



A.S.(MD).No.115 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.10.2025

PRONOUNCED ON : 23.10.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

A.S.(MD).No.115 of 2017

1.G.K.Gomathi

2.C.K.R.Brindha

....Appellants/Plaintiffs

Vs

M.R.Rajaram (died)

1.M.R.Krishnaram (died)

V.R.Vasantha (died)

2.M.R.Havishmathy

3.M.R.Ramesh

4.S.S.Geetha

5.K.M.Usha

6.M.R.Kanchana

7.G.R.Gandharoobi

7.V.G.Suguna

9.V.B.Krishnakumar

10.V.B.Ramkumar

11.M.A.Ashok Kumar

12.P.S.Anitha

13.V.R.Manoharan



A.S.(MD).No.115 of 2017

14.M.R.Meera

....Respondents/Defendants

(Defendants 4 to 7 impleaded as per
order in IA.No.140 of 2014 dated 07.02.2014)

(Amended as per order in IA.No.532 of 2014 dated 06.11.2014)

(Defendants 8 to 16 impleaded as per order
in IA.No.1091 of 2015 dated 18.01.2016)

(Amended as per order in I.A.No.85 of 2016 dated
29.01.2016)

(Memo dated 29.01.2024 in USR.No.3106 is recorded, as R1 died
and R11 and R12 who are already on record, are recorded as LR's
of the deceased R1 vide Court order dated 08.10.2025.)

Prayer: The First Appeal has been filed under Order 41 Rule 1 and 2 read
with Section 96 of C.P.C, to set aside the judgement and decree dated
31.03.2016 made in O.S.No.148 of 2009 on the file of VI Additional District
Judge, Madurai, allow this appeal suit.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents : Mr.J.Prabakaran
for R2 to R5, R11 & R12

:Mr.V.Arjun
for Mr.M.Divakaran for R6 to R10,
R13 & R14

:R1 died.

J U D G M E N T

(Made by **R.VIJAYAKUMAR,J.**)

The plaintiffs in O.S.No.148 of 2009 on the file of the VI Additional
District Court, Madurai have preferred the present first appeal challenging



A.S.(MD).No.115 of 2017

the dismissal of their suit for partition.

WEB COPY (A).Factual Background:

2.As per plaint averments, the suit schedule properties belonged to one Manickaa.Sa.Vengatajalapathi Iyer. He had no issues. They have adopted one M.V.Ramasubbier as their son. After the demise of Manickaa.Sa.Vengatajalapathi Iyer, the properties were treated by M.V.Ramasubbier as his self acquired properties. He got married to Meenakshi Ammal. The said Ramasubbier had passed away on 10.08.1981 and his wife Meenakshi Ammal died on 19.01.2008.

3.According to the plaintiffs, the plaintiffs are the daughters of the said couple and the defendants 1 and 2 are their brothers and the 3rd defendant is one of their sister. As per plaint averments, the said suit schedule properties were enjoyed as common and joint by plaintiffs and defendants till the death of their mother and their parents have passed away without executing any document. The plaintiffs claimed that they are entitled to 1/5th share in the suit schedule properties.

4.The defendants 1 and 2 have filed their written statement admitting the relationship between the parties. They have also admitted that the properties are self acquired properties of M.V.Ramasubbier. Further they contended that on 11.09.1964, M.V.Ramasubbier and the defendants 1 and 2 have entered into a registered partition. The said partition deed was attested



A.S.(MD).No.115 of 2017

by the plaintiffs and their respective husbands. In the said partition deed, the 1st item in 'A' schedule property (house property) was absolutely allotted to M.V.Ramasubbier. Items 2 to 9 of 'A' schedule properties were allotted to the share of the father M.V.Ramasubbier. Items 13 to 15 were allotted to the 2nd defendant.

5.It is further contended by the defendants that Ramasubbier, his wife Meenakshi Ammal and the defendants 1 and 2 have entered into another partition on 19.08.1974. Under the said partition deed, Items 2 to 9 that were allotted in favour of Ramasubbier on 11.09.1964 were partitioned. Some of the properties were allotted to the mother Meenakshi Ammal and other properties were allotted to the defendants 1 and 2. The defendants have further averred that on 11.07.1979, Ramasubbier had executed a Will under which the 1st item of 'A' schedule property was bequeathed in favour of his wife Meenakshi Ammal as a life interest holder and vested remainder was given to the defendants 1 and 2. Under the said document, M.V.Ramasubbier had given Rs.20,000/- to each one of his daughters and defendants 1 and 2 were directed to pay a sum of Rs.5,000/- to each one of the daughters.

6.The defendants had further claimed that the said payments were made and receipts were also issued by the plaintiffs. The defendants had further claimed that their mother Meenakshi Ammal had executed a Will on 11.01.1991 with regard to the properties that were allotted to her under



A.S.(MD).No.115 of 2017

partition deed dated 19.08.1974. Under the said Will, the properties were allotted in favour of the plaintiffs and the defendants. There was a direction to handover some of the jewels to the plaintiffs. Accordingly, the jewels were handed over and the receipts were also obtained. The defendants further contended that based upon the partition deed dated 19.08.1974 and the Will dated 11.01.1991, the plaintiffs have sold the property to the third parties. Therefore, the plaintiffs are estopped from claiming partition from the suit schedule properties. According to the defendants, 'B' and 'C' schedules are not available and they are imaginary properties. Hence, they prayed for dismissal of the suit.

7.The plaintiffs have filed a reply statement contending that the partition deeds dated 11.09.1964 and 19.08.1974 are forged documents and they questioned the genuineness and validity of the Will dated 11.07.1979 and 11.01.1991. They also questioned the genuineness and validity of the receipts said to have been executed by them.

8. The plaintiffs in their reply statement had further contended that M.V.Ramasubbier was not in sound disposing state of mind while entering into partition on 11.09.1964 and 19.08.1974 at the time of execution of the alleged Will dated 11.07.1979. Therefore, these documents are vitiated.

(B).Findings of the trial Court:

9.The trial Court after considering the oral and documentary evidence



A.S.(MD).No.115 of 2017

arrived at a finding that the first plaintiff and the third defendant have jointly sold two items of the properties under Ex.B19 on 17.08.2009. In the said sale deed, the plaintiffs and the third defendant have traced their title through the registered partition deed dated 19.08.1974 and the Will executed by Meenakshi Ammal on 11.01.1991. Hence, the validity of these earlier partition deeds and Will have been admitted. In such circumstances, the plaintiffs cannot ignore those documents, as if they are invalid.

10.The trial Court further found that the attesor of Ex.B1 Will has been examined as DW1 and he has categorically deposed that Ramasubbier was in sound disposing state of mind at the time of execution of Ex.B1 Will. The trial Court found that the evidence of DW1 is credible and his chief examination was not discredited during cross examination.

11.Based upon the above said findings, the trial Court found that the properties having already been partitioned and the partition deeds having been admitted by the plaintiffs in their sale deeds, they cannot reopen the partition and the trial Court proceeded to dismiss the suit. Challenging the same, the present first appeal has been preferred by the plaintiffs.

(C)Submissions of the counsels:

12.The learned counsel for the appellants had submitted that the trial Court ought to have granted a preliminary decree for partition at least with regard to the 1st item of the suit schedule properties, in view of the fact that it



A.S.(MD).No.115 of 2017

is not covered under Ex.B11 partition deed. He had further submitted that the 1st item of the suit schedule properties was not partitioned under Ex.B11. The Counsel further submitted that there is a reference about the ill health of Ramasubbier in Ex.B11 document. Therefore, the execution of Ex.B12 partition deed and Ex.B1 Will executed by the said Ramasubbier are clearly vitiated in view of the fact that they have been executed when he was not in sound state of mind.

13.The learned counsel for the appellants had further submitted that in view of ill health of the testator, namely Ramasubbier, these documents are vitiated and they are not valid in the eye of law. The trial Court ought not to have non-suited the plaintiffs at least with regard to the 1st items of 'A' schedule property. He had further submitted that Ex.B1 Will said to have been executed by Ramasubbier has not been proved in accordance with Section 68 of Indian Evidence Act.

14.Per contra, the learned counsel for the respondents/defendants has submitted that the suit schedule properties have devolved upon Ramasubbier as self acquired properties and have been dealt with under registered document namely Exs.B11, B12, B1 and B8. The genuineness and validity of those documents, though questioned by the plaintiffs in their reply statement, they have not chosen to adduce any evidence whatsoever. He had further submitted that even as per plaint averments, the suit schedule properties



A.S.(MD).No.115 of 2017

originally belonged to Ramasubbier's grandfather namely Manickaa.Sa.Vengatajalapathi Iyer. After his death, it had devolved in the hands of Ramasubbier in the year 1964.

15.The learned counsel for the respondents had further submitted that as per Ex.B1 Will dated 11.07.1979, Ramasubbier himself has paid a sum of Rs.20,000/- to each one of the daughters. The balance amount of Rs.5000/- has to be paid by the defendants 1 and 2 which was properly paid by them and the receipts have been issued. The partition deed executed under Ex.B12 and the Will under Ex.B8 have been admitted in the sale deed executed by the first plaintiff and the third defendant under Ex.B19 sale deed. In such circumstances, they cannot question the validity of the parent documents. Hence, he prayed for sustaining the judgment and decree of the trial Court.

16.We have considered the submissions made on either side and perused the material records.

(D).Discussion:

17. The points that arise for consideration in the first appeal are as follows:

(a)Whether the suit schedule properties have already been partitioned under Ex.B12 and Ex.B27?

(b)Whether the plaintiffs have been allotted any share under Ex.B8 Will dated 11.01.1991?



A.S.(MD).No.115 of 2017

18.As admitted by both the parties, though the suit schedule properties originally belonged to Manickaa.Sa.Vengatajalapathi Iyer, it devolved as a separate property in the hands of M.V.Ramasubbier. Therefore, Ramasubbier is entitled to deal with the properties as per his wishes during his life time and the plaintiffs who are the daughters of Ramasubbier would not be entitled to challenge the same.

19.In the light of the above said facts, let us consider the issues raised in the present appeal.

20. M.V.Ramasubbier during his life time has entered into a registered partition deed along with his sons namely defendants 1 and 2 on 11.09.1964 which is marked as Ex.B11. In the said partition deed, items 2 to 9 of 'A' schedule properties in the present suit were allotted to the share of Ramasubbier. The 1st item (house property) was not subjected to partition. Items 10 to 12 were allotted to the 1st defendant and Item Nos. 11 to 15 were allotted to the 2nd defendant.

21.As far as Items Nos.2 to 9 which were allotted to the share of Ramasubbier are concerned, he again entered into another partition along with his wife Meenakshi Ammal and his sons namely defendants 1 and 2 under Ex.B12 on 19.08.1974. In the said partition deed, some of the properties were allotted to his wife Meenakshi Ammal and other properties were allotted to defendants 1 and 2.



A.S.(MD).No.115 of 2017

22.As far as the 1st Item in 'A' schedule property is concerned (which was not allotted to any one under Ex.B11 partition deed and retained by Ramasubbier), Ramasubbier had chosen to execute a Will on 11.07.1979 under Ex.B1 granting life interest in favour of his wife Meenakshi Ammal and vested remainder to his sons defendants 1 and 2. Under the said document, he had paid Rs.20,000/- to each one of his daughters and directed his both the sons to pay a sum of Rs.5000/- to each one of their sisters. Exs.B2 to B5 and Exs.B13 to B17 are the receipts issued by the plaintiffs and the 3rd defendant for receipt of the said amount.

23. As regards the properties allotted to her under Exs.B12 partition deed, Meenakshi Ammal had executed a Will on 11.01.1991 under Ex.B8. Under the said Will, the properties have been allotted not only in favour of the defendants, but also in favour of the plaintiffs.

24.In the said Will, a direction has been issued to the plaintiffs and the defendants to share the jewels equally. As regards handing over of these jewels to the plaintiffs, two receipts have been issued by the plaintiffs under Exs.B6 and B7. With regard to the properties that were jointly allotted under Ex.B12, defendants 1 and 2 have entered into a partition between themselves on 14.05.2009 under Ex.B23. Under Ex.B8 Will executed by Meenakshi Ammal, properties have been allotted in favour of the plaintiffs also.



A.S.(MD).No.115 of 2017

25.The first plaintiff and the 3rd defendant have jointly executed Ex.B19 sale deed in favour of a 3rd party with regard to the property that was allotted to them under Ex.B8. A perusal of the said Will traces title to Ex.B8 Will executed by Meenakshi Ammal and Ex.B12 partition deed dated 19.08.1974 which was entered into between Ramasubbier and his wife Meenakshi Ammal and their sons namely defendants 1 and 2. Therefore, it is clear that the plaintiffs have admitted the genuineness and validity of Ex.B12 partition deed and Ex.B8 Will executed by their father and mother.

26.Ex.B12 partition deed refers to Ex.B11 partition deed dated 11.09.1964 entered into between Ramasubbier and defendants 1 and 2. In such circumstances, the plaintiffs cannot question the validity and genuineness of Ex.B11 partition deed also. Though the plaintiffs have questioned the sound state of mind of Ramasubbier at the time of executing Exs.B11, B12 and B1 documents, the plaintiffs themselves are tracing their title only through these documents while executing Ex.B19 sale deed. Therefore, they are clearly estopped from challenging these documents.

27.A residuary contention was raised by the learned counsel for the appellants, that the 1st item of 'A' schedule property was not the subject matter of Ex.B11 partition deed. Therefore, at least for the said item, the decree for partition should have been granted. It is the admitted case of both parties that the properties devolved upon Ramasubbier as self acquired properties.



A.S.(MD).No.115 of 2017

Therefore, without partitioning the 1st item in 'A' schedule property (house property), he had chosen to retain the same under Ex.B11 partition. However, he had executed Ex.B1 Will on 11.07.1979 wherein he has conferred life interest upon his wife Meenakshi Ammal over the house property and vested remainder to defendants 1 and 2. Only under the said document, Ramasubbier paid a sum of Rs.20,000/- to each one of his daughters and directed his sons to pay another sum of Rs.5,000/- to each one of the daughters. The defendants 1 and 2 had made those payments and marked the original receipts as Exs.B2 to B5 and B13 to B17. That apart, the defendants 1 and 2 have chosen to examine DW1 who is the attesor of Ex.B1 Will. His evidence has not been discredited during cross examination of the plaintiffs.

28.It is pertinent to point out that Ex.B1 Will relates only to the house property which was executed in the year 1979. In such circumstances, the contention of the learned counsel for the appellants with regard to the 1st item of 'A' schedule property is also not legally sustainable.

(E).Conclusion:

29.In view of the above said deliberations, the judgment and decree of the trial Court are hereby confirmed and the first appeal stands dismissed. No costs.

(C.V.K.J.,)

(R.V.J.,)

23.10.2025.



A.S.(MD).No.115 of 2017

WEB COPY

Index : Yes/No

Internet : Yes/No

NCC : Yes/No

msa

To

1.The VI Additional District Judge
Madurai

2.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai



WEB COPY



A.S.(MD).No.115 of 2017

**C.V.KARTHIKEYAN,J.
AND
R.VIJAYAKUMAR,J.**

msa

Pre-delivery Judgment made in
A.S.(MD).No.115 of 2017

23.10.2025