BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.03.2026

DELIVERED ON : 30.04.2026

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

S.A.(MD)No.650 of 2020
and
C.M.P.(MD)Nos.6819 & 6820 of 2020, 3755 of 2022
& 15844 of 2023

1.G.Muthaiah
2.G.Rajamani ... Appellants

Vs.

1.Dr.J.Rajapriya
Represented by its Power Agent V.Kannan
2.Dr.J.Srinivasan
3.Rajeswari (Died) ... Respondents

[Memo filed on 24.11.2025 in USR.No.48432 is recorded, as R3 died & R1 & R2 who are already on record are recorded as LRs of the deceased R3, vide court order dated 17.03.2026 made in S.A.(MD)No.650 of 2020]

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, praying to call for the records and set aside the judgment and decree dated 18.12.2019 in A.S.No.28 of 2019 on the file of the Principal District Judge, Karur, confirming the judgment and decree dated 05.08.2016 in O.S.No.258/2011, on the file of the Additional Sub Court, Karur, by allowing the Second Appeal.

For Appellants : Mr.H.Lakshmi Shankar
For Respondent No.1 : Mr.T.Balakumaran
For Respondent No.2 : Mrs.M.P.Kavia
Respondent No.3 : Died

JUDGMENT

The defendants 3 & 4 in O.S.No.258 of 2011, on the file of the Additional Sub Court, Karur, are the appellants in the present Second Appeal.

2.The Second Appeal has been admitted by this Court on 27.03.2026, on the following substantial questions of law:

> *i) Whether the Courts below are correct and justified in holding that Section 34 of the Foreign Exchange Management Act, 1999 will not bar the jurisdiction of the court to consider the nullity and voidness of sale deed dated 24.10.2005, especially when the issue of contravention of any regulation under the Act is covered by Section 13 of the Foreign Exchange Management Act, 1999 as per which the adjudicating authority alone is empowered to determine the same?*

ii) Whether the Courts below are justified in concluding the 24.10.2005 sale deed to be illegal and invalid for contravention of the Foreign Exchange Management Regulation dated 03.05.2000, especially when the Foreign Exchange Management Act, 1999 or the regulation do not declare such a transaction to be void?"

3.I have heard Mr.H.Lakshmi Shankar, learned counsel for the appellants / defendants, Mr.T.Balakumaran, learned Counsel for the first respondent / plaintiff and Mrs.M.P.Kavia, learned Counsel for the second respondent / 1st defendant.

4.The facts that are necessary for adjudicating the second appeal on the substantial questions of law are as follows:

4.1. The first respondent filed a suit in O.S.No.258 of 2011, seeking to declare the sale deed executed by the first defendant in favour of the third defendant in Document No.192 of 2005, as null and void, in terms of the provisions of the Foreign Exchange Management Act, 1999 [in short 'FEMA'] and for consequential relief of partition of Schedule 'B' property and allotment of 1/3rd share to the plaintiff, besides the decree for partition in respect of

Schedule 'A' property into three equal shares and allot 1/3rd share to the plaintiff.

4.2. The 'A' Schedule property originally belonged to Ellappa Naicker, who had two sons, namely, Narayanasamy Naicker and Subba Naicker. The said Ellappa Naicker and his two sons entered into a partition deed on 04.05.1959, under which 'A' Schedule properties, amongst other properties were allotted to Narayanasamy Naicker. Narayanasamy Naicker was blessed with three sons, namely Kasthuri, Jayaraman and Rajagopal. After the demise of Narayanasamy Naicker and his wife, the above mentioned three sons, entered into a partition on 19.10.1995, under which 'B' Schedule properties, amongst other properties were allotted to the share of Jayaraman, who is the father of the plaintiff and the first defendant. The second defendant is the mother of the plaintiff. Even during the lifetime of the father of the plaintiff Jayaraman, some items of properties which fell to his share in the partition deed dated 19.10.1995 were alienated. The 'A' Schedule properties in the suit are the remaining properties which are available for partition.

4.3. The plaintiff contends that she was married only on 07.07.1996, after the commencement of the Hindu Succession Act, [Tamil Nadu Act 1 of 1990] and hence, the plaintiff being unmarried on the date of the Act 1 of 1990 coming into force, is entitled to a right by birth and consequently, she is entitled to 1/3rd share in 'A' Schedule properties. In so far as 'B' Schedule properties, it is the case of the plaintiff that the 'B' Schedule properties are the separate properties of the father Jayaraman, he having purchased items 1 and 2 of 'B' Schedule property under registered sale deed dated 22.10.1994 and third item having been gifted to him under registered settlement deed. Father Jayaraman died on 25.04.2009, leaving behind the plaintiff and defendants 1 and 2 as his surviving class-I legal heirs and therefore, even in respect of Schedule 'B' property, the plaintiff is entitled to 1/3rd share.

4.4. The plaintiff demanded for partition of the properties, but the defendants 1 and 2 were evading. The third defendant set up a case claiming that 'A' Schedule properties were already sold by the father Narayanasamy Naicker along with the first defendant. However, it is the contention of the plaintiff that the third defendant is a non-resident Indian and any purchase of agricultural lands is not permitted under the FEMA. Though the plaintiff caused a pre-suit notice, except the third defendant, other defendants did not send any reply. The third defendant sent a reply stating that he was entitled to purchase the property and also claimed that the plaintiff has orally relinquished her right in the 'A' schedule property. In view of the unsustainable stand taken in the reply notice, plaintiff proceeded to file the suit for declaration and for consequential relief of partition.

4.5. The second defendant supported the case of the plaintiff. However, the fourth defendant filed a written statement stating that the plaintiff is not entitled to any share in 'A' Schedule property and in respect of 'B' Schedule property, the Director of Enforcement has already imposed a penalty under the provisions of FEMA, on the third defendant and the third defendant has also preferred an appeal against the same. The transaction in favor of the third defendant is not sham and nominal or void as alleged by the plaintiff. The third defendant has also thereafter settled the property in favor of his mother, the fourth defendant.

4.6. The trial court decreed the suit, as against which, the defendants 3 and 4 preferred A.S.No.28 of 2019. The learned

District Judge, Karur, in and by judgment and decree dated 18.12.2019, has dismissed the appeal, as against which the present Second Appeal has been filed.

5.Mr.H.Lakshmi Shankar, learned counsel for the appellants would firstly contend that in respect of 'A' Schedule properties, which are stated to be ancestral properties of the father, the appellants have not specifically denied the entitlement of the first respondent / plaintiff and hence, he states that it may not be proper for the defendants 3 and 4, at this Second Appellate stage to contend that the plaintiff is not entitled to any share even in Schedule 'A' properties.

6.However, Mr.H.Lakshmi Shankar, has mainly revolved his arguments around Schedule 'B' properties, though, it is an admitted case of the defendants 3 and 4, that the third defendant was a Non-Resident Indian and the Schedule 'B' properties were admittedly agricultural properties. It is his primordial submission that there is no total prohibition for sale of agricultural lands in favour of Non-Resident Indians. In this regard, Mr.H.Lakshmi Shankar, has taken me through the provisions of the 'Foreign Exchange Regulation Act, 1973' [in short 'FERA'], which paved the way for the present enactment namely FEMA. The provisions of FERA, according to Mr.H.Lakshmi Shankar, are more punitive in nature and however, under the FEMA, similar *pari materia* provisions are not incorporated and therefore, merely because there is a violation of the provisions of FEMA, according to the learned Counsel, the transaction would not be rendered void for the plaintiff to be entitled to a declaration, especially when her father and brother had already dealt with the property for valuable consideration, in favour of the third defendant.

7.Mr.H.Lakshmi Shankar, has taken me through the Scheme of FEMA as well as the FERA and contends that under the provisions of FERA, there was no bar for proceedings being initiated before the Civil Court, whereas in contrast, under FEMA, specific adjudicating authority has been named and various provisions including power of review has been vested with the authorities and therefore, the relief which can be obtained under FEMA cannot be obtained by filing a civil suit. In this regard, he relies on the applicability of Section 9 of the Code of Civil Procedure as well and contends that a suit for declaration that the sale deed in favour of the third defendant is null and void cannot be maintained before the regular Civil Court.

8.It is his further submission that when the authorities have imposed fine for the purchase of the agricultural lands and the same has also been confirmed in appeal, the same issue cannot be gone into by the Civil Court to declare the sale deed as null and void, when the authorities under FEMA have not chosen to confiscate the property or annul the transaction itself.

9.Mr.H.Lakshmi Shankar, learned Counsel for the appellants, would rely on the following decisions in support of his contentions:

i) ***Vijay Karia and others*** *Vs.* ***Prysmian Cavi E Sistemi Srl and others,*** *reported in* ***AIR 2020 SC 1897.***

ii) ***Raj Kumar Shivhare*** *Vs.* ***Assistant Director, Directorate of Enforcement and another,*** *reported in* ***(2010) 4 SCC 772.***

iii) ***SRM Exploration Pvt. Ltd.*** *Vs.* ***N & S & N Consultants S.R.O.,*** *reported in* ***2012 Supreme (Del) 828.***

iv) ***GPE (India) Ltd., and others*** *Vs.* ***Twarit Consultancy Services Pvt. Ltd., and another,*** *reported in* ***2023 SCC Online Mad 46.***

10. Mr.H.Lakshmi Shankar, would also rely on the notification in Notification No.FEMA 21/2000-RB dated 03.05.2000 and inviting my specific attention to Regulation 3(b), learned Counsel would contend that there is no bar for transfer of any immovable property in India to a person resident in India by an Indian citizen resident outside India. He would therefore, state that the settlement in favour of the fourth defendant, mother of the third defendant was in order and permissible even under FEMA, in view of the Foreign Exchange Management (Acquisition and transfer of immovable property in India) Regulations, 2000. It is his further submission that only taking into account the fact that the property has now been settled in favour of the mother of the fourth defendant, who is admittedly a resident and citizen of India, the authorities have also exercised discretion not to confiscate the property, but only impose fine on the appellants.

11. Per contra, Ms.M.P.Kavia, learned Counsel for the second respondent as well as Mr.T. Balakumaran, learned Counsel for the first respondent have stated that the third defendant has admitted that he is a Non-Resident Indian and equally admitted the fact that the Schedule 'B' properties are agricultural properties and the very object of the Central Government, promulgating the two Acts namely FERA as well as FEMA, was only to prohibit sale of agricultural lands to Non-Resident Indians. Referring to Section 23 of the Indian Contract Act 1872, the learned Counsels would state that the transaction is forbidden by law, the sale is null and void and therefore, rightly the Courts below have granted the relief in favour of the plaintiff. The learned Counsel would also rely on Section 6(h) of the Transfer of Property Act, 1882, to fortify their submissions that when Section 6(h) of the Transfer of Property Act is read along with Section 23 of the Indian Contract Act, the irrefutable conclusion that can be drawn is that the sale in favour of the third defendant is null and void.

12. Learned Counsels have also relied on the decision of the Hon'ble Supreme Court in ***Asha John Divianathan*** *Vs.* ***Vikram Malhotra and others,*** *reported in* ***2021 SCC Online SC 147.*** It is therefore, contended by the learned Counsel for the respondents that when the purchase by the third defendant was not permitted under the provisions of the FEMA, the transaction was hit by Section 23 of the Indian Contract Act r/w. Section 6(h) of the Transfer of Property Act and therefore, there is no infirmity in the findings by the Courts below, granting the relief of declaration.

They would also state that once the sale in favour of the third defendant is set aside, consequently the plaintiff is entitled to the relief of partition and there is no bar of a suit for partition, being filed under the provisions of FEMA and it is therefore, their submission that the Second Appeal deserves to be dismissed and the substantial questions of law are to be answered against the appellants.

13. Insofar as the settlement made by the third defendant in favour of the fourth defendant, it is the contention of the learned Counsel for the respondents that the settlement deed was pending suit and it was clearly effected by the doctrine of *lis pendens* and therefore, no advantage can be taken by the appellants, stating that now the property is owned by a resident Indian [a citizen of India] and therefore, there is no violation of any law.

14.C.M.P.(MD)No.15844 of 2023, has been filed to receive additional evidence. The documents which are sought to be filed as additional evidence are the orders passed by the Deputy Director, Enforcement [Foreign Exchange Management], dated 15.10.2009 and the order passed by the Appellate Authority / Special Director dated 20.05.2019.

15. Mr.H.Lakshmi Shankar, learned Counsel appearing for the petitioners / appellants in the above petition, would state that the Adjudicating Authority, namely the Authorised Officer, imposed a penalty of Rs.50,000/- on 29.10.2014 and the same was challenged in appeal and the appeal was dismissed, confirming the order of the Adjudicating Authority, imposing fine. It is therefore, his submission that these documents are relevant to decide the core issues that arise for consideration in the Second Appeal, especially in the light of the substantial questions of law, that have been suggested and also framed at the time of admission.

16. Per contra, learned Counsel appearing for the respondents would submit that nothing turns on the additional documents which are now sought to be produced and in fact, according to them, the set of orders only reinforce the case of the plaintiff that there has been a violation of the provisions of FEMA.

17.I do not find any serious prejudice being caused to the respondents, if these additional documents are looked into, especially, they being orders passed by the adjudicating authority and the appellate authority under the provisions of FEMA.

Moreover, considering that the substantial questions of law also revolve around the provisions of FEMA, the set of orders by the Original Authority as well as the Appellate Authority, would certainly be assisting this court in deciding the substantial questions of law.

18. In the result, C.M.P.(MD)No.15844 of 2023 is ordered and the additional documents are taken on record and marked as Exhibits B.6 and B.7.

Discussion:

19. In so far as Schedule 'A' property is concerned, though it has been faintly canvassed by Mr.H.Lakshmi Shankar, learned Counsel for the appellants that the properties were self-acquired properties and not ancestral properties available for partition, for the daughter to claim a share, as already seen, there was no denial of the claim of the plaintiff that Schedule 'A' properties were ancestral properties and that the plaintiff was not entitled to claim a share, taking shelter under Act 1 of 1990. In fact, even in the grounds of Second Appeal, I find that the appellants have conceded to the fact that 'A' Schedule properties are ancestral properties. Ground 8 is extracted hereunder:

> *"8.The Courts below ought to have considered that plaintiff / 1st respondent is a Co-parcener with respect to 'A' schedule properties alone, that are ancestral and only in respect of those properties she will be entitled to 1/3rd share on the ground that she is not a party to the sale deed and on the ground that the sale deed can legally convey only 2/3rd share of 'A' schedule property to the 3rd defendant."*

20. In view of the above, I do not see why the plaintiff should be non-suited to a decree for partition, in respect of Schedule 'A' properties.

21. Now, coming to Schedule 'B' properties, the interesting question that begs an answer is as to whether the purchase of the agricultural lands by the third defendant, being a Non-Resident Indian, is a void transaction or not.

22. It is not in dispute and in fact, even the case of the plaintiff herself that Schedule 'B' properties were the separate properties of her father. The third defendant has purchased both Schedule 'A' and Schedule 'B' properties from Jayaraman under registered sale deed dated 24.10.2005. Jayaraman sold both

Schedule 'A' and Schedule 'B' properties, executing the said document for himself and also as power agent of the first defendant, his son. Pending the suit, the third defendant settled both Schedule 'A' and Schedule 'B' properties, in favour of the 4th defendant, his mother, by registered sale deed dated 20.12.2012. In view of the above settlement, the fourth defendant was also impleaded in the suit.

23. It is also borne out of record that the plaintiff lodged a complaint with the Authorized Officer under FEMA, after the filing of the suit. The Authorized Officer passed an order on 29.10.2014, slapping a penalty of Rs.50,000/- for violation of provisions of FEMA. The appellants preferred an appeal before the Appellate Authority under the provisions of FEMA and under Exhibit B.7 and the order of the Adjudicating Authority was confirmed. Section 34 of FEMA is relied on by both the learned Counsel for the appellants as well as the learned Counsel for the respondents. The same is extracted hereunder for easy reference:

> *“**Section 34. Civil court not to have jurisdiction.**—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Adjudicating Authority or the Appellate Tribunal or the Special*

Director (Appeals) is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

24. Relying on the said provision, Mr.H.Lakshmi Shankar, contends that when the jurisdiction of the Civil Court has been expressly taken away by Section 34 of FEMA, the plaintiff cannot challenge the sale deed in favour of the third defendant, which is within the domain of the Adjudicating Authority under the provisions of FEMA. Pointing out to the fact that an appeal is also provided before the Appellate Tribunal and a further appeal is provided to the High Court, from the decision of the Appellate Tribunal, Mr.H.Lakshmi Sshankar contends that a separate mechanism has been set out under the provisions of FEMA and in such circumstances, Section 9 of CPC would come into play and the plaintiff cannot sustain the relief of declaration of the sale deed in favour of the third defendant as null and void, on the sole ground that it is violative of the provisions of FEMA.

25. Per contract, learned Counsel for the respondents would contend that Section 34 of FEMA cannot bar a suit for partition and in such circumstances, there is no purpose in relaying on Section 34, in the manner in which it is thought to be viewed by the learned Counsel for the appellants.

26.I am unable to the countenance the arguments of the learned Counsel for the respondents for the simple reason that, only if the sale deed is set aside or declared to be null and void, the plaintiff would become entitled to claim any right to the Schedule 'B' properties, be it by way of partition or otherwise. Therefore, the relief of partition is only consequential to the relief of declaration. Now, it is to be seen whether the relief of declaration can be sustained before the Civil Court. Therefore, if the plaintiff is not entitled to the relief of declaration, then the relief of partition which is only a consequential relief cannot stand alone and it is therefore, not open to the plaintiff to contend that Section 34 is not barring a suit for partition and the suit filed by the plaintiff was in order.

27. Section 34 clearly bars the jurisdiction of the Civil Court to even entertain any suit or proceedings in respect of a matter which is to be decided by the Adjudicating Authority or the Appellate Tribunal or the Special Director [Appeals] as provided under the Act. The complaint regarding violation of provisions of FEMA came to be given only by the plaintiff under the provisions of FEMA. It is only on such complaint made by the plaintiff that the Adjudicating Authority took up enquiry and ultimately imposed a penalty of Rs.50,000/- on the defendants. Admittedly, the imposition of penalty was confirmed by the Appellate Authority as well.

28. The authorities have power under the provisions of FEMA to confiscate properties, apart from levying fine and also pass an order of imprisonment for a term extending upto 5 years, in addition to the fine. Section 13 deals with contravention and penalties. Section 13(2) empowers the Adjudicating Authority, in addition to imposing penalty, to also confiscate a property, in respect of which contravention has taken place. In the present case, the contravention is in respect of Schedule 'B' properties. Thus, the Adjudicating Authority has in its wisdom thought it fit to only impose penalty and has not invoked powers available under Section 13(2) of FEMA, to confiscate the Schedule 'B' properties.

29. In this backdrop, it is to be examined whether the plaintiff can seek a declaration before the Civil Court that the sale deed in favour of the third defendant is null and void, on the ground that it is in violation of the provisions of FEMA. There is no dispute that there has been a violation of the provisions of FEMA. Even according to the defendants 3 and 4, the third defendant is a Non-Resident Indian and Schedule 'B' properties are agricultural properties. When the FEMA has been brought about with laudable objects of consolidating and amending the law relating to foreign exchange, with the object of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange markets in India, the Act specifically incorporating provisions regulating purchase of agricultural lands by Non-Resident Indians and also providing for specific penalties in the event of contravention of the law, it is clear that FEMA is a complete Code by itself, touching the acquisition of properties in India by Non-Resident Indians. The Adjudicating Authority is clothed with the power of adjudicating any contravention of any of the provisions of the Act.

30. Section 14 provides for enforcement of orders of the Adjudicating Authority. As against orders of the Adjudicating Authority, an appeal is provided under Section 17 to the Special Director [Appeals] and there is a further appeal to the Appellate Tribunal under Section 19. Procedure and powers of the Appellate

Tribunal as well as Special Director [Appeals] are also specifically set out in Section 28 and as against the orders of the Appellate Tribunal, an appeal is provided to the High Court under Section 35. In fact, the power to compound the contravention is also given under Section 15. It is in this light that provisions of Section 23 of the Contract Act and Section 6(h) of the Transfer of Property Act are to be tested and applied.

31. The above provisions are usefully extended hereunder:

*"**FEMA:***

***Section 14. Enforcement of the orders of Adjudicating Authority.**—(1) Subject to the provisions of sub-section (2) of section 19, if any person fails to make full payment of the penalty imposed on him under section 13 within a period of ninety days from the date on which the notice for payment of such penalty is served on him, he shall be liable to civil imprisonment under this section.*

(2) ....

....

***Section 15.Power to compound contravention.**—(1) Any contravention under section 13 may, on an application made by the person committing such contravention, be compounded within one hundred and eighty days from the date of receipt of application by the*

Director of Enforcement or such other officers of the Directorate of Enforcement and officers of the Reserve Bank as may be authorised in this behalf by the Central Government in such manner as may be prescribed.

(2) Where a contravention has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be initiated or continued, as the case may be, against the person committing such contravention under that section, in respect of the contravention so compounded.

....

Section 17. Appeal to Special Director (Appeals).*—(1) The Central Government shall, by notification, appoint one or more Special Directors (Appeals) to hear appeals against the orders of the Adjudicating Authorities under this section and shall also specify in the said notification the matter and places in relation to which the Special Director (Appeals) may exercise jurisdiction.*

(2).....

....

Section 19. Appeal to Appellate Tribunal*— (1) Save as provided in sub-section (2), the Central Government or any person aggrieved by an order made by an Adjudicating Authority, other than those referred to in sub-section (1) of section 17, or the Special Director (Appeals), may prefer an appeal to the Appellate Tribunal:*

Provided ......

....

Section 28. Procedure and powers of Appellate Tribunal and Special Director (Appeals).—*(1) The Appellate Tribunal and the Special Director (Appeals) shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal and the Special Director (Appeals) shall have powers to regulate its own procedure.*

(2).......

....

Section 35. Appeal to High Court.—*Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order:*

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Section 23 of the Indian Contract Act, 1872:

23.What considerations and objects are lawful, and what not.—*The consideration or object* *of an agreement is lawful, unless—*

it is forbidden by law; or

is of such a nature that if permitted, it would defeat the provisions of any law; or

is fraudulent ; or

involves or implies injury to the person or property of another; or

the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Section 6(h) of the Transfer of Property Act, 1882:

6.What may be transferred.*—Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force.*

(a).....

......

(h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) [for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872 (9 of 1872), or (3) to a person legally disqualified to be transferee].

32. There is no second opinion on the principle that any contract which is forbidden by law is void. It is however, difficult to accept the argument of the learned Counsel for the respondents that the sale in contravention of provisions of FEMA would come within the sweep of Section 23, contending that the said transaction is forbidden by law. None of the provisions of FEMA, impose any prohibition on acquisition of properties. In fact, on the contrary, it only provides penalties for contravention, including power of confiscation. When the authorities have conducted due inquiry and have ultimately chosen to impose only a fine on the third defendant, they have consciously not proceeded against the property which is subject matter of question, namely Scheduled 'B' properties. In such circumstances, I am afraid that it cannot be a case, where the sale can be declared as null and void.

33. The Hon'ble Supreme Court in ***Vijay Karia's*** case, elaborately dealt with the distinction between FERA and FEMA and taking note of the fact that there is no *pari materia* provision like Section 47 of **FERA in FEMA**, held that transactions violating FEMA cannot be held to be void and further held that even when a particular act violates any provision of FEMA or the rules framed thereunder, such violation can be condoned. The Hon'ble Supreme Court also took note of the fact that there is no similar provision like Section 56 of FERA, incorporated under FEMA. Section 56 of FERA is the provision which deals with offences and prosecutions under the FERA regime that is prior to 1999, when FEMA was promulgated.

34. This decision in ***Vijay Karia's*** case was applied by this Court in ***GPE [India] Ltd's*** case, where this Court held that the contract not being void, the liabilities and obligations imposed under the contract would survive. I am also informed that the decision of this Court in ***GPE [India] Ltd's*** case was taken up by way of Special Leave Appeal before the Hon'ble Supreme Court and the Hon'ble Supreme Court by order dated 26.08.2025 dismissed the Special Leave Appeal.

35. At this juncture, it would also be relevant to refer to the Foreign Exchange Management [Acquisition and Transfer of Immovable Property in India] Regulations, 2000. The regulation 3 of the said Regulations, deal with acquisition and transfer of property in India by an Indian citizen resident outside India. Though 3(a) permits acquisition of immovable property in India, such immovable property not being agricultural properties / plantation / farm house, 3(b) does not restrict the nature of immovable property unlike 3(a), which carves out three exceptions. 3(b) permits transfer of 'any' immovable property in India, to a person resident in India. A plain reading of the said regulations clearly suggests that there is no bar for even agricultural property to be transferred to a person resident in India, though it may not be permissible under 3(a).

36. In the present case as well, subsequent to the acquisition, the third defendant has settled the property in favour of his mother. The same has also been taken note of by the Adjudicating Authority as well as the Appellate Authority, while proceeding to impose penalty of Rs.50,000/- on the third defendant. In such circumstances, when a complete mechanism is provided under the provisions of the FEMA and the said provisions have also been invoked in the present case and there has been a conscious decision to impose penalty alone and not to confiscate the schedule 'B' properties, it is certainly not permissible for the plaintiff to seek for the relief of declaration that the transaction itself is null and void, on the ground that it violates the provisions of FEMA.

37. In any event, the Hon'ble Supreme Court has clearly laid down the ratio that any violation of the provisions of FEMA cannot be termed as void. In such circumstances, I do not see how Section 23 of the Contract Act r/w. Section 6(h) of the Transfer of Property Act, can even be relied on to challenge the sale deed in favour of the third defendant. The Courts below have clearly misinterpreted the provisions of FEMA, especially Section 34, failing to see that the bar was not merely for a suit for injunction, but in respect of any matter which an Adjudicating Authority or the Appellate Tribunal or the Special Director [Appeals] is empowered to determine.

38. In ***Raj Kumar Shivhare's*** case, the Hon'ble Supreme Court held that the statutory scheme of Section 34 of FEMA is to exclude the jurisdiction of the Civil Court in express terms.

39. In ***SRM Exploration Pvt. Ltd's*** case, the Division Bench of the Delhi High Court held that none of the provisions of FEMA render void transactions which have taken place in contravention of the FEMA or its provisions. The Hon'ble Division Bench also took note of the fact that though Section 47 of FERA prohibited entering into contracts or agreements directly or indirectly evading or avoiding operation of the FERA, while re-enacting the law by enacting FEMA on the very same subject, the legislature has chosen to do away with the said provision [Section 47 of FERA].

40. The learned Counsel for the respondents have relied on the decision of the Hon'ble Supreme Court in ***Asha John Divianathan's*** case, wherein the Hon'ble Supreme Court held that a contract is void, if prohibited by Statute, even without express declaration that the contract is void. However, the Hon'ble Supreme Court took note of the decision in ***Vijay Karia's*** case and on facts distinguished the same, specifically, observing that FEMA was brought about pursuant to the Nation's policy of managing foreign exchange instead of policing foreign exchange under FERA.

41.I have already noticed that ***Vijay Karia's*** case would squarely apply to the facts of the present case and therefore, even though the Hon'ble Supreme Court in ***Asha John Divianathan's*** case had held that until permission is accorded by the Reserve Bank of India, it would not be a lawful contract within the meaning of Section 10 r/w. Section 23 of the Contract Act, the Hon'ble Supreme Court was dealing with the provisions of FERA in the said decision and in such circumstances, the Hon'ble Supreme Court, taking note of the punitive provisions and express prohibition under Section 31 of FERA, held the contract to be opposed to public policy. The said decision, therefore, will have no application to the facts of the present case.

42. For all the above reasons, I am inclined to hold that the appellants are entitled to succeed and the substantial questions of law are answered in favour of the appellants.

43. In fine, the Second Appeal is partly allowed, setting aside the judgment and decree of the Courts below, in so far as Schedule 'B' properties are concerned, while confirming the decree for partition pertaining to Schedule 'A' properties. There shall be no order as to costs. Consequently, C.M.P.(MD)Nos.6819 & 6820 of 2020 & 3755 of 2022 are closed and C.M.P.(MD)No.15844 of 2023 is allowed.

30.04.2026

Index : Yes / No
Internet : Yes / No
MR

To

1.The Principal District Judge,
Karur.

2.The Additional Sub Court,
Karur.

3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

P.B.BALAJI, J.

MR

PRE-DELIVERY JUDGMENT MADE IN
S.A.(MD)No.650 of 2020

30.04.2026