

AS.(MD)No.300 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 17.04.2025

Pronounced On : 30.04.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HON'BLE MR.JUSTICE M.JOTHIRAMAN**

A.S.(MD)No.300 of 2023
and
C.M.P.(MD)No.16302 of 2023

Dineshkumar

... Appellant /1st Defendant

Vs.

1.Rajeswari

... 1st Respondent / Plaintiff

2.Vimala

3.V.S.Veerreswaran

4.Meena

... Respondents 2 to 4 / Defendants 2 to 4

PRAYER : First Appeal filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree dated 18.08.2023 passed in O.S.No.1 of 2019 on the file of the Additional District Judge, Virudhunagar.



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For Appellant : Mr.G.Prabhu Rajadurai

For R1 : Mr.T.Lajapathi Roy,
Senior Counsel,
for M/s.Lajapathi Roy and Associates.

For R3 to R4 : Mr.C.Suresh Kannan

JUDGMENT

(Judgment of this Court was delivered by **M.JOTHIRAMAN J.**)

Unsuccessful first defendant has preferred the appeal. The suit is filed for partition, to declare the release deed dated 01.11.2006 in Doc.No. 3913/2006 is null and void, for permanent injunction, declaration of sale deeds dated 27.06.2012 and sale deed dated 01.02.2021 in Doc.No.3489 of 2012 & 1/597/2021 are null and void. The trial Court decreed the suit partly.

2.For the shake of convenience, the parties are referred to as per their rank before the trial Court.

3.The brief Case of the plaintiff is as follows:-

The first defendant is the brother of the plaintiff, second defendant



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is the plaintiff's mother. The suit schedule properties are ancestral properties of plaintiff, first defendant and their father Gunasekaran. Gunasekaran died in the year 1995. The suit first and second schedule items, the plaintiff is entitled for 4/9 share and in third schedule property the plaintiff's father is having 1/3 share and his brothers Rajasekaran and Chandrasekaran were having 1/3 share. The said Rajasekaran and Chandrasekaran died before marriage, so, their share devolved upon plaintiff's grand mother soundammal. Soundammal died in the year 2002. Therefore, the plaintiff is entitled for 4/9 share in the suit third schedule property. The plaintiff got marriage on 08.06.2008. On 01.11.2006, the first defendant fraudulently and by undue influence, obtained signature of the plaintiff in his favour. She signed in the document thinking that it is only a mortgage deed. She has not received any amount. At the time of marriage, the plaintiff, the first defendant executed a gift settlement with respect to Door No.11 of Karadi Kamatchi Chettiyar Street. In that document the release deed dated 01.11.2006 was not stated. The third defendant purchased a portion of third schedule properties from the first defendant on 27.06.2012.



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4.The brief case of the first defendant is as follows:-

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The plaintiff is a B.E. Graduate and literate. She knew contents of release deed and received consideration after release deed, the first defendant executed a gift deed. The plaintiff has accepted the same. The plaintiff has admitted the Will dated 13.11.1995 executed by her grandmother Soundammal. The house in Door No.12 is purchased by the first defendant. The plaintiff is not entitled for partition. The plaintiff schedule properties 1 to 3 and Door No.11 belong to grandmother Soundammal and she executed the Will in favour of the first defendant on 13.11.1995. The defendant paid Rs.4,27,350/- each to the plaintiff and the second defendant and they executed the release deed. Two houses in the gift settlement deed were not included in the suit. The suit is bad for partial partition. In the plaintiff schedule third item property, after the death of Rajasekaran and Chandrasekaran, their 2/3 share devolved on Soundammal. The second schedule properties was purchased by the plaintiff's father. In that property Soundammal got 1/4 share as per Will, the first defendant is entitled for 2/4 share in the second schedule property. The second defendant is entitled for 1/4 share in the second schedule property. The first defendant obtained a loan of Rs.45,00,000/- from DBS



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finance and made additional construction in the lodge in third schedule property. The plaintiff is not entitled for any share.

5.The second defendant filed written statement, supporting the case of the first defendant.

6.The plaintiff filed reply statement wherein it has been stated that release deed is a fraudulent one and it was not shown in the gift deed. The Will dated 13.11.1995, is a fraudulent one. Since houses in Door No.11 & 12 are absolute properties of the plaintiff, those properties have not been shown in the suit.

7.The brief case of the third defendant is as follows:-

It is for the plaintiff to prove that she is having share in the properties. The plaintiff was ousted out from possession from the date of marriage on 01.11.2006. With respect to the third schedule property Soundammal executed a Will in a sound state of mind. The release deed was executed by the plaintiff with full knowledge. The defendant is the bonofide purchaser of the property.



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8.The brief case of the fourth defendant is as follows:-

The fourth defendant is bonofide purchaser with value without notice of the suit. The plaintiff and first defendant are not known to the fourth defendant, before purchase. This purchase will not affect the suit by the plaintiff.

9.Based on the above pleadings, the trial Court framed the following the issues:-

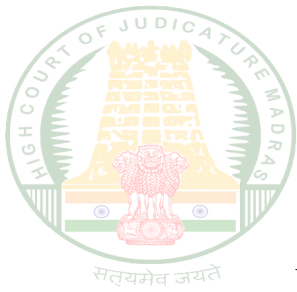
i)Whether the plaintiff is entitled for 4/9 share in suit schedule properties item 1 and 2 or not?

ii)Whether the plaintiff is entitled for 4/27 share in suit schedule property item 3 or not?

iii)Whether the plaintiff is entitled for the relief of permanent injunction against the defendant not to alienate the properties or not?

iv)Whether the plaintiff is entitled for the relief of permanent injunction against the defendant not to alienate the properties or not?

v)Whether the plaintiff is entitled for the relief of declaring the sale deed executed in favour of D3 as null and void or not?



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vi)Whether the plaintiff is entitled for the declaration for the cancellation of the sale deed executed in favour of D3 after the suit or not?

vii)Whether the suit properties is worth of more than 10 crores as claimed by the Defendant or not?

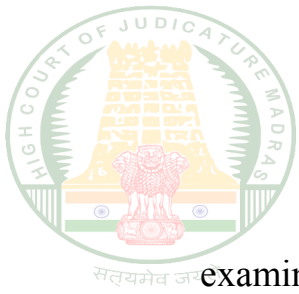
viii)Whether this Court has no jurisdiction on the basis of pecuniary jurisdiction of this Court or not?

ix)What are the orther reliefs the plaintiff is entitled for?

On the side of the plaintiff, the plaintiff herself examined as P.W.1 and Ex.A1 to Ex.A15 were marked. On the side of the defendants 1 and 2, the first defendant himself examined as D.W.1 and one Muthukumar examined as D.W.2 and Ex.B1 to Ex.B14 were marked. On the side of the defendants 3 & 4, no witness was examined and no documents was marked.

10.Findings of the trial Court:-

The first defendant failed to discharge his burden and failed to prove that the plaintiff out of her own will, after knowing the contents Ex.A1 signed it. So, Ex.A1 release deed with respect to share of the plaintiff is void and not binding on the plaintiff. Ex.B3 Will is proved by



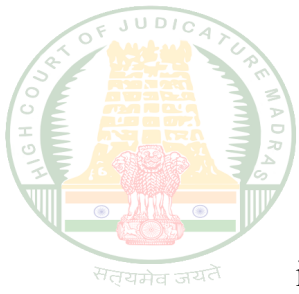
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examining the D.W.2 one of the attestor in the Will. As per Ex.B3 Will the first defendant become the absolute owner of the plaint first schedule property. So the plaintiff is not entitled for any share. The suit second schedule property was purchased by the plaintiff's father. After death of father, the plaintiff, defendants 1 & 2 and plaintiff's grandmother Soundammal inherited the property. So the plaintiff is entitled for $\frac{1}{4}$ share in the said property. With regard to suit third item property since it is ancestral property at the time of death of Gunasekaran a notional partition taken place and $\frac{1}{3}$ share has to be divided into three. $\frac{1}{9}$ share of Gunasekaran would devolve on the plaintiff's grandmother, plaintiff's mother, plaintiff and first defendant. So the plaintiff is entitled for $\frac{15}{108}$ share. The sale deed executed in favour of third and fourth defendants cannot be held to be void. The purchasers are entitled for equity and they have to workout their remedy within the share of the first defendant.

11.Points for determination arises in this appeal are as follows:-

i)Whether the first defendant gifted two house properties to the plaintiff on account of execution of release deed by the plaintiff?



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ii)Whether the plaintiff is executed the release deed (Ex.A1 = Ex.B2) under fraud and undue influence?

12.The learned Counsel appearing for the first defendant / appellant would submit that the suit is barred by limitation and it was filed after six years of the execution of the release deed. The plaintiff has not put forth any specific averment regarding fraud and undue influence in executing the release deed. The plea of fraud and undue influence cannot be taken together as that they are contradictory pleas. The trial Court failed to consider that the plaintiff who has pleaded fraud and undue influence has not proved in the manner known to law and as such, the plaintiff has not shifted her burden. As per Section 92 of the Indian Evidence Act, the plaintiff is estopped from speaking against the release deed, as she is a signatory to the document. The learned Counsel further would argue that attestors of the release deed need not been examined and it is the duty of the plaintiff to plead and proved fraud and undue influence. The first defendant has gifted two houses to the plaintiff vide Ex.B1 and if the plaintiff is not accepting the release deed executing by her, she ought to have included the said houses in the suit for partition. Without assigning



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any reasons, allotting the share in the third schedule properties to the plaintiff is un-sustainable in law.

13.Per contra, the learned Senior Counsel appearing for the plaintiff / respondent would submit that after the death of plaintiff's father, in her childhood she was under the care and custody of the first defendant, who is only male member of the family and so, he was in a position of dominating Will of the plaintiff and hence, execution of Ex.A1 release deed is by undue influence. The release deed was not supported by any consideration of value though the released deed mentioned that a sum of Rs.4,20,350/- has been paid in cash. Actually, the first defendant did not pay any amount to the plaintiff. The first defendant is maintaining the properties of the family as the Kartha of the joint family. The first defendant obtained the release deed by informing the plaintiff as if he is going to avail loan for solemnizing marriage. Upon believing the words of the first defendant the plaintiff has chosen to sign in the document in the Sub Registrar Office. Therefore, without informing the nature and contents of the document, release deed came to be registered, upon playing fraud and undue influence.

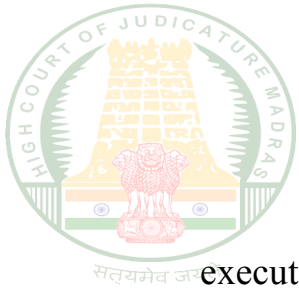


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14.It is the specific case of the plaintiff that before her marriage by way of fraud and undue influence Ex.A1 release deed dated 01.11.2006 came to be registered. A perusal of Ex.A1 = Ex.B2 shows that the plaintiff / Rajeshwari and her mother Vimala / second defendant have executed release deed in favour of the first defendant on 01.11.2006 before the Sub Registrar Office, Aruppukottai. Wherein, it is also mentioned that the said Rajeshwari and Vimala have received a sum of Rs. 4,27,350/- each in cash and released their 2/12 share in the schedule mentioned properties therein. There are three items of properties were mentioned in the release deed, they are, 1.House property in D.No.11 situated in Karadi Kamatchi Chettiyar Street, Chinnpuliypatti Village, measuring east to west 33 feet north to west 19 feet house site including the house. 2.In the aforesaid same street, house property in D.No.11 measuring east to west 34 feet north to west 20 feet house site including the house. 3.The property situated at Pudukadai Street, building of complex consisting of lodge and etc.,

15.P.W.1 states that before her marriage by playing fraud and undue influence as if the first defendant has to obtain a loan for her marriage



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executed the release deed in his favour dated 01.11.2006. Ex.A2 is the gift deed in Doc.No.3760/2009 executed by the first defendant in favour of the plaintiff subsequently on 01.07.2009, in respect of house property to the value of Rs.1,80,000/-. A perusal of Ex.A2 no where it has been mentioned about the release deed executed by the plaintiff. However, wherein it has been stated that the property mentioned therein has been purchased by the first defendant, out of his own income and purchased under registered sale deed dated 07.05.2004 in Doc.No.1.1982/2014. In Ex.A2, wherein the second defendant / Kamala has signed as one of the attesting witness. On the same day, under Ex.B1 gift deed in Doc.No. 3759/2009 came to be executed by the first defendant in favour of the plaintiff with regard to the house property to the worth of Rs.2,10,000/-, therein also the second defendant / Kamala signed as one of the attesting witness.

16.It is the specific case of the first defendant that plaintiff is a well educated lady and after knowing the contents of the document, she had signed in Ex.A1. At this juncture, it is requisite to cite the sections 101 and 103 of the Indian Evidence Act as follows:



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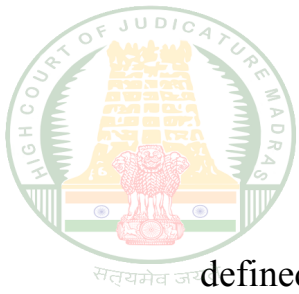
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Section 101 – Burden of Proof – Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Section 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.

It is relevant to cite the decision of the Hon'ble Supreme Court reported in ***AIR 2011 SC 2344 – Rangammal v. Kuppuswami***, it has been held that “when a person is bound to prove the existence of any fact, it is said that burden of proof lies on that person. Thus, the burden of proving fact always lies upon the person who asserts it. Unless such burden is discharged, the other party is not required to be called upon to prove his case.”

17.It is pertinent to mention that in a case of alleged fraud and undue influence is pleaded then it is bound and duty of the party who pleads so. It is relevant to read the definition of fraud and undue influence



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defined in the Indian Contract Act, 1872. Sections 16 & 17 of the said Act reads as follows:-

16. “Undue influence” defined.—(1) A contract is said to be induced by “undue influence” where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions



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of section 111 of the Indian Evidence Act, 1872

17. “Fraud” defined.—“Fraud” means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:—

(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

18. It is pertinent to mention that although undue influence and fraud are cognate vices and may in part overlap in some cases, yet in law, they



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are distinct categories and in view of Order 6 Rule 4 read with Order 6 Rule 2 CPC, they require to be pleaded separately with particularity and precision. It is also pertinent to mention that merely because of the executent and the beneficiary are close relatives and the same is not sufficient to presume the undue influence.

19.The marriage of the plaintiff was solemnized on 08.06.2008. Ex.A1 was executed on 01.11.2006. Ex.A9 is the agreement of deposit of title deeds dated 23.03.2006 came to be executed by the first and second defendants along with the plaintiff. From the above document shows that in earlier occasion, just before execution of Ex.A1, the plaintiff and the defendants have executed an agreement of deposit of title deed to borrow some amount under Ex.A9. Ex.B4 is the sale deed dated 16.02.1977 with regard to plaint second item D.No.9 was purchased by the plaintiff's father Gunasekaran. Ex.A5 is the partition deed dated 16.04.1970, which shows that the plaintiff's father has got third schedule property in the said partition. According to the first defendant, the third item property is not property of their father and it was absolute property of grandmother Soundammal. Third item of the suit property is a lodge and complex with



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shop buildings. As per Ex.A1, the second defendant mother along with the plaintiff also executed settlement deed in favour of her son, the first defendant, on 01.11.2006. It is seen from the records subsequently on 03.11.2008, the first defendant executed Ex.A11 settlement deed with respect to three shops in the third schedule properties in favour of his mother / second defendant. Thereafter, on 06.11.2008, the second defendant / mother in turn, executed the gift deed with respect to the shop building to the first defendant under Ex.A12 and Ex.A13. It is pertinent to mention that the plaintiff was not a party or she has not signed as a witness. Ex.A2 = Ex.B1 contains of two gift deeds executed by the first defendant in favour of the plaintiff. The Doc.No.3759 is connection with D.No.11 and Doc.No.3760 is connection with D.No.12. Admittedly, both properties are not shown in the suit schedule properties. A perusal of Ex.B1 gift deed shows that D.No.12 was the self acquired property of first defendant. In the above documents, the factum of execution of Ex.A1 release deed by the plaintiff and the second defendant have not been stated. What is the reason for non mentioning about Ex.A1 release deed executed by the plaintiff before her marriage, when the first defendant had executed two gift deeds in favour of the plaintiff, after her marriage, has

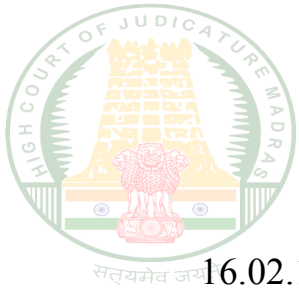


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not been explained by the first defendant. The initial burden lies on the plaintiff has been discharged. But the first defendant has failed to discharge his burden that the plaintiff, out of her own will and after knowing the contents of the documents, has signed in the release deed(Ex.A1 = Ex.B2).

20.Ex.B5 sale deed dated 14.03.1962 would show that Door No.10 was purchased by Soundammal. The said Soundammal executed Ex.B3 Will 13.11.1995 in favour of the first defendant. D.W.2 Muthukumar, who is one of the attesor, was examined and he has deposed that Soundammal signed in his presence in the Will and he also signed in the presence of Soundammal. The legal requirements mandated under Section 68 of Indian Evidence Act, and Section 63 of the Indian Succession Act complied with proving the execution of Ex.B3 Will. Ex.A2 came to be executed in the year 2009 wherein the execution of Will by the Soundammal is also been stated and the gift was accepted by the plaintiff. Further, Ex.A2 original gift deed came to be produced from the custody of the plaintiff. The said Soundammal died in the year 2012 and thereafter, the Will came into force, thereby, the first defendant become absolute owner of the plaint first schedule property. Ex.B4 is the sale deed dated



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16.02.1977 stands in the name of the plaintiff's father Gunasekaran which is pertaining to the second schedule property. The first defendant executed the sale deed in favour of third defendant with respect to his share in the third schedule property. It is seen from records that the second defendant executed release deed in Ex.A11 in favour of first defendant in respect of suit third schedule property. Further, the first defendant also obtained properties of Soundammal under Ex.B3 Will. The alienation of third schedule property with respect to the share of the first defendant cannot be held void. It is for the purchasers to workout their remedy within the share of the first defendant.

21.The suit second schedule property was purchased by the plaintiff's father under Ex.B4 sale deed dated 16.02.1977. After the death of the father, the plaintiff, the defendants 1 & 2 and the plaintiff's grandmother Soundammal inherited the property. Since all the properties owned by Soundammal were bequeathed by her in favour of the first defendant. We are of the view that there is no reasons to interfere with the judgment and decree of the Court below. There is no merits in this appeal and the same is liable to be dismissed. The points are answered accordingly.



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22.In the result, the first appeal is dismissed and the judgment and decree dated 18.08.2023 passed in O.S.No.1 of 2019 on the file of the Additional District Judge, Virudhunagar is hereby confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(G.R.S., J.) & (M.J.R., J.)
30.04.2025

NCC : Yes / No
Index : Yes / No
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To

Additional District Judge, Virudhunagar.



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gns

Pre-Delivery Judgement made in
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30.04.2025