

A.S.(MD)No.60 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

**A.S(MD)No.577 of 2011
and
MP(MD)No.1 of 2011**

1.Paripoornam Appellant / 5th defendant

Vs.

1.Dr.S.Sumathy
2.Minor Dhyan @ Selvadhyan

(Minor 2nd respondent is represented
by his mother & natural guardian,
1st respondent)

... Respondents 1 & 2 /
Plaintiffs

3.Sathish

4.S.Raji
5.Ganesan
6.N.Ashokkumar

... Respondents 3 to 6 /
Defendants 1 to 4



A.S.(MD)No.60 of 2009

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code, to set aside the judgment and decree of the learned Principal District Judge, Pudhukottai dated 22.12.2010 in O.S No.11 of 2005 and to decree the said suit as prayed for with costs throughout and thus render justice.

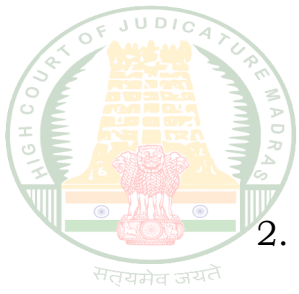
For Appellants : Mr.V.Raghavachari, Senior Counsel
for Mr.Arvind Srivasta

For Respondents : Mr.K.S.Sankhar Murali for R1 & R2
Mr.R.Ganapathi Subramanian for R5
No appearance for R3, R4 & R6

JUDGEMENT

(Judgment of the Court was made by **G.R.SWAMINATHAN, J.**)

This appeal arises out of a partition suit. Dr.Sumathi and her minor son Dhyan @ Selvadhyan/the respondents 1 and 2 herein filed O.S No.11 of 2005 on the file of the Principal District Judge, Pudhukottai seeking their half share in the suit schedule properties. The suit schedule comprises totally five items. We are concerned only with the items 3 and 4. This is because the suit was dismissed in respect of items 1, 2 and 5 and the plaintiffs have not chosen to challenge the decree.



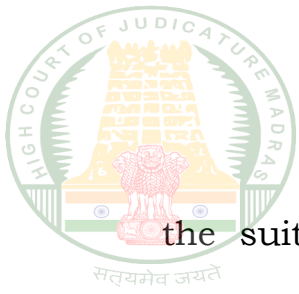
A.S.(MD)No.60 of 2009

2. The case of the plaintiffs is as follows:

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The first plaintiff (first respondent herein) and the second plaintiff are the the second wife and son of late Dr.M.Selvaraj respectively. The first and second defendants are the son and daughter of Dr. M. Selvaraj born through his first wife. Item No 3 of the suit schedule property was purchased in the name of Dr. M Selvaraj vide registered sale deed bearing registration number 444 dated 07.02.1996. The relationship between the first plaintiff and defendants 1 and 2 was strained. Though several attempts were made to seek partition of the properties, the defendants did not cooperate. Hence, she was constrained to file a suit for partition.

3.The first and second defendant filed written statement contesting the marital status of the first plaintiff. Subsequently, they turned turtle. In their additional written statement, they conceded the case of the plaintiffs. All the other defendants filed independent written statements controverting plaint allegations. The appellant who was shown as the fifth defendant alone strongly contested the suit proceedings. According to the appellant/D5, the defendants 1 and 2/ son and daughter of Dr.Selvaraj, executed power of attorney in favour of the fourth defendant and the fourth defendant sold the third item of



A.S.(MD)No.60 of 2009

the suit schedule property in favour of the appellant/subsequent purchaser vide sale deed dated 30.06.2004 (Ex.B21).

4. Based on the rival pleadings, the learned Trial Judge framed a number of issues. The first plaintiff examined herself as PW.1. Exs.A1 to A21 were marked on their side. The first defendant examined himself as DW.1. The appellant herein examined herself as DW.3. The power of attorney Ashok Kumar examined himself as DW.4. As many as seven witnesses were examined on the side of the defendants. Exs.B1 to B30 were marked by the defendants. Through the court witness, two exhibits were marked. After considering the evidence on record, the learned trial Judge passed a preliminary decree on 22.12.2010. In the judgment, the learned trial Judge had sustained the claim of the plaintiffs in all respects. The learned trial Judge came to the conclusion that the sale deed executed in favour of the appellant/D5 was illegal. Challenging the said judgment and preliminary decree, the fifth defendant has filed this appeal.

5. The learned counsel for the plaintiffs (respondents 1 and 2) contended that when admittedly item 3 stood in the name of Dr.Selvaraj, the first and second defendants alone could not have alienated the property in favour of the appellant (D5) through the

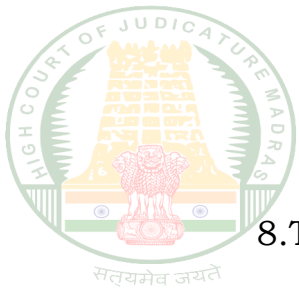


A.S.(MD)No.60 of 2009

fourth defendant/power of attorney. Per contra, the learned Senior Counsel appearing for the appellant contended that his vendors admittedly had 50% share in the suit items 3 and 4 and that therefore, the sale deed executed by the defendants 1 and 2 through their power of attorney in respect of the third item could not have been declared to be null and void in its entirety. At best, it could have been held to be not binding on the plaintiffs to the extent of their half share therein.

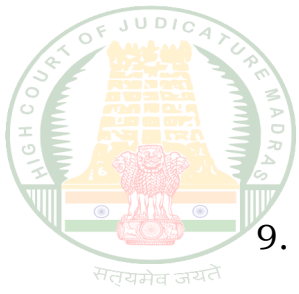
6. We carefully considered the rival contentions and went through the evidence on record.

7. The appellant herein is concerned only with Item 3 of the suit schedule property. D1 and D2 have admitted the execution of the power of attorney in favour of the 4th defendant. It is relevant to note here that the appellant's vendors, namely, D1 and D2, though chose to sail with the plaintiffs, did not chose to file any declaratory suit impeaching the sale deed executed in favour of the appellant. We find considerable force in the aforesaid submission of the learned Senior Counsel appearing for the appellant/D5.



A.S.(MD)No.60 of 2009

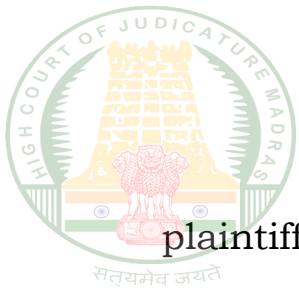
8.The Court below has been carried away with the inadequacy of consideration to come to the conclusion that Ex.B21 sale deed dated 30.06.2004 is a sham and nominal document. Ex B23 dated 10.04.2009 is the acknowledgment receipt (urudhi mozhi kadidham) which states that the first defendant has received a sum of Rs. 23,31,745 as consideration. He has duly signed the document along with the date. Ex B24 dated 20.09.2007 is the acknowledgment receipt given by second defendant after receipt of Rs 5,00,000 from the power of attorney holder (D4). The Court below has answered the 2nd additional substantial question framed on 09.07.2010 in favour of defendants 1 and 2 by holding that they have received consideration from the sale of Item 3 of the suit schedule property. After having held so, the court below has come to the conclusion that the sale deed is invalid as the appellant herein was not a bonafide purchaser as the consideration was inadequate. We find the said conclusion to be perverse. The plea of inadequate consideration falls flat on the face of acceptance of the sale proceeds from Item 3 as evidenced by Ex B23 and Ex B24. We, therefore, set aside the finding of the trial court that Ex.B21 sale deed dated 30.06.2004 standing in the name of the appellant herein is illegal.



A.S.(MD)No.60 of 2009

9. Once we come to the conclusion that Ex B21 is not a sham and nominal document, the question that calls for consideration is whether it can be held to be valid to the extent of the half share of Defendants 1 and 2.

10. This question is no longer res integra. The Hon'ble Supreme Court in the recent decision reported in **2025 SCC OnLine SC 565 (Gangubai Raghunath Ayare v. Gangaram Sakharam Dhuri)** upheld the High Court's decision reversing the decision of the trial court which set aside the sale deed executed by a co-owner in favour of a third party to be void in toto, and held that the sale deed was valid to the extent of the undivided share of the co-owner. In **Sk. Golam Lalchand vs Nandu Lal Shaw alias Nand Lal Keshri alias Nandu Lal Bayes and Others (2024 SCC OnLine SC 2456)**, the Hon'ble Supreme Court held that in view of Section 44 of the Transfer of Property Act, 1882, the sale deed would be valid to the extent of the share of the co-owner. In view of the well-settled position, we hold that the sale deed is valid to the extent of $\frac{1}{2}$ share of defendants 1 and 2. We clarify that it does not affect the



A.S.(MD)No.60 of 2009

plaintiffs' half share in the third item of the suit schedule property.

11.At this stage, the learned Senior Counsel for the appellant pointed out that the plaintiffs should be allotted exclusively item no.4 of the suit schedule property in the share that is to be allotted to the defendants 1 and 2. This equity in our view has to be worked out only in the final decree proceedings. Liberty is given to the appellant to raise this contention only in the final decree proceedings. The judgment and decree of the learned trial Judge is modified. This appeal is partly allowed. No costs. Connected miscellaneous petition is closed.

[G.R.S., J.] [M.J.R., J.]
12.03.2025

Index : Yes / No
Internet : Yes/ No
SKM

To:

1.The Principal District Judge, Pudhukottai

Copy to:

The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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M.JOTHIRAMAN, J.

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