BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.02.2026

Delivered on : 10.04.2026

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD).No.103 of 2017
and
C.M.P(MD)No.1829 of 2017

1.Mokkammal

2.Muthulakshmi

3.Indira

4.Kumar (died)

5.Maheshwari

6.K.Nagajothi

7.Minor Subamadesh Kanna

8.Minor Logesh Pandi : Appellants

(7th and 8th appellants are minors represented by their mother and guardian/6th appellant herein)

(Appellants 6 to 8 are brought on record as LRs of the deceased 4th appellant vide Court order, dated 11.12.2025 made in CMP(MD)No.19318 of 2025 in SA(MD)No.103 of 2017)

(6th appellant is appointed as guardian of minor appellants 7 and 8 vide Court order, dated 16.12.2025 made in CMP(MD)No.19869 of 2025 in SA(MD)No.103 of 2017)

/Vs./

1.V.Karuppanan (died)

2.Muthaiah

3.Ramakrishnan

4.Sekar : Respondents

(Memo dated 01.06.2025 presented before the Court on 27.10.2025 is recorded as R1 died and appellants 1 to 5 respondents 2 and 4, who are already on record, are recorded as LRs of the deceased R1 vide Court order, dated 27.10.2025 made in SA(MD)No.103 of 2017)

(Since the respondent No.4 who is plaintiff No.6 in the suit and appellant No.6 in the regular appeal had gone to foreign country for avocation could not join the appellants herein and hence, he shown and arrayed as proforma 4th respondent and that the reliefs are sought for in this second appeal for the 4th respondent also)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 05.04.2016 in A.S.No.29 of 2014 on the file of the Subordinate Judge, Paramakkudi, confirming the decree and judgment, dated 01.02.2014 made in O.S.No.58 of 2010 on the file of the learned District Munsif cum Judicial Magistrate, Kamudhi.

For Appellants : Mr.S.Partha Sarathy

For Respondents : Mr.J.Barathan, for R3.

: Mr.K.Vijay Sathya, for R4.

: No Appearance, for R2.

: R1 died, memo recorded.

JUDGMENT

The second appeal is directed against the judgment and decree made in A.S.No.29 of 2014, dated 05.04.2016 on the file of the Subordinate Judge, Paramakkudi, confirming the judgment and decree passed in O.S.No.58 of 2010 on the file of the learned District Munsif cum Judicial Magistrate, Kamudhi.

2.The appellants are the plaintiffs 1 to 5. They along with fourth respondent Sekar, filed a suit in O.S.No.58 of 2010, before the District Munsif cum Judicial Magistrate, Kamudhi, claiming partition and allotment of 6/8 shares in the suit property.

3. For the sake of convenience and brevity, the parties hereinafter will be referred as per their ranking/status before the trial Court.

4. The relationship not in dispute is that the first plaintiff is the wife of the first defendant and the plaintiffs 2 to 6 and the second defendant are their

children. The third defendant is a third party-purchaser. Pending second appeal, the fourth appellant/plaintiff had died and his legal heirs were impleaded as the appellants 6 to 8 and the sixth appellant was appointed as guardian of minor appellants 7 and 8.

5.The case of the plaintiffs, in brief, is as follows :

a) The suit properties are the ancestral properties of the first defendant. The plaintiffs were constrained to get an encumbrance certificate on 11.01.2010 as the third defendant was claiming right over the suit property and they came to know that the defendants 1 and 2 had executed a mortgage deed, dated 13.11.1997 and subsequently, a sale deed, dated 04.01.2001, but the patta bearing No.157 continued to be in the name of the first defendant.

b) The plaintiffs and the defendants 1 and 2 are in possession and enjoyment of the suit property. At the time of execution of the sale deed by the defendants 1 and 2, the plaintiffs 2 and 3 were major and only the plaintiffs 4 to 6 were minors. Hence, the sale in favour of the third defendant will not bind the shares of the plaintiffs.

c) On enquiry, the defendants 1 and 2 admitted to have executed a sale deed for the loan availed by them from the third defendant and that the third defendant executed an agreement not to claim any right and title over the suit property and that the sale deed was executed only as a security for the loan. Hence, the plaintiffs were forced to file the above suit for partition and for allotment of 6/8 shares in the suit property.

6. The defence of the third defendant, in short, is as follows :

a) The suit properties are the ancestral properties of the plaintiffs and the defendants 1 and 2. The first defendant along with the second defendant for himself and as a guardian for minor plaintiffs 2 to 6 had mortgaged the suit property to the third defendant for Rs.40,000/- and the first defendant had agreed to repay the loan amount with interest at Rs.2/- per Rs.100/- per month. But the defendants 1 and 2 have failed to any amount towards principal or interest. But they availed further hand loans from the third defendant and the loan amount and interest had exceeded Rs.1 lakh as in December 2000. Since the plaintiffs and the defendants 1 and 2 were unable to discharge the loan amount, they have requested the third defendant to purchase the suit properties. But at that time, the suit properties would fetch only Rs.65,580/- and hence, the third defendant asked the first defendant to give his other properties also. But the first defendant agreed to execute the sale deed in respect of the suit properties and also agreed to repay the loan amount within three years and thereafter, he would get back the properties in his favour at his expenses and both the parties entered into an agreement to the same. But the defendants 1 and 2 failed to repay the loan amount within three years. Hence, the defendants 1 and 2 handed over the possession of the suit properties to the third defendant in January 2004 and Revenue records were mutated in the name of the third defendant and he has been paying the taxes.

b) The defendants 1 and 2 in collusion with the plaintiffs filed the above suit to extract money from the third defendant. Moreover, the plaintiffs have purposely omitted the other properties owned by their family in the suit for partition. The plaintiffs have not filed the above suit within time prescribed and is barred by limitation. Hence, the suit is liable to be dismissed.

7. The learned trial Judge, upon considering the pleadings of both the parties, framed the following issues :

1.Whether the plaintiffs are entitled to the relief of preliminary decree as prayed for ?

2. Whether plaintiffs are entitled to the relief of final decree ?

3. To what other relief, the plaintiffs are entitled to ?

8. During trial, the first and second plaintiffs examined themselves as P.W. 1 and P.W.2 respectively and exhibited three documents as Ex.A.1 to Ex.A.3. The defendants 1 and 2 remained ex-parte. The third defendant examined himself as D.W.1 and one Thangamani as D.W.2 and exhibited 14 documents as Ex.B.1 to Ex.B.14.

9. The learned trial Judge, upon considering the pleadings and evidence both oral and documentary and on hearing the arguments of both the sides, passed the judgment and decree, dated 01.02.2014, dismissing the suit with costs. Aggrieved by the dismissal of the suit, the plaintiffs preferred an appeal in A.S.No.29 of 2014 and the learned Subordinate Judge, Paramakudi, upon considering the materials available on record and on hearing the arguments of both the sides, passed the impugned judgment and decree, dated 05.04.2016, dismissing the appeal and thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the first appeal, the plaintiffs 1 to 5 have preferred the present second appeal.

10. At the time of admission, the following substantial questions law came to be formulated.

a) Whether the judgment of the Courts below sustainable that the plaintiffs 2 to 6 are bound by Ex.B.2/A.2, when there is no material available that Ex.B.2/A.2 has been executed for the benefit of plaintiffs 2 to 6 ?

b) Whether the conclusion arrived at by the Courts below is right that the suit is bad for partial partition ?

c) In the facts and circumstances of this case whether the Courts below are right in holding that the suit without a prayer for cancellation of Ex.B.2/A2 is not maintainable ?

11. It is admitted by all the parties that the first defendant for himself and on behalf of the plaintiffs 2 to 6, along with the second defendant mortgaged the suit properties in favour of the third defendant vide mortgage deed, dated 13.11.1997 under Ex.B.1.

12. It is the specific case of the third defendant that the defendants 1 and 2 have not paid any amount towards principal or interest for the mortgaged loan;

that they have also availed further loans and that since the principal and interest had exceeded Rs.1 lakh, they approached the third defendant and requested him to purchase the suit properties.

13. It is the further case of the third defendant that since the suit properties were only worth about Rs.65,580/-, the third defendant demanded the first defendant to sell his other properties, but after negotiations, the third defendant had agreed to give a concession to the effect that the first defendant has to repay the loan amount within a period of three years and on such repayment, the third defendant will reconvey the suit properties and that both the parties have entered into an agreement for the said effect.

14. According to the third defendant, in pursuance of the said agreement between the parties, the first defendant for himself and on behalf of the minor plaintiffs 3 to 6 along with second defendant had executed a registered sale deed dated 04.01.2001 under Ex.A2 (B2) conveying the suit properties to him. Admittedly, though the third defendant has alleged that they have entered into an agreement for reconveyance simultaneously with Ex.B.2 sale deed, the same was not produced before the Court.

15. It is the further case of the third defendant that the defendants 1 and 2 have failed to repay the loan amount within stipulated period of three years and hence, they have handed over the possession of the suit properties to him and since then he has been in possession and enjoyment of the same.

16. The learned counsel appearing for the plaintiffs would contend that the alleged sale deed under Ex.B.2 was executed only as a security for a loan transaction and was never intended to operate as an out-and-out conveyance of title. It is his further submission that the said document does not confer any right or title upon the third defendant. Hence, according to him, Ex.B.2 cannot be construed as a genuine sale deed, and consequently, the concurrent finding of both the Courts below treating Ex.B.2 as a valid sale deed is vitiated by perversity.

17. The learned counsel appearing for the plaintiffs placed reliance on the judgment of the Supreme Court of India in ***Ramlal and another v. Phagua and others***, reported in ***(2006) 1 SCC 168,*** wherein it has been held that when a document styled as a sale deed is in fact executed only as a security for a debt, such a document does not operate as a conveyance of title and, at best, can be

treated only as a security for the loan transaction. The relevant passages are extracted hereunder:

> " *12.In our opinion, the High Court has rightly come to the conclusion that the sale deed in question was not in fact a real sale deed but was by way of surety and thus did not pass any right, title or interest in favour of the vendee which is clear from the admission of the vendee/defendant No.8. We have already extracted the contents of the written statement in paragraphs (supra). We have also perused the document executed by the plaintiffs/respondents herein in favour of Mst. Hasrat Bi. It did not pass any right, title or interest in her favour and in all probabilities the transaction was only by way of loan and the so called sale deed executed by the respondent/plaintiff in favour of Mst. Hasrat Bi was nothing but by way of surety.*
>
> *13. D.W.1 Mehboob Khan, the husband of defendant No.8 has clearly admitted in his evidence as follows:-*
>
> *"it is true that Phagua took the amount from me as loan.*
>
> *Phagua is resident of Village Mangla and he has his house and immovable property there."*
>
> *14. In the instant case, in addition to the sale deed executed on 01.12.1965 an agreement was also entered into between the parties simultaneously for execution of the re-conveyance deed in favour of the respondent/plaintiff as is admitted by the appellant herein. Therefore, by the said sale deed, no right, title or interest*

ever pass in favour of Mst. Hasrat Bi and that mere mutation of the name of Mst. Hasrat Bi in the revenue records does not confer any right, title or interest in her favour in the absence of the real transaction of the property. It is seen from the records that since the respondent/plaintiff failed to repay the loan within the stipulated period of 3 years, Mst. Hasrat Bi got her name recorded in the revenue records and sold the property to the appellants herein by a registered sale deed for a sum of Rs. 4,000/-. In our view, since Mst. Hasrat Bi had no right, title or interest over the suit property she was not competent to execute the sale deed in favour of Ramlal Shyamlal and Pyarelal for any consideration and if Mst. Hasrat Bi executed the sale deed in favour of the appellants it never conferred any right, title or interest in favour of the subsequent purchasers i.e. the appellants. Therefore, the respondent filed a suit for declaration that the sale deed dated 01.12.1965 executed by him in favour of Mst. Hasrat Bi was only a nominal sale and he continues to be the owner of the suit land and also prayed for possession of the suit land as he was forcibly dispossessed by the appellant after purchasing the land from Mst. Hasrat Bi. A copy of the Plaint has been filed and marked as Annexure-R3.

18. Per contra, the learned counsel appearing for the third defendant placed reliance on the three-Judge Bench decision of the Supreme Court of India in ***K.Simrathmull v. Nanjalingiah Gowder,*** reported in ***AIR 1963 SC 1182***, wherein

it has been held that where a vendor reserves a right of reconveyance subject to stipulated conditions, such right is in the nature of a concession or privilege, which must be exercised strictly in accordance with the terms of the contract. It was further held that failure to comply with such conditions within the prescribed time would result in the loss of the right to repurchase, thereby rendering the sale absolute and conferring full title upon the purchaser.

19. The learned counsel for the third defendant would also rely upon certain observations in ***Ramlal***'s case itself, extracted hereunder :

> "*16.The respondent/plaintiff has clearly stated that he has repaid the entire loan by paying the cash amount to Mehboob Khan. The first Appellate Court has not given any finding in respect of the issues framed by the trial Court". ...*

20. The learned counsel for the third defendant would submit that, in the said case, the entire loan amount had been repaid, which formed the basis for the Court to conclude that the transaction was only by way of security. According to him, in the present case, neither the plaintiffs nor defendants 1 and 2 have come forward to repay the alleged loan amount or seek reconveyance within the stipulated period of three years as per the agreement. Hence, it is contended that

the sale deed under Ex.B.2 has become absolute and the third defendant has acquired valid title over the suit property.

21. At this juncture, it is necessary to refer the ***K.Simrathmull's*** case referred above and the relevant passage is extracted hereunder:

> " 5.*The plaintiff had sold his property to the defendant. There is now no dispute that though the,sale deed was for Rs.700/-. it was in satisfaction of the loan borrowed on February 18, 1948 for Rs. 1500/- that the sale deed was executed. By the deed Ext. A-1 the defendant gave plaintiff a concession: he agreed to reconvey the house, but the exercise of the right of demanding reconveyance by the plaintiff was subject to two conditions (1) that the right must be exercised within two years, and (2) that the rent payable under Ext. B-1 should not be in arrears for more than six months at any time. When the plaintiff demanded specific performance .of the agreement of reconveyance, the first condition was fulfilled but the second was not. It is true that equity relieves against penalties when the intention of the penalty is to secure payment of a sum of money or attainment of some other object, and when the event upon which the penalty is made payable can be adequately compensated by payment of interest or otherwise. Thus relief is granted in equity against the penalty in a money bond, and also against penal sums made payable on breach of bonds, covenants and agreements for payment of money by installments, or for doing or omitting to do a particular act (see Halsbury's Laws of England III Edition vol. 14 page 620 Art. 1147).*

The cases in John H. Kilmer v. British Columbia Orchard Lands Ltd. (1) and Devendra Prasad Sukul and others v. Surendra Prasad Sukul and Another(2) are illustrations of that principle. But there is a well recognised exception to this rule which is enunciated in Halsbury's Laws of England Vol. 14, 3rd Edition page 622 paragraph 1151, as follows: "Where under a contract, conveyance, or will a beneficial right is to arise upon the performance by the beneficiary of some act in a stated manner, or at a stated time, the act must be performed accordingly in order to obtain the enjoyment of the right, and in the absence of fraud, accident or surprise, equity will not relieve against a breach of the terms". The Federal Court in Shanmugam Pillai and others v. Annalakshmi Ammal and others(1) held by a majority of three to two that where under an agreement an option to a vendor is reserved for repurchasing the property sold by him the option is in the nature of a concession or privilege and may be exercised on strict fulfillment of the conditions on the fulfillment of which it is made exercisable. If the original vendor fails to act punctually according to the terms of the contract, the right to repurchase will be lost and cannot be specifically enforced. Refusal to enforce the terms specifically for failure to abide by the conditions does not amount to enforcement of a penalty and the Court has no power to afford relief against the forfeiture arising as a result of breach of such a condition. A majority of the Judges of the Court in that case followed the principle set out in Davis. v. Thomas (2). We accept the view of the majority enunciated in Shanmugam Pillai's case. The decree passed by the High Court must therefore be set aside and the decree *passed by the trial Court restored. 'But the property in dispute is valuable. Even on the defendant's case it was on the date of the institution of the suit worth Rs. 15000/-. The defendant purchased it only about a year and seven months prior to the date of the institution of the suit for Rs. 1500/-. He appears to have overreached the plaintiff and taken a document of sale conveying the property when a mere loan was intended on the security of the property. It is unfortunate, having regard to the provision of Section 58 (c) of the 'Transfer of Property Act, that the plaintiff is debarred from proving that the transaction was in the nature of a mortgage. In the circumstances, we direct that there will be no order as to costs throughout.*

22. Insofar as the contention that Ex.B.2 is only a nominal sale deed executed by way of security for a debt is concerned, this Court is unable to accept the same. No doubt, as rightly contended by the learned counsel for the plaintiffs, the Supreme Court of India in ***Ramlal's*** case has held that the nomenclature of a document is not conclusive and that a document styled as a sale deed can, in appropriate cases, be construed as a mortgage if it is intended only as security for a debt. There can be no quarrel with the said proposition. However, the applicability of the said principle depends upon the facts and circumstances of each case and the intention of the parties as discernible from the recitals of the document and the surrounding circumstances.

23. Hon'ble Supreme Court of India has consistently held that the determinative test is the intention of the parties, to be gathered from the document as a whole and the surrounding circumstances. However, it is equally well settled, as laid down in ***K. Simrathmull v. Nanjalingiah Gowder,*** that in order to constitute a mortgage by conditional sale under Section 58(c) of the Transfer of Property Act, the condition for reconveyance must be embodied in the very same document. Where the sale is absolute in its terms and the right of repurchase is contained in a separate agreement, the transaction would amount only to a sale with a condition of repurchase and not a mortgage by conditional sale.

24. In the case on hand, Ex.B.2 is couched as an absolute sale deed and does not incorporate any stipulation for reconveyance. The alleged right of repurchase is said to emanate from a separate agreement, purportedly executed contemporaneously with the sale deed; however, the said agreement has not been produced before the Court. In view of the dictum laid down in ***K. Simrathmull's*** case referred supra, the transaction cannot be construed as a mortgage by conditional sale, and the right, if any, reserved in favour of the vendor can only be treated as a contractual right to repurchase within the stipulated time.

25. In the present case, it is an admitted position that defendants 1 and 2 have failed to comply with the conditions within the agreed period. Consequently, the right of repurchase stands extinguished, and the title conveyed under Ex.B.2 has become absolute. Therefore, the reliance placed on ***Ramlal and another v. Phagua and others*** is clearly distinguishable on facts, as there is no material on record to establish that Ex.B.2 was intended merely as a security for a debt.

26. The learned counsel appearing for the plaintiffs would submit that it is a settled principle of law that, where the property of minors is dealt with in a transaction, the purchaser is under an obligation to satisfy himself that the alienation is supported by legal necessity or is for the benefit of the minors. It is his further contention that, in the present case, there is absolutely no evidence to establish any legal necessity and that Ex.B.2 does not contain any recital to that effect. According to him, the Courts below have failed to properly appreciate this aspect and have erroneously rejected the claim of the plaintiffs, whereas they ought to have held that Ex.B.2 was not supported by legal necessity and was not binding on the minors.

27. In support of the said contention, the learned counsel placed reliance on the judgment of the Supreme Court of India in ***Smt. Rani and another v. Smt. Santa Bala Debnath and others***, wherein the Hon'ble Apex Court has elaborated the scope of "legal necessity" and the burden cast upon the alienee, and the relevant passages have been extracted supra.

> *10. Legal necessity to support the sale must however be established by the alienees. Sarala owned the land in dispute as a limited ,owner. She was competent to dispose of the whole estate in the property for legal necessity or benefit to the estate. In adjusting whether the sale conveys the whole estate, the actual pressure on the estate, the danger to be averted, and the benefit to be conferred upon the estate in the particular insistance must be consi- dered. Legal necessity does not mean actual compulsion : it means pressure upon the estate which in law may be regarded as serious and sufficient. The onus of providing legal necessity may be discharged by the alienee by proof of actual necessity or by proof that he made proper and bona fide enquires about the existence of the necessity and that he did all that was reasonable to satisfy himself as to the existence of the necessity.*
>
> *11.Recitals in a deed of legal necessity do not by themselves prove legal necessity. The recitals are, however, admissible in ;evidence, their value varying according to the circumstances in which the transaction was entered into. The recitals may be used to*

corroborate other evidence of the existence of legal necessity. The, weight to be attached to the recitals varies according to the circumstances. Where the evidence which could be brought before the Court and is within the special knowledge of the person who seeks to set aside the sale is withheld, such evidence being normally not available to the alienee, the recitals go to his aid with greater force, and the Court may be justified in appropriate cases in raising an inference against the party seeking to set aside the sale on the ground of absence of legal necessity wholly or partially when he withholds evidence in his possession.

28. Per contra, the learned counsel appearing for the third defendant, by placing reliance on paragraph No.11 of ***Smt. Rani***'s case referred supra, would submit that though the initial burden is on the alienee to establish that the transaction was supported by legal necessity or for the benefit of the minors, such burden can be discharged not only by adducing direct evidence but also by demonstrating that proper and bona fide enquiries were made. He would further contend that the person who seeks to avoid the transaction may be in possession of special knowledge and relevant evidence, which may not be available to the alienee, and that where such evidence is withheld, the recitals in the document, though not conclusive, may assume significance and can be relied upon to support the case of the alienee.

29. The learned counsel appearing for the third defendant would further submit that the third defendant had made due enquiries and was aware of the financial exigencies of the first defendant, who was maintaining a large family consisting of nine members and was the sole earning member. It is his contention that the first defendant had earlier executed a mortgage deed under Ex.B.1 in respect of the suit property for a sum of Rs.40,000/- to meet family necessities and, having subsequently borrowed additional amounts, his total liability had swelled to Rs.1,00,000/-. According to him, it was only to discharge the said liability that the first defendant executed the sale deed under Ex.B.2.

30.The learned counsel would further submit that even after the institution of the suit, the plaintiffs and defendants 1 and 2 continued to reside together under the same roof without any dispute, which, according to him, probabilises the case that Ex.B.2 was executed for family necessity. In support of his contention, he placed reliance on the judgment of the Supreme Court of India in ***Arvind @ Abasaheb Ganesh Kulkarni and others v. Anna @ Dhanpal Parisa Chougule and others***, wherein the Hon'ble Apex Court has considered the scope of legal necessity and the relevant passages are extracted hereunder :

> *" It has further to be remembered that there were continuous dealings between the family of the plaintiffs and the family of the*

second defendant, over a long course of years. In those circumstances it is impossible to agree with the conclusion of the courts below that the sale was not binding on the plaintiffs. The courts below appeared to think that notwithstanding the circumstance that there was legal necessity to a large extent it was incumbent on the second defendant to establish that he made enquiry to satisfy himself that there was sufficient pressure on the estate which justified the sale. We are unable to see any substance in the view taken by the courts below. When the mortgagee is himself the purchaser and when the greater portion of the consideration went in discharge of the mortgagors, we do not see how any question of enquiry regarding pressure on the estate would arise at all. Where ancestral property is sold for the purpose of discharging debts incurred by the father and the bulk of the proceeds of the sale is so accounted, the fact that a small part of the consideration is not accounted for will not invalidate the sale."

31. The Hon'ble Supreme Court, in a catena of decisions, has settled the legal position on the question of legal necessity that the initial burden lies on the alienee to establish that the transaction was supported by legal necessity or was for the benefit of the estate. Further, such burden is neither strict nor onerous in nature.

32. In classic decision of ***Prasad Pandey Vs.Mussumat Babooee Munraj Koonveuveree,*** which has been consistently approved by the Hon'ble Supreme Court, it has been held that the alienee need only show that he made bona fide enquiries and satisfied himself as to the existence of legal necessity. The same principle has been reiterated in subsequent decisions and also in ***Smt.Rani's*** case and in ***Arvind @ Abasaheb Ganesh Kulkarni's*** case relied on by the learned counsel for the plaintiffs, wherein, it has been held that the alienee is not bound to prove the actual application of the consideration and that proof of existence of circumstances giving rise to legal necessity is sufficient.

33. In the case on hand, Ex.B.2 contains recitals indicating that the sale was effected for family necessity. The evidence on record further discloses that the plaintiffs, along with Defendants 1 and 2, were residing together as members of a joint family, thereby indicating the existence of common family interests and obligations. The third defendant has also adduced material to show that the transaction was preceded by antecedent debts of a pressing nature.

34. It is well settled that the discharge of antecedent debts constitutes a valid legal necessity, binding on the co-parceners, unless it is shown that such debts were tainted by illegality or immorality. Significantly, the defendants 1 and

2, who executed Ex.B.2 sale deed, have remained ex-parte and have not chosen to dispute the existence of such necessity.

35. The plaintiffs, on the other hand, have neither pleaded nor proved that the debts were tainted by illegality or immorality. In such circumstances, it can easily be inferred that the third defendant has discharged the burden cast upon him, while the plaintiffs have failed to rebut the same. No doubt, the learned trial Judge gave a finding that the suit is bad for partial partition, however, the first appellate Court has rightly held that such a plea is not available to a third party alienee. In any event, the said finding does not, in any manner, affect the ultimate conclusion arrived at by the Courts below.

36. No doubt, the plaintiffs have taken a stand that the plaintiffs 2 and 3 were majors at the time of execution of Ex.B.2 sale deed. As rightly contended by the learned counsel for the third defendant, the Courts below, considering the evidence available on record, by observing that the plaintiffs had not produced any documentary evidence to show that they were majors at that time, has held that they were also minors at the time of execution of Ex.B.2 sale deed.

37. The learned counsel appearing for the third defendant would submit that, when the Kartha of a joint family or the natural guardian of minors alienates the property of the minors, the minors are entitled to challenge such alienation by filing a suit for cancellation within the prescribed period of limitation, namely, three years from the date of their attaining majority, as contemplated under Article 60 of the Limitation Act. In the present case, it is pointed out that the suit has been instituted after a lapse of nearly nine years from the date of execution of Ex.B.2 and, more importantly, the plaintiffs have not sought the relief of cancellation of the sale deed, but have merely prayed for partition.

38. Per contra, the learned counsel appearing for the plaintiffs would contend that, as already submitted, though Ex.B.2 is styled as a sale deed, it is not a genuine conveyance of title, but only a document executed as security for a loan transaction. According to him, since the third defendant did not derive any valid title under Ex.B.2, the question of seeking cancellation of the said document does not arise. He would further submit that the Courts below erred in holding that the plaintiffs ought to have sought the relief of cancellation and that the said finding is vitiated by perversity.

39.As per the settled legal position, an alienation made by a natural guardian or Kartha, even if not supported by legal necessity or benefit of the estate, is not *void ab initio*, but is only voidable at the instance of the minors. Consequently, such a transaction continues to be valid and operative unless is duly set aside in accordance with law. Article 60 of the Limitation Act specifically prescribes a period of three years for a suit by a minor, who has attained majority, to set aside a transfer of property made by his guardian. The period of limitation begins to run from the date on which the minor attains majority. Therefore, it is incumbent upon such persons, on attaining majority, not only to institute the suit within the prescribed period, but able to seek substantive relief of setting aside or cancellation of the alienation.

40. In the present case, the plaintiffs 4 to 6, who were minors at the time of execution of Ex.B.2, have not chosen to challenge the said alienation even within three years of their attaining majority. More importantly, they have not even sought necessary relief of cancellation or setting aside of Ex.B.2. It is well settled that where a document is voidable, the same cannot be ignored and must be specifically impeached in appropriate proceedings. A mere prayer for partition, without seeking to avoid the alienation, is legally insufficient and cannot have the

effect of nullifying the same. In such circumstances, the plaintiffs cannot, by couching the relief as one for partition, circumvent the statutory mandate under Section 60 of the Limitation Act and thereby, avoid the binding effect of Ex.B.2 sale deed.

41.Insofar as the first plaintiff is concerned, she is the wife of the first defendant and, admittedly, the suit property is ancestral in nature. Hence, she is not entitled to claim any share, and the said position has also been fairly conceded by the learned counsel appearing for the plaintiffs. Considering the evidence available on record and taking note of the settled legal position, the Courts below have rightly concluded that Ex.B.2 is a valid sale deed and that the plaintiffs 2 to 6 are not entitled to claim partition. The said findings do not warrant any interference. Consequently, this Court holds that the Second Appeal is devoid of merits and is liable to be dismissed. Having regard to the facts and circumstances of the case, this Court is of the view that the third defendant is entitled to costs throughout.

42. In the result, the Second Appeal stands dismissed, confirming the concurrent judgments and decrees of the trial Court made in O.S.No.58 of 2010, on the file of the learned District Munsif cum Judicial Magistrate, Kamudhi, and

by the first appellate Court in A.S.No.29 of 2014 on the file of the Subordinate Judge, Paramakkudi. The third defendant shall be entitled to costs throughout. Consequently, connected Miscellaneous Petition is closed.

10.04.2026

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
das

To:

1.The Subordinate Judge,
Paramakkudi.

2.The District Munsif cum Judicial Magistrate,
Kamudhi.

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

K.MURALI SHANKAR,J.

DAS

Pre-delivery Judgment made in
S.A.(MD).No.103 of 2017
and
C.M.P(MD)No.1829 of 2017

Dated: 10.04.2026