

S.A.Nos.120, 121 and 344 of 2001

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 26.06.2025

JUDGMENT PRONOUNDED ON : 21. 07.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A.Nos, 120, 121 and 334 of 2001
and CMP.No.1335 of 2001

-

SA.Nos.120 & 121 of 2001

Guruva Thayammal

....Appellant/1st Respondent
/Plaintiff in both appeals

Vs

1.Jeya Leela (died)

2.Kutty alias Rajaboopathi

3.Jeeseeli

4.Rajaman Singh

5.Sridhar

...Legal heirs of the 1st respondent/
in both appeals

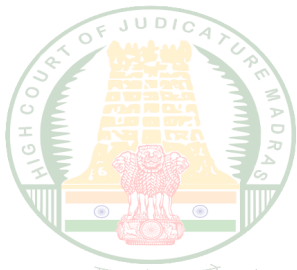
6.Ramadoss

7.Rajammal

8.Marimuthu

...Respondents/Respondents/
/Defendants in both appeals

(Memo is recorded to the effect that R1 died, R2 to R5 who are already on record are recorded as legal heirs of the deceased R1 vide Court order dated



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18.02.2025)

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SA.No.334 of 2001

Guruva Thayammal

...Appellant/First Respondent
/Plaintiff

Vs

1.Marimuthu

...1st respondent/appellant
/4th defendant

2.Ramdas

3.Rajammal

...Respondents 2 & 3/
Respondents 2 and 4/
Defendants 1 and 3

4.Jeyaleela (died)

5.Kutty alias Rajaboopathi

6.Jeeseeli

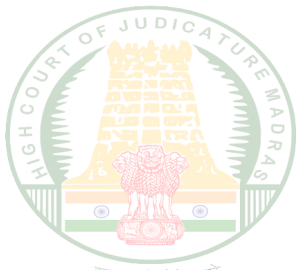
7.Rajaman Singh

8.Sridhar

....Legal heirs of the 4th respondent

(Memo is recorded to the effect that R4 died, R5 to R8 who are already on record are recorded as legal heirs of the deceased R4 vide Court order dated 18.02.2025)

COMMON PRAYER : Second Appeal is filed under Section 100 of C.P.C, to set aside the common judgment made in A.S.No.29 of 1997, A.S.No.45 of 1997 and A.S.No.53 of 1997 and the decree in A.S.No.29 of 1997 all dated 26th June 1998 on the file of the Additional Sub Court, Srivilliputhur and restore the decree and judgement dated 27th January 1997 made in O.S.No.277 of 1996 on the file of the Additional District Munsif, Srivilliputhur.



S.A.Nos.120, 121 and 344 of 2001

(In all the second appeals)

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For Appellant : M/s.Chithra Sampath
Senior Counsel for Mr.P.Santhosh Kumar

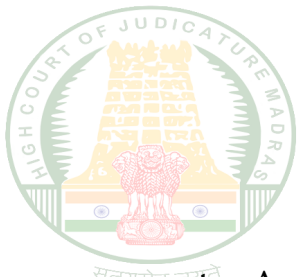
For Respondents : Mr.M.Thirunavukkarasu for R8
:M/s.M.Rajeswari for R4 & R5
:No appearance – R2, R3, R6 and R7
:**(*)Mr.M.Thirunavukkarasu for R1 in S.A.No.334 of 2001**

COMMON JUDGMENT

All the three second appeals have been filed by the plaintiff in O.S.No.277 of 1996 on the file of the Additional District Munsif Court, Srivilliputhur.

(A)Factual Matrix:

2.The suit schedule properties were jointly purchased by one Sudalaimuthu Nadar and his wife Pathamuthu Ammal under Exhibit A1 dated 23.03.1959. The said Sudalaimuthu Nadar had died intestate. Pathamuthu Ammal had executed two settlement deeds in favour of the plaintiff under Exhibit A2 dated 19.03.1979 and Exhibit A3 dated 22.03.1979 with regard to the 2nd schedule property in respect of her 1/2 share in the property purchased under Exhibit A1. The balance 1/2 share belonging to Sudalaimuthu Nadar is shown as 1st item of the 3rd schedule



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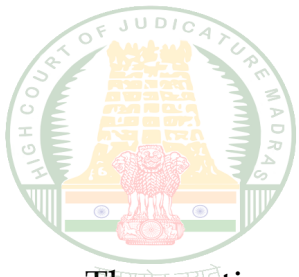
property. Apart from that, two other items are shown in the 3rd schedule property.

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3. It is the case of the plaintiff that after the settlement deed was executed in her favour, she had handed over the property to the 2nd defendant for management and after death of the mother in the year 1992, he had refused to share the benefits from the agricultural properties. Therefore, the suit for declaration of title and recovery of possession with regard to the 2nd schedule property.

4.The plaintiff had further contended that as far as the 1st item of 3rd schedule property (half share of Sudalaimuthu Nadar), she is entitled to 1/4th share. The 2nd and 3rd items in the 3rd schedule property are house property and a pathway connected to the house and they are ancestral properties and therefore, she is entitled to seek 1/4th share in the entire 3rd schedule property. Hence, she has prayed for a preliminary decree and a final decree to be passed for the 3rd schedule property.

5.The defendants have filed a written statement contending that though the properties were jointly purchased in the name of Sudalaimuthu Nadar and Pathamuthu Ammal, Pathamuthu Ammal did not have any independent income.



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The entire sale consideration came from Sudalaimuthu Nadar. Therefore, Pathamuthu Ammal is only a name lender for her ½ share. In such circumstances, the mother is not entitled to execute Exhibits A1 and A2 settlement deeds in favour of the plaintiff.

6.The defendants have further contended that Exhibits A1 and A2 settlement deeds were obtained by playing fraud upon the mother and therefore, they are not valid in the eye of law. It was further contended that these two documents were never acted upon and the documents have not come into force. It was further contended that pursuant to the said settlement deed, possession was not taken over by the plaintiff and the possession continued to be with the defendants.

7.The defendants have further submitted that the plaintiff, the mother and the 3rd defendant (another daughter) have executed Exhibit B1/B18 release deed on 04.10.1972 with regard to Item Nos.2 and 3 in the 3rd schedule property. As regards as the 1st item, they have relinquished their rights orally. Therefore, the suit for partition is not maintainable. The defendants have further contended that the 2nd defendant has executed a mortgage deed with regard to the 1st item of 3rd schedule in favour of the 4th defendant under Exhibit B16 on 06.09.1993. There was a

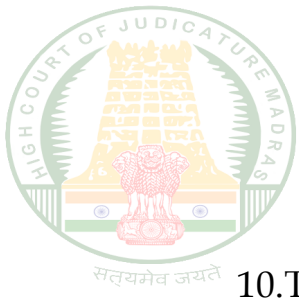


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registered partition deed between the defendants 1 and 2 under Exhibit A5 on 21.12.1994 in which 'A' schedule property was allotted to the 2nd defendant. The 2nd and 3rd items in the 'C' schedule was allotted to the 1st defendant.

8.The defendants have further stated that relying upon the partition deed, the 2nd defendant has executed a sale deed in favour of the 4th defendant on 23.02.1995 under Exhibit A4 /B13 with regard to the 1st item of 'C' schedule property. The plaintiff has never taken possession of the property pursuant to the settlement deed and the plaintiff, mother and other sisters have relinquished their in the suit schedule property. They have prayed for dismissal of the suit.

9.The trial Court arrived at a finding that Exhibits A1 and A2 have been proved in accordance with law and therefore, the plaintiff is entitled to a decree for declaration of title with regard to the 2nd schedule property. The trial Court further found that there are discrepancies in Exhibit B1 release deed and Exhibit A5 partition deed and therefore, they are not legally sustainable. The trial Court proceeded to grant preliminary decree for partition with regard to 1/4th share of the plaintiff in the 3rd schedule property.



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10.The defendants 1, 2 and 4 have filed three independent first appeals before the Additional Subordinate Court, Srivilliputhur. The First Appellate Court arrived at a finding that the plaintiff has not examined the attestor of Exhibits A2 and A3 and therefore, those settlement deeds have not been proved. The First Appellate Court arrived at a finding that the document has not come into force and the possession was not taken over by the plaintiff pursuant to Exhibit A1 and A2. The First Appellate Court further found that the defendants have proved Exhibit B1 release deed with regard to the 2nd and 3rd items of 3rd schedule property.

11.The First Appellate Court further found that since the plaintiff is not a party to the partition deed, the same is not binding upon her. Therefore, the First Appellate Court proceeded to partly reverse the decree of the trial Court and has granted a decree for partition with regard to the 1st item of the suit schedule property and dismissed the suit with regard to the 2nd and 3rd schedule property. Challenging the common judgement and decree passed in these three first appeals, present second appeals have been preferred by the plaintiff.

12.The second appeals were admitted on the following common substantial questions of law:



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"1.Whether the Court below is correct in holding that Exs.A2 & A3 were not proved in the absence of any challenge made by the defendants by way of counterclaim?

2.Whether the Court below was justified in holding that Exs.A2 & A3 were not proved, when the defence taken was the plea of fraud and coercion, which had to be proved by the defendants?

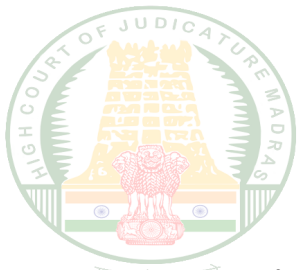
3.Whether the Court below rejected the plead of ouster pleader by the defendants is correct to hold that Exs.A2 and A2 were not acted upon in regard to undivided share?

4.Whether the Court below erred in holder that the plaintiff had not obtained patta after Exs.A2 and A3 when admittedly, the suit B schedule was an undivided share and the co-sharers were her kith and kin?

5.Having rejected the plea of ouster pleased by the defendants, whether the Court below is correct in holding that the Exs.A2 and A3 were not acted upon in regard to undivided share?"

(B)Submissions of the learned counsels appearing on either side:

13.The learned Senior Counsel appearing for the appellant submitted that as far as Exhibits A1 and A2 settlement deeds are concerned, the execution of the document by the mother is admitted by the defendant. Their only defence is that it was obtained by fraudulent means. In such circumstances, the examination of attesor is not necessary. After the death of the father in the year 1972, the mother was alive till 1992. Therefore, there was no occasion for the daughter to insist for



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mutation of revenue records in her name. The First Appellate Court was not right in arriving at a finding that the possession has not been taken and the settlement deeds have not come into force.

14.The learned Senior Counsel had further submitted that when a plea of fraud is raised by the defendants, the entire burden would be upon the defendants to establish the same. The First Appellate Court was not right in shifting the burden upon the plaintiff. She had further submitted that the First Appellate Court had erred in arriving at a finding that Exhibits A2 and A3 have not been acted upon merely based upon the fact that the revenue records have not been mutated in the name of the plaintiff. When Exhibits A2 and A3 relate to settlement of undivided share, the mutation of revenue records cannot take place until the properties are partitioned.

15.The learned Senior Counsel for the appellant had further submitted that when a plea of ouster, pleaded by the defendants has been rejected by the Appellate Court, whether it was correct in holding that Exhibits A2 and A3 were not acted upon. She had further submitted that the plaintiff, her mother and other sisters are illiterate persons and they have signed Exhibit B1 without having knowledge about

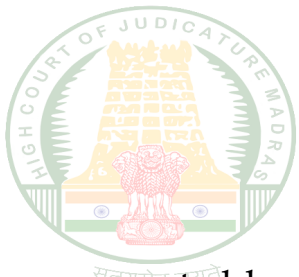


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the character and contents of the documents. In view of the principles of *non est factum*, the document becomes void and therefore, the plaintiff is entitled to a decree for partition with regard to item Nos. 2 and 3 in the 3rd schedule property also.

16.The learned Senior Counsel had relied upon a judgement of the Hon'ble Supreme Court reported in **2023 SCC Online SC 1022 (Ramathal and others Vs. K.Rajamani (dead) through Lrs. and another)** and the judgement of this Court reported in **2019-1-L.W.927(A.Mahinmaidas Vs. P.Parameswari and another)** to contend that, in the case of plea of *non est factum*, the entire burden is upon the beneficiary of the document. The learned Senior Counsel further submitted that as far as Exhibit B1 is concerned, there are inconsistencies with regard to the payment of consideration, the attestors were not examined and only the scribe was examined as PW1. In Exhibit A5 partition deed, there was no reference about Exhibit B1 release deed. Therefore, it is a clear case of vitiating factor. The First Appellate Court has not properly appreciated the plea of *non est factum* with regard to Exhibit B1 document.

17.The learned Senior Counsel had further pointed out that there is no reference about Exhibit B1 release deed or Exhibit A5 partition deed in the sale deed

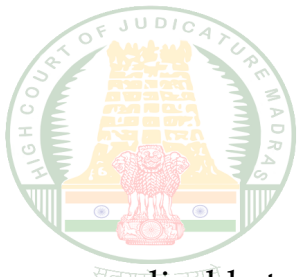


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executed by the 2nd defendant in favour of the 4th defendant on 23.02.1995. Hence, the learned Senior Counsel prayed for allowing the second appeals and to restore the judgement and decree of the trial Court.

18.Per contra, the learned counsel appearing for the respondents/defendants had contended that the plaintiff had not filed a single document to establish the fact that Exhibits A1 and A2 have been acted upon. In fact, the mother of the parties did not have any independent income and she was just a name lender and therefore, she had no right to execute Exhibits A1 and A2. The very fact that the plaintiff has not chosen to mutate the revenue records in her favour from the year 1979 onwards, will clearly establish the fact that these documents were not acted upon.

19.The learned counsel for the respondents had further submitted that Exhibit B1 release deed has been executed voluntarily by the mother and two sisters in the year 1972. They have not chosen to challenge these documents for so many years. They have also received the consideration mentioned in the said document. It is too late in the day to contend that they were not aware of the contents of the documents. They are not illiterates and therefore, the plea of *non est factum* is not



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applicable to the facts of the present case.

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20.The learned counsel had further submitted that merely because there is some discrepancy between the oral and the documentary evidence touching upon the release deed, considering the fact that the evidence is recorded after more than 30 years, minor discrepancies cannot affect the validity of the document. After having executed Exhibit B1, the plaintiff cannot make a claim over the 2nd and 3rd schedule properties. He further contended that as regards other items, the plaintiff, the mother and other sisters have orally relinquished their shares. Based upon the oral relinquishment, the brothers have entered into a partition deed on 21.12.1994 and based upon the allotment made in the partition deed, the sale deed was executed by the 2nd defendant in favour of the 4th defendant on 23.02.1995. Therefore, the release deed, the partition deed and the sale deed executed by the 2nd defendant in favour of the 4th defendant are valid in the eye of law and not liable to be set aside.

21.The learned counsel for the respondents had further contended that the defendants are in possession of the suit schedule properties right from the date of death of the father and they are in enjoyment of the same and the rights of the



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plaintiff, if any over the suit schedule properties, have been lost in view of the principles of ouster. Hence, he prayed for confirming the judgment and decree of the First Appellate Court.

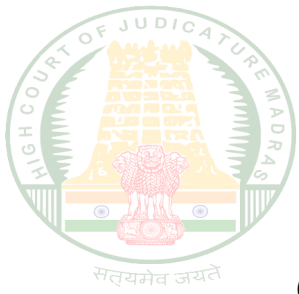
22.Heard both sides and perused the material records.

(C)Discussion:

23.It is not in dispute that Sudalaimuthu Nadar and his wife Pathamuthu Ammal have jointly purchased the 1st schedule property under Exhibit A1 on 23.03.1959. According to the defendants, Pathamuthu Ammal is just a name lender and the entire sale consideration came from Sudalaimuthu Nadar. In the light of the said pleadings, the defendants have attacked the right of Pathamuthu Ammal to execute Exhibits A2 and A3 settlement deeds with regard to the alleged ½ share in favour of the plaintiff.

24.The unamended Section 3(2) of the Benami Transactions (Prohibition) Act, 1988 is extracted as follows:

“3. Prohibition of benami transactions- ----



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(1)...

(2) Nothing in sub-section (1) shall apply to

(a) the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife of the unmarried daughter;

(b) the securities held by a -

(i) depository as registered owner under sub-section(1) of section 10 of the Depositors Act, 1996

(ii) Participant as an agent of a depository."

25. The Hon'ble Supreme Court in a judgment reported in (1995) 4 SCC 572

(**Nand Kishore Mehra Vs. Sushila Mehra**) in Paragraph No.8 has held as follows:

8.....Since the plaintiff is the husband who had the right to enter into a benami transaction in the matter of purchase of property in the name of his wife or unmarried daughter, as we have held earlier, he is entitled to enforce his rights in the properties concerned if he can succeed in showing that he had purchased them benami in the name of his wife. But in view of the statutory presumption incorporated in sub-section (2) of section 3 of the Act, he can get relief sought in the suit only if he can prove that the properties concerned had not been purchased for the benefit of the wife, even if he succeeds in showing that the consideration for the purchases of the properties had been paid by him."

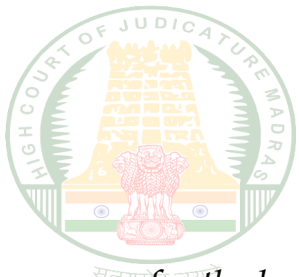


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26.A Division Bench of our High Court in a judgment reported in (1997) 2 LW 908 (*Parvathi Ammal Vs. Solai Ammal and another*) in Paragraph No.14 has held as follows:

“14.....If the family properties which are the subject matter of the suit for partition are the self-acquisitions of Kesava Padayachi and Kesava Padayachi has chosen to purchase some of the items in the name of his wife, apparently to benefit her, merely because the purchases were said to have been made by the husband from his funds or that it was, along with the other properties belonging to the family, enjoyed by the family itself is not a sufficient clue or evidence or basis for readily coming to the conclusion that the acquisition by Kesava Padayachi in the name of his wife, the 1st defendant, is benami. Normally, as pointed out in the series of cases referred to above, the general presumption should be that the husband thought fit to purchase some of the items of the properties in the name of his wife for her benefit and welfare. Such presumption would be in our view be strong in a case where the very case of the plaintiff is that all properties belonging to the father are his self-acquisition and not that they were purchased from out of any ancestral nucleus or nucleus coming tout of the joint family or coparcenary property or funds. In such cases, Courts have been insisting upon very strong and specific claim at the instance of the defendants who project the claim of benami, in making it also obligatory on the part of such person to prove the same that the acquisition was not meant to be.



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for the benefit or welfare of the person in whose name it was acquired but it was for the family only, and that the ostensible owner was merely a name-lender. In this case, there is no such plea or assertion and the evidence is also slender and practically nil from the side of the plaintiff who failed to make any specific plea as above and produce any independent evidence except examine herself on the plaintiff's side....."

27. Another Division Bench judgment of our High Court in a judgment reported in **2023 (4) CTC 9 (Shanthi and others Vs.K.Senthil Kumar)** in Paragraph No.18 has held as follows:

"18. Section 2 (9) (A) of amended Benami Transactions (Prohibition) Act, 2016 would suggest a rule of evidence namely, property purchased by husband in the name of his wife shall be presumed to be purchased for the benefit of wife, in other words, it creates a rebuttable presumption that property purchased by husband in the name of his wife is her property unless the contrary is proved by the person, who alleges it was not purchased for her benefit."

28. In a case where a person purchases property in the name of his wife or his unmarried daughter, there is a legal presumption that the properties are purchased for the benefit of the wife or his unmarried daughter, unless the contrary intention is proved. Therefore, it is clear that the entire burden would be upon the



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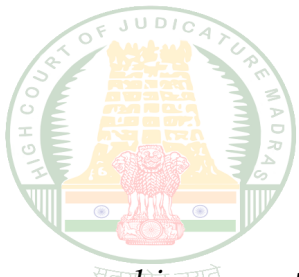
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person who pleads that the property was not purchased for the benefit of his wife and she was just a name lender. In the present case, though Sudalaimuthu Nadar was alive from 1959 to 1972, he has not chosen to raise such a plea. The defendants are not able to establish that $\frac{1}{2}$ share, though purchased in the name of their mother, it was not for her benefit. In such circumstances, it is clear that both Sudalaimuthu Nadar and Pathamuthu Ammal are joint owners of the 1st schedule property. Therefore, Pathamuthu Ammal would be entitled to $\frac{1}{2}$ share as a matter of right and her entitlement to execute Exhibits A2 and A3 in favour of her daughter cannot be questioned.

29.The defendants have further contended that Exhibits A2 and A3 have not been acted upon and the plaintiff has not examined the attestor of Exhibits A2 and A3 to prove the same in accordance with law.

30.The Hon'ble Supreme Court in a judgment reported in (2000) 7 SCC 189 (*Rosammal Issetheenammal Fernandez (dead) by Lrs. and others Vs. Joosa Mariyan Fernandez and others*) in Paragraph No.11 has held as follows:

"11.Under the proviso to Section 68 the obligation to produce at least one attesting witness stands withdrawn if the execution of any such document, not being a will which is registered, is not specifically denied. Therefore, everything



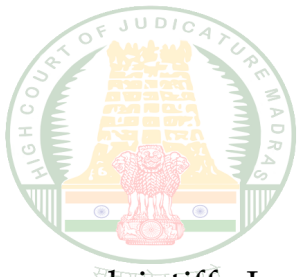
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hinges on the recording of this fact of such denial. If there is no specific denial, the proviso comes into play but if there is denial, the proviso will not apply....."

31.In the present case, the defendants have only contended that Exhibits A1 and A2 documents have been obtained by the plaintiffs by playing fraud upon the mother. Therefore, it is clear that the execution of document is not in dispute.

32.In view of the judgement of the Hon'ble Supreme Court referred to supra, when the execution is not in dispute, as far as a settlement deed is concerned, examination of attestor is not mandatory. Hence, the First Appellate Court was not right in arriving at a finding that the plaintiff has not proved Exhibit A2 and A3 by examining the attestors.

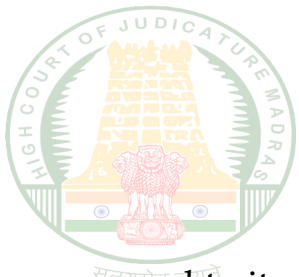
33.It is further contended by the defendants that Exhibits A1 and A2 deeds have not been acted upon and the defendants have not taken possession pursuant to the said documents. Though Exhibits A2 and A3 were executed by the mother in the year 1979, she was alive till 1992. The present suit for partition has been filed on 14.02.1996. It is understandable that the plaintiff has not chosen to mutate the revenue records or take possession of the property when her mother was alive. That apart, only an undivided $\frac{1}{2}$ share was settled by her mother in favour of the



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plaintiff. In such circumstances, the plaintiff becomes a joint owner along with defendants 1 to 3. Therefore non-mutation of the revenue records or not taking the physical possession of the property pursuant to the settlement deed, would not affect the validity of Exhibits A1 and A2. In the light of these circumstances, the plea of defendants that the right of the plaintiff to seek partition stands ousted cannot be countenanced.

34.The mother, plaintiff and the 3rd defendant have jointly executed Exhibit B1 release deed on 04.10.1972 in favour of their two brothers namely defendants 1 and 2. The learned Senior Counsel appearing for the plaintiff has attacked these documents invoking the principles of *non est factum*. There are no pleadings in the plaint that the plaintiff has executed Exhibit B1 release deed under misrepresentation with regard to the character of the document. Though in the written statement, Exhibit B1 release deed has been pointed out, no reply statement has been filed raising the plea of *non est factum*. Even during the chief examination, the plaintiff has not deposed anything relating to the plea of *non est factum*. In such circumstances, it is clear that the plaintiff along with two other co-owners have chosen to execute Exhibit B1 release deed in favour of the defendants 1 and 2 with



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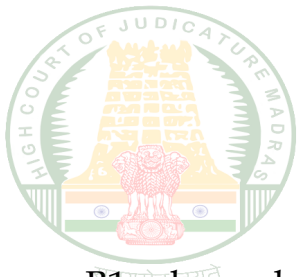
regard to item Nos. 2 and 3 in the 3rd schedule. Therefore, the plaintiff would not be entitled to seek partition with regard to Item Nos. 2 and 3 of 3rd schedule property.

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35.As far as Exhibit A5/B15 partition deed between the defendants 1 and 2 is concerned, the plaintiff is not a party to the said document and therefore, the same is not binding upon her. Relying upon the partition deed, the 2nd defendant has sold the 1st item of 3rd schedule property to the 4th defendant under Exhibit B13. Since the partition deed is not binding upon the plaintiff, any sale made by the 2nd defendant with regard to 1st item of 3rd schedule shall bind the share of the 2nd defendant alone.

36.The plaintiff has got a settlement deed with regard to an undivided $\frac{1}{2}$ share in Exhibit A1 property from her mother which is shown as 2nd schedule in the suit. Since she has got only an undivided $\frac{1}{2}$ share from her mother, the prayer for declaration of title and recovery of possession with regard to the 2nd schedule property is not maintainable and she would only entitle to seek partition of $\frac{1}{2}$ share in Exhibit A1 property.

37.As far as the 3rd schedule property is concerned, the plaintiff is not entitled to a share in the 2nd and 3rd items of 3rd schedule property in view of Exhibit



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B1 release deed. The plaintiff would be entitled to a preliminary decree for partition
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with regard to another 1/4th share in Exhibit A1 property.

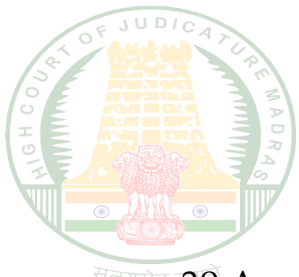
38. In view of the above said deliberations, all the substantial questions of law are answered in favour of the appellant. The judgement and decree of the First Appellate Court are modified as follows:

a) The plaintiff shall be entitled to a preliminary decree for 5/8th share in the property covered under Exhibit A1 sale deed dated 23.03.1959.

b) The prayer for declaration of title and recovery of possession with regard to the 2nd schedule property is hereby rejected.

c) The prayer for partition with regard to the 2nd and 3rd items in 3rd schedule property is hereby rejected.

(*) d) The 4th defendant shall be entitled to work out his remedy during the final decree proceedings



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39. Accordingly, the second appeals are partly allowed on the above said terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

21.07.2025

(*)Corrected as per order of this Court dated 23/07/2025 made in SA(MD)No. 10,121&334 of 2001

Sd/-

Assistant Registrar (CS III)

// True Copy //

/08/2025

Sub Assistant Registrar
(CS- I/ II / III / IV)

msa

To:-

1.The Additional Subordinate Judge

Srivilliputhur

2.The Additional District Munsif

Srivilliputhur

3.The Section Officer

V.R.Section

Madurai Bench of Madras High Court

Madurai

+1cc to M/S.P.SANTHOSH KUMAR, Adv in SR-44691/2025

+1cc to M/S.M.THIRUNNAVUKARASU Adv in SR-44699/2025

S.A.Nos, 120, 121 and 334 of 2001
and CMP.No.1335 of 2001

21.07.2025

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Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023

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