



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-01-2026

CORAM

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**THE HONOURABLE MR JUSTICE N. SATHISH KUMAR
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

**AS No. 1189 of 2025
and CMP.No.29752 of 2025**

1. H. Suvindra Krishnan
2. H. Preethi Krishna

Appellant(s)

Vs

1. Billroth Hospital Limited
Company Registered Under Companies
Act, Rep.by its Director, No.43,
Lakshmi Talkies Road, Shenoy Nagar,
Chennai 30.

2.K. Saroja
3.K. Ramprakash
4.S. Harikrishnan

Respondent(s)

PRAYER: Appeal filed under Order XLI read with Section 96 of Code of Civil Procedure, to set aside the decree and judgement passed on 20.08.2024 in OS No.3886 of 2021 on the file of the III Additional Judge, City Civil Court, Chennai.

For Appellant(s): Mr.S.Venkata Krishna Kumar

JUDGMENT

(Judgment was made by **N.Sathish Kumar J.**)

Challenging the decree and judgment of the Trial Court dismissing the suit filed for partition of 2/8th share and also for declaring the sale deed executed by guardian Mr.S.Harikrishnan without obtaining permission from



Court as ab-initio void, not binding on the plaintiffs, the then minors.

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2. Brief facts in filing this appeal are as follows:-

2.a. The plaintiffs are the son of Harikrishnan. The said Harikrishnan is the son of Subbaiya Naidu. The suit property was originally purchased by Mr. Subbaiya Naidu under a registered Sale deed dated 03.09.1948 registered as Doc.No.1909 of 1948. According to the plaintiff, the said Subbaiya Naidu had five sons namely Kannan, Ratchagan, Parthasarathy, HariKrishnan and Vijaya Kumar and two daughters namely Late Mrs. Andal and Mrs. Rani Nagarajan. According to the plaintiff, though the property is individual property of Subbaiya Naidu, the same has been treated as joint family properties among the male members. The daughters got married in the year 1966 and 1977 respectively, therefore, all of the male members and the siblings were in possession of the property as a joint family property. Subbaiya Naidu died on 24.04.1981. Kannan died on 08.05.1969, Rachagan died on 12.01.1989 and Mr. Vijaya Kumar died unmarried, therefore, the remaining survivors of HUF namely Parthasarathy, Harikrishnan, Ramprakash, Venugopal, Lalli, Karthikeyan, Suvindra Krishnan and Preethi Krishnan were residing in the and they are entitled to equal shares each by 1/8 share.

2.b. The chairman of the first defendant being the family doctor of the



plaintiff family approached the other co-owners and informed them that he is requiring additional space for car parking. It was mutually agreed to sell the property for Rs.2 crores, at that time the plaintiffs were minors. According to them, only in order to avoid stamp duty, true market value has not been shown in the agreement and agreement is entered into only for Rs.40 lakhs, however, the first defendant did not pay the remaining 1 crore 60 lakhs. According to the plaintiffs, the plaintiffs were minor at the time of executing sale agreement and sale deed, the said sale deed has been registered by playing fraud. Therefore, they issued legal notice dated 31.05.2017 calling upon the first defendant to pay the balance sale consideration with interest @ 18% per annum from the date of sale deed till the date of payment. As the defendant has chosen to give evasive reply dated 12.06.2017. Hence, the suit.

2.c. The first defendant filed a written statement disputing the claim of the plaintiffs. It is the contention of the first defendant that the property is the absolute property of the Subbaiya Naidu. After his death, class I legal heirs of the Subbaiya Naidu have derived the title and interest of the property. Since the plaintiffs being the grandchildren, they have no right over the suit property. According to the first defendant, the property was validly sold and conveyed for a valuable consideration. In the sale deed dated 31.01.2005, the plaintiffs were also made as co-nominee parties, at any event, the entire consideration has been



paid and the sale is valid. The allegation that the lesser consideration is shown in the agreement and sale deed is denied. It is the contention that the suit itself is barred by limitation.

2.d. The defendants 2 to 4 filed their written statement and contended that the value of the property was aggregated to Rs.88,50,000/-, wherein, the property was registered for the undervalue of Rs.40 lakhs

2.e. Based on the above pleadings, the Trial Court initially framed the following issues:

1. Whether the suit is barred by limitation?
2. Whether the court fee paid in the plaint is correct?
3. Whether the sale deed dated 31.1.2005 is obtained by fraud and without agreed consideration?
4. Whether the plaintiffs have any right of share in the suit property?
5. Whether the plaintiffs are entitled for the declaration as sought for by them?
6. Whether the plaintiffs are entitled for 2/8 share in the suit property?
7. Whether the sale deed dated 31.1.2005 is abinitio valid, not binding on the plaintiffs?
8. To what other relief the plaintiffs are entitled to?

and re-casted the following issues:-

1. Whether the plaintiffs are entitled for partition of 2/8 share in the suit schedule



property?

2. Whether the plaintiffs are entitled for declaration of the sale deed dated 31.1.2005 in favour of the 1st defendant is declared to be null and void and not binding on the plaintiffs?

3. Whether the suit is barred by limitation?

4. To what other relief the plaintiffs are entitled to?

2.f. On the side of the plaintiff, first plaintiff himself was examined as PW1 and marked Exs.A1 to A8. On the side of the defendants, DW1 was examined and no documents were marked on their side.

2.g. Considering the oral and documentary evidences, the Trial Court dismissed the suit in entirety. Challenging the same, the present appeal has been filed.

3. It is now well settled that the Appellate Court may after hearing the appellant or his pleader, if finds the appeal worthless may dismiss the appeal even during the admission stage provided dismissal should contain order on merits. This is the dictum of the Hon'ble Supreme Court.

4. Heard the learned counsel for the appellants and perused the materials



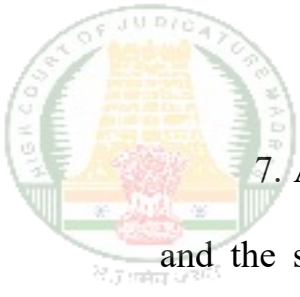
placed on record.

5. The learned counsel for the appellants submitted that though the plaintiffs/appellants were made as eo-nominee parties, they acquired the knowledge only later, therefore, the suit was filed belatedly two years after attaining majority by the plaintiffs and that cannot be put against them. Thus, according to them, the suit is maintainable. It is the further contention that the property value is more than 2 crores, the first defendant has agreed to pay that amount, however, the property has been registered only for Rs.40 lakhs and there was a fraud played in registering the document. Hence, the sale deed in favour of the first defendant has to set aside and declared to be null and void.

6. In light of the above submissions, now the following points arise for consideration are as follows:-

- i) Whether the suit filed by the plaintiffs who were made as eo-nominee parties in the sale deed dated 31.01.2005 is barred by limitation?
- ii) Is there any fraud played and established on record to countenance the submission of the learned counsel for the appellants?

Points (i) & (ii)



7. A copy of the sale deed dated 31.01.2025 has been marked as Ex.A1 and the said sale deed was sought to be assailed in the main suit. It is the admitted case of the plaintiff that the property was originally purchased by the grandfather of the plaintiffs namely one Subbaiya Naidu and the suit property is grandfather's self acquired property. Though it is contended by the plaintiff that all the male members/legal heirs were in joint possession of the property even during the lifetime of Subbaiya Naidu; after the death of Subbaiya Naidu on 25.04.1981, the plaintiffs with other co-owners are entitled to 1/8th share. According to the plaintiffs, Subbaiya Naidu had five sons and two daughters. The two daughters were married in the year 1966 and 1977 respectively. Subaiah Naidu died on 25.04.1981, therefore, according to them, through the plaintiffs' father S.Harikrishnan, the plaintiffs derive title and accordingly, they are entitled to 1/8th share. It is not in dispute that Ex.A1/sale deed was executed not only by the sons of the Subabiya Naidu, the minor plaintiffs were also made as co-nominee parties. Though they were minors at the relevant point of time, they were represented by their father Mr.Harikrishnan

8. It is relevant to note that even assuming that as per the pleadings of the plaintiff that the property is a self acquired property of Subbaiya Naidu. On his death, property devolved upon the Class-I legal heirs as per Section 8 of the Hindu Succession Act. The contention of the learned counsel for the appellants



that the property is joint family property and there was a joint family constituted, even then, when the sale was being made, the plaintiffs were made as eo-nominee parties and they were represented by their natural guardian. It is relevant to note that even the property is construed to be a joint family property where the minors have undivided interest in the joint family property and the property is under the management of the adult member of the family, no guardian is required to be appointed in respect of such undivided interest as per Section 12 of the Hindu Minority and Guardianship Act, 1956.

9. As far as the sale of the minor property is concerned, normally, when the individual property of the minors are sought to be subjected to any encumbrance, the same can be done only with the permission obtained under Section 8 of the Hindu Minority and Guardianship Act, 1956. It is relevant to note that sale of the minor property contrary to Section 8 of the Act, i.e., without any permission of the Court is not void from the inception, it is only a voidable transaction. When the said sale is made as conveyable one, unless such transaction is avoided within the time-frame as mandated under the law, such voidable transaction becomes valid in the eye of law. Therefore, even assuming that the subject property was a joint family property in which the plaintiffs have shares in the property, it is to be noted that they have been made as eo-nominee parties. In such case, they ought to have challenged the sale within a period of



three years on attaining the majority. Admittedly, the plaintiff attained majority in the years 2007 and 2011. When the plaintiff had attained majority long back and the very cause title of the plaint itself clearly shows that the plaintiffs were aged about 27 and 23 respectively at the time of filing the suit, it is clear that the suit has been filed beyond the period of limitation. Such being the case, the suit is certainly not maintainable. On the limitation ground itself is suffice to dismiss the appeal. Further, it is also to be noted that the plaint pleadings itself clearly shows that the property is the absolute property of Subbaiya Naidu, after his death, the property will normally go to the class-I legal heirs. As long as the plaintiffs' father is alive, as grandchildren/the plaintiffs will not become class-I legal heirs and they will not get any share.

10. It is the only contention of the plaintiffs that though there was an agreement to purchase the property for Rs.2 crores, the property have been registered only for Rs.40 lakhs, therefore, remaining sale consideration has not been paid. It is relevant to note that the document has been properly registered and conveyed. Even assuming that there was an agreement to pay the remaining consideration, it is for the plaintiffs to enforce the agreement for recovery of money, therefore, mere inadequacy of the price may not be a ground seeking to set aside the document. Further, there is no evidences and materials on record to substantiate the statement of the plaintiffs that the suit property were agreed to



be conveyed for a sum of Rs.2 crores. When the registered document is already conveyed and came into effect, registered document will prevail. Therefore, the plaintiff contention is far fetched.

11. Further, it is also to be noted that the first plaintiff himself even in his evidence has clearly admitted that the property is individual property of the Subbaiya Naidu only, therefore, the question of treating the property as joint family property does not arise at all. As already stated above, even assuming that the property was a joint family property, the plaintiffs being co-nominee parties ought to have challenged the sale within a period of three years as per Article 61 of Schedule to the Limitation Act. That apart, even assuming that the property is a joint family property, for recovery of property, the suit should have been filed to set aside the alienation of the father, for that, the limitation is 12 years as per Article 109 of Schedule to the Limitation Act. Since sale has been effected on on 31.01.2005 and the suit has been filed only on 23.10.2017 beyond the period of 12 years, even if Article 109 of Schedule to the Limitation Act is applied, the suit is barred by limitation. Hence, we do not find any merits to admit this appeal. Accordingly, these points are answered.

12. In the result, the appeal suit dismissed. The judgment and decree of the Trial Court is hereby confirmed. No costs. Consequently, connected



miscellaneous petition stands closed.

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(N.SATHISH KUMAR J.)(R.SAKTHIVEL J.)
09-01-2026

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



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To

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



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