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A.S.(MD)NO.5 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

A.S.(MD)No.5 of 2023 AND

C.M.P.(MD)No.77 of 2023

1. Geetharamani
2. Devika
3. Jothilakshmi
4. Vanitha

... Appellants / Plaintiffs

Vs.

Yogeshwaran (Deceased)

1. Thiyagarajan
Through his Power Agent
Geetharamani.

2. Jayalakshmi
3. Karthiga

Karuppiah(deceased)

4. Ganapathy
5. Subramanian
6. Muthusaravanan
7. Vijayalakshmi
8. Karthikeyan
9. Soundarya
- 10.Kunjaram
- 11.Keerthana
- 12.Ramesh
- 13.Annalakshmi



14.Alagappan

15.Jayakumar

... Respondents / Defendants

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Prayer: Appeal suit filed under Section 96 CPC., to set aside the judgment and decree dated 31.10.2022 in O.S.No.29 of 2011 on the file of the Principal District Judge, Sivagangai and allow the appeal as prayed for.

For Appellant : Ms.AL.Ganthimathi,
Senior counsel,
for Mr.C.Mahadevan.

For R-4toR-6,
R-10,R-11&R-14 : Mr.G.Prabhu Rajadurai

For R-7 to R-9 : Mr.S.Jayavasanthan

For R-2 & R-3 : Mr.S.Parthasarathy,
for Mr.K.Sasi Prabhu.

For R-1 & R-13 : No appearance.

* * *

J U D G M E N T

(Order of the Court was delivered by G.R.SWAMINATHAN, J.)

This appeal arises out of a partition suit.

2. The suit properties belonged to one Sakthivel Asari. He married twice. Through the first wife, the plaintiffs and defendants 1 and 2 were born. The third defendant Jeyalakshmi was the second



wife. The fourth defendant Minor Karthiga was born through the second wife. The other defendants are subsequent purchasers / legal heirs of the deceased first defendant.

3. The daughters of the said S.Sakthivel Asari filed O.S. No.29 of 2011 on the file of the Principal District Judge, Sivagangai seeking partition of their 4/8th share in the suit schedule property and for recovery of possession. The case of the plaintiffs was that the partition deed dated 25.04.2011 would not bind them as it was obtained by fraud. The first defendant got the signatures of the plaintiffs claiming that it was a power of attorney document. Written statements were filed by the first defendant and subsequent purchasers who were arrayed as defendants 3-8 controverting the plaint allegations.

4.The Court below framed the following issues:

- 1.Whether the partition deed dated 25.04.2011 is valid and binds the shares of the plaintiffs?
- 2.Whether the plaintiffs are entitled to 4/8th share in the scheduled property?
- 3.To what other reliefs the plaintiffs are entitled to?



On the side of the plaintiff, the fourth plaintiff was examined as PW1 and Exhibits A1 to A5 were marked. On the side of the defendants, DW1 (7th defendnat) and DW2 (Mr. Ilangovan) were examined and Exhibits B1 to B6 were marked. After hearing both sides and examining the evidence, the Court below dismissed the suit vide judgment and decree dated 31.10.2022. Challenging the same, this appeal has been filed.

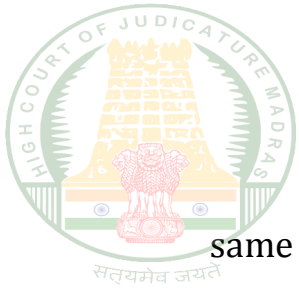
4. The learned Senior counsel for the appellants raised very many contentions. But we need not consider the same at length for a simple reason. The counsel for the respondents even at the outset submitted that the only point that arises for determination in this appeal is whether the suit itself is maintainable. They drew our attention to the decision rendered by the Hon'ble Division Bench of this Court in ***A.S.No.697 of 2014 (Easwaran V. Rajeswari and Others) on 17.11.2022***. It was held therein that when the partition deed is challenged on the ground of fraud, there must be a specific prayer to set aside or cancel the instrument by paying court fee for the value of the property. The Hon'ble Division Bench held that when the signatures in the document are admitted by the plaintiffs, the



declaratory relief without a prayer to set aside the partition deed cannot be granted.

5. The factual matrix obtaining in the case on hand are similar. The prayer in the partition suit sought by the appellants was resisted by the first defendant on the ground that the partition had already taken place among the family members on 25.04.2011 and that the said partition deed was also duly registered. If according to the appellants / plaintiffs, the partition deed is vitiated by fraud and misrepresentation, they should have prayed for setting aside the said document.

6. The learned Senior counsel would contend that the plaintiffs were led to believe that they were to execute the deed of power of attorney and that the signatures were fraudulently obtained. If that be so, the plaintiffs ought to have sought the relief of declaration that the said document is void. In other words, there must have been a specific prayer for setting aside or cancelling the instrument by paying proper Court fee. In the case on hand, though in the prayer portion there is a clear averment that the said document is not binding on the plaintiffs, no relief has been sought for getting the



same set aside. As rightly pointed out by the learned counsel for the contesting respondents, the Court fee was not paid under Section 37(2) of the Tamil Nadu Court-Fees and Suits Valuation Act and there was no payment of Court fee under Section 40 of the Act and Section 25(d) of the Act.

7. Respectfully applying the ratio laid down in the above Judgment, we hold that the suit is liable to be dismissed on this sole ground. It is in this view of the matter we decline to interfere with the impugned judgment of the trial Court. There is no need to enter into the merits of the matter at all. The suit itself was not maintainable. This appeal suit is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.SWAMINATHAN, J.) & (M.JOTHIRAMAN, J.)
17th April 2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU/skm



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To:
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1. The Principal District Judge,
Sivagangai.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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AND

M.JOTHIRAMAN, J.

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