

A.S.No.290 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 01.07.2025

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

A.S.No.290 of 2024
and
C.M.P.No.16101 of 2024

1.Dr.Gajendraraj
2.G.Devendran

... Appellants/Defendants

Versus

G.Ramesh Rajan

... Respondent/Plaintiff

Appeal Suit is filed under Section 96 of Civil Procedure Code against the Preliminary Decree dated 25.04.2022 in O.S.No.4449 of 2017 pending on the file of learned XIX Additional District and Sessions Judge, City Civil Court, Chennai.

For Appellants	: Mr.R.Subramanian
For Respondent	: Mr.K.V.Sundararajan

JUDGMENT

This Appeal Suit is filed against the Preliminary Decree dated 25.04.2022 in O.S.No.4449 of 2017 pending on the file of learned XIX Additional District and Sessions Judge, City Civil Court, Chennai.



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WEB COPY2. The learned Counsel for the Appellants Thiru.R.Subramanian submitted his arguments. The learned Counsel for the Appellants invited the attention of this Court to the introduction paragraph in the judgment in O.S.No.4449 of 2017, dated 25.04.2022 on the file of the learned XIX Additional District and Sessions Judge, City Civil Court, Chennai. In the introduction paragraph, it is stated that R.Subramanian, Counsel appeared for the Defendants 1 and 2. Subsequently, it is stated that Defendants 1 and 2 were set *ex parte*. It is the contention of the learned Counsel for the Appellants that he himself appeared before the learned Judge. In the month of April, he suffered fracture in an accident. Therefore, he was unable to attend Court due to fracture on his leg. When the case came up for hearing on 5.4.2022, he had sent one of his junior colleagues to represent on his behalf. Accordingly, on request, the case was adjourned to 12.04.2022. On 12.04.2022, Thiru.R.Subramanian himself was available before the Court. Still, the learned Judge had recorded as the Defendants 1 and 2 set *ex parte*.

3. It is the contention of the learned Counsel for the Appellants that the suit in O.S.4449 of 2017 was instituted by the brother of the Defendants 1 and 2 as Plaintiff seeking the relief of partition of the suit property. In the



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suit for partition, the Plaintiff had impleaded Defendants 1 and 2 alone. The

Plaintiff and the Defendants are sons of C.Ganesan. The said C.Ganesan is

the son of Chinnappan. Chinnappan had only one son Ganesan. Ganesan

had five sons and a daughter. The Plaintiff Ramesh Rajan along with the

Defendants - Gajendraraj and Devendran, mother of Plaintiff and

Defendants, sister Deva Kumari and two brothers had executed settlement

deed in favour of the first Appellant herein Dr.Gajendraraj. Dr.Gajendraraj is

a Super Specialist working in the Tamil Nadu Medical Service in the Madras

Medical College. Since the property is a house, having an extent of 720 sq. ft.

and it cannot be divided equally, the mother of the Plaintiff and the

Defendants along with other siblings of the first Defendant Dr.Gajendraraj

had executed a Release Deed thereby releasing their undivided share in

favour of Dr.Gajendraraj in the year 2007. Subsequently, without the

knowledge of the first Defendant Dr.Gajendraraj, other siblings and mother

of the first Defendant Dr.Gajendraraj had unilaterally cancelled the Release

Deed after three years from the date of execution of the Release Deed which

is against law. It is the submission of the learned Counsel for the Appellants

that after execution of Release Deed, naturally all the siblings of

Dr.Gajendraraj had released their respective shares. Therefore, automatically,

the entire property vest with the first Defendant Dr.Gajendraraj. Once having



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released their undivided share they do not have any right in the suit property.

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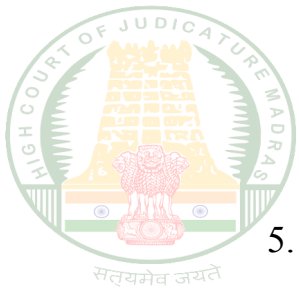
While so, after the period of limitation beyond three years the parties to the Release Deed had executed cancellation deed thereby cancelling the Release Deed executed in the year 2013. Cancellation deed cancelling the Release Deed is illegal against them as they do not have the right to cancel the Release Deed as on the date of execution of the Release Deed they are not the owner of the property. While so, behind the back of the first Defendant Dr.Gajendraraj, the mother and other siblings of Dr.Gajendraraj had executed cancellation deed and subsequently, the mother of the Plaintiff and Defendants executed settlement deed/gift deed in favour of her children – five sons and one daughter. Therefore, her share of 1/7 was granted to each of the child. After she had released her 1/6 share equally to her children, the other siblings of the Plaintiff and the Defendants had executed their undivided share and executed Release Deed in favour of the Plaintiff Ramesh Rajan. The said Ramesh Rajan had filed the suit for partition in which he had impleaded the Defendants 1 and 2 alone. If really the suit was for partition, he ought to have impleaded all the siblings/all the co-parceners as party Defendants in the suit. He had not done so. Also behind the back of the first Defendant Dr.Gajendraraj, the siblings of Dr.Gajendraraj along with his mother had executed cancellation deed, cancelling the Release Deed in



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favour of the Dr.Gajendraraj. Dr.Gajendraraj was in the dark about those developments. Therefore, the suit ought not to have been decreed. The suit was filed without impleading all the legal heirs of Ganesan. The judgment of the learned XIX Additional District and Sessions Judge, City Civil Court, Chennai in O.S.No.4449 of 2017 dated 25.04.2022 is to be set aside as perverse. It is the contention of the learned Counsel for the Appellants that the suit for partition shall include all the properties of the family along with all the co-parceners of the property. Here the Plaintiff Ramesh Rajan had instituted the suit as though the other co-parceners had executed the Release Deed in favour of the Plaintiff herein. The only persons who had not executed the Release Deed are Defendants 1 and 2. Therefore, he seeks partition.

4. The learned Counsel for the Appellant Thiru.R.Subramanian in support of his submissions relied on the judgments of this Court in **S.A.(MD) No.221 of 2014 [Mrugan vs. Natarajan], dated 22.09.2022;** passed in **S.A.No.1177 of 2009 [Munusamy vs. Subramani], dated 27.09.2021** and **S.A.(MD) No.135 of 2016 [Baluchamy vs. G.Subbiah Thever (Died) and six others]**



5. He also relied on the ruling reported in **2021 (2) CTC 639** in the

WEB COPY case of **Rathinaswamy vs. Achi Kannu** wherein it is held as under:

“Civil Procedure Code, 1908, Order 1, Rule 9 – Impleading of legal heir – Partition – Held, share allotted to Legal Heir though not party – Suit held bad for non-joinder of necessary party – Judgment and Decree of Trial Court partitioning suit property, set aside.”

6. He also relied on the ruling reported in (2014) 7 MLJ 226 in the

case of **R. Sankaranarayanan vs. V. Elumalai** wherein it is held as under:

“No agreement of contract could be enforced against person, who is not party to contract – Suit not maintainable – Trial Court ought not to have taken plaint on its file when Revision Petitioner not party to alleged agreement of sale – Petition allowed.

7. Based on the above rulings the learned Counsel for the Appellants submitted that the suit filed by the Plaintiff seeking partition against Defendants 1 and 2 – Dr.Gajendraraj and Devendran and leaving out the rest of the others is not maintainable as per the ruling in **2021 (2) CTC 639** in the case of **Rathinaswamy vs. Achi Kannu**. Dr.Gajendraraj was not a party to the release deed executed by other parties, who are the siblings of the Plaintiff and Defendant and also mother of the Plaintiff and Defendant. Therefore, based on that the Plaintiff cannot institute the suit and the suit is not maintainable. The judgment and decree granted by the learned XIX



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Additional District and Sessions Judge, City Civil Court, Chennai in favour

of the Plaintiff is therefore not a well reasoned judgment as per the above rulings. It is erroneous and it has to be set aside.

8. The learned Counsel for the Respondent/Plaintiff by way of reply submitted that the submission of the learned Counsel for the Appellants is not maintainable. The Defendants 1 and 2 in the suit in O.S.No.4449 of 2017 had filed written statement in which the share of each of the co-parceners is fairly conceded. The written statement claims that Dr.Gajendraraj is ready to purchase the shares of other co-parceners. If really the Defendants 1 and 2 in O.S.No.4449 of 2017 is aggrieved by the unilateral Cancellation of the Release Deed, the Defendants 1 and 2 ought to have filed counter-claim seeking declaration that the cancellation of the Release Deed in favour of Dr.Gajendraraj by the others co-parceners is to be declared as null and void. The Defendants had not filed counter. The learned Counsel for the Respondent submitted that in the final decree application, if the Appellant herein is ready to purchase the property, the Plaintiff is willing to concede it. On merits, the Appeal is not maintainable as the Defendant had in cross-examination admitted the facts stated in the plaint. The written statement is filed by two brothers of the Plaintiff, Dr.Gajendraraj and



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Devendran. If Devendran is not a signatory, the written statement should have been filed as counter claim by the Defendant. Also it is the submission of the learned Counsel for the Respondent that the Release Deed and the cancellation deed are all regarding undivided share of each of the siblings for which Article 59 of the Limitation Act need not be pressed into service. No prejudice is caused to the Defendants.

Point for determination:

Whether the Appeal is to be allowed and the judgment in O.S.No.4449 of 2017, dated 25.04.2022 passed by the learned XIX Additional District and Sessions Judge, City Civil Court, Chennai, granting preliminary decree for partition is to be set aside?

9. The argument of the learned Counsel for the Appellants is found justified considering the fact that the sons and daughter of Ganesan had executed Release Deed releasing their undivided share in the properties to and in favour of the first Defendant Dr.Gajendraraj. After executing the Release Deed releasing their individual undivided share in favour of Dr.Gajendraraj, the other sons of Ganesan and the siblings of Dr.Gajendraraj do not have any right over the very same property. (When the father



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executing a release deed of the sons and daughters of Ganesan had executed

release deed favouring the first Defendant in the suit in O.S.No.4449 of 2017

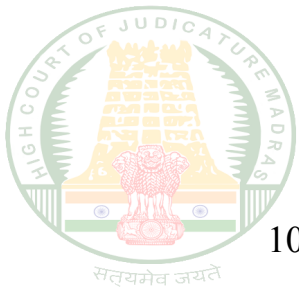
Dr. Gajendraraj). The moment release deed is executed, their right in the property by those who had executed the release deed is extinguished. They do not have any right in the property. Already they had released their right in favour of Dr. Gajendraraj. Therefore, the very same party cancelling the release deed after three years is hit by Article 59 of Limitation Act. Therefore, based on that cancellation deed filing a suit for partition by the Plaintiff based on cancellation deed behind the back of Defendant-1 Dr.Gajendraraj is not fair from the point of view of a normal prudent man. The Civil Court exercised discretion based on principles of fairness, equity and good conscience. The conduct of the Plaintiff and his siblings in cancelling the release deed after three years cannot be accepted by any Court of law. When that be the case, executing cancellation deed and thereby cancelling the Release Deed is found unacceptable in the eyes of law as per the provisions of the Transfer of Property Act. Not only that, after having executed Release Deed in favour of Dr.Gajendraraj and after three years from the date of execution of Release Deed in favour Dr.Gajendraraj, the filing of the cancellation deed by the parties to the Release Deed in favour of Dr.Gajendraraj is found not reasonable, as it is hit by Article 59 of the



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Limitation Act and again executing a Release Deed whereby the mother executes Release Deed in favour of all her children granting 1/7 share to each of the son and daughter is not found justified. Again one of the coparceners, the Plaintiff Ramesh Rajan filing the suit for partition without impleading all the legal heirs of Ganesan and only impleading Defendants 1 and 2 is found to be against the principles governing partition. The Defendants denying the execution of cancellation of Release Deed and seeking that the partition itself is not proper is found justified. When the Plaintiff had instituted the suit, the Plaintiff is duty bound to implead all the legal heirs of Ganesan as Defendants. Instead the Plaintiff had instituted the suit against the Defendants 1 and 2 alone. The claim of the Plaintiff that the other sons and daughter of Ganesan having executed cancellation deed after three years from the date of execution of Release Deed in favour of Dr.Gajendraraj is found to attract Article 59 of the Limitation Act. The Plaintiff having not impleaded all the legal heirs on the ground that legal heirs of Ganesan had jointly executed Release Deed in favour of the Plaintiff is found unacceptable considering the fact that after execution of Release Deed already in favour of Dr.Gajendraraj, they do not have any share in the property on the date of execution of the cancellation deed which is unilateral.



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10. Based on the ruling the suit filed by the Plaintiff in O.S.No.4449 of 2017 is not maintainable. The judgment and decree in favour of the Plaintiff ignoring the well considered judgment that all necessary parties shall be impleaded in a suit for partition and the claim of the Plaintiff that other siblings executed release deed cancelling the release deed in favour of Dr.Gajendraraj after executing the release deed in his favour was ignored by the learned XIX Additional District and Sessions Judge, City Civil Court, Chennai thereby granted a decree in favour of the Plaintiff amounts to erroneous conclusion arrived at by the learned XIX Additional District and Sessions Judge, City Civil Court, Chennai and therefore, the same is to be set aside.

11. In the light of the above discussion, **the point for determination is answered in favour of the Defendants and against the Plaintiff in O.S.No.4449 of 2017.** The judgment in O.S.No.4449 of 2017, dated 25.04.2022 passed by the learned XIX Additional District and Sessions Judge, City Civil Court, Chennai, granting preliminary decree for partition is found perverse and the same is to be set aside.



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WEB COPY In the result, **the Appeal is allowed.** The judgement of the learned XIX Additional District and Sessions Judge, City Civil Court, Chennai in O.S.No.4449 of 2017 dated 25.04.2022 is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes / No
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To

1. The XIX Additional District and Sessions Court,
City Civil Court, Chennai.
2. The Section Officer,
V.R. Section,
High Court Madras.



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SATHI KUMAR SUKUMARA KURUP, J.,

SRM

Judgment made in
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