



A.S.No.1130 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 29.01.2026**

CORAM :

**THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR**

**AND**

**THE HONOURABLE MR. JUSTICE R. SAKTHIVEL**

**A.S.No.1130 of 2025**

**and**

**C.M.P.No.27560 of 2025**

R.Damodaran

... Appellant

Vs.

R.Dorairaj (deceased)

1.Dr.S.Swayam Jothi

2.Dr.D.Sai Sucheethra

3.Dr.D.Sreelekha

... Respondents

**Prayer** : Appeal filed under Section 96 r/w. Order XLI Rule 1 of the Code of Civil Procedure against the judgment and decree dated 28.04.2025 passed in O.S.No.6533 of 2019 (C.S.No.577 of 2009) on the file of the I Additional City Civil Court, Chennai.

For Appellant : Mr.A.Viveganandhan

For R1 to R3 : Ms.S.Geetha  
for Mr.Rajnish Pathiyil



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## **J U D G M E N T**

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(Judgment was delivered by **N. SATHISH KUMAR, J.**)

Challenging the judgment and decree passed by the learned I Additional Judge, City Civil Court, Chennai, in O.S.No.6533 of 2019, dated 28.04.2025, granting preliminary decree of 2/3<sup>rd</sup> share to the plaintiffs, the unsuccessful defendant has filed the above Appeal.

2.For the sake of convenience, the parties will be referred to as per their rank before the trial Court.

3.The 1<sup>st</sup> plaintiff and the defendant are brothers. They are the sons of one Ranganatha Mudaliar. The suit properties were originally owned by the said Ranganatha Mudaliar. The said Ranganatha Mudaliar died intestate on 04.04.1979 leaving behind his (i) wife Swarnabai Ammal, (ii) the plaintiff and (iii) Miss.R.Vatsala Kumari, his daughter who remained spinster during her lifetime and (iv) the defendant as legal heirs. The 1<sup>st</sup> plaintiff's mother Swarnabai Ammal died intestate on 08.01.1993. After the death of the 1<sup>st</sup> plaintiff's father and mother, the 1<sup>st</sup> plaintiff, the defendant and their sister



Vatsala Kumari became entitled to 1/3rd share in the properties of their father. The 1<sup>st</sup> plaintiff was living in the First Floor in the house while, the sister Vatsala Kumari was residing in the Hall of the Ground Floor as well with the plaintiff upstairs for food and sleep, while the defendant was occupying the remaining portion of the Ground Floor. The remaining area was jointly used by all the co-owners of the same.

4.It is the contention of the plaintiffs that the 1<sup>st</sup> plaintiff has paid for the electricity service connection and water connection. The defendant did not pay any amount including the water tax, etc. The 1<sup>st</sup> plaintiff and his sister Vatsala Kumari issued a legal notice as against the defendant demanding their 1/3rd share towards the expenses, however, the same was not paid by the defendant. The entire expenses of the properties were met by the 1<sup>st</sup> plaintiff. During the lifetime of Vatsala Kumari, she was taken care of by the 1<sup>st</sup> plaintiff and his family members. During her lifetime, the sister Vatsala Kumari, out of love and affection, released her 1/3rd share in favour of the 1<sup>st</sup> plaintiff by Release Deed dated 17.04.2007 registered as Doc.No.799 of 2007 on the file of the Sub-Registrar's Office, Adyar. The sister Vatsala Kumari died on 01.06.2007. Therefore, it is the contention of



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the plaintiffs that, by virtue of the Release Deed, the 1<sup>st</sup> plaintiff is entitled to 2/3rd share in the 1<sup>st</sup> item of the suit property. Hence, the 1<sup>st</sup> plaintiff filed the present suit for partition as against his brother, viz., the defendant. The 1<sup>st</sup> plaintiff died during the pendency of the suit and his legal heirs were substituted as plaintiffs 2 to 4.

5.The defendant contested the suit by filing his written statement. Admitting that the properties were purchased by their father, it is the contention of the defendant that the 1<sup>st</sup> plaintiff was residing in the First Floor and after filing the present suit, the 1<sup>st</sup> plaintiff vacated and was residing in a nearby place, however, the defendant continues to reside in the Ground Floor. The defendant's only sister Vatsala Kumari died as a spinster on 01.06.2007. Therefore, it is the contention of the defendant that he is also entitled to equal share. The defendant's sister Vatsala Kumari fell sick on 17.02.2007 and she was diagnosed with cancer. She was admitted in Billroth Hospital in a very serious condition and she was unconscious for nearly three months (March, April & May, 2007) and she died on 01.06.2007. When the defendant and his family members visited the hospital to see her sister Vatsala Kumari, she could not even recognise



anyone and she was in an unconscious state. Therefore, it is the contention of the defendant that the defendant's sister Vatsala Kumari could not have executed the Release Deed. Further, the defendant also disputed the very signature found in the document. It is his contention that his sister could not have executed the Release Deed knowing its contents, as she was in an unconscious state. According to the defendant, the document has been prepared for the purpose of the suit.

6.Further, it is the contention of the defendant that the 1<sup>st</sup> plaintiff has managed to get Power of Attorney from his sister Vatsala Kumari in favour of his daughter Miss.D.Sai Suchetra. When the Power of Attorney could be registered on special attendance, the Release Deed also could have been registered in the same manner. This creates a serious doubt on the very execution of the document. Hence, he opposed the suit.

7.Based on the pleadings of the parties, the trial Court has framed the following issues :

- 1. Is the defendant entitled to half share in all the items of the suit schedule mentioned properties, in view of the Release Deed dated 19.04.2007 executed by Ms.R.Vatsala Kumari registered*



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*as Doc.No.799 of 2007 in the office of the SRO, Adyar, releasing her 1/3rd right in the Item No.1 of the schedule mentioned property in favour of the plaintiff ?*

- 2. Is not the plaintiff entitled to 2/3rd share in the suit Item No.1 of the schedule mentioned property, in view of the Release Deed executed by Mrs.Vatsala Kumari registered as Doc.No.799 of 2007 in the Office of the SRO, Adyar, releasing her 1/3rd share in the 1<sup>st</sup> item of the suit schedule property ?*
- 3. Is the alleged Release Deed dated 19.04.2007 alleged to have been executed by Miss.R.Vatsala Kumari is true, valid and genuine ?*
- 4. Is the claim of Rs.46,666/- correct and justified, even without a prayer and proper payment of Court fee therefor ?*

8.On the side of the plaintiffs, P.W.1 to P.W.4 were examined and Exs.A1 to A20 were marked. On the side of the defendant, D.W.1 was examined and Exs.B1 to B4 were marked.

9.Based on the evidence and materials on record, the trial Court, by its judgment and decree dated 28.04.2025, answered the issues in favour of the plaintiffs and decreed the suit.



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10. Aggrieved over the judgment and decree of the trial Court, the sole defendant has filed the above Appeal.

11. Learned counsel for the appellant/defendant would submit that the Release Deed dated 17.04.2007 (Ex.A8) is highly doubtful. The executrix Vatsala Kumari was admittedly in hospital in a serious condition and therefore, she could not have executed the said document. It is his further contention that, when Ex.A16 (Power of Attorney) has been filed to show that the Power of Attorney was registered on a special attendance in the hospital itself, there was no reason as to why the Release Deed, which was already executed on 17.04.2007, could not be registered on special attendance by the Sub-Registrar in the hospital itself. According to him, this fact creates serious doubt about the very execution of the document itself. It is his further contention that P.Ws.3 and 4 are the Doctors who are working with P.W.2 who is the daughter of the 1<sup>st</sup> plaintiff. Hence, their evidence as attesting witnesses cannot be given much importance. Hence, the very execution of the Release Deed relied upon by the plaintiffs is very doubtful. Therefore, it is his submission that the said document cannot be given



importance and the defendant is also entitled to equal share in the 1<sup>st</sup> item of the suit properties.

12. Whereas, the learned counsel for the respondents 1 to 3/plaintiffs would submit that P.W.3 and P.W.4 (Doctors) have no axe to grind against the defendant and they have clearly spoken about the mental faculties of the deceased sister Vatsala Kumari, though she was in the hospital. They have deposed that she was in a position to take rational decision and that the document Ex.A8 has been executed by her. They have further stated that the Power of Attorney (Ex.A16) was registered on special attendance at the request of the deceased Vatsala Kumari. The Sub-Registrar was present during the registration of the Power of Attorney on 18.04.2007. The Power of Attorney (Ex.A16) itself clearly shows that special power has been given to the Agent only to present the Release Deed already executed by the executrix Vatsala Kumari on 17.04.2007 before the jurisdictional Sub-Registrar. It is her further contention that P.W.3 and P.W.4, who are the attesting witnesses to the Release Deed, have clearly spoken about the execution of the document as well as the attestation and therefore, there is no suspicion attached to the document. It is her contention that, mere



registration of the Release Deed by presentation through the Power Agent itself cannot be a suspicious circumstance. Further, it is her contention that the evidence of the defendant (D.W.1) itself clearly shows that his sister was not moving well with him and he has not even seen her when she was suffering from serious ailment; she was taken care by the 1<sup>st</sup> plaintiff and his family members; even for the last rites of his sister Vatsala Kumari, he did not attend. It is her contention that, all these facts clearly show that the sister has, in fact, looked after by plaintiff, therefore, she executed Release Deed in favour of her elder brother who has taken care of her, namely, the 1<sup>st</sup> plaintiff. Therefore, the learned counsel would pray for dismissal of this Appeal.

13.In the light of the above submissions, the points that arise for consideration in this Appeal are as follows :

1. *Whether the Release Deed (Ex.A8) dated 17.04.2007 executed by Vatsala Kumari is valid and true ?*
2. *Whether the document Ex.A8 suffers from any suspicion attached to it ?*



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14. Heard the learned counsel on either side and perused the entire materials available on record.

**Point Nos.(1) and (2) :**

15. The relationship of the parties is not in dispute. The 1<sup>st</sup> plaintiff and the deceased Vatsala Kumari were residing in the same place. The evidence adduced by both sides clearly shows that till her death, the sister Vatsala Kumari was taken care by her elder brother, namely, the 1<sup>st</sup> plaintiff. Though the defendant was residing in the Ground Floor of the same building, his evidence (D.W.1) clearly indicates that he was not getting along with his only sister. His evidence clearly shows that he was not aware as to whether his sister was admitted in the hospital for treatment of cancer and he, in fact, denied that his sister was admitted in the hospital at the relevant point of time. Even when the dead body of his sister was brought to the house, he did not attend the funeral and he pleads ignorance of the place where her body was cremated. All these facts clearly show that the defendant was not getting along with his sister for some or other reasons. There are documents (Exs.A5 and A7) to the effect that the 1<sup>st</sup> plaintiff and



his sister have demanded 1/3rd share in the expenses met out in respect of the common property. The defendant (D.W.1) has admitted that he has not met out any expenses. This fact clearly shows that there was a strained relationship developed between the defendant and his sister Vatsala Kumari. In the above background, the sister releasing her 1/3rd right in favour of her elder brother, viz., the 1<sup>st</sup> plaintiff, under whose care she was residing in the house, is quite normal.

16.It is the contention of the appellant/defendant that, though the Release Deed was executed on 17.04.2007, which is marked as Ex.A8, the same has been registered only on 19.04.2007, that too, by P.W.2 who is the Power Agent of Vatsala Kumari. It is relevant to note that Ex.A8 (Release Deed) was executed on 17.04.2007. The execution of the document has been clearly spoken by P.W.3 and P.W.4, who are Doctors by profession working in the same hospital. On scanning of the evidence of P.W.3 and P.W.4, it can be seen that they have, in unison voice, stated that, though the executrix was suffering from cancer, she was in a position to take a rational decision and she was possessing a sound state of mind to execute a document. The evidence of P.W.4 further indicates that, in fact, the deceased



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Vatsala Kumari had informed her that she wants to settle the issue by executing the document. Both P.W.3 and P.W.4 have seen the executrix, i.e., Vatsala Kumari executing the document Ex.A8 in a sound state of mind. That apart, for the specific purpose of presenting the said document for registration, P.W.2 was appointed as Power Agent and the Power of Attorney (Ex.A16) in that regard, has been registered on 18.04.2007. It is relevant to note that the Power of Attorney (Ex.A16) was registered in the hospital and the Sub-Registrar visited the hospital on special attendance and registered the Power of Attorney. In the Power of Attorney (Ex.A16) itself, it is referred that the executrix Vatsala Kumari had already appointed one Dr.S.Swayam Jothi as Power Agent and now, alternatively, she is appointing P.W.2 as her Power Agent for presenting the Release Deed executed by her on 17.04.2007 in favour of the 1<sup>st</sup> plaintiff. Therefore, when law permits presentation of the document by an Agent, when execution has been spoken to by the attesting witnesses, merely because such registration has been done through Agent properly appointed under law, it cannot be said that the document is attached with suspicious circumstances. What is to be seen is, whether such document is executed while the person was possessing sound state of mind. P.W.3 and P.W.4 (Doctors), in unison voice, have stated that,



at the time of executing the Release Deed Ex.A8, the executrix Vatsala Kumari was possessing sound mental faculties and she was in a position to take rational decisions. When the execution has been proved and nothing can be elicited from their evidence to doubt the execution of the document, merely because the document was presented by the Power Agent for registration, such execution will not lose its significance. After execution of the Release Deed, the same has been registered. Once the document gets registered as per law, it will come into effect. Though the defendant has raised a contention to the effect that, when the Power of Attorney could be registered on special attendance, why the same could not be done to the Release Deed also, though that argument can be attractive, the fact remains that the execution has been done on a different date and the Power Agent has been specifically appointed only for presentation of the document already executed for registration before jurisdictional Sub-Registrar, based on which, the Release Deed has been registered later. There is no other circumstance brought on record to doubt the execution of the document. The conduct of the defendant also assumes significance. The fact remains that there was a strained relationship between the executrix and the defendant and the defendant has even pleaded ignorance about the ill health of his sister while



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residing in the same building and he has not even shared any expenses of the house and he has not even taken care to see his sister who was suffering from cancer and even he has not even gone to his sister's funeral. Therefore, it is quite normal for any family member to disinherit such member and release their share in favour of the other family member who takes care of their well being all along. In such view of the matter, we do not find any infirmity in the Release Deed Ex.A8 and also Ex.A16 Power of Attorney and other documents. ***Accordingly, both the points are answered in favour of the plaintiffs.***

17. Therefore, we do not find any merit in this Appeal. Accordingly, this Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(N.S.K., J.) (R.S.V., J.)  
29.01.2026

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Neutral Citation : Yes



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**N. SATHISH KUMAR, J.**  
**and**  
**R. SAKTHIVEL, J.**

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To

- 1.The I Additional Judge,  
City Civil Court,  
Chennai.
- 2.The Section Officer,  
VR Section,  
High Court, Madras.

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**29.01.2026**