BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.02.2026

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

A.S.(MD)No.151 of 2014
and
M.P.(MD)No.1 of 2014
and
C.M.P.(MD)Nos.10669 and 10670 of 2021

R.S.Gopalan ... Appellant

Vs.

1.R.S.Bhaskaran
2.Rathina Devi
3.M.Hari @ Hariharan
4.Dhanalakshmi
5.N.Rajasekaran
6.N.Ramesh
7.N.Devaki ... Respondents

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code, to set aside the judgment and decree dated 08.10.2013 made in O.S.No.7 of 2004 on the file of the Principal District Court, Thanjavur.

For Appellant : Mr.P.Valliappan, Senior Counsel,
For Mr.P.Thiagarajan.

For Respondents : Mrs.Chithra Sampath, Senior Counsel,
For Mr.V.Nandha Kumar for R2.

Mr.S.Parthasarathy,
For Mr.V.R.Shanmuganathan for R3.

Mr.G.Mohankumar for R4.
No appearance for R1, R5, R6 & R7.

JUDGMENT

(By G.R.SWAMINATHAN, J.)

The plaintiff in O.S No.7 of 2004 on the file of the Principal District Judge, Thanjavur is the appellant herein. The suit was filed claiming 1/4th share in the suit schedule properties and for rendition of accounts.

2.The case of the plaintiff is as follows :

The plaintiff and defendants 1 to 3 were born to Seetharama Chettiar and Nachiar Ammal. The fourth defendant is the daughter of the first defendant. Seetharama Chettiar passed away on 14.09.1975. The first defendant R.S.Munirajan was the eldest son. The family was engaged in paddy business. In 1975, a rice mill was purchased and all the four brothers were carrying on the business jointly. The plaintiff and the defendants 1 to 3 constituted a joint family. They were running two firms, namely, Munirajan Firm and Lakshmi Traders. The suit schedule properties were acquired by the brothers out of their joint efforts. The first defendant had a dominant position and the plaintiff had to submit to his dictates. On 31.03.1997, a family arrangement was executed as if oral partition had taken place on 20.01.1997. Actually, no such partition ever took place. The plaintiff was made to execute two sale deeds dated 31.03.1997 in favour of the fourth defendant. No consideration was received by the plaintiff. On the other hand, two signed blank cheques were obtained from the plaintiff by the first defendant. The sale deeds are sham and nominal. Since no real partition was effected, the plaintiff filed O.S No.33 of 1999 on the file of the Sub Court, Kumbakonam claiming his $1/4^{th}$ share in the suit properties. The suit was later transferred to the Principal District Judge, Thanjavur and renumbered as O.S No.7 of 2004.

3.The first defendant filed written statement controverting the plaint averments. The very maintainability of the suit was questioned on the ground that there was no joint family and that there was only partnership business. He contended that the income from the firm was utilized for purchase of properties in the name of the firm. The crux of his written statement is that on 20.01.1997, a complete oral partition was made in the presence of all the family members and that on 31.03.1997. The factum of this partition was also duly recorded. The plaintiff also acted on the same as evidenced by the two registered sale deeds conveying properties allotted to him in the partition in favour of the fourth defendant. Having acted upon the said family arrangement, it was not open to the plaintiff to seek the relief of partition.

4.The defendants 2 and 3 supported the stand of the first defendant. The second defendant however filed an additional written statement retracting from his earlier stand and supporting the case of the plaintiff. The fourth defendant filed written statement contending that the sale deeds dated 31.03.1997 was executed in her favour only after payment of consideration to the plaintiff. She pointed out that the registration of the sale deeds took place 15 days later and that the plaintiff did not raise any objection during the relevant time. Her stand is that since no declaratory relief was sought against the fourth defendant, the suit was liable to be dismissed as far she was concerned.

5.The plaintiff filed reply statement. During the pendency of the suit, the first defendant passed away. One of the legal heirs was already on record as the fourth defendant. The son and another daughter of the first defendant were impleaded as D5 and D6.

6.Based on the rival pleadings, the following issues were framed :

1.Whether the suit is maintainable in law since it was not clearly averred in the plaint that the suit properties are belonging to partnership firm or joint family firm?
2.Whether the suit properties are in joint possession of the plaintiff and if not so, whether the court fee paid is correct?

3.While the father of the plaintiff and the defendants 1 to 3 was alive can there be a joint Hindu family without the father?

4.Whether the suit properties belonged to joint Hindu family?

5.Whether the suit properties were earned out of joint efforts of the plaintiff and the defendants 1 to 3?

6.Whether the suit filed without impleading the partnership firm is maintainable in law?

7.Whether the income of the partnership firm was divided as per partnership deed as contended by the first defendant?

8.Whether the plaintiff is entitled to claim share in the properties of the partnership firm?

9.Whether the memorandum of family arrangement and deed of declaration are valid in law?

10.Whether the suit is maintainable without declaring that the sale deed executed by the plaintiff in favour of the 4th defendant is void?

11.Whether the properties of the plaintiff and the defendants 1 to 3 are not included in the plaint?

12.Whether the suit is hit by non-joinder of necessary parties?

13.Whether the 1st defendant is liable to render accounts?

14.Whether the moveable properties are liable for partition?

15.Whether the plaintiff is entitled for meane profits? 16.Whether the court fee was paid by valuing the properties

17.Without seeking the prayer for cancellation of sale deed in favour of the 4th defendant and without payment of court fee, whether the plaintiff is entitled for the relief as prayed for?"

7.The plaintiff examined himself as PW.1. PW.2 to PW.8 are official witnesses. Exs.A1 to A94 were marked. Munirajan examined himself as DW.1. The fourth defendant also entered the witness box as DW.3. Totally 11 witnesses were examined on the side of the defendants. Exs.B1 to B112 were marked. Exs.C1 to C26 were also marked. After a consideration of the evidence on record, the trial court by judgment and decree dated 08.10.2013 dismissed the suit.

8.The learned Senior Counsel appearing for the plaintiff / appellant made the following submissions :

The alleged family arrangement dated 31.3.1997 marked as Ex.B. 70 is neither stamped nor registered. In the above said document, it is stated that on 20.1.1997, there was an oral partition among the brothers and subsequently, the terms and condition of said oral partition were written down in Ex.B.70. The oral partition dated 20.1.1997 is denied. It is for the 1st defendant to prove the alleged oral partition. He claims that

Ex.B.70 is only a reproduction of the oral partition. But no acceptable evidence has been let in to prove the oral partition alleged to have been held on 20.1.1997. The 1st defendant relies upon Ex.B.9 the invitation for the opening ceremony of Chakkarapani Rice Mill to contend that the partition has been effected and the family arrangement dated 31.3.1997 has been acted upon. The fact remains that after the execution of the family arrangement dated 31.3.1997, the plaintiff was thrown out of the house and in order to survive and take care of his family, he had to run the business in the place allotted to him and he had no other option but to change the name and do the business. This will not prove that there was an oral partition on 20.1.1997. The entries in Ex.B.13, the deed of retirement, and in Ex.B.23 & Ex.B.24 sale deed regarding the family arrangement "evidenced by the deed dated 20.1.1997" clearly shows that no oral partition took place on 20.1.1997. Ex.B.23 & Ex.B.24 are marked by the defendant and in those documents also, there is reference only to family arrangement dated 20.1.1997 and nowhere oral partition dated 20.1.1997 has been referred to. Therefore, the claim of the defendants that there was an oral partition on 20.1.1997 is false and not proved by the 1st defendant.

When the oral partition dated 20.1.1997 is not proved by the 1 defendant, Ex.B.70 family arrangement dated 31.3.1997 is not valid and cannot be received in evidence and it cannot be held that partition has taken place among the brothers.

A perusal of the family arrangement shows that 51 items were available for the partition and out of it, 23 items were allotted to the share of R.S.Munirajan. 11 items were allotted to R.S.Nagarajan. 7 items were allotted to R.S.Basakaran and 11 items were allotted to the R.S.Gopalan. R.S.Muniranjan was allotted 8 properties in Chennai measuring 9.11 Acres which are more valuable properties. Out of 28.46 Acres allotted to R.S.Munirajan 9.11 Acres of land is very very valuable property situated at Chennai. It cannot be compared to the properties in Kumbakonam. Likewise, serial no.8, item no.17 is a house property measuring 7,633 square feet of land with the RCC building. In this house, all the brothers were residing together. After 31.3.1997, the other brothers were driven out as the same was allotted to R.S. Munirajan. The building consists of ground floor and 1st floor measuring around 12000 square feet of built up area. Therefore, the perusal of the family arrangement dated 31.3.1997 indicates the upper hand of R.S.Munirajan in the allotment of properties. All the valuable properties were allotted to R.S.Munirajan. It is not an equal partition among all the shares and all the brothers were not given the due shares. The sale deed in favour of Rathinadevi 31.3.1997 is invalid for the following reasons :

Even before the family arrangement was executed, the sale deed had been executed mentioning about the family arrangement.

The family arrangement itself was signed by notary around by 6 pm to 9 pm on 31.3.1997 and in such circumstance the sale deed itself is a pre-planned document got from the plaintiff. As per the evidence of Mr.Thambithurai DW.9 notary, he signed the document around 6 to 9 pm in the evening. But the demand draft in the name of the plaintiff on 31.3.1997 was taken in the morning itself. It clearly shows that everything has been executed as per the plan of Mr.R.S.Munirajan to defraud the plaintiff Mr.R.S.Gopalan.

Though in the family arrangement, the plaintiff was allotted a rice mill, he was not allowed to enjoy the same and boiler license was in the name of Lakshmi Traders represented by R.S.Munirajan and he refused to give no objection certificate to the concerned department for change of boiler license. Ex.B.44 is the letter written by R.S.Munirajan to the Inspector of Boilers.

A perusal of the family arrangement dated 31.3.1997 shows that some of the properties allotted to R.S.Munirajan and R.S.Gopalan overlap. R.S.Munirajan mortgaged the above said properties to Indian Bank under Ex.A.43 Memorandum of deposit of title deeds executed by R.S.Munirajan in favor of Indian Bank, Chennai. Under Ex.A.47, the property mortgaged by R.S.Munirajan (also allotted to R.S.Gopalan) was brought to sale under SARFAESI Act for default of payment of the loan obtained by R.S.Munirajan on behalf of Vasavi Traders. Though it was claimed by the 1st defendant that the entire account was settled by the oral partition on 20.1.1997, the amount lying in the bank account has not been divided and the same shows that no partition took place on 20.1.1997.

In the property sold to Rathinadevi for Rs.2.10,000/-, sugar cane worth Rs.1,50,000/- was standing in the property ready for harvest. No prudent man will sell the property without calculating the value of the sugarcane grown by him in the property. Adangal copy Ex.A.62 shows the cultivation of sugarcane in the land by R.S.Gopalan. It is stated by the counsel for the respondent under Ex.B.84 that the property patta has been changed in the name of plaintiff immediately after oral partition. But, a perusal of Ex.B.84 shows that the application has not been given for change of patta of all the properties allotted to the plaintiff. It has not been proved that R.S.Gopalan gave an application for transfer of patta.

Though the respondent relied upon Ex.C2, C3, C5, C7, C8, C17, C24, C25, B84, B109, B9 etc, to show that the partition document was acted upon, as on date, the license for boiler has not been changed in the name of plaintiff. If really any partition had taken place, and the mill was exclusively allotted to plaintiff, the first defendant would have given no objection for the name transfer of the boiler.

9.Per contra, the learned Senior Counsel appearing for the fourth defendant submitted that the court below had correctly approached all the issues framed by it and that interference is not called for. Written submission was filed and we were taken through its contents. The sum and substance of her arguments is as follows:

Since even according to the pleadings in the plaint, the plaintiff is not in joint possession of the suit properties, the payment of court fees as per Section 37(2) of the Tamil Nadu Fees and Suits Valuation Act, 1955 was not proper. The documents styled as "Deed of Family Arrangement" and "Deed of Declaration" executed on 31.03.1997 is only an evidence of the oral partition that took place on 21.01.1997. Hence, the family arrangement does not require registration. The plaintiff could not have sought for the relief of partition of the property covered under the two registered sale deeds executed in favour of the fourth defendant on 31.03.1997 (Ex. B24 and Ex. B25) without praying for setting aside the sale deeds. The plaintiff has not fulfilled the requirement of Order VI Rule 4 of the Civil Procedure Code, 1908 which mandates him to state the particulars regarding the fraud that was perpetrated on him. The failure to implead R.S Munirajan Firm, Lakshmi Traders and Mrs. Devaki, partner of Lakshmi Traders renders the suit bad for non-joinder of parties. The plaintiff obtained patta in respect of the properties allotted to him and also caused name change of the business allotted to him. Thus after deriving benefit from out of the partition, the plaintiff would be estopped from making a case to unsettle the family arrangement.

10.We carefully considered the rival contentions and went through the evidence on record. The points that arise for determination are as follows :

a) Whether all or any of the suit properties have the character of "joint family properties" available for partition?

b)Whether the plaintiff ought to have impleaded the partnership firms (R.S.Munirajan Firm and Lakhsmi Traders) and sought appropriate reliefs and whether for having failed to do so, the suit was not maintainable?

c) Whether the plaintiff ought to have sought cancellation of the sale deeds dated 31.03.1997 ?

d) Whether the deed of family arrangement dated 31.03.1997 is inadmissible in evidence since it was not registered ?

e) Whether the plaintiff has proved that the deed of family arrangement dated 31.03.1997 was only a tentative arrangement?

f) Whether the court below correctly answered the issues framed by it ?

11.It is not in dispute that the appellant / plaintiff R.S.Gopalan was a partner in R.S.Munirajan Firm and M/s.Laskhmi Traders that were established for the purpose of trading in food grains and for hulling paddy as agents for Government Organisations. Both the firms were registered (Registration number 36 of 1968 in the office of the Registrar of Firms, Pudukottai and 20 of 1974 before the Registrar of firms, Thanjavur respectively) under the Partnership Act, 1932. This is clear from a perusal of Ex B5 and Ex. A59. The plaintiff has included many items in the suit schedule properties that stand in the name of either of the firms. As regards the nature and character of the properties, the plaintiff's case is not clear even in the pleading. While in para 3, he states that the acquisitions were made out of the joint efforts of the brothers, in para 6 of the plaint, he casually avers that they belong to the joint family consisting of plaintiff and defendants 1-3 and that since the business of the partnership firms were flourishing, they were able to purchase properties and that all the properties purchased out of the income from the businesses were also mentioned in the "A" Schedule.

12.The proposition that irrespective of the character of the property, when it is brought in by the partner when the partnership is formed, it becomes a property of the partnership firm by virtue of Section 14 of the Indian Partnership Act, 1932 is too well settled. The Hon'ble Supreme Court in the decision reported in ***AIR 1966 SC 1300 (vide Addanki Narayanappa v. Bhaskara Krishnappa***) held as follows:

> "The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done whatever is brought in would cease to be the trading asset of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership."

The plaintiff filed the suit on the premise that the suit schedule properties are all joint family properties which had not been divided by metes and bounds. He projected the case that the plaintiff and the defendants 1 to 3 were carrying on business as a Hindu joint family. The concept of Hindu joint family cannot be extended to this case. This is so because the father of the plaintiff died on 14.09.1975. Though it is admitted in his pleadings that the only property in Seetharama Chettiar's name was bequeathed in favour of his wife, he retracts this assertion in his cross-examination to strengthen his contention that the properties bore the character of joint family properties. Moreover, in his evidence, the plaintiff has admitted that he does not know which among the suit schedule properties have been purchased out of the partnership income and which ones have been purchased from the joint family income. It is well settled that proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact (***Randhi Appalaswami v. Randhi Suryanarayanamurty, ILR 1948 Mad 440).*** It is not only the jointness of the family that has to be proved but the burden lies upon the person alleging existence of a joint family to prove that the property belongs to the joint Hindu family. There must be material on record to show that the property is the nucleus of the joint Hindu family or that it was purchased through funds coming out of this nucleus (vide ***Bhagwat Sharan v. Purushottam*****, (2020) 6 SCC 387).** Even in his evidence, the plaintiff admits that in the year 1975, a mill in

Sakkottai was purchased jointly in the name of Lakshmi Traders. Thus, in the absence of any documentary evidence to show that the joint family nucleus existed from which the properties could have been acquired, we have to hold that the plaintiff has not discharged the burden of proving that the suit schedule properties had the character of joint family property. This point is answered accordingly.

13.It is pertinent to note that M/s.Lakshmi Traders included Devaki, the wife of the second defendant R.S.Nagarajan, as one of the partners. She was not made a defendant. No relief was sought against the firms. A perusal of the evidence on record would show that the suit schedule contains several partnership assets including both the properties standing in its name as well as properties purchased in the name of individual partners. The plaintiff asserts that Ex.B.48 retirement deed dated 20.01.1997 by which the plaintiff, Devaki and R.S Baskaran are shown to have retired and Ex. B49 partnership deed by which Hariharan, son of the first defendant, has been shown to have been inducted are fraudulent documents. In this backdrop, failure to implead the firms and Mrs.Devaki, one of the partners in Lakshmi Traders, is a fatal omission on the part of the plaintiff.

14.The general rule in regard to impleadment of parties is that the plaintiff in a suit, being *dominus litis*, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief (vide ***Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd.*, (2010) 7 SCC 417**). But when relief has been claimed in respect of the properties of the firms, the firms are necessary parties to the suit. They ought to have been joined as parties and in their absence, no effective decree could have been passed. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed.

15.The learned Senior Counsel appearing for the appellant/plaintiff argued that since the plea of non-joinder of necessary parties was not taken at the earliest opportunity, the court below erred in non-suiting the plaintiff on this ground. He drew our attention to Order I Rule 13 CPC which reads that all objections on the ground that non-joinder or mis-joinder of parties shall be taken at the earliest opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

16.Though the contention of the learned Senior Counsel of the appellant is impressive, we are not swayed by the said submission. Though the first defendant in his written statement raised the technical plea of mis-joinder, as regards non-joinder, the averments are to the effect that the plaintiff having stated that some of the properties were partnership properties, purposely has not impleaded the necessary parties. We need to look at not only Order 1 Rule 13 CPC but also Order 1 Rule 9 CPC. Order 1 Rule 9 reads as follows :

> "No suit shall be defeated by reason of the mis-joinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it:
>
> **Provided** that nothing in this rule shall apply to non-joinder of a necessary party."

A careful reading of the aforesaid provision leads to the conclusion that the court will have to non-suit the plaintiff if a necessary party has not been joined as a defendant. Order 1 Rule 3 states that all persons may be joined in one suit as defendants where any right to relief is alleged to exist against such persons. In the case on hand, relief is sought not only against the individuals, but also in respect of the properties that stood in the name of the two firms. Hence, the Lakshmi Traders firm and R.S Munirajan firm are necessary parties. Failure to implead them is definitely a fatal defect even if the contesting defendants may not have pointedly raised an objection as envisaged under Order 1 Rule 13 CPC. This is all the more so because the plaintiff had been sufficiently alerted by the averments set out in Paragraph 23 of the written statement filed by the first defendant R.S.Munirajan. For reasons that are not clear, the plaintiff did not choose to amend the plaint to implead the firms as well as Mrs.Devaki, partner in Lakshmi Traders. We are of the view that the trial court was justified in invoking Order 1 Rule 9 CPC to non-suit the plaintiff on the ground of non-joinder of necessary parties. This point is answered accordingly.

17.We initially wondered if the court below could have dismissed the suit on this sole ground without venturing into other issues. Neither the trial court nor this Court can afford to be content with answering the issue of non-joinder alone. This is on account of Order 14 Rule 2 of CPC which mandates that notwithstanding that a case may be disposed of on preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues. Sub-rule 2 reads as follows :

> "**(2)** Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-
>
> **(a)** the jurisdiction of the Court, or
>
> **(b)** a bar to the suit created by any law for the time being in-force.
>
> and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue."

The Hon'ble Supreme Court in ***Sathyanath v. Sarojamani*, (2022) 7 SCC 644** interpreted the said Rule in the following terms:

> "21.The provisions of Order 14 Rule 2 are part of the procedural law, but the fact remains that such procedural law had been enacted to ensure expeditious disposal of the lis and in the event of setting aside of findings on preliminary issue, the possibility of remand can be avoided, as was the language prior to the unamended Order 14 Rule 2. If the issue is a mixed issue of law and fact, or issue of law depends upon the decision of fact, such issue cannot be tried as a preliminary issue. In other words, preliminary issues can be those where no evidence is required and on the basis of reading of the plaint or the applicable law, if the jurisdiction of the court or the bar to the suit is made out, the court may decide such issues with the sole objective for the expeditious decision."

The relevant provision governing the procedure to be followed by the Appellate Court is laid down in Order 41 Rule 24 which reads as follows:

> "24. Where evidence on record sufficient, Appellate Court may determine case finally.

> Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which Appellate Court proceeds."

The objective of the aforesaid rule is explained in the following terms by the Hon'ble Supreme Court in ***Sathyanath*** decision:

> "**34.** The objective of the provisions of Order 41 Rules 24 and 25 is that if evidence is recorded by the learned trial court on all the issues, it would facilitate the first appellate court to decide the questions of fact even by reformulating the issues. It is only when the first appellate court finds that there is no evidence led by the parties, the first appellate court can call upon the parties to lead evidence on such additional issues, either before the appellate court or before the trial court. All such provisions of law and the amendments are to ensure one objective i.e. early finality to the lis between the parties."

The Hon'ble Supreme Court emphatically held as follows:

> "**35.** Keeping in view the object of substitution of sub-rule (2) to avoid the possibility of remanding back the matter after the decision on the preliminary issues, **it is mandated for the trial court under Order 14 Rule 2 and Order 20 Rule 5, and for the first appellate court in terms of Order 41 Rules 24 and 25 to record findings on all the issues."**

18.There is a reason behind incorporation of Order 14 Rule 2 of CPC which casts such a power on the trial court. The trial court and the first appellate court are courts of facts. It is well settled that there cannot be a trial before trial. If at the final hearing, the plaintiff is non-suited on the sole issue and other issues are not gone into and the first appellate court chooses to take a contra view, there will be needless remand calling upon the trial court to render judgment on other issues which had been left un-answered. This would lead to needless prolongation of litigation and turn out to be expensive for the parties. It is for this reason, Order 14 Rule 2 of CPC envisages pronouncement of judgment on all other issues even though a case may be disposed of on preliminary issue subject to the provisions of sub-rule (2).

19.The next issue is whether the appellant ought to have prayed for setting aside the two registered sale deeds dated 31.03.1997 in favour of the fourth defendant. It can be seen that the appellant chose to remain content with seeking the relief of partition simpliciter. When on 31.03.1997, the plaintiff had executed two sale deeds in favour of Rathina Devi, the fourth defendant, and they were also registered, declaration must have been sought for cancellation of those documents and appropriate court fee should have been paid in terms of Section 41 of the Tamil Nadu Court-Fees And Suits Valuation Act, 1965.

20.The learned Senior Counsel for the appellant would argue that when the specific case of the plaintiff is that since the execution of these documents were vitiated by fraud, there was no need to seek any specific declaration in respect of those documents. He relied on the decisions reported in ***(2012) 11 SCC 574 (vide Badami vs Bhali), (2005) 6 SCC 149 (vide State of Andhra Pradesh vs T. Suryachandra Rao) and 2021 SCC OnLine SC 3600 (vide Sonamati Devi vs Mahendra Vishwakarma)*** for the proposition that fraud vitiates every solemn act.

He contended that fraud encompasses within its ambit coercion, undue influence and misrepresentation. On facts, he submitted that the appellant was at the mercy of the elder brother and was tricked into signing the documents.

21.We are not convinced by this submission. The learned Senior Counsel for the fourth defendant drew our attention to the decision reported in ***(1976) 2 SCC 142 (vide Afsar Seikh vs Soleman Bibi)*** **.** It was held that though "undue influence", "fraud", "misrepresentation" are cognate vices and may, in part, overlap in some cases, **they are in law distinct categories,** and are, in view of Order 6 Rule 4, read with Order 6 Rule 2 of the Code of Civil Procedure, required to be separately pleaded, with specificity, particularity and precision. Admittedly, the plaintiff was an adult aged about 43 years during the relevant time. The sale deeds were also duly registered subsequently. While the maxim that fraud unravels everything is beyond cavil, fraud was not pleaded in terms of the requirement of Order 6 Rule 4 of CPC. In para 9 of the plaint, the appellant has averred that the sale deed was executed for sham and nominal purposes to render the family arrangement probable. These particulars are not sufficient to attract “fraud”. From the evidence on record, no doubt, R.S.Munirajan, being the eldest male member of the family is a dominant figure who appears to have imposed his will on the transactions in question. Hence, the plea of undue influence is more appropriate. As held by the Hon'ble Supreme Court in the ***Afsar Sheikh*** decision, fraud and undue influence are not one and the same thing. While an act vitiated by fraud may even constitute nullity, in respect of undue influence, one will have to seek to avoid the act, once undue influence is pleaded.

22.This issue as to whether the plaintiff who is a party to the deed in question is obliged to seek the relief of cancellation has been emphatically addressed as early as in 1939 by this Court in the decision reported in **AIR 1939 Mad 894 (Vellaya Konar v. Ramaswami Konar)** wherein it was held as follows:

> “When the plaintiff seeks to establish a title in himself and cannot establish that title without removing an insuperable

> obstruction such as a decree to which he has been a party or a deed to which he has been a party, **then quite clearly he must get that decree or deed cancelled or declared void *in toto*,** and his suit is in substance a suit for the cancellation of the decree or deed even though it be framed as a suit for a declaration."

The Hon'ble Supreme Court has reiterated the settled position that when the plaintiff seeks to establish his title to the property which cannot be established without avoiding the instrument that stands as an insurmountable obstacle in his way which otherwise binds him, the plaintiff necessarily has to seek a declaration and have that instrument cancelled or set aside, all the more so when he is a party to the said instrument. (***Mohd. Noorul Hoda v. Bibi Raifunnisa*, (1996) 7 SCC 767**. It is pertinent to note that both the sale deeds are duly registered thereby acquiring certain sanctity. In this background, the plaintiff was obliged to seek declaratory relief in respect of the sale deeds executed in favour of the fourth defendant Rathnadevi. Failure to do so comes in the way of the plaintiff from seeking any relief in respect of the properties covered by the said sale deeds dated 31.03.1997 (Ex. B24 and Ex B25). This point is answered accordingly.

23.The fourth and fifth issues will have to be taken up together. The suit schedule properties were divided among the four brothers by virtue of the family arrangement dated 31.03.1997 (Ex.B71). Admittedly, it is un-stamped and unregistered. The learned Senior Counsel for the appellants relied on a catena of decisions including ***Yellapu Uma Maheswari v. Buddha Jagadheeswararao, (2015) 16 SCC 787*** and ***Sita Ram Bhama v. Ramvatar Bhama, (2018) 15 SCC 130)*** for the proposition that an unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Per contra, the learned Senior Counsel for the second respondent placed reliance on the decisions reported in ***Roshan Singh v. Zile Singh, (2018) 14 SCC 814*** wherein it was held that while an instrument of partition which operates or is intended to operate as a declared volition constituting or severing ownership and causes a change of legal relation to the property divided amongst the parties to it, requires registration under Section 17(1)(*b*) of the Act, a writing which merely recites that there has in *time past* been a partition, is not a declaration of will, but a mere statement of fact, and it does not require registration. Our attention was also drawn to the decision reported in **(2020) 9 SCC 706** (***Ravinder Kaur Grewal v.***

Manjit Kaur) wherein it was reiterated that a family arrangement being binding on the parties, clearly operates as an estoppel, so as to preclude any of the parties who have taken advantage under the agreement from revoking or challenging the same.

24.The three Judges Bench of the Hon'ble Supreme Court in ***Kale v. Director of Consolidation, (1976) 3 SCC 119*** laid down the following propositions as regards the binding effect and the essentials of a family settlement:

> "(*1*) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;
> (*2*) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;
> (*3*) The family arrangement may be even oral in which case no registration is necessary;
> (*4*) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced

into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made *under the document* and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(*5*) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same;

(*6*) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement."

25.The learned Senior Counsel appearing for the second respondent drew our attention to the decision reported in ***(2019) 6 SCC 409 (Thulasidhara v. Narayanappa)*** for the proposition that if the properties had been orally divided through family arrangement and this prior division alone is recorded and reduced into writing, such document may not require registration.

26.We fail to understand as to how assets belonging to two registered firms can be orally divided among the erstwhile partners. Assets belonging to registered partnership firm can be divided among the partners only in the manner known to law and only in terms of the deed of partnership. They can definitely not be the subject matter of oral arrangement. We are therefore of the view that Ex.B70 is not admissible in evidence. That is why, the question of going to the issue as to whether there was oral partition may not really arise. Partition of joint family properties can be done orally. Immovable properties belonging to registered partnership firms cannot be orally partitioned. Even though we have rendered a finding in favour of the appellant on this issue, we are not in a position to grant relief to the appellant in view of the non-joinder of necessary parties to the suit. The court below had answered all the other issues against the plaintiff by proceeding on the footing that Ex.B70 is admissible in evidence and that the oral partition had taken place in respect of the suit schedule properties on 20.01.1997. Since we hold that assets of registered partnership firms could not have been the subject matter of oral partition, we have to reverse the findings given by the court below on Issue No.9. The findings of the court below in respect of the other issues are confirmed.

27.This appeal stands dismissed. No costs. Connected miscellaneous petitions are closed.

(G.R.S. J.,) & (R.K.M. J.,)
02.02.2026

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
SKM

To:

The Principal District Court,
Thanjavur.

Copy to:

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

G.R.SWAMINATHAN, J.
and
R.KALAIMATHI, J.

SKM

A.S.(MD)No.151 of 2014
and
M.P.(MD)No.1 of 2014
and
C.M.P.(MD)Nos.10669 and 10670 of 2021

02.02.2026