal, the plaintiffs, suppressing the said Release Deed filed the present suit.

18. It is relevant to note that the 4th defendant is the father of the plaintiffs, who was impleaded in the suit only on 16.03.2016. The 1st defendant filed the written statement on 16.09.2014, wherein he had specifically pleaded about the Release Deed executed by her sister Valliammal / mother of the plaintiffs. It is to be noted that the existence of the Release Deed is not denied by way of any reply submitted by the plaintiffs. Whereas the 4th defendant, who is the father of the plaintiffs was impleaded only on 16.03.2016. Similarly, the defendants 2 and 3 filed their respective written statements, reiterating the same averments on 15.02.2016. Even at that time, the plaintiffs did not file any reply statement, denying the document. Whereas the 4th defendant filed a written statement, denying the Release Deed executed by his wife and the said statement was



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filed only on 29.01.2019, that too, after recording substantial evidence by the parties. In fact, D.W.1 was cross examined on 18.01.2019 and after cross examination of D.W.1 on 18.01.2019, the written statement of the 4th defendant was filed on 29.01.2019. Above factual details are relevant to assess the conduct and defence taken by the defendants.

19. Now, in the light of the above background, when the document is analyzed, in the Release Deed / Ex.B6 executed by Valliammal on 22.08.1994 in favour of the 1st defendant, it has been clearly stated that since the property is a joint family property, in which Valliammal has half share, she has relinquished her share in favour of the 1st defendant after receiving Rs.40,000/- consideration. The document was registered on the file of SRO, Ayodhiyapattinam and attested by D.W.2 and D.W.4 and thus, Ex.B6 is the registered document. A registered document always carries a presumption that the document is registered in a proper manner by the authorities, which is their official act. That apart, D.W.2 (Ponnusamy), one of the witnesses was examined and he clearly deposed in his evidence that the document was executed by Valliammal in favour of the 1st defendant in



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his presence and he had also signed as one of the attesting witnesses. In the cross examination, he had also stated about the Release Deed and spoken about the payment of consideration of Rs.40,000/- in the presence of witnesses and Valliammal has also put thumb impression in the document. Much emphasis has been made by the learned counsel for the respondents that one of the witnesses known as Valliammal has put her thumb impression and therefore, identity has not been established.

20. On perusal of the very document, it is seen that Valliammal was identified before the Sub Registrar by one Chellappa Udaiyar, S/o.Mottaiappan Udayar and E.Krishnan, S/o.Ilayarama Udayar. Apart from identification of witnesses, D.W.2 and D.W.4 and one K.Manickam also signed as witnesses. Though the thumb impression of Valliammal was also obtained in the place earmarked for witnesses, in fact, that has been taken advantage by the counsel to contend that the document has not been properly proved. D.W.2, one of the attesting witnesses clearly stated that there were six people present at the relevant point of time. Once the execution of document has been proved and D.W.2 has clearly spoken about



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the thumb impression affixed by Valliammal and the document has been registered, it is to be held that the document has been duly proved in the manner known to law.

21. Needless to state that once the execution of the document has been properly established and it is registered, the burden is automatically shifted on the other side, who disputed the very signature. The plaintiffs ought to have taken steps to disprove the factum of execution. They have not taken any steps in this regard. It is also to be noted that as already stated, though the existence of Release Deed was indicated in the written statement filed in the year 2014 itself, the same has not been denied. Whereas the 4th defendant filed written statement on 29.01.2019 after D.W.1 was examined and denied the document. He was also examined as D.W.4. Merely because D.W.4 disputed his signature later point of time, that too, the defendants have established their case, his evidence cannot be given much importance.

22. When the evidence of P.W.1 is carefully analyzed, it is seen that she has pleaded ignorance about the Release Deed executed by her



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mother and she has also not sought any relief to cancel the document. She has also pleaded ignorance about the signature of her father as a witness in the said document. She has also pleaded ignorance that her mother has not taken any steps till her death to avoid the document. Therefore, when the document has not been denied and its execution has been clearly established by examining attesting witnesses, in such case, the burden should be on the plaintiffs to disprove the document by seeking expert aid and admittedly, no steps whatsoever were taken. Therefore, the finding of the Trial Court that there is a doubt in the execution of the document, in view of this Court, is not proper, as the Trial Court has not appreciated the evidence in this regard properly.

23. Yet another submission made by the plaintiffs is that in Ex.A5, a release deed executed by the plaintiffs and 4th defendant in favour of one Jamunarani in connection with the property, the 1st defendant is one of the attesting witnesses and according to the plaintiffs, Ex.B6 is not acted upon. The defendants pleaded in the written statement that the Release Deed in Ex.A5 is not connected with the suit property. It is further submitted that



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though he had not read the contents of the documents at the relevant point of time, pursuant to the insistence of the purchaser, he signed as a witness in the document.

24. Be that as it may, on perusal of both documents, namely, Ex.A5 and Ex.B6, it is seen that Ex.A5 is not connected with the suit property or the property, which was the subject matter of the Release Deed. The Release Deed was executed in respect of Patta No.52, S.Nos.73/2, 98/6, 98/7, 98/8, 98/9 and half of the share of these survey numbers held by Valliammal has been released under Ex.B6, whereas Ex.A5 is with regard to Patta Nos.89 and 376 and S.Nos.21/6, 22/1 and 22/5 and therefore, it cannot be said that only in respect of the subject matter of the Release Deed / Ex.B6, Ex.A5 came to be executed. The Release Deed in Ex.B6 is in respect of Patta No.52 against specific S.Nos.73/2, 98/6, 98/7, 98/8, 98/9 and not in respect of the property covered under Ex.A5. Even assuming that there was some recital as far as that survey number is concerned to the effect that those survey numbers are joint family properties, that will not amount to estoppel, as far as release deed executed in respect of different survey



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numbers. Therefore, the contention of the plaintiffs in this regard has no legs to stand. Those aspects have not been considered by the Trial Court and in fact, the Trial Court has not properly appreciated the evidence and documents in this regard.

25. A reading of Ex.A5 makes it very clear that after the death of Valliammal, the 1st defendant has dealt with the property and sold the same to one Jamunarani and thereafter, at the insistence of the purchaser, all of them have jointly executed the release deed/Ex.A5. S.No.22/5 was a joint property at the relevant point of time and the Release Deed in Ex.B6 is in respect of Patta No.52. In such view of the matter, the question of applying estoppel merely on the ground that 1st defendant is a witness in the document will not arise at all. As the plaintiffs have not discharged the burden to disprove the execution of Ex.B6, when the mother had already relinquished her share in the suit property, the plaintiffs and the 4th defendant cannot claim any right over the suit property. Accordingly, the points raised in this appeal are answered.



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26. In the result, the Appeal Suit is allowed and the judgment

and decree passed in O.S.No.242 of 2013 dated 24.03.2022 by the I Additional District Judge, Salem is hereby set aside and the suit filed by the plaintiffs stands dismissed. Considering the relationship of the parties, there is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

17.02.2025

Index: Yes / No

Internet: Yes / No

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To:

1. The I Additional District Judge,
Salem.
2. The Section Officer,
V.R.Section,
High Court,
Madras.



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N.SATHISH KUMAR,J.,
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