



THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 19.11.2025

Judgment pronounced on : 13.02.2026

CORAM

**THE HON'BLE MR. JUSTICE P.B.BALAJI**

**A.S. No.740 of 2023**  
**and CMP. No.25524 of 2023**

1.C.P.Asokan @ C.P.Ashok  
2.C.P.Srinivasan  
3.C.P.Sudhakar  
4.Lakshmanan

..Appellants

Vs.

Hema Malini

..Respondent

**Prayer:** Appeal Suit filed under Section 96 of the Code of Civil Procedure, to set aside the judgment and decree passed in O.S. No.3223 of 2018 dated 21.04.2023 on the file of XXIII Additional City Civil Judge, Chennai.

For Appellants : Mr.V.Manohar

For Respondent : Mr.S.Mukunth,  
Senior Counsel for  
Mr.D.Ferdinand for  
M/s.BFS Legal



## **JUDGMENT**

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Challenging the decree in O.S. No.3223 of 2018, on the file of the XXIII Additionall City Civil Court, Chennai, are the appellants.

2. I have heard Mr.V.Manohar, learned counsel for the appellants and Mr.S.Mukunth, learned Senior Counsel for Mr.D.Ferdinand, learned counsel for M/s.BFS Legal for the respondents.

### **3. PLEADINGS:-**

#### **(a) Complaint in brief:-**

The defendants 1 to 3 are nephews of the plaintiff, being her elder brother's sons. The 4<sup>th</sup> defendant is the plaintiff's deceased nephew's son. The suit has been filed for partition and separate possession of the suit property. The defendants 1 to 3 conspired amongst themselves, taking advantage of the plaintiff's illiteracy and obtained the plaintiff's signature in a partition dated 09.04.2001 and also got it registered in the office of the Sub Registrar, Sowcarpet. The plaintiff is not aware of the contents of the document. The plaintiff was under the impression that she was signing for mutation of revenue records in the name of C.R.Parthasarathy, her brother, herself and her sister,



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Sulochana's name. These facts came to the knowledge of the plaintiff only in April 2018 when the plaintiff obtained an Encumbrance Certificate, after the demise of her brother, C.R.Parthasarathy. Immediately, the plaintiff demanded her 50% share in the property, as she was the joint owner alongwith the deceased brother, C.R.Parthasarathy and Sulochana, the plaintiff's sister Sulochana having died on 18.02.2009 and thus, the plaintiff was entitled to 50% and his brother, C.R.Parthasarathy, was entitled to 50%. The plaintiff does not know English language and her husband also lacked good knowledge in English and the signature of the plaintiff was obtained fraudulently. The plaintiff never saw her sister in the Registrar's Office and the plaintiff's sister Sulochana's signature has been forged. The document has been brought about by fraud and misrepresentation. The further document, viz., Release Deed dated 23.08.2012 is also non-est in law and not binding on the plaintiff. The plaintiff has not even received a sum of Rs.1,50,000/- which is mentioned in the document, viz., the partition deed, which is the plaintiff's share according to the partition deed. The plaintiff has called upon the defendants to come forward for an amicable partition. However, the defendants have not complied with the demands. The plaintiff issued a lawyer's notice on 18.04.2018, the defendants did not even choose to send a reply, hence, the plaintiff is constrained to file the suit, challenging the partition deed dated 09.04.2001 and the consequent Release Deed dated 23.08.2012 and also seeking partition and other reliefs.



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**(b) Written Statement filed by the 1<sup>st</sup> Defendant:-**

The suit is motivated and is only at the instance of the son of the plaintiff. There is no truth or merit in any of the allegations made in the plaint. The suit has not been valued properly the suit is also barred by law of limitation for having been filed after lapse of 17 years. The other sister Sulochana, was very much present in the Registrar's Office and she has also signed the Registration endorsement before the Sub Registrar. In such circumstances, the plaintiff's allegation that her sister, Sulochana's signature has been forged is totally false and vexatious. The plaintiff has signed in English and falsely claimed that she is illiterate. The sum of Rs.1,50,000/- was paid as reflected in the document and the allegation to the contra, is stoutly denied. The document was acted upon even in 2001 to everybody's knowledge and consequently, the Release Deed is also valid and binding on the plaintiff. The plaintiff and her husband collected a draft of the document even 10 days before the execution in order to consult their lawyers and it is not as if they had no occasion to even know the contents of the document. Having taken benefit under the partition deed, it is not open to the plaintiff to go back of the document and claim that the document has been brought about by fraud and misrepresentation. It is also contended that after notice was issued by the plaintiff, the issue was taken up with the plaintiff and the plaintiff confessed that she was not instrumental in issuing the



notice and was not interested in claiming any share and that was the reason why no reply was sent to the said notice. The defendants is therefore pray for dismissal of the suit.

**(c) Issues:-**

The Trial Court framed the following issues:

*(i) Whether the defendants 1, 2 and 3 and father of 4<sup>th</sup> defendant namely, Madhusoodhanan were not having any share in the suit property and not proper parties in the registered Partition Deed No:94/2001 is true as claimed by the plaintiff.*

*(ii) Whether the plaintiff is entitled to the relief of declaration that registered Partition Deed No.94/2001 dated 09.04.2001 is null and void and not binding upon the plaintiff?*

*(iii) Whether the plaintiff is entitled to the relief of declaration that registered Release Deed No.929/2012 dated 23.08.2012 is null and void and not binding upon the plaintiff.*

*(iv) Whether the plaintiff is entitled to the relief of preliminary decree for partition and separate possession 1/2 share in the suit property as prayed for.*



(v) *Whether the plaintiff is entitled to the relief of mesne profit as prayed for.*

(vi) To what relief if any, the plaintiff is entitled.

Thereafter, framed the following additional Issue:

(i) *Whether the suit is barred by limitation as claimed by the defendant side.*

**(d) Trial:-**

On the side of the plaintiff, P.W.1 to P.W.3 were examined and Ex.A1 to Ex.A5 were marked. On the side of the defendants, D.W.1 was examined, however no documents were exhibited.

**(e) Decision of the Trial Court:-**

The Trial Court finding that the partition deed is vitiated by fraud, collusion, undue influence and mis-joinder of parties, declared the same to be null and void. The Trial Court also found that the suit is not barred by limitation. The relief of declaration regarding the subsequent Release Deed dated 23.08.2012 was also granted as prayed for. Consequently, the Trial Court passed a preliminary decree holding that the plaintiff was



entitled to one half share in the suit property. Insofar claim for mesne profits, liberty was given to the plaintiff to work out her rights in the final decree proceedings.

#### **4. Arguments of the learned counsel for the appellants, Mr.V.Manohar:-**

The learned counsel appearing for the appellants would contend that the suit for declaration challenging the partition deed, to which admittedly the plaintiff was a party after lapse of 17 years was hopelessly barred by law of limitation. However, the Trial Court clearly fell in error in holding that the suit was not barred by limitation as the partition deed was brought about by fraud and collusion.

4.1. The learned counsel taking me through the documents viz., Ex.A1, partition deed would submit that when it has been contended by the plaintiff that she was illiterate and did not know English and further, her sister, Sulochana did not even come to the Sub Registrar's Office and the document was signed by the plaintiff under the impression that she was signing only for mutation of revenue records in the name of the legal heirs viz., her brother C.R.Parthasarathy, herself and her sister, Sulochana, the plaintiff's sister, Sulochana has put her signature before the signature of the plaintiff, on the right hand side of each page of the partition deed. Pointing out to the registration endorsements on the reverse of the first page as well, Mr.V.Manohar, learned counsel



would contend that it has Sulochana's left thumb impression and her signature find place just above the left thumb impression and signature of the plaintiff, Hema Malini.

4.2. The learned counsel would therefore contend that the allegation made by the plaintiff that her sister, Sulochana, never came to the Sub Registrar's office is clearly invented for the purpose of the case and the plaintiff had no explanation to offer as to how the signature and left thumb impression of her sister, Sulochana finds place just above the plaintiff's signature and left thumb impression, as a mark of the registration of the document before the Sub Registrar. The learned counsel would also take me through the admissions of P.W.1, where the plaintiff admits having signed the document and giving up her case in the plaint, in cross examination that she did not receive the money by admitting that she has received Rs.1,50,000/-. The learned counsel would therefore state that the plaintiff has come to Court with a totally false and fabricated case. He would therefore contend that the Trial Court, without referring to the oral and documentary evidence has clearly rendered a perverse judgment cannot be sustained in the eye of law.

#### **5.Arguments of the learned counsel for the respondent:-**



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Per contra, Mr.S.Mukunth, learned Senior Counsel appearing for the respondent would submit that the mere fact that the plaintiff signed in English cannot be put against the plaintiff when even in the plaint, the plaintiff has categorically asserted that neither the plaintiff nor her husband were conversant with English language. According to the learned Senior Counsel when non est factum has been pleaded and the mere admission of executing the document cannot be put against the plaintiff. The learned Senior Counsel would further state that there was no necessity for the brother's children to joint the partition deed when admittedly, the property was belonging to the father of the plaintiff, her brother C.R.Parthasarathy and sister, Sulochana. The learned Senior Counsel would also contend that the independent witness to the partition deed one, T.Prakash, has not been examined. He would also take me through the pleadings in the written statement as well as the oral evidence to fortify his contention that the plea of illiteracy has not been denied by the defendants. Placing much reliance on the Sub Registrar's evidence who was examined as P.W.3, on being summoned to Court, Mr.S.Mukunth, learned Senior Counsel would contend that admittedly, the property was worth Rs.59 lakhs in the year 2001 and by merely paying Rs.1,50,000/- to each of the sisters, the brother has played fraud upon the sister in bringing about Ex.A1 partition deed and knocking off the valuable immovable property.



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5.1. He would take me through the evidence of P.W.1, where P.W.1 has clearly stated that she was unaware of the contents of the document and she did not know to read English. Learned Senior Counsel would further contend that there is also no mention that the contents of the document had been read over to the plaintiff and in such circumstances, the burden was clearly on the defendants to establish that their hands were clean and no foul was played in bringing about the document, which is admittedly typed in English.

5.2. The learned Senior Counsel Mr. Mukunth, would also state that according to the stand taken by the defendants, the plaintiff and her sister were paid more than what they demanded. In this regard, he falls back on the evidence of P.W.3, the Sub-Registrar to show that the property was easily worth approximately Rs.60 lakhs on the relevant date. In such circumstances, it is the contention of the learned Senior Counsel that mere fact that the document has been executed by the plaintiff cannot validate the document and deny relief to the plaintiff to challenge the same on the ground of fraud and misrepresentation. He would also state that there has been no explanation on the side of the defendants as to why the sons of the defendant joined the execution of the partition deed. The Trial Court has rightly found that the document was bad even for mis-joinder of the sons of the defendant. He would further state that the plaintiff was clearly in a



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fiduciary relationship with her brother, C.R.Parthasarathy and referring to the evidence of P.W.1, Mr.Mukunth, learned Senior Counsel would contend that even in cross examination, after filing of the suit, the plaintiff had only stated that her brother would have never cheated her and it would clearly show the trust that the plaintiff had in her brother. It is therefore contended by the learned Senior Counsel that it is a classic case of a fiduciary relationship where the burden would stand shifted on the shoulders of the person in whom trust has been placed.

5.3.The learned Senior Counsel has relied the following decision in support of his contentions:

(i) *MST.Sethani Vs. Bhana*, reported in 1993 Supp (4) 639;

(ii) *Girish Kumar H.Jain*, reported in 2010 (5) CTC 40;

(iii) *R.Vatsala and others Vs. R.Krishnakumar and another*, reported in (2017) SCC Online Mad 26344; and

(iv) *Sharafat Sheikh Vs. Union of India and Another*, reported in (2022) SCC Online Del 2725.



6. I have carefully considered the submissions advanced by the learned counsel for the appellants, Mr.V.Manohar and Mr.S.Mukunth, learned Senior Counsel for the respondents. The following points arise for determination in this appeal:-

- (i) Whether the partition deed dated 09.04.2001 and consequent Release Deed dated 23.08.2012, are null and void and not binding on the plaintiff?
- (ii) Whether the suit is barred by the law of limitation?
- (iii) If answer to point No.1, is in favour of the plaintiff, then whether the plaintiff is entitled to further reliefs of partition, means profits etc?

7. The relationship between the parties is admitted. The factum of execution and registration of Ex.A1, partition deed is also admitted. However, it is the contention of the plaintiff that the plaintiff did not know English, though she used to sign in English and equally, her husband was also not conversant in English. They signed the document under the impression that the plaintiff was signing only for mutation of revenue records to include their names, i.e., her name, her brother's name and her sister's name in the place of that the deceased father, in whose name, the revenue records admittedly stood at that point of time. It is the further case of the plaintiff that her sister never came to the Sub Registrar's office and her signature has been forged. In the plaint, the plaintiff also



claims that though a sum of Rs.1,50,000/- is stated to have been paid to her under the partition deed, no such amount was paid to the plaintiff.

8. Making these averments and allegations, the plaintiff challenges the said partition deed as being brought about by playing fraud and misrepresentation, besides forging signature of her sister. As a consequence, the Release Deed which came to be executed post the partition deed under Ex.A2, is also sought to be nullified. The plaintiff thereafter, seeks for partition and separate possession of her one half share, consequent to the demise of her sister without leaving any heirs to succeed to her one half share.

9. It is the case of the defendants on the other hand that the plaintiff was fully aware of the contents and terms of the partition deed and she has also received a sum of Rs.1,50,000/- and she and her sister have personally appeared before the Sub Registrar and signed and executed the partition deed and have also completed the registration formalities by affixing their left thumb impression as well as signatures on the reverse side of the registered document, Ex.A1. The plaintiff has examined herself as P.W.1. In her cross examination, she admits that the instruction for preparing the plaint were given only by her son. She admits that her husband is working in a Hotel as a Manager in a



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Three Star Hotel, where not only local tourists, but was also international tourists, come to stay. The plaintiff admits that as Manager of the said Hotel, her husband was worldly wise. She admits that her husband has signed as one of the attesting witnesses in the document. In cross examination, she also admits that she received a sum of Rs.1,50,000/-. The explanation given by P.W.1 is that it was represented by the defendants that the amount was paid for transferring the electricity service connection from the father's name. She also admits that the signature found before her signature in the document is that of her sister. She also admits that she never applied any Encumbrance Certificate before filing of the suit. She had further admits that her son alone knows all these things. In fact, to a specific question that the suit has been filed only at the behest of her son has been admitted by the plaintiff.

10. In the light of the case on which, the plaintiff came to Court and the evidence adduced by her, the following facts clearly emerge:

- (i) The plaintiff does not dispute the execution and registration of Ex.A1, partition deed on 09.04.2001
- (ii) The plaintiff gives up her case that the amount Rs.1,50,000/- which has been stated in the deed, not being paid to her, in cross examination, where she



categorically admits that Rs.3,00,000/- was paid to her and her sister (Rs.1,50,000/- each).

- (iii) It is feebly contended by the plaintiff that her sister's signature has been forged. The plaintiff admits that the signature before her signature in the document to be her sister's signature. Therefore, the plea of forgery has been virtually given up, leave alone not being established that it was a case of forgery.
- (iv) The fact that the registration endorsements before the Sub Registrar also carries the left thumb impression of the signature of the plaintiff's sister before the left thumb impression and the signature of the plaintiff herself would also clearly raise a presumption that the official acts of registration have been done in a proper manner. There is absolutely no explanation on the side of the plaintiff as to how her sister's left thumb impressions and signature are found above the left thumb impression and signature of the plaintiff in the registration endorsement in Ex.A1, document.
- (v) The plaintiff claims to be illiterate and also claims that her husband is also illiterate. However, she admits in the cross examination that she signed in English, though claims that she does not read English. However, she candidly admits the fact that her husband was employed as a Manager in a Three Star



Hotel where there is inflow of even international tourists. Thus to contend that even her husband did not know the contents of the document is absolutely not a believable version.

- (vi) In the written statement, there is a categorical and assertive statement that 10 days prior to the execution of the partition deed, the husband of the plaintiff took a draft of the document to get opinion from his Advocate. The said averment has not been denied either by filing reply statement or even in the proof affidavit filed by P.W.1. Thus the version of the defendant that a draft to the partition deed was given 10 days prior to the execution of the document can be safely taken as admitted. In such circumstances, the averments made in the plaint that the plaintiff signed the document as if she was under the impression that it was only for mutation of revenue records is clearly unsustainable.
- (vii) The plaintiff, as already discussed, has taken a false plea that she did not even receive a sum of Rs.1,50,000/-. However, in cross examination she admits not only receipt of Rs.1,50,000/- by her, but also receipt of the other Rs.1,50,000/- by her sister. The plaintiff has therefore clearly not approached the Court with clean hands.



(viii) The explanation given for having received the sum of Rs.1,50,000/- is amusing. The plaintiff contends that for change of the electricity service connection from the father's name to her name, the amount has been paid. By no stretch of imagination, for transfer of electricity connection from the father's name to the legal representative's names, any amounts would be paid, that too, Rs.1,50,000/-. The explanation is therefore clearly evasive and in order to justify the stand taken in the plaint that the document was executed only under the impression that it was for mutation of revenue records.

(ix) Coming to the evidence of the Sub Registrar, no doubt, the Sub Registrar has stated that the property value was around Rs.59,00,000/- at the execution and registration of Ex.A1, partition deed. However, the fact that the plaintiff has been paid Rs.1,50,000/- and the other legal heir has been paid Rs.1,50,000/- cannot be a ground to nullify the partition deed on this score alone. It is settled law that the partition need not be equal and it can also be inequitable. It is in this regard that the averments in the written statement assume importance. The defendants have categorically stated that the plaintiff was paid more than what the plaintiff demanded. It is not uncommon for a married daughter to give up her share in the father's property. The plaintiff and her sister were satisfied with a payment of Rs.1,50,000/- in lieu of their respective 1/3<sup>rd</sup> share.



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Therefore, on this ground, partition deed cannot be attacked or challenged as being unfair or inequitable. In fact, the Sub Registrar's evidence does not in any manner impeach the presumption regarding valid acts of registration of the document as well. In such circumstances, the plaintiff has miserably failed to prove that the partition deed was brought about by fraud and misrepresentation. The findings of the Trial Court are clearly perverse and the Trial Court has shifted the burden on the defendants to establish that their father had acted clean and did not take any undue advantage under Ex.A1 partition deed, misusing the fiduciary relationship between the father of the defendants and his sisters.

11. With regard to the arguments revolving around the fiduciary relationship and the decisions that have been relied on by the learned Senior Counsel, the Hon'ble Supreme Court in *Sethani's* case, (referred herein supra) held that when the plaintiff pleads that the documents was vitiated having been executed under undue influence of the defendant, then the initial onus on the plaintiff would stand discharged and the defendant had to thereafter, establish that the document was executed under no undue influence. The facts of the said case, are entirely different. The plaintiff was an old blind and illiterate tribal woman, who was totally dependent on the defendants and was also



living with the defendants till her death. Under such circumstances, the Hon'ble Supreme Court held that the defendant had to establish that there was no undue influence.

12. In *R. Vatsala's* case (referred herein supra), the Hon'ble Division Bench of this Court, held that the legal heir in whose favour the property was released had to established that there was no fraud or undue influence played. That was a case where the lady was aged and she had no male member to depend upon.

13. The Delhi High Court in *Sharafat Sheikh's* case (referred herein supra), held that merely because a person signs in English, it would not mean that the person has full understanding of the language. In *Girish Kumar's* case (referred herein supra), this Court, took note of the fact that when the defendant had stated that she did not know to write and read and the contents of the documents were in English and the defendant being an illiterate woman, the burden was very heavy on the plaintiffs to prove that the document was executed by the defendant, knowing the contents of the documents and consequences arising thereto. That was a case where, the defendant had only affixed the left thumb impression and had not even signed. In the present case, the plaintiff has admitted to have signed the document, that too in English. Her husband has attested the document as one of the witnesses. Her husband admittedly employed as a Manager in a



Three Star Hotel. In such circumstances, the facts of the present case would stand entirely on a different footing and none of the decisions that have been relied on by the learned Senior Counsel would come to the rescue of the respondent to sustain the judgment and decree of the Trial Court. The plaintiff in the present case, therefore cannot be held to have been in a fiduciary capacity as claimed.

14. Much was also argued by Mr.S.Mukunth, learned Senior Counsel regarding non examination of the independent witness, Mr.Prakash. I do not see why the defendants were under any obligation to examine the independent witness, when the plaintiff had firstly admitted her signature and the factum of registration of the document and secondly, when her own husband had attested the said document. It is not a case where the plaintiff was wholly dependent on her brother, in which case, it may be correct to contend that the plaintiff and her brother were in a fiduciary relationship and in such circumstances, the burden shifted to the beneficiary of the partition deed. However, in the present case, the plaintiff was admittedly married and living with her husband and family and therefore, she was not dependent on the plaintiff for her sustenance. In such circumstances, the argument that the plaintiff and her brother were in a fiduciary relationship and further the non examination of independent witness was fatal to the case of the defendants is wholly unsustainable. The Trial Court has misread



and misconstrued the pleadings and evidence and has come to perverse conclusions that too. erroneously shifting the burden on the proof of the defendants.

15. With regard to limitation as well, admittedly, the plaintiff is aware she executed the document on 09.04.2001. If really the plaintiff was under the impression that she signed the document only for transfer of names by way of mutation of records with the Revenue and Electricity, it is too much to believe the version of the plaintiff that she did not take any steps for close to 17 years. The plaint also does not disclose the necessity for her applying for Encumbrance Certificate. In fact, in cross examination, she admits that she did not even apply for Encumbrance Certificate and only her son would know if any Encumbrance Certificate has been applied. In such circumstances, when the plaintiff is a party to the partition deed, her entitlement to challenge the same as being brought about by playing fraud and misrepresentation could be entertained, provided the suit was brought within a period of three years from the date of the document. The question of the date of knowledge cannot come to the rescue of the plaintiff to bring the suit within the period of limitation. The Trial Court has not addressed the issue of limitation also in a proper perspective and has without any discussion, straightaway proceeded to render a finding that the suit is not barred by limitation. In such view of the matter, all points are answered.



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16. In the light of the above, the findings of the Trial Court are liable to be set aside. Consequently, the plaintiff not being entitled to any relief, there is no necessity to even discuss her entitlement to partition and declaration regarding the consequent release deeds.

17. In fine, this First Appeal is allowed. Consequently, the judgment in O.S. No.3223 of 2018 dated 21.04.2023, passed by the XXIII Additional City Civil Judge, Chennai is set aside. Consequently, connected Miscellaneous Petition is also closed. No costs.

**13.02.2026**

Neutral Citation Case: Yes  
Speaking order  
Index: Yes  
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To

1. The XXIII Additional City Civil Judge, Chennai.
2. The Section Officer, V.R. Section, High Court of Madras.



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**P.B.BALAJI.J.**

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**Pre-delivery judgment made in**  
**A.S. No.740 of 2023**  
**and CMP. No.25524 of 2023**



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13.02.2026