

IN THE COURT OF THE MUNSIFF'S, PUNALUR  
PRESENT :-Smt. Reshma R.S, Civil Judge (Junior Division)  
Saturday the 31<sup>st</sup> day of January 2026/11<sup>th</sup> day of Magha,1947.

**Common Judgment in OS 134/2008 and OS 443/2014**

**OS 134/2008**

**Between**

- Plaintiffs** :
1. Maneesha, aged 15 years (Minor),  
D/o Earnest Perera, Ever Shine, Vilakkudy Muri,  
Vilakkudy Village, Pathanapuram,  
represented by her mother and next friend  
Esther W/o Earnest Perera, Ever Shine,  
Vilakkudy Muri, Vilakkudy Village,  
Pathanapuram.
  2. Maya, aged 20 years, D/o Earnest Perera,  
Ever Shine, Vilakkudy Muri, Vilakkudy Village,  
Pathanapuram.
  3. Manoj, aged 22 years, S/o Earnest Perera,  
Ever Shine, Vilakkudy Muri, Vilakkudy Village,  
Pathanapuram,  
**(By Adv. John George and Adv. V.M Joseph)**

**And**

- Defendants** :
1. Justus Perera, aged 48 years, S/o Joseph Perera,  
Morning Star, Vilakkudy Muri,  
Vilakkudy Village, Pathanapuram Taluk.
  2. Alphonse Perera, aged 56 years, Morning Star,  
Vilakkudy Muri, Vilakkudy Village,  
Pathanapuram Taluk.
  3. Fredittamma Berty, Fabi, Kannimelchery,  
Vadakkevila Village, Kollam Taluk.
  4. Joseph Perera, aged 95 years, Morning Star,  
Vilakkudy Muri, Vilakkudy Village,  
Pathanapuram Taluk.

Addl. D5. Hycinth Sofiya, aged 60 years,  
W/o Alphonse Perera, Kalichery House,  
Koumudi Nagar, Pallithottam P.O,  
Pallithottam Chery, Kollam East Village.  
(Addl. D5 is impleaded as per order in  
IA 102/2019 dated 04-02-2019)  
**(By Adv. P.C Sivaraja Pillai for D1 and D4)**  
**(D3 - Ex-parte)**  
**(Adv. R. Sivadasan and Adv. R. Asokan for**  
**D2 and Addl. D5)**

**OS 443/2014**

**Between**

**Plaintiffs** :

1. Esther M.A, aged 56 years, W/o Earnest Perera,  
Ever Shine, Arampunna Ward, Punalur Village,  
Punalur Taluk, Vilakkudy P.O.
2. Manoj, aged 28 years, S/o Earnest Perera,  
Ever Shine, Arampunna Ward, Punalur Village  
Punalur Taluk, Vilakkudy P.O.
3. Maya, aged 26 years, D/o Earnest Perera,  
Ever Shine, Arampunna Ward, Punalur Village  
Punalur Taluk, Vilakkudy P.O.
4. Maneesha, aged 21 years, D/o Earnest Perera,  
Ever Shine, Arampunna Ward, Punalur Village  
Punalur Taluk, Vilakkudy P.O.  
**(By Adv. John George and Adv. V.M Joseph)**

**And**

**Defendants** :

1. Fredittamma Berty, aged 65 years,  
D/o Joseph Perera, Fabi, Kannimelchery  
Vadakkevila Village, Kollam Taluk.
2. Alphonse Perera, aged 63 years,  
S/o Joseph Perera, Kalichery House,  
Koumudi Nagar-33, Pallithottam,  
Kollam West Village, Kollam Taluk, Kollam-6.

3. Justus Perera, aged 54 years, S/o Joseph Perera, Mornining Star, Arampunna Ward, Vilakkudy P.O, Punalur Village, Punalur Taluk.  
**(By Adv. R. Sivadasan for D2)**  
**(Adv. P.C Sivaraja Pillai for D3)**  
**(D1 - Ex-parte)**

These suits are coming on for final hearing before me on 27-01-2026 and stood over for consideration to 31-01-2026 and on the same day the court delivered the following.

### **COMMON JUDGMENT**

OS 134/2008 is a suit for partition, declaration and other consequential reliefs and OS 443/2014 is a suit for partition and separate possession.

2. **The plaint averments, in OS 134/2008, in brief, are as follows: -**  
The defendants 1 to 3 are the children born to the 4<sup>th</sup> defendant with his wife, deceased Josaphina Perera. They had another son named Earnest Perera, who died on 04/05/2002. The plaintiffs are the children of said Earnest Perera, and the additional 4<sup>th</sup> plaintiff is his widow. The 4<sup>th</sup> defendant had a daughter named Telma Perera, who had died, and had four children. The plaintiffs, as well as the relatives, have no knowledge of them for the last 10 years. Hence, for the disposal of this suit, their death has to be declared. The plaint A, B, C and D schedule properties are owned by the deceased Josephina, the mother of Earnest Perera, and defendants 1 to 3. Said Josephina had died on 24/11/2007 at the age of 85. As said, Josephina had been suffering from mental illness; she was locked in a

room by the 1<sup>st</sup> defendant. No one else had permission to visit her at that time. She did not have the mental capacity to identify her children too. Said Josephina died intestate. After the death of Josephina, plaintiff A, B, C and D schedule properties are in the joint possession and enjoyment of the plaintiffs and defendants. Even though the plaintiffs demanded the defendants to partition the plaintiff schedule properties, they were not amenable for the same. Subsequently, when the plaintiffs inquired about the matter, it was learnt that the said properties were executed by deceased Josephina in favour of the 1<sup>st</sup> defendant as per the settlement deed Nos. 3036/2007, 3037/2007, 3038/2007 and 3039/2007 of Punalur SRO. The signature seen in the said documents is not that of Josephina. The said settlement deeds are fabricated. Hence, the settlement deed Nos. 3036/2007, 3037/2007, 3038/2007 and 3039/2007 of Punalur SRO are to be ignored. The defendants alone have no right over the plaintiff A, B, C and D schedule properties; it is in the joint possession of the plaintiffs and the defendants. The said properties are partible. The plaintiffs have 1/4 right over the said properties. Since the defendants are not willing to partition the plaintiff A, B, C and D schedule properties, the same is to be partitioned through the process of court and to get separate possession of the plaintiffs' 1/4<sup>th</sup> share. Otherwise, it would cause irreparable injury and hardships to the plaintiffs. The 4<sup>th</sup> defendant, who is the father of the plaintiffs' father and the defendants, is 95 years old and cannot make his own decisions.

The 4<sup>th</sup> defendant is under the custody of the 1<sup>st</sup> defendant. The E and F schedule properties are owned by the 4<sup>th</sup> defendant and the deceased Josephina. After the death of Josephina said properties are in the joint possession and enjoyment of the plaintiffs and defendants. The properties scheduled as plaint G schedule belong to the 4<sup>th</sup> defendant alone, and the same is in his possession and enjoyment. The plaintiffs also learnt that besides plaint A, B, C and D schedule properties, E, F and G schedule properties were also fraudulently settled in favour of the 1<sup>st</sup> defendant as per settlement deed Nos. 3034/2007, 3035/2007 and 3033/2007, respectively, of Punalur SRO. The 4<sup>th</sup> defendant has informed the plaintiffs that he did not voluntarily execute the above-said documents in favour of the 1<sup>st</sup> defendant, and that he was forced to do so, and that now he is willing to give them to the plaintiffs. As the above-mentioned documents were executed by the fourth defendant under the undue influence of the 1<sup>st</sup> defendant, the said documents have no legal effect. The said documents were executed fraudulently. It is seen that 7 documents were executed on 21/08/2007 in the name of the 1<sup>st</sup> defendant. The above-mentioned documents are to be set aside as they are void. Otherwise, it would cause irreparable injury and hardships to the plaintiffs. Plaint H, I and J schedule properties are owned by the 4<sup>th</sup> defendant, and the said properties are also in his possession and enjoyment. There was a family settlement done by the 4<sup>th</sup> defendant that the plaint H, I and J schedule properties are devolved

on the children of the 4<sup>th</sup> defendant and also the children of the deceased Earnest Perera. However, the 4<sup>th</sup> defendant was unable to perform his part due to the unlawful interference by the 1<sup>st</sup> defendant. The 4<sup>th</sup> defendant is under the unlawful custody of the 1<sup>st</sup> defendant. Now the plaintiffs apprehend that the 1<sup>st</sup> defendant, by influencing, threatening and cheating the 4<sup>th</sup> defendant, will execute the plaint H, I and J schedule properties in his favour. Hence, they are to be restrained from doing so. Otherwise, it would cause irreparable injury and hardships to the plaintiffs. A preliminary decree was passed in this suit on 22/05/2010. The 2<sup>nd</sup> defendant in this case was set ex-parte. Thereafter, as per IA 2949/2014 dated 20/12/2014, the said ex-parte order was set aside. In IA 2949/2014, it was specified that Josephina Perera had given the 2<sup>nd</sup> defendant a power of attorney registered as No. 253/1996 of Iravipuram SRO. But the said document is a fraudulently created one. Josephina Perera had no need to execute such a power of attorney. On the basis of the power of attorney No. 253/1996 of Iravipuram SRO, the 2<sup>nd</sup> defendant alleged that the plaint A, B, C and D schedule properties were sold to the wife of the 2<sup>nd</sup> defendant by virtue of sale deed No. 2548/2007 of Punalur SRO. The sale deed No. 2548/2007 executed by the 2<sup>nd</sup> defendant in favour of the additional 5<sup>th</sup> defendant has no legal effect. The said document was created fraudulently. On the execution of the said deed, Josephina Perera was incapable of making decisions, and she was under the unlawful custody of

the 1<sup>st</sup> defendant. The additional 5<sup>th</sup> defendant has no right over the plaint A, B, C and D schedule properties. The sale deed No. 2548/2007 executed by the 2<sup>nd</sup> defendant in favour of the additional 5<sup>th</sup> defendant is to be ignored. After knowing the institution of this suit, the 1<sup>st</sup> defendant has been attempting to cause damage to the plaint schedule properties, to enter others into the plaint schedule properties, and to create deeds with respect to the plaint schedule properties. If he succeeds in his attempt, it will cause irreparable injury and hardships to the plaintiffs. Hence, this suit.

3. **The 1<sup>st</sup> and 4<sup>th</sup> defendants filed written statement, contending the following:** - The suit is not maintainable either in law or on facts. The suit is filed without any bona fides. The plaint A, B, C and D schedule properties are owned by the deceased Josaphina, who is the mother of the 1<sup>st</sup> defendant and the wife of the 4<sup>th</sup> defendant. The said properties were executed by Josaphina in favour of the 1<sup>st</sup> defendant as per the settlement deed Nos. 3036/2007, 3037/2007, 3038/2007 and 3039/2007 of Punalur SRO, and since then, the 1<sup>st</sup> defendant has been in possession and enjoyment of the said properties. Josaphina was suffering from age-old ailments, and they had taken care of her well. The E and F schedule properties were owned by Josephina and the 4<sup>th</sup> defendant. The said properties are also settled in favour of the 1<sup>st</sup> defendant as per the settlement deed Nos. 3034/2007 and 3035/2007 of Punalur SRO, and since then, the 1<sup>st</sup> defendant has been in possession and enjoyment of the said

properties. The plaint G schedule property was owned by the 4<sup>th</sup> defendant, and the said property was settled in favour of the 1<sup>st</sup> defendant as per the settlement deed No. 3033/2007, and since then, the 1<sup>st</sup> defendant has been in possession and enjoyment of the same. The 1<sup>st</sup> defendant has every right over the A, to G schedule properties. The 4<sup>th</sup> defendant has already given the shares to all the children, and he has a clear understanding of what should be given to whom regarding the remaining properties. The 1<sup>st</sup> defendant never influenced, threatened, intimidated or cheated the 4<sup>th</sup> defendant and his wife. It is true that H, I and J schedule properties are in the possession and enjoyment of the 4<sup>th</sup> defendant. The 4<sup>th</sup> defendant has every right and authority regarding the said properties. The 4<sup>th</sup> defendant does not act under anyone's persuasion. The 4<sup>th</sup> defendant has absolute right over the said properties. Hence, the suit and the injunction application are to be dismissed; otherwise, it would cause irreparable injury and hardships to the 4<sup>th</sup> defendant. It is false to state that attempts are being made to damage the plaint schedule properties and to allow others to enter into the said properties. Hence, this suit is liable to be dismissed.

4. **The 1<sup>st</sup> and 4<sup>th</sup> defendants filed additional written statement, contending the following:** -The amended suit is not maintainable either in law or on facts. Josephina, who is the mother of the 1<sup>st</sup> defendant and the wife of the 4<sup>th</sup> defendant, had executed the deeds in favour of the 1<sup>st</sup> defendant without anyone's persuasion. The signature on the deeds is that

of Josephina. Hence, this suit is liable to be dismissed with costs and compensatory costs to the defendants 1 and 4.

5. **The 2<sup>nd</sup> defendant filed written statement, contending the following:** -The suit is not maintainable either in law or on facts. The 2<sup>nd</sup> defendant is the eldest son of the late Joseph Perera and Josephina Perera. Defendants 1 and 3, along with Ernest Perera, and Telma Perera, are the remaining issues. Earnest Perera, the father of the plaintiffs, died on 07/05/2002, leaving behind the plaintiffs and Estar Earnest, his wife, as his sole legal heirs. Telma Perera died on 07/11/1996. It is false to state that the whereabouts of the 4 issues left behind by late Telma Perera have not known for the last 10 years. They are living in Thiruvananthapuram. The plaintiffs, along with their mother, Estar Earnest, in their capacity as the legal heirs of late Earnest Perera, are entitled to a 1/5<sup>th</sup> share of the properties left behind by late Josephine Perera, barring the legally enforceable documents executed by her in favour of their issues, including late Earnest Perera, on her own free will and volition. It is because many among the properties scheduled in the plaint are either sold out on prior dates or already made the subject matter of sale deeds as well as settlement deeds executed by the 4<sup>th</sup> defendant in favour of his other issues. It may be kindly noted that during the lifetime of Earnest Perera, the late father of the plaintiffs, he was the recipient of a total area of 3 Acres 77 cents from the 4<sup>th</sup> defendant, whereas the 1<sup>st</sup> defendant got only 2 acres 05 cents. Those

properties were already vested in the 1<sup>st</sup> defendant with mutation effected in his favour with absolute possession and enjoyment over the same. Barring the natural wear and tear of old age, Josephina had no infirmity whatsoever in exercising her mental faculties or physical stamina. Even though the 2<sup>nd</sup> defendant was settled with his family at Kollam, and on that account could not always be with his parents who were living at their ancestral house, adjacent to the house of the plaintiffs, he used to pay regular visits to ensure the supply of essentials, including medicine for their natural petty ailments. It is strange to note that the plaintiffs went to the extent of even alleging that no document in respect of properties under schedule A to D was executed by Josephine Perera and that settlement deed Nos. 3036/2007, 3037/2007, 3038/2007 and 3039/2007 of Punalur SRO were fraudulently created by the 1<sup>st</sup> defendant by keeping late Josephine Perera in the dark, with further specific allegation that Josephine Perera was mentally incapacitated with amnesia to take any step to execute any such document on her own volition. So the further averments that those settlement deeds have no legal sanctity and hence are to be ignored, that those have neither any legal effect nor the first defendant has derived any right under the same, are absolutely unfounded. Those properties under schedules A, B, C, and D are not partible, because those were already the subject matter of sale deed No. 2548/2007 of Punalur SRO executed by the 2<sup>nd</sup> defendant in his capacity as the power of attorney holder of late

Josephine Perera on the strength of the power of attorney in favour of Hycinth Sophia, the wife of the second defendant against due consideration. In light of what is submitted above, the claim put up by the plaintiffs that they are entitled to a 1/4<sup>th</sup> share of those properties is false. The plaintiffs never demanded partition. Hence, no such prayer is liable to be granted by this court. The plaintiffs, along with their mother, have been the major beneficiaries of the magnanimity and sense of justice on the part of Joseph Perera and Josaphina, who gracefully set apart 3 acres 77 cents of properties vide gift deed Nos. 429/1966, 4146/1966, 4098/86 and 173/1974 as submitted above. None of the other sons and daughters had raised any objection to the same. The present suit is only aimed at disrupting the peaceful enjoyment and possession of the properties now vested upon the defendants 1 and 2, thereby deriving unlawful enrichment at their expense. The averments regarding the scope and ambit of the letters the plaintiffs/mother got from Joseph Perera are a virtual contradiction of his mental setup, which she wants to put up through the plaintiffs while dealing with the documents he executed in favour of the defendants 2 and 3. It establishes the further fact that it was under duress that she could get such letters written by Joseph Perera, with his reluctance to subscribe his signature beneath those. The plaint E and F schedule properties were made over to the 1<sup>st</sup> defendant by the parents by executing settlement deed Nos.3034/2007 and 3035/2007 of Punalur SRO. Similar is

the case with the property under schedule G also, the settlement deed No.3033/2007 in respect of which was also duly executed by Joseph Perera in favour of the 1<sup>st</sup> defendant. The properties under schedule I and J, having an extent of 11 cents each, continued to be in the ownership and possession of Joseph Perera. Those 22 cents of properties and the remaining 55 cents under the H schedule are partible. But the averment that Joseph Perera had made family arrangements for the partition of the above properties and that it was frustrated at the intervention of defendants 1 to 3 is not correct. During the pendency of the suit, Joseph Perera voluntarily chose to set apart 45 cents out of the total 100 cents, ie H schedule to the 2<sup>nd</sup> defendant vide gift deed No.1595/ 2010. The alleged apprehension of the plaintiff regarding the then-potential threat of the execution of documents had no relevance at all. As the court in I.A 776/2008, filed by the plaintiffs for restraining the 4<sup>th</sup> defendant from executing any document in respect of any of the scheduled properties, was kind enough to grant absolute power to the 4<sup>th</sup> defendant to deal with his properties as he chose during his lifetime. The plaintiffs are not entitled to get the reliefs in their entirety as prayed for in the plaint. Regarding properties under A, B, C, D, E, F and G, no partition is contemplated. Only in respect of properties under schedules I and J, and 55 cents out of 100 cents in schedule H alone are partible. Hence, partially allow the plaint as submitted above.

6. **The 2<sup>nd</sup> defendant filed additional written statement, contending the following:** - The suit is not maintainable either in law or on facts. The suit is hopelessly barred by limitation. During the lifetime of Earnest Perera, the deceased father of the plaintiffs, the 4<sup>th</sup> defendant, the late father of the defendants had set apart a total area of 3 Acres 77 cents to him exclusively, leaving apart the remaining properties to be divided among the other issues of the 4<sup>th</sup> defendant. It was putting his mother under threat of physical injury, that he managed to get the above deeds 3033/2007, 3034/2007, 3035/2007, 3036/2007, 3037/2007, 3038/2007 and 3039/2007 executed by her in his favour on 21/08/2007 relating to 93 ½ cents. Even though his mother was in sound physical and mental conditions, she could not withstand his above physical threat. As a result, those settlement deed Nos. 3036/2007, 3037/2007, 3038/2007 and 3039/2007 have no legal sanctity as the properties there under were already the subject matter of sale deed No. 2548/2007 of Punalur SRO executed by the 2<sup>nd</sup> defendant in his capacity as the power of attorney holder of late Josephina Perera on the strength of the above power of attorney in favour of the additional 5<sup>th</sup> defendant against due consideration. The area covered by the sale deed was 1 Acre 8 ½ cents, of which the above 93 ½ cents formed part. The additional 5<sup>th</sup> defendant thereby derived absolute right of ownership, possession and enjoyment over the above properties. So the above settlement deeds are abinitio void, and hence those fraudulent documents

have absolutely no bearing on the above right of ownership and possession of the properties under A to D schedules conferred upon the additional 5<sup>th</sup> defendant. Hence, those settlement deeds are to be ignored, as they have neither any legal effect nor has the 1<sup>st</sup> defendant derived any right under the same. The plaintiff and her mother were in full knowledge of the execution of the above sale deed in favour of the additional 5<sup>th</sup> defendant at the time of its execution itself. Nothing had prevented the plaintiff from challenging the above sale deed No. 2548/2007 of Punalur SRO within the statutory period of limitation and hence relief No. 1 A become sterile from at least 20/12/2017 onwards. So this suit is to be dismissed in limine as far as the additional 5<sup>th</sup> defendant is concerned.

7. **The 2<sup>nd</sup> defendant again filed additional written statement, contending the following:** - The power of attorney No. 253/96/V of 1996 was one executed by Josephine in favour of the 2<sup>nd</sup> defendant, to ensure his service and his active involvement in clearing the outstanding liability with accumulated interest against the loans she and her husband Joseph Perera has availed and also for looking after the larger interest of the family. It was in liaison with the additional 5<sup>th</sup> defendant that he accomplished the objective. The additional 5<sup>th</sup> defendant also had her own contribution, both physically as well as financially, discharging the above duty. Accordingly, it was in due appreciation of the above contribution made by the additional 5<sup>th</sup> defendant that at the instance of his mother, the sale deed No.

2548/2007 in respect of the above A to D schedule properties was executed in her favour by the 2<sup>nd</sup> defendant with full concurrence of Josephina and the other issues of Josephine. The 2<sup>nd</sup> defendant was allotted with only 2 Acres 94 cents, which allotted to him at the first instance, which was later on compensated by his father by allotting 45 cents out of the 1 Acre of property under schedule H in OS 134/2008 (F in OS 443/2014), whereon the family house was situated as well as 27 cents in B schedule in OS 443/2014 vide settlement deed Nos. 1195/2010 and 1196/2010, respectively. This was to equalise the shares of all the defendants. The relief sought by the plaintiffs in this suit is a 1/4<sup>th</sup> share in properties scheduled as A to J owned jointly as well as independently by the old couple. Her claim in respect of properties scheduled as A, B, C and D in OS 134/2008 is not maintainable. Until their deaths, both Joseph Perera and Josephina maintained robust health and sound mental equilibrium. Barring the natural wear and tear due to old age, neither of them had any infirmity whatsoever in exerting their mental faculties and physical stamina. But despite the same, it is a fact that Joseph Perera and Josephina were banking upon the 2<sup>nd</sup> defendant, their eldest son, for helping them in making the right decision on the varied major family issues being faced by them during their old age. It was for looking after the larger interest of the family members that mother Josephine had executed a power of attorney in favour of the 2<sup>nd</sup> defendant as early as 16/10/1996, as No. 253/96/V of

Eravipuram SRO, empowering him to deal with their properties with the full knowledge of all in the family. Dr. Sebastian a retired civil surgeon having 35 years in Govt. Service and 25 years of private practice, who is none other than the younger brother of Josephina was always there to safeguard the physical and mental status of both till their death. It may be noted that the fact that the deeds A1 to A4 carried mere marks of Josephina unsupported by any of her accepted signatures is also a convincing proof of her sound mental health in as much as even while compelled by her youngest son to put her signature beneath those deeds, she was deadly against negating the sale deed already executed by her power of Attorney on her direction in favour of additional 5<sup>th</sup> defendant, her beloved daughter-in-law. The various steps 2<sup>nd</sup> defendant meticulously took to safeguard the larger interest of the entire parental family. Himself in close liaison with his wife additional 5<sup>th</sup> defendant, who was working as a Lecturer in Fathima Matha National College, were clearing the already mounting liabilities which is evidenced by Exts.B21 to B33 from B35 to B44 and B46 by the 2<sup>nd</sup> defendant and B47 to B60 by the additional 5<sup>th</sup> defendant, covering a long period of 20 years from 1992 to 2012. Ext. B45 is the copy of the sale deed executed on the strength of that power of attorney in favour of one John and his wife Valsa disposing of 90 cents of property for partially clearing the above liability of the family. Further It was in due appreciation of the above dedicated service rendered by the 2<sup>nd</sup>

defendant set apart the properties vide settlement deed No.1195/2010 (Ext.B9) executed by Joseph Perera on 30/03/2010 giving 45 cents out of 1 Acre holding the family house scheduled as H in this case (F in OS 443/2014) and settlement deed No. 1196/2010 (Ext. B8) executed by Joseph Perera on 30/03/2010 giving 27 cents scheduled as B in OS 443/2014. Setting apart the family house in the above 45 cents by Joseph Perera in the name of the 2<sup>nd</sup> defendant, vide the above said settlement deed No.1195/2010 was a calculated move on his part as his eldest son alone could be banked upon by him for keeping the house intact in sound condition to perpetuate his memory and high reputation of the family with easy access to all the members of the family whenever they chose to have. The total extent of properties the 2<sup>nd</sup> defendant got was 3 Acres 61 cents. In the case of Joseph Perera alleged mental incapacity cannot be attributed to him. His age had no adverse impact on his mental equilibrium. Moreover, after the death of Josephina, the 2<sup>nd</sup> defendant took him to his own house at Kollam, where he was well nourished and looked after till his death. DW5 John deposed in support of the mental soundness of both. Moreover, it was by bodily presenting himself in the Sub Registry that Joseph Perera executed the above settlement deeds Nos. 1195 and 1196/2010 in favour of the 2<sup>nd</sup> defendant. It was also in compliance with the finding of this court in LA No. 776/2008, as early as 03/07/2008, upholding his right to deal with his properties according to his whims and

fancies while dismissing the contention to the contrary raised by the 1<sup>st</sup> plaintiff therein. Hence 55 cents out of 1 Acre after excluding 45 given to 2<sup>nd</sup> defendant and 22 cents ie. 11 cents each under schedules I and J in OS 134/2008 and G and H under 443/2014 are the partible properties. Hence, the plaintiffs are not entitled to get other reliefs sought in the suits. Hence, it is humbly submitted that the plaintiffs are not entitled to get any of the deeds in favour of the 2<sup>nd</sup> defendant and the additional 5<sup>th</sup> defendant set aside.

8. Even though summons was served on the 3<sup>rd</sup> defendant, she did not care to appear before the court nor file any written statement. Hence, this court ordered to proceed with the case against the 3<sup>rd</sup> defendant ex-parte.

9. **The additional 5<sup>th</sup> defendant filed written statement, contending the following:** -The suit is not maintainable either in law or on facts. The additional 5<sup>th</sup> defendant is the wife of the 2<sup>nd</sup> defendant. During the lifetime of Earnest Perera, the 4<sup>th</sup> defendant, the late father of the defendants, had set apart a total area of 3 Acres 77 cents to him exclusively, leaving apart the remaining properties to be divided among his other issues. None of the other sons and daughters had raised any objection to the same. It is false to state that the plaintiffs are entitled to 1/4<sup>th</sup> share of the properties under the settlement deeds Nos. 3036/2007, 3037/2007, 3038/2007 and 3039/2007. The plaint A, B, C and D schedule properties are not partible. The 1<sup>st</sup> defendant fraudulently created settlement deeds with respect to the plaint

A, B, C and D schedule properties by cheating the mother. These settlement deeds have no legal sanctity as the properties thereunder were already the subject matter of the sale deed No. 2548/2007 of Punalur Sub Registry dated 06/07/2007 executed by the 2<sup>nd</sup> defendant in his capacity as the power of attorney holder of late Josephine Perera on the strength of the above power of attorney in favour of the additional 5<sup>th</sup> defendant against due consideration. The area covered by the sale deed was 1 Acre 8 ½ cents, of which above 93 ½ formed part. The additional 5<sup>th</sup> defendant thereby derived absolute right of ownership, possession and enjoyment over the above properties. So the above settlement deed Nos. 3036/2007, 3037/2007, 3038/2007 and 3039/2007 are abinitio void, and hence those fraudulent documents have absolutely no bearing on the above right of ownership and possession of the properties under A to D schedules conferred upon the additional 5<sup>th</sup> defendant. Hence, those settlement deeds are to be ignored, as they have neither any legal effect nor has the 1<sup>st</sup> defendant derived any right under the same. The plaintiffs and her mother were fully aware of the execution of the above sale deed in favour of the additional 5<sup>th</sup> defendant at the time of its execution. Her above memory was duly refreshed by the 2<sup>nd</sup> defendant on 2 consecutive dates, ie, on 20/12/2014 through the affidavit filed by the 2<sup>nd</sup> defendant under O.9 R.13 CPC, followed by the averment in the written statement filed by the 2<sup>nd</sup> defendant on 27/02/2015 in OS 443/2014, the connected case. Nothing had

prevented the plaintiffs from challenging the above sale deed No. 2548/2007 of Punalur Sub Registry dated 06/07/2007 within the statutory period of limitation. The claim put up by the plaintiffs that they are entitled to a 1/4<sup>th</sup> share on those properties under schedules A to D is unsustainable under the law. No question of the plaintiffs having raised any demand to the additional 5<sup>th</sup> defendant for partition also arises at all. Hence, the suit is liable to be dismissed with costs to the additional 5<sup>th</sup> defendant.

10. The additional 5<sup>th</sup> defendant filed an additional written statement with similar contentions to those of the additional written statement of the 2<sup>nd</sup> defendant.

11. **The plaint averments, in OS 443/2014, in brief, are as follows: -**  
The defendants are the children of deceased Joseph Perera and Josephina Perera. They had another son, Earnest Perera, who died on 07/05/2002. The plaintiffs 1 to 4 are the wife and children of said Earnest Perera. Joseph Perera and Josephina Perera had died on 11/08/2011 and 24/11/2007, respectively. The 4<sup>th</sup> defendant had a daughter named Telma Perera, who had died, and had four children. The plaintiffs, as well as the relatives, have no knowledge of them for the last 15 years. Hence, for the disposal of this suit, their death has to be declared. The plaint A, B, C and D schedule properties are in the joint possession and enjoyment of deceased Joseph Perera and Josephina Perera by virtue of the sale deed No. 4316/1109 of SRO Pathanapuram and 2934/1994 of Punalur SRO. They

effected mutation in their name and were paying for the land tax. The plaint D and E schedule properties are owned by Joseph Perera by virtue of the sale deed No.4316/1109 of SRO Pathanapuram, and the same were in his possession and enjoyment. At the time of possessing and enjoying the plaint A and B schedule properties by Joseph Perera and Josephina Perera, Smt. Josephina Perera had died on 24/11/2007 at the age of 85. Josephina had been suffering from mental illness, she was locked in a room, and she was under the control of 3<sup>rd</sup> defendant. She did not have the mental capacity to execute any deed or deeds with respect to the plaint schedule property. Said Josephina died intestate. After the death of Josephina, plaint A, B, C and D schedule properties are in the joint possession and enjoyment of the plaintiffs and defendants. Even though the plaintiffs demanded the defendants to partition and separate possession of the plaint schedule properties, they were not amenable for the same. Subsequently, when the plaintiffs inquired about the matter, it was learnt that Smt. Josephina Perera had executed settlement deed Nos. 3036/2007, 3037/2007, 3038/2007 and 3039/2007 of Punalur SRO with respect to the properties owned by her. On the same day, Joseph Perera and Josephina Perera executed settlement deed Nos. 3034/2007 and 3035/2007 of Punalur SRO with respect to the plaint A and C schedule properties jointly owned by them in favour of the 3<sup>rd</sup> defendant. At the time of execution of the settlement deed Nos. 3034/2007 and 3035/2007, Joseph Perera was 95

years old and was unable to make his own decisions. Joseph Perera was under the custody of the 3<sup>rd</sup> defendant. At the time when the plaintiffs inquired about the properties of Josephina, it was learnt that plaint D schedule property was also fraudulently executed as per deed No. 3033/2007. As the above-mentioned documents were executed by Joseph Perera and Josephina Perera, under the undue influence exercised by the 3<sup>rd</sup> defendant, the said documents have no legal effect. The said documents were fabricated. Hence, the settlement deed Nos. 3033/2007, 3034/2007 and 3035/2007 of Punalur SRO are to be ignored as void. The defendants alone have no right over the plaint A, C, D, F and H, which are in the joint possession of the plaintiffs and the defendants. The said properties are partible. The plaintiffs have 1/4 right over the said properties. The plaintiffs also filed OS 134/2008 before this court seeking the relief of perpetual injunction and other consequential reliefs. The said suit was decreed on 22/05/2010 in favour of the plaintiffs. The properties scheduled as G to J in OS 134/2008 are the properties scheduled in A to H in this case. After the death of Joseph Perera plaint schedule properties are in the joint possession and enjoyment of the plaintiffs and the defendants. When the plaintiffs demanded the defendants for partition and separate possession of their 1/4<sup>th</sup> share over the said properties, the 2<sup>nd</sup> defendant was not amenable for the same by saying false objections. Subsequently, on 01/08/2014, it was learnt that deceased Joseph Perera had executed a

settlement deed No. 1196/2010 of Punalur SRO with respect to the plaint B schedule property and settlement deed No. 1195/2010 with respect to the 45 cents of property on the western side included in the F schedule in favour of the 2<sup>nd</sup> defendant. The said documents have no legal effect because they were created fraudulently. At the time of execution of the above-mentioned documents, Joseph Perera was 97 years old, and he was under the custody of the defendants 1 to 3. Joseph Perera has no capacity to execute the said documents. The said documents were fraudulently created by defendants 1 to 3 in the name of the 2<sup>nd</sup> defendant. On the strength of those documents, the 2<sup>nd</sup> defendant has never had any right. The said deeds are bad for Lis pendens. After the death of Joseph Perera and Josephina Perera, the plaint schedule properties are in the joint possession and enjoyment of the plaintiffs and the defendants. The plaintiff is entitled to 1/4<sup>th</sup> share of the plaint schedule properties. Hence, the plaint schedule properties are to be partitioned and to get separate possession of the plaintiffs' 1/4<sup>th</sup> share. Hence, this suit.

12. **The 2<sup>nd</sup> defendant filed written statement, contending the following:** - The suit is not maintainable either in law or on facts. The 2<sup>nd</sup> defendant is the eldest son of late Joseph Perera and Josephine Perera. Defendants 1 and 3, along with Ernest Perera and Telma Perera, are the remaining issues. Earnest Perera, the husband of the 1<sup>st</sup> plaintiff, died on 07/05/2002, leaving behind plaintiffs 2 onwards as his legal heirs along

with the 1<sup>st</sup> plaintiff. Telma Perera died on 07/11/1996. The whereabouts of the 4 issues left behind by late Telma Perera are not known for the last 15 years is utter falsehood. They, Ranjith, Sajith, Sobha, and Ajith, reside in Thiruvananthapuram. At the outset, it may be kindly noted that the 1<sup>st</sup> plaintiff, along with her issues are entitled to 1/5<sup>th</sup> share of the properties left behind by Joseph Perera and Josephine Perera, barring those which are supported by legally enforceable documents executed by them in favour of their issues, including the late husband of the 1<sup>st</sup> plaintiff on their own free will and volition. The plaintiffs secured a decree in OS 134/2008 by misleading this Court through misrepresentation of the facts and circumstances. The 1<sup>st</sup> plaintiff was well aware of the fact that even though the parents of her late husband were constrained to live in the family house in the 1 acre of land in survey No. 436/23, the property inherited by Joseph Perera, wherein the family of the 3<sup>rd</sup> defendant was allowed to reside. They always found solace at their convenience in living along with the 2<sup>nd</sup> defendant under his affectionate care and attention at his house at Kollam. To the knowledge of the 1<sup>st</sup> plaintiff and all other relatives, the 2<sup>nd</sup> defendant has been residing at Kollam for the last 20 years with his family. It appears that it was on the basis of a paper publication after suppressing the above actual residential address of the 2<sup>nd</sup> defendant that the 1<sup>st</sup> plaintiff ensured a favourable disposal of the suit. Thus, a preliminary decree of partition in respect of properties described as A to D thereof was passed.

Thus, it was, in fact, by keeping the 2<sup>nd</sup> defendant in the dark that the 1<sup>st</sup> plaintiff in this suit did stage-manage the earlier suit OS 134/2008 through her issues, whereby she could obtain settlement deed Nos. 3033/2007, 3034/2007 and 3035/2007 declared void. The averment that Josephina was ailing for years before her death is not true. It was only reduced physical activity that she faced. But that physical condition had never any adverse impact on her state of mind, which was very sound and highly impeccable in nature. She was fully conscious of all her day-to-day activities and was in her full senses with no adverse impact even on her memory. No doubt, at the relevant time, she and her husband were living in their family house, wherein the 3<sup>rd</sup> defendant was allowed to reside with his family. But the allegation that she had lost her mental equilibrium, that she was locked up in a room by the 3<sup>rd</sup> defendant, that she was denied contact with the outside world and was denied even medical treatment, etc., is false. The further averment that she was incapable of executing documents is untrue. But the fact remains that the 3<sup>rd</sup> defendant, who was as greedy as the 1<sup>st</sup> plaintiff, had put the parents under duress to derive undue benefit for himself. Thus, it is subsequently known that by putting his parents under threat of physical injury, the 3<sup>rd</sup> defendant managed to get the above deed Nos. 3033/2007, 3034/2007, 3035/2007, 3036/2007, 3037/2007, 3038/2007 and 3039/2007 executed by them in his favour. Even though his parents were in sound physical and mental conditions, they could not withstand his

belligerent attitude, which made them succumb to his evil machinations to sign their signatures to those deeds. The 3<sup>rd</sup> defendant could not have such deeds executed in respect of the properties in Schedules A to D in that suit, as the late Josephine Perera was unable to execute them. Because those were already the subject matter of sale deed No. 2548/2007 of Punalur Sub Registry executed on 06/07/2007 in favour of Hysinth Sophia, the wife of the 2<sup>nd</sup> defendant, against due consideration, by the 2<sup>nd</sup> defendant in his capacity as the power of attorney holder of late Josephina Perera on the strength of the Power of Attorney duly registered as early on 16/10/1996 No. 253/1996/V of Eravipuram. The 2<sup>nd</sup> defendant herein, who was denied a chance to rebut that evidence, is prejudiced by the above preliminary decree and has chosen to file IA Nos. 2988 and 2939 to set aside the same, which are pending consideration. The 2<sup>nd</sup> defendant is confident of securing an order in his favour. Similarly, the appeal preferred by the 3<sup>rd</sup> defendant against that preliminary decree is also pending before the Sub Court, Kottarakkara. The averments that he was incapable of making a decision on his own, that he was under illegal detention of the 3<sup>rd</sup> defendant in the family house, that he was kept away from all those interested in him, with denial of outside contacts to him, etc., are in fact not only false but wild in nature also. It is a fact that, while they were residing at his house, he executed documents in favour of the 3<sup>rd</sup> defendant. But those can by no stretch of imagination be attributed to any lack of

mental acumen on his part. On the other hand, it was by placing him under undue pressure that the 3<sup>rd</sup> defendant secured those documents in his favour. It is submitted that the 1<sup>st</sup> plaintiff and under her influence the remaining plaintiffs also have been motivated only by their selfish interest in succeeding to the estate of the deceased owners during their lifetime itself. The averments that as early on 30/03/2010, late Joseph Perera had executed settlement deed No. 1196/2010 in favour of the 2<sup>nd</sup> defendant in respect of B schedule property and another settlement deed No. 1195/2010 in his favour in respect of F schedule property are true. But the area allotted to the plaintiff was only 45 cents out of 1 Acre of land as against 1 acre mentioned in the F schedule. The further averment that the 1<sup>st</sup> plaintiff came to know about the same only on 01/08/2014 is not true, as everybody in the family circle was in the full knowing of not only the same but also the fact that the 37 cents shown in E schedule had also been set apart in the name of the 2<sup>nd</sup> defendant vide sale deed dated 09/01/1994 against due consideration and that the 2<sup>nd</sup> defendant rightfully sold out the same to one Dickson Zacharia, a total stranger as early on 26/06/2008 to the knowledge of the entire family members including the plaintiff. Moreover, a fresh case is now being brought by the 1<sup>st</sup> plaintiff that Joseph Perera was also unlawfully in the custody of the 2<sup>nd</sup> defendant. That itself betrays the falsity of her entire contentions. The averments regarding the state of mind of Joseph Perera, that those documents did not reflect his

intention, that those were executed against his free will by putting him under duress and also by practising fraud on him by the 2<sup>nd</sup> defendant, etc., are absolutely false and hence denied. Ever since the death of his wife on 24/11/2007, Joseph Perera left the family house once and for all, immediately thereafter, thereby escaping from the evil clutches of the plaintiffs and the 3<sup>rd</sup> defendant to lead a contented life under the 1<sup>st</sup> defendant by enjoying his love and affection. The very contents of those documents are the live testimonials of the judicious deliberation which Joseph Perera had exercised while executing those documents in favour of the 2<sup>nd</sup> defendant. He chose to set apart only so many portions of the respective total areas, which, according to him, the 2<sup>nd</sup> defendant rightly deserved. That the execution of the above documents is hit by "Lis pendens" is also an absolutely wild contention, unsustainable under law, and it does not affect the legality of those documents. Those documents, in fact, have conferred on the 2<sup>nd</sup> defendant an absolute right over those properties, and hence those documents are beyond reproach. Therefore, the claim put forward by the plaintiffs that after the demise of Joseph and Josephina, the schedule properties came into the joint possession of the plaintiffs and the defendants is absolutely false as far as the above-mentioned properties set apart in the name of the 2<sup>nd</sup> defendant and those passed through him are concerned. As submitted above, the right of the plaintiffs are limited to 1/5<sup>th</sup> share of the properties left behind by Joseph

Perera and Josephina Perera, barring the legally enforceable documents executed by them in favour of the 2<sup>nd</sup> defendant and all other issues including late husband of the 1<sup>st</sup> plaintiff as submitted above on their own free will and volition. No cause of action for the plaintiffs. None of the reliefs sought in the plaint are allowable. Hence, this suit is liable to be dismissed with costs of the 2<sup>nd</sup> defendant.

13. **The 3<sup>rd</sup> defendant filed written statement, contending the following:** -The suit is not maintainable either in law or on facts. The present suit is not maintainable as OS 134/2008 is pending before this court. The plaint A and C schedule properties belonged to Josephina and Joseph Perera. As per settlement deed Nos. 3034/2007 and 3035/2007, those props were settled in favour of 3<sup>rd</sup> defendant. Now plaint A and C schedule properties are in the absolute ownership of 3<sup>rd</sup> defendant. The plaint D schedule property belonged to Joseph Perera. As per settlement deed No.3033/2007, father settled that property in favour of the 3<sup>rd</sup> defendant. Now the 3<sup>rd</sup> defendant is the absolute owner of that property also. The parents voluntarily executed settlement deeds in favour of the 3<sup>rd</sup> defendant. The 3<sup>rd</sup> defendant never exercised undue influenced over his parents. The suit is bad for non-joinder of necessary party, as the legal heirs of Telma Perera were not made parties to the suit. The absolute properties of 2<sup>nd</sup> and 3<sup>rd</sup> defendants are not partible. The plaintiffs are entitled to claim partition of the intestate property only. It is false to state

that the parents were incapacitated to execute documents. They voluntarily executed documents in favour of their children. The properties are not in the joint possession. The 3<sup>rd</sup> defendant has the authority to deal with his absolute properties in any lawful manner. The reliefs sought in the plaint cannot be allowed. Hence, the suit is liable to be dismissed with costs.

14. Based on the above pleadings, the following issues in OS 134/2008 for consideration: -

- 1) Whether the plaint schedule item No. A, B, C and D are partible?
- 2) If so, what shall be the quantum of share allottable to the plaintiffs?
- 3) Whether the sale deed No. 2548/2007 is valid?
- 4) Whether the plaintiffs are entitled to get a decree of declaration as prayed for?
- 5) Whether the settlement deed Nos. 3034/2007, 3035/2007, 3033/2007, 3036/2007, 3037/2007, 3038/2007 and 3039/2007 of Punalur SRO are void, liable to be set aside?
- 6) Whether the plaintiffs are entitled to the relief of injunction as prayed for?
- 7) Relief and costs?

15. Based on the above pleadings, the following issues in OS 443/2014 for consideration: -

- 1) Whether the plaint A to H schedule properties are partible?
- 2) If so, what shall be the share to be allotted to the plaintiffs?

## 3) Reliefs and costs?

16. As per order of the Hon'ble High Court of Kerala in OP(C) NO. 3089/2017, these two cases were jointly tried. OS 134/2008 was treated as the leading case.

17. From the side of the plaintiffs, PW1 to PW4 and Exts. A1 to A16 documents were marked. From the side of the defendants, DW1 to DW12 were examined, and Exts. B1 to B60 were marked. Exts. X1 to X5 were marked. Exts. C1 series to C6 series were marked.

18. Heard both sides and perused all the available records.

19. **Issue Nos. 1, 2 and 5 in OS 134/2008:** - These issues are considered together for brevity, convenience, and to avoid repetition of facts. The parties are referred to as per their rank in OS 134/2008, the leading case. OS 134/2008 is filed seeking partition of the plaint A to D schedule properties, cancellation of certain settlement deeds, declaration, as well as consequential injunction. There are A to J schedule properties in OS 134/2008. OS 443/2014 is also filed by the same plaintiffs seeking partition of plaint A to H schedule properties. It is to be noted that in OS 443/2014, the 2<sup>nd</sup> defendant raised a counter claim seeking realisation of Rs. 10,00,000/-. However, IA 1874/2019 filed by the 2<sup>nd</sup> defendant to admit the counter claim was dismissed by this court. Hence that counter claim does not arise for consideration.

20. Admittedly, the plaint schedule properties in both the cases belonged to Joseph Perera and Josephina Perera, the parents of defendants 1 to 3 in OS 134/2008. The relationship between the parties is not in dispute. The plaintiffs are the legal heirs of the predeceased son of Joseph Perera and Josephina Perera, Mr. Earnest Perera. According to the plaintiffs, the plaint A to B schedule properties are partible, and despite repeated demands, the defendants were not amenable to partitioning the plaint schedule properties. Upon further inquiry, it was revealed that certain documents were created by the defendants, allegedly executed by the parents. Accordingly, the present suit is filed to cancel the said documents and to partition the properties.

21. To prove the contentions of the plaintiffs, the additional 4<sup>th</sup> plaintiff mounted the box and gave evidence as PW1. She filed affidavit in lieu of examination-in-chief in tune with the plaint averments. According to PW1, the parents never executed any documents regarding the plaint schedule properties and those documents are forged. During her cross-examination, PW1 deposed that Joseph Perera and Josephina Perera reside with the 1<sup>st</sup> defendant. According to PW1, the entire family's expenses were met by her deceased husband. PW1 testified that she never wanted any other property other than the legal share of her deceased husband. During her cross-examination, PW1 was confronted with the documents by virtue of which her deceased husband was given share. According to her, the

parents told to allot some property from the H, I and J schedules of property, but she has not produced any evidence to prove the same. PW1 reiterated that the parents were not well, and they were locked in a room, and the documents were executed exercising undue influence. Even though PW1 was cross-examined in length and in detail, nothing fatal was brought out.

22. The District Social Welfare Officer was examined as PW2. Ext. A11 was marked through her. According to PW2, Ext. A11 is the reply given as per the Right to Information Act. The copy of the report prepared by the ICDS Officer was marked as Ext. A12. According to PW2, the complaint submitted to the Human Rights Commission was forwarded to the District Social Welfare Office, and, on the basis of that complaint, an inquiry was conducted, and a report was prepared. During her cross-examination, she deposed that she had not prepared any report and that the date on which the report was prepared was not mentioned in it. According to PW2, the complaint was received in their office on 10/10/2007. She further added that she made no inquiry into the report's authenticity. During her re-examination, she deposed before the court that Ext. A12 report was prepared in the course of discharging official duties.

23. The ICDS Officer, Pathanapuram, was examined as PW3. According to PW3, she prepared the inquiry report regarding the present condition of Joseph Perera and Josephina Perera. PW3 identified Ext. A12

report and her signature. PW3 deposed before the court that Ext. A12 is the report prepared by her, and Joseph Perea and Josephina Perera were living in a pathetic condition without any treatment. She further added that after preparing Ext. A12 report, she forwarded it to the District Social Welfare Department as part of her official duties. During her cross-examination, she deposed before the court that in Ext. A12 document its date of preparation is not mentioned. But she added that Ext. A12 was prepared on 18/10/2007 and forwarded to the District Social Welfare Office on the same day. PW3 further testified that she directly visited the Perera couple and witnessed their condition. According to PW3, she spoke with Joseph Perera, but the communication was unclear. According to PW3, after visiting Joseph Perera and Josephina Perera and preparing the report, she was unable to sleep for two days due to their pathetic condition.

24. One Usha was examined as PW4. PW4 was employed as a domestic servant to care for Josephina Perera. According to PW4, she looked after Josephina Perera in 2005, and at that time, Josephina Perera could not even recognise people approaching her. She had memory loss and poor eyesight. It was also testified that Josephina Perera was completely laid up and she was unable to do her daily activities without the help of a bystander. During her cross-examination, she deposed before the court that she looked after Josephina Perera for 2 years from 2005. According to PW4, she was not removed from her service when she returned after attending a

festival; she heard the news of the death of Josephina Perera. When a specific question was put to PW4 to the effect that in 2005 she was terminated from her employment, she replied negatively. Further, a suggestion was put to PW4 to the effect that she committed theft in that house; PW4 replied negatively. A perusal of the cross-examination of PW4 makes it clear that the defendant admits that PW4 was employed as a domestic servant to look after Josephina.

25. To prove the contentions of the defendants, DW1 to DW12 were examined. The 1<sup>st</sup> defendant was examined as DW1. According to DW1, he gave evidence before the court on behalf of the 4<sup>th</sup> defendant. He filed affidavit in lieu of examination-in-chief, reiterating the averments in his written statement. Exts. B1 to B7 documents were marked through him. According to DW1, the signature of Josephina is in the form of a cross, and also a combination of 2 letters. During his cross-examination, he deposed before the court that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants were aware of the fact of execution of documents in his favour. He further added that the parents might have told that to them, and that he never disclosed the same. According to DW1, the 2<sup>nd</sup> and 3<sup>rd</sup> defendant has a supportive attitude after becoming aware of that fact. He further added that there is no family settlement regarding the partition of plaint schedule properties and that the parents never disclosed their intention regarding the partition of plaint schedule properties. According to DW1, Exts. B1 to B7 documents were

registered at the residence, and that he never filed any application for the same. He further added that his father told the document writer, and that the documents were registered at home, due to the difficulty of the parents to climb the steps. He further added that he came to know about the execution of the documents at 5.30 pm on the date of its registration. According to DW1, he never interfered in the process of registration and he was not even aware as to how his parents took photographs. He further added that the properties covered by Exts. B1 to B7 documents were surveyed and demarcated 10-12 years prior to the date of registration. Further DW1 added that the stamp papers were purchased by his father from his wife, and he later came to know about the same. During his cross-examination, he was confronted with Ext. A5 document and he admitted that the signature of his mother seen in Ext. A5 document and Exts. B4 to B7 are different. He further added that he is not in possession of any other document which contains Josephina's signature similar to that affixed in Exts. B4 to B7 documents. He further admitted the signature of his mother in Ext. A6 document and added that he is in possession of other documents wherein the mother had affixed a different signature. Even though DW1 stated that he is ready to produce such documents, he did not care to produce any such document with a different signature. When a suggestion was put to him to the effect that Josephina was suffering from memory loss

and she was incapacitated to execute Exts. B1 to B7 documents, he denied the same.

26. DW1 further added that at the time of executing documents in his favour, the father was 93 years old. He further added that father had no physical ailments. When a specific question was put to DW1 to the effect that whether there is any difficulty in examining the 4<sup>th</sup> defendant before the court, he replied in negative and added that 4<sup>th</sup> defendant is residing with his elder son for the last 4-5 months. He further added that there were no disputes between DW1 and 4<sup>th</sup> defendant. According to DW1, ICDS Officer never visited his parents and the contents of Ext. A12 document are false. He further added that from Ext. A5 document it appears that the Officer who prepared it has some personal grudge towards him.

27. One Raveendran was examined as DW2. DW2 was one of the attesting witnesses of Exts. B1 to B7 documents. According to DW2, the Sub Registrar visited the residence and DW2 witnessed Joseph Perera affix his signature. He further added that Joseph Perera and Josephina Perera voluntarily affixed their signatures after understanding the contents of the documents. During his cross-examination, he deposed that the Registrar did not ask him any questions and that he did not speak to anyone. According to DW2, Joseph Perera told him to stand as a witness. According to DW2, 7 documents were prepared at the parties' residence at

that time. He further added that he was not present when those 7 documents were prepared.

28. Another attesting witness of Exts. B1 to B7, Mr. Sabeer was examined as DW3. According to DW3, the documents were also read over prior to the affixing of the signature. According to him, he signed the documents as per the direction of Joseph Perera. According to DW3 also, all the 7 documents were prepared at the residence. According to him, he arrived at the residence at 5.00 p.m. and remained there until 5.30 p.m. When a specific question was put to DW3 as to whether the 7 documents were prepared within half an hour, he answered in the negative. DW3 also did not talk to Joseph Perera or Josephina Perera. According to him, he reached the residence before the Sub Registrar's arrival.

29. The document writer was examined as DW4. He identified Exts. B1 to B7 documents and his signatures in it. According to him, Exts. B1, B2 and B5 documents were in his handwriting, and Exts. B3, B4, B6 and B7 documents written by one Sreeranjana. According to DW4, the prior documents were handed over to him by Joseph Perera, and the draft documents were read over to them two days before the registration at their residence. He further added that Joseph Perera and Josephina Perera affixed their signatures at their residence. According to DW4, he prepared Exts. B1 to B7 documents in three days. According to DW4, these documents were executed for bank-related matters. According to DW4,

Ext. B1 document was prepared at his office, and the details of the witnesses were written at the residence of Joseph Perera. When a specific question was put to DW4 to the effect that the attesting witnesses testified before the court that Exts. B1 to B7 documents were prepared at the residence of Joseph Perera, DW4 replied that he is not aware of that aspect. He further stated that he has not prepared any documents at Joseph Perera's residence. DW4 further added that he and the 1<sup>st</sup> defendant have known each other for the last 10-15 years.

30. Then 2<sup>nd</sup> defendant was examined as DW5. He filed affidavit in lieu of examination-in-chief, reiterating the averments in the written statement. Exts. B8 to B46 documents were marked through him. According to DW5, the parents had no physical or mental incapacity to execute the documents. During his cross-examination, he deposed that Ext. B15 sale deed was executed as per the instructions of the mother, and the consideration was the money spent by the 2<sup>nd</sup> defendant for his family. According to DW5, no sale consideration was paid at the time of executing the sale deed. Further, he added that Ext. B15 sale deed was executed, taking into account the expenses incurred by DW5 and his wife for the family. Further, DW5 admitted that he and his wife are aware of Exts. A1 to A4 documents. Further, he admitted that the recitals of Exts. A1 to A4 documents as well as Exts. B15 sale deed are inconsistent with each other. When a suggestion was put to DW5 to the effect that the 1<sup>st</sup> defendant is claiming title over the

property covered by the Ext. B15 sale deed on the strength of Exts. A1 to A4 documents, DW5 replied negatively. According to DW5, after 2014, the 1<sup>st</sup> defendant did not raise any such contentions. Further, he added that he and his wife took steps to cancel Exts. A1 to A4. He further added that it was the mistake of the 1<sup>st</sup> defendant and that the Sub-Registrar who registered the documents was the defaulter. Even though DW5 admitted the fact that Exts. A1 to A4 documents were mistakenly registered by the Sub Registrar; he denied a suggestion put to him to the effect that Exts. A1 to A4 documents are forged. Further, DW5 admitted the signatures of his father and mother in the Exts. A5 and A6 documents. Further, he added that in Ext. B16 also, the signature of the mother is there on each pages. He further added that her mother has affixed her signature in English and that the signature seen in Exts. A5 and A6 documents as well as Ext. B16 are correct. Further, he added that he is ready to produce documents executed by his mother, wherein a signature identical to the one seen in Ext. B16 document. He further added that the advocate commissioners reported that the properties lie together and that no boundaries have been created.

31. The additional 5<sup>th</sup> defendant was examined as DW6. She also filed affidavit in lieu of examination-in-chief, reiterating the averments in her written statement. Exts. B47 to B60 documents were marked through her. During her cross-examination, she deposed before the court that she is aware of the mother's execution of documents in favour of the 1<sup>st</sup>

defendant. When a suggestion was made to DW6 regarding whether Josephina executed subsequent documents relating to the property covered by the Ext. B15 document, she replied in the affirmative. DW6 added that she never read out the contents of Exts. A1 to A4. She further stated that she learned of the mother's execution of the documents only when the case was filed. When a specific question was put to DW6 regarding whether Exts. A1 to A4 documents affect her right over the property covered by the Ext. B15 sale deed, the reply was that as the document in her favour is a sale deed, the subsequent document would not cause any harm to her. When a suggestion was put to DW6 to the effect that whether she is aware of the fact that the 1<sup>st</sup> defendant is claiming rights over the property covered by Ext. B15 sale deed, she replied that she is not aware. According to DW6, Ext. B15 document was executed in her favour, taking into account the amount expended by her for the well-being of the family. Further, a specific question was put to DW6 as to whether she is aware of the number of properties covered by Ext. B15 sale deed, she replied negatively. Further, she added that she never surveyed the property and that it lies together with other properties. Further, she added that she never constructed any boundary and that no mutation was effected.

32. The advocate commissioners who visited the plaint schedule properties were examined as DW7 and DW8. Exts. C3 series and C4 series were marked through DW4. Exts. C5 series and C6 series were marked

through DW8. The expert commissioner was examined as DW11. The report prepared by him was marked as Ext. C4(c).

33. One of the brothers of Josephina, Mr John, was examined as DW9. According to him, until her death, Josephina had no ailments, and she and her husband were residing with Justus Perera. During his cross-examination, he deposed before the court that he never interfered in the matter of partition in the properties of Joseph and Josephina. He further stated that he is not aware of the full extent of the properties owned by Joseph and Josephina. He further added that he is not aware of the execution of 7 documents in favour of the 1<sup>st</sup> defendant and that he is unable to depose about the physical and mental condition of Josephina at the time of execution of those documents. He further added that Joseph Perera expressed his willingness to him to execute documents in favour of the 2<sup>nd</sup> defendant.

34. One of the brothers of Josephina, Dr Sebastian, was examined as DW10. According to him, the physical condition of Josephina was normal till her death, and she was capable of understanding the consequences of her act. According to DW10, Joseph Perera's health condition was also normal. During his cross-examination, he deposed that no disciplinary proceedings were initiated against him during his government service. Further, he stated that he had never examined Josephina's physical or mental condition. Further, he added that he occasionally visited his sister.

According to DW10, he lastly examined Josephina in 1986. When a suggestion was made to DW10 regarding the defect that it is unusual for a person to execute 7 documents in favour of another person on the same day, he replied affirmatively after taking considerable time to answer. When a suggestion was put to him to the effect that Joseph Perera was under the undue influence of Alphonse Perera, he replied that he was not aware. He further added that he is not aware of the execution of any documents and that Joseph Perera never disclosed any such aspects.

35. The Junior Superintendent SRO Punalur was examined as DW12. Exts. X3 to X5 were marked through him. DW12 produced the certified copy of the exchange deed No. 3099/1973, executed by Josephina Dicrose, and it was marked as Ext. X2. According to DW12, the identity of the executants would be ensured from the witnesses and thereafter, their thumb impression and sign would be affixed in the thumb impression register. The attested copy of the relevant page of the thumb impression register was produced and marked as Ext. X3. DW12 produced the certified copy of the exchange deed No. 2934/1994 and the same was marked as Ext. X4. DW12 added that the signature of Josephina is there in that document. The attested copy of the relevant page of the thumb impression register was produced and marked as Ext. X5. During his cross-examination, he deposed before the court that the signatures of Josephina in Ext. B16 document and Ext. X5 are patently different.

36. Here, the suit is filed seeking cancellation of settlement deeds and for partition. There is no dispute to the fact that the plaint schedule properties originally belonged to Joseph Perera and Josephina Perera. The partition is sought regarding plaint A to D schedule properties. It was contended that on 21/08/2007, Josephina Perera executed 4 settlement deeds in favour of the 1<sup>st</sup> defendant, bearing Nos. 3036/2007, 3037/2007, 3038/2007, and 3039/2007. Joseph Perera and Josephina Perera jointly executed the settlement deed Nos. 3034/2007, and 3035/2007. Joseph Perera executed settlement deed No. 3033/2007. It is the specific case of the plaintiffs that these documents were not executed by Josephina and Joseph, and that the signatures of Josephina seen on these documents are not those of Josephina. It was contended that the parents were under the wrongful confinement of the 1<sup>st</sup> defendant, and both of them were not in a sound mental and physical condition to execute the documents. It was contended that these documents were forged.

37. It can be seen that the settlement deed No. 3036/2007 was created regarding the plaint A schedule property, 3037/2007 was created regarding the plaint B schedule property, 3038/2007 was created regarding the plaint C schedule properties, and 3039/2007 was created regarding the plaint D schedule properties. The certified copies of these documents were produced and marked as Exts. A1 to A4, respectively. The defendants produced the originals of those settlement deeds, which were marked as

Exts. B4 to B7, respectively. The certified copy of the settlement deed No. 3034/2007, 3035/2007 and 3033/2007 were produced and marked as Exts. A7, A8, and A9. The plaintiffs are seeking a relief to cancel these documents as they are void. The first and foremost consideration is whether these documents are valid.

38. It is to be noted that these documents are registered settlement deeds, and hence carry a presumption that these documents are validly executed. Here, the specific case of the plaintiffs is that the mother was laid up and she was not in a condition to understand the consequences of her act. It was also contended that the father was also under the undue influence of the 1<sup>st</sup> defendant, and he also had physical and mental ailments, resulting in incapacity. It was also contended that the parents were in wrongful confinement by the 1<sup>st</sup> defendant and that the 1<sup>st</sup> defendant exercised undue influence over the parents. According to the plaintiffs, the health condition of the parents was poor, and the mother was ailing due to various diseases, and she had memory loss, poor eyesight, and was not able to understand the consequences of her act. It was contended that Josephina was not mentally and physically sound to execute the documents, even two years before her death. It can be seen that Josephina died on 24/11/2007, and the disputed documents were executed on 21/08/2007. It can be seen that the disputed documents were executed 3 months prior to the death of Josephina. The plaintiffs highlighted that the

documents were executed by the parents while they were under the wrongful confinement of the 1<sup>st</sup> defendant, and Exts. A1 to A4 documents are executed in favour of the 1<sup>st</sup> defendant. The exercise of undue influence is also pleaded. There are specific pleadings to that effect. The 4<sup>th</sup> defendant in OS 134/2008 was Joseph Perera. It is to be noted that even though the 1<sup>st</sup> and 4<sup>th</sup> defendants together filed a written statement, and the mental and physical conditions of the 4<sup>th</sup> defendant were specifically under challenge, the 4<sup>th</sup> defendant was not examined before the court. It is to be noted that the 4<sup>th</sup> defendant is the competent witness to depose about his conditions and also to disclose before the court that he and his wife voluntarily executed these disputed documents. However, the 4<sup>th</sup> defendant was not produced before the court, nor was he examined. The non-examination of the 4<sup>th</sup> defendant can only be considered as fatal to the defence case of the defendants, and the same strengthens the case of the plaintiffs.

39. The learned counsel for the plaintiffs relied on the evidence of PW2 and PW3 and Exts. A12 and A13. PW2 required PW3 to inspect the Perera couples and to prepare a report on their present condition. There is nothing to discredit the evidence of PW2, PW3, and Exts. A12 and A13. PW2 and PW3 are official witnesses and Exts. A12 and A13 are the outcome of an official duty. The defendants failed to disprove this evidence. Ext. A10 series, the letters/writings of Joseph Perera also reveal light on their

condition at the house of the 1<sup>st</sup> defendant. In some of those letters, Joseph Perera has written about the physical abuse he faced, the ailments of Josephina and also there is a reference to the execution of 7 documents. There is also advice to engage a lawyer, file a case, and obtain a stay order. It is interesting to note that the defendants did not challenge the Ext. A10 series.

40. It is the specific case of the plaintiffs that the signature of Josephina seen on the disputed documents is not that of Josephina. The learned counsel for the plaintiffs prayed for a comparison of the signature of Josephina in the disputed documents with her admitted signatures. Exts. A5 and A6 documents were produced by the plaintiffs as the admitted signatures of Josephina. Ext. A5 is a document executed by Josephina and the 4<sup>th</sup> defendant in 1986, and A6 is a document executed by Josephina in 1979. The 2<sup>nd</sup> defendant also admitted that the signatures of his mother seen on Exts. A5 and A6 are correct. However, he took a contention that the signature of his mother in the Ext. B15 document is also correct, and he would produce documents executed by the mother by affixing that signature. But the 2<sup>nd</sup> defendant failed to produce any such documents. A perusal of Exts. A5 and A6 make it clear that the signatures of Josephina affixed on these documents are nearly identical. But the signatures seen affixed on the disputed documents are totally different, which has no similarity with the signature seen affixed in the disputed

documents. The difference is visible to the naked eye and is conspicuously different. Even if there was a time gap between the execution of documents and the disputed documents were executed in 2007, that alone could not be considered as a reason for the change of the signature, as both signatures do not have any similarity.

41. Another thing to be noted is that all these disputed documents were executed in one day, and that too without informing the other children. The evidence of the attesting witnesses and the document writer does not tally with each other. According to the document writer, the documents were prepared at his office. But as per the evidence of the attesting witnesses, the documents were prepared at the residence of Joseph Perera.

42. The evidence of PW4 also assumes significance. It is more or less an admitted fact that PW4 was employed to look after ailing Josephina. According to PW4, Josephina was incapable of identifying the persons who appeared before her. It was the specific case of PW4 that she looked after Josephina for 2 years from 2005, and hence, it can be seen that even before the time of the alleged execution of the disputed documents, Josephina had no capacity to execute the document. From the evidence on record, it can only be seen that the plaintiffs succeeded in proving their case regarding the mental and physical inability of the parents. As the parents were under the undue influence of the 1<sup>st</sup> defendant and were

unable to understand the consequences of their act, this court is of the view that the evidence on material makes the plaintiffs' case more probable.

43. Another thing to be noted is that the recitals of Ext. B15 document, and Exts. A1 to A4 documents are inconsistent with each other. Ext. B15 was executed first, as per the power exercised by the power of attorney. At the same time, subsequently Exts. A1 to A4 documents were created regarding the properties covered by the Ext. B15 document. The 2<sup>nd</sup> and 5<sup>th</sup> defendants are aware of these aspects. However, none of them took any steps to correct the same. Another thing to be noted that the 2<sup>nd</sup> defendant deposed before the court that he has taken steps to cancel Exts. A1 to A4 documents, but no such steps seen taken.

44. Another thing to be noted is that these properties were not surveyed and demarcated, and the 5<sup>th</sup> defendant is not even aware of the total extent of property covered by the Ext. B15 sale deed. The advocate commissioners also gave evidence to the effect that the properties lie together.

45. Even though, it was contended that the parents had no physical ailments and they were healthy till their end, the defendants failed to adduce any cogent evidence to prove their contention. The evidence of DW10 cannot be relied, as he himself deposed before the court that he lastly examined his sister in 1986. Rather the evidence of PW3 and PW4 appears trustworthy. Ext. A12 report speaks about the pathetic and

inhuman circumstances in which Joseph Perera and Josephina Perera were living. The undue influence exercised on them is evident. The patent difference in the signature substantiates the plaintiffs' case. The writings of Joseph Perera make it clear that the 7 documents were not executed voluntarily. The non-examination of Joseph Perera itself cut the roots of the defendants' case.

46. In light of the above discussion, it can only be seen that the disputed documents were not voluntarily executed by Joseph Perera and Josephina Perera. In such parlance, it can only be seen that the disputed documents are void, and hence, they are liable to be set aside. Hence, it can only be seen that plaint A to D schedule properties are the intestate properties of deceased Josephina, and the same are liable to be partitioned between her children. It is to be noted that the share claimed by the plaintiffs is 1/4<sup>th</sup>. Admittedly, there are 4 children of Joseph Perera and Josephina Perera. It is the specific case of the plaintiffs that the whereabouts of the legal heirs of a pre-deceased daughter of Josephina are not known. The defendants also did not adduce any evidence to disprove that aspect. The defendants did not dispute the share claimed in the plaint either. Hence, it can only be seen that the plaintiffs are entitled to get 1/4<sup>th</sup> right over the plaint A to D schedule properties. Thus, issue Nos. 1, 2, and 5 are answered accordingly.

47. **Issues Nos. 3 and 4 in OS 134/2008:** These issues are considered together for brevity, convenience, and to avoid repetition of facts. It is to

be noted that the 2<sup>nd</sup> defendant, on the basis of Ext. B16 power of attorney executed a sale deed No. 2548/2007 in favour of the additional 5<sup>th</sup> defendant, who is none other than his wife. In light of the discussion of the above issues, it was already found that the mother was not capable at the time of executing the sale deed in favour of the additional 5<sup>th</sup> defendant. It is to the specific contention of the 2<sup>nd</sup> defendant that the mother voluntarily executed Ext. B16 power of attorney in his favour, and he executed various documents exercising the power given by his mother, and the plaintiffs are not entitled to challenge the sale deed in favour of the additional 5<sup>th</sup> defendant on the sole ground that the document was executed in favour of his wife.

48. The contention of the plaintiffs is that the power of attorney was also forged and that the executant of the power of attorney was not in her senses at the time of executing the sale deed in favour of the additional 5<sup>th</sup> defendant. As there is a challenge to the power of attorney, the first and foremost thing to consider is whether Ext. B16 power of attorney is valid. According to the learned counsel for the plaintiffs, the power of attorney is forged, as evidenced by the fact that it was not registered at an SRO within the jurisdiction of which the executant was residing. Per contra, the learned counsel for the 2<sup>nd</sup> defendant contended that the power of attorney was validly executed by the mother.

49. It is to be noted that none of the parties raised any objection to the Exts. A5 and A6 documents, and the signatures of Josephina seen on them. Hence, the signatures seen in those documents can be considered as the admitted signature of the deceased Josephina. A perusal of Ext. B16 and Exts. A5 and A6 documents also make it clear that the signature of Josephina in Ext. B16 power of attorney is entirely different from the signatures in Exts. A5 and A6. These two signatures have no connection with each other. The signature seen in Ext. B16 power of attorney is conspicuously a distinct one. Another thing to be noted is that Ext. B16 was executed in 1996, and in that power of attorney itself, it is specifically provided that Josephina is not capable of managing the affairs. Even though the signature is different, it can be seen that there is a reference to the ailing condition of Josephina. If the mother was able to look after the affairs by herself, then there is no need to execute any power of attorney. The 2<sup>nd</sup> defendant did not adduce any evidence to prove the validity of the B16 power of attorney. Even though he testified before the court that the signature of Josephina seen on Ext. B16 is correct, and he is ready to produce other documents executed by the mother, affixing those signatures. However, he failed to do so. In such parlance, it can only be seen that the 2<sup>nd</sup> defendant failed to prove the validity of Ext. B16 power of attorney. Another thing to be noted is that the power of attorney was executed in 1996, and the disputed document was executed in 2007. It has

already come to evidence that in 2007, Josephina was not capable of understanding the consequences of her act and that she was incapacitated. In such parlance, the power of attorney holder is not entitled to do any such act that the executant of the power of attorney was not capable of at the relevant time. On that score also, a doubt is cast on the sale deed. Another thing to be noted is that as per the evidence of DW6, she is not aware of the total extent of property and that she never effected mutation. It was also testified that the property covered by Ext. B15 document was not surveyed nor separate boundaries were laid. Also, there is no recitals in the sale deed to the effect that the same was executed taking into account the expenses incurred by the 2<sup>nd</sup> and 5<sup>th</sup> defendants for the well-being of the family. If so, what prevented the mother from executing a settlement deed in favour of the 5<sup>th</sup> defendant is not known.

50. From the evidence on record, it can only be seen that the plaintiffs succeeded in proving that the Ext. B16 power of attorney is not valid, and also at the time of executing the sale deed, the executant was incapacitated. In such parlance, it can only be concluded that the sale deed No. 2548/2007 is not valid, and hence, issue Nos. 2 and 3 are found in favour of the plaintiffs.

51. **Issue No. 6 in OS 134/2008:** The next thing to be considered is whether the plaintiffs are entitled to get a decree of perpetual injunction as prayed for. It is to be noted that the 4<sup>th</sup> defendant expired during the

pendency of the case, and hence, the 2<sup>nd</sup> part of the prayer has become infructuous. The first part in the prayer is to restrain the 1<sup>st</sup> defendant from causing any damages to the plaint A to J schedule properties and from alienating or encumbering the plaint A to J schedule properties.

52. However, it is to be noted that the plaintiffs and the defendants are the co-owners of the plaint schedule properties. It is the settled law that one co-owner cannot claim order of injunction against the other co-owner with regard to the property owned jointly. The Hon'ble Apex Court in **Mohammed Baqar and Others v. Naim un Nisa Bibi and Others** reported in **AIR 1956 SC 548**, held that "The parties to the action are co-owners, and as under the law, possession of one co-sharer is possession of all co-sharers, it cannot be adverse to them unless there is a denial of their right to their knowledge by the person in possession, exclusion and ouster following thereon for the statutory period." Thus, the only case in which a co-owner can claim injunction against the other co-owner is in case of ouster. Here, no such ouster is made out from the evidence. The plaintiffs do not have a case that the defendants are trying to oust them from the plaint schedule properties. Hence, this court is of the view that if a decree of injunction restraining the defendants is passed, it will cause injury to the right of defendants of enjoyment of the plaint schedule property as a co-owner. Hence, issue No. 6 is answered accordingly.

53. **Issue Nos. 1 and 2 in OS 443/2014:** These issues are considered together for brevity, convenience, and to avoid repetition of facts. OS 443/2014 is filed by the plaintiffs seeking partition of the properties of Joseph Perera. The plaint E to J schedule properties in OS 134/2008 are the plaint A to H schedule properties in OS 443/2014. According to the plaintiffs, the plaint A to H schedule properties in OS 443/2014 were in the joint possession and enjoyment of the plaint schedule properties and are entitled to get 1/4<sup>th</sup> share over the same. During the pendency of the OS 134/2008, Joseph Perera executed settlement deed No.1196/2010 regarding the plaint B schedule property and settlement deed No. 1195/2010 regarding the 45 cents of property included in the plaint F schedule property. It is the specific case of the plaintiffs that both these documents were forged and Joseph Perera was not physically and mentally capable to execute the documents. It was contended that these documents are hit by the doctrine of lis pendens, and the hence, those documents do not have any legal validity. Hence, prayed for ignoring those settlement deeds, and decreeing the suit. Per contra, the contention of the 2<sup>nd</sup> defendant is that Joseph voluntarily executed these documents and are valid. It was also contended that the validity of the documents is not hit by the doctrine of lis pendens, as the injunction order in OS 134/2008 was modified by this court regarding the absolute properties of Joseph Perera, and hence, he has the right to deal with his property in his lifetime, in any

manner he wanted. Hence, the 2<sup>nd</sup> defendant prayed for the dismissal of the suit. The 3<sup>rd</sup> defendant also had similar contentions.

54. From the evidence on record, and in light of the above discussion, it was already found that the parents, Joseph Perera and Josephina Perera were both physically and mentally weak and were under the wrongful confinement of the defendants. The undue influence exercised by the defendants is evident. Apart from that, there are no evidence on material to show that Joseph Perera voluntarily executed the settlement deeds in favour of the 2<sup>nd</sup> defendant, and that too during the pendency of another suit between his children challenging the validity of the documents executed by him. Another thing to be noted is that the execution of these documents were not brought on record in OS 134/2008. Another thing to be noted is that Joseph Perera was alive at the time when trial was commenced in OS 134/2008 at the first instance. At that time also, he did not care to appear before the court to mount the witness box and to gave evidence in support of his contentions. The non-examination of Joseph Perera is fatal, and the same makes probable the case of the plaintiffs. Considering all these things, this court is of the view that the settlement deed Nos. 1195/2010, and 1196/2010 were not voluntarily executed by the father, and it can only be concluded that those documents have not come into force. Hence, the plaint schedule properties in OS 443/2014 can only be considered as the intestate property of Joseph Perera. In such parlance,

it can only be concluded that the plaintiffs are entitled to get a 1/4<sup>th</sup> share over the plaint schedule properties. Thus, issue Nos. 1 and 2 are answered accordingly, in favour of the plaintiffs.

55. **Issue No. 7 in OS 134/2008 and Issue No.3 in OS 443/2014:** In light of the discussion made in the above issues, this court is of the view that the plaintiffs succeeded in proving their case and hence are entitled to get a decree. The general rule is that costs shall follow the event. However considering the close relationship between the parties, this court directs both the parties to bear their respective costs.

**In the result:** OS 134/2008 and OS 443/2014 are decreed as follows:

- 1) The settlement deed bearing Nos. 3033/2007, 3034/2007, 3035/2007, 3036/2007, 3037/2007, 3038/2007, and 3039/2007 of Punalur SRO dated 21/08/2007 are hereby cancelled.
- 2) The sale deed No. 2548/2007 dated 11/07/2007 is declared as void.
- 3) Plaint A to D schedule in OS 134/2008 are found partible.
- 4) The plaintiffs are jointly entitled to get 1/4<sup>th</sup> share in plaint A to D schedule properties in OS 134/2008.
- 5) The defendants 1 to 3 are entitled to get 1/4<sup>th</sup> share each in plaint A to D schedule properties in OS 134/2008.

- 6) Plaint A to H schedule properties in OS 443/2014 are found partible.
- 7) The plaintiffs are jointly entitled to get 1/4<sup>th</sup> share in plaint A to H schedule properties in OS 443/2014.
- 8) The defendants 1 to 3 are entitled to get 1/4<sup>th</sup> share each in plaint A to H schedule properties in OS 443/2014.
- 9) The defendants' share shall be allotted on payment of the requisite court fees.
- 10) The plaintiffs are entitled to be put in possession of their share demarcated in the final decree.
- 11) Any of the parties may move the court to pass a final decree in these proceedings itself as held by the Hon'ble Apex Court in **Kattukandi Edathil Krishnan and Another v. Kattukandi Edathil Valsan and Others**, reported in **2022 (3) KLT 924**.
- 12) Equities, if any, will be considered at the final decree proceedings.
- 13) The case is listed for taking steps under Order XX Rule 18 of Code of Civil Procedure, 1908.

14) Considering the relationship between the parties, there shall be no order as to costs.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this, the 31<sup>st</sup> day of January 2026)

Sd/-  
Civil Judge (Junior Division)

**Appendix**

**Witness for the Plaintiffs**

PW1	01-11-2019	Esther M.A
PW2	11-03-2010	M.C Jayasree
PW3	11-03-2010	M. Fathima Beevi
PW4	11-03-2010	Usha

**Exhibits for the Plaintiffs**

A1	21-08-2007	Certified copy of settlement deed No.3036/2007.
A2	21-08-2007	Certified copy of settlement deed No.3037/2007.
A3	21-08-2007	Certified copy of settlement deed No.3038/2007.
A4	21-08-2007	Certified copy of settlement deed No.3039/2007.
A5	27-11-1986	Original settlement deed No.4098/1986.
A6	03-08-1977	Original mortgage deed No.1989/1977.
A7	21-08-2007	Certified copy of settlement deed No.3034/2007.
A8	21-08-2007	Certified copy of settlement deed No.3035/2007.
A9	21-08-2007	Certified copy of settlement deed No.3033/2007.
A10(a)	-----	Letter
A10(b)	-----	Letter
A10(c)	-----	Letter
A10(d)	-----	Letter
A10(e)	-----	Letter

A11	26-04-2008	The reply letter No.A2-2958/2007 given as per the Right to Information Act.
A12	-----	The copy of Report prepared by Child Welfare Office, Pathanapuram.
A13	12-11-2007	Copy of letter issued from Social Welfare Office, Kollam.
A14	06-07-2007	Certified copy of sale deed No.2548/2007.
A15	30-03-2010	Certified copy of settlement deed No.1195/2010.
A16	30-03-2010	Certified copy of settlement deed No.1196/2010.

**Witness for the Defendants**

DW1	11-03-2010	Justus Perera
DW2	11-03-2010	Raveendran
DW3	11-03-2010	Sabeer
DW4	11-03-2010	Omanakuttan
DW5	14-11-2019	Alphonse Perera
DW6	04-12-2019	Hycinth Sofiya Paul
DW7	11-12-2019	Adv. K Rajan
DW8	11-12-2019	Adv. Lenu Jamal
DW9	11-12-2019	John
DW10	11-12-2019	Dr. Sebastian
DW11	17-12-2019	Abhilash S
DW12	17-09-2025	Krishnakumar P.J, Junior Superintendent, Sub Registrar Office, Punalur.

**Exhibits for the Defendants**

B1	21-08-2007	Original Settlement Deed No.3033/2007
B2	21-08-2007	Original Settlement Deed No.3034/2007.
B3	21-08-2007	Original Settlement Deed No.3035/2007.
B4	21-08-2007	Original Settlement Deed No.3036/2007.
B5	21-08-2007	Original Settlement Deed No.3037/2007.
B6	21-08-2007	Original Settlement Deed No.3038/2007.
B7	21-08-2007	Original Settlement Deed No.3039/2007.
B8	30-03-2010	Certified copy of Settlement Deed No.1196/2010.
B9	30-03-2010	Certified copy of Settlement Deed No.1195/2010.
B10	26-06-2008	Certified copy of Settlement Deed No.2868/2008.
B11	24-11-2007	Letter written in stamp paper.

B12	21-07-2018	Judgment in CMA No.36/2017 (Sub Court, Punalur)
B13	-----	6 Photos (copy).
B14	03-11-2011	Death Certificate of Joseph Perera issued from Kollam Corporation.
B15	06-07-2007	Original Sale Deed No.2548/2007.
B16	16-10-1996	Original Power of Attorney (253/1996).
B17	21-01-1966	Certified copy of Sale Deed No.429/1966.
B18	27-11-1986	Certified copy of Settlement Deed No.4098/1986.
B19	-----	Certified copy of Settlement Deed No.173/1974.
B20	21-05-1966	Original Sale Deed No.4146/1966.
B21	20-09-2019	Tax Receipt issued from Village Office, Punalur.
B22	13-05-2019	Tax Receipt issued from Village Office, Vilakkudy.
B23	-----	Loan Pass Book of Alphonse Perera issued from Co-operative Bank, Elampal.
B24	28-06-2007	Receipt issued from Elampal Service Co-operative Bank, Elampal. Receipt No.254433.
B25	28-06-2007	Receipt issued from Elampal Service Co-operative Bank, Elampal. Receipt No.254424.
B26	-----	Receipt issued from Elampal Service Co-operative Bank, Elampal. Receipt No.352630.
B27	01-09-2016	Certificate of Encumbrance on Property.
B28	30-03-2004	Receipt of Coastal Urban Co-operative Bank Limited, Kollam Rs.35,000/-
B29	30-04-2004	Receipt of Coastal Urban Co-operative Bank Limited, Kollam Rs.30,393/-
B30	28-03-2005	Receipt of Coastal Urban Co-operative Bank Limited, Kollam Rs.1,01,569/-
B31	12-02-1992	Receipt issued from Pathanapuram Primary Co-operative Agricultural Development Bank Limited No.Q.995.
B32	30-08-1999	Certificate on Encumbrance on Property.
B33	-----	Gehan (Form No.1).
B34	24-05-2008	Certified copy of Sale Deed No.2043/2008.
B35	21-08-2006	Collection Deposit Slip issued from Citibank N.A.

B36	11-07-2006	Collection Deposit Slip issued from Citibank N.A.
B37	-----	Collection Deposit Slip issued from Citibank N.A.
B38	31-07-2004	Receipt of Coastal Urban Co-operative Bank Limited.
B39	28-02-2006	Collection Deposit Slip issued from Citibank N.A.
B40	28-02-2006	Collection Deposit Slip issued from Citibank N.A.
B41	-----	Collection Deposit Slip issued from Citibank N.A.
B42	27-10-2005	Repayment receipt issued from Citibank N.A.
B43	-----	Certificate of encumbrance on property.
B44	21-12-2017	Release deed No.3093/2017.
B45	11-03-2004	Copy of sale deed No.858/2004.
B46	30-09-2019	Certificate issued from Elampal Service Co-operative Bank Limited No.604.
B47	-----	Loan Pass Book of Hycinth Sofiya Paul issued from Elampal Service Co-operative Bank Limited.
B48	28-06-2007	Receipt No.254434 issued from Elampal Service Co-operative Bank Limited.
B49	-----	Receipt No.253571 issued from Elampal Service Co-operative Bank Limited.
B50	-----	Pass Book of Hycinth Sophia Paul issued from Quilon District Co-operative Bank Limited, Kunnicode.
B51	26-02-1996	Receipt issued from Kollam District Co-operative Bank Limited.
B52	13-06-1996	Receipt issued from Quilon District Co-operative Bank, Limited.
B53	30-03-2004	Receipt issued from Kollam District Co-operative Bank, Limited.
B54	30-10-2004	Receipt issued from Kollam District Co-operative Bank, Limited.
B55	29-05-2007	Receipt issued from Kollam District Co-operative Bank, Limited.
B56	-----	Pass Book of Hycinth Sophia Paul issued from Syndicate Bank, Kollam.

B57	30-01-2006	Letter from Syndicate Bank, Kollam Branch.
B58	-----	Pass Book of Hycinth Sophia Paul issued from Syndicate Bank, Kollam.
B59	-----	Pass Book of Hycinth Sophia Paul issued from Vysya Bank Limited.
B60	23-12-2014	Certificate of encumbrance on property.

### **Court Exhibits**

C1	27-05-2008	Mahazar prepared by Commissioner Advocate S.R Amrit.
C2	29-05-2008	Commission Report prepared by Commissioner Advocate S.R Amrit.
C3	11-06-2019	Mahazar prepared by Advocate Commissioner K. Rajan.
C3(a)	11-06-2019	Rough Sketch prepared by Commissioner Advocate K. Rajan.
C3(b)	18-06-2019	Commission Report prepared by Commissioner Advocate K. Rajan.
C4	08-08-2019	Commission Report prepared by Advocate Commissioner K. Rajan.
C4(a)	01-08-2019	Mahazar prepared by Commissioner Advocate K. Rajan.
C4(b)	01-08-2019	Commission Report prepared by Advocate Commissioner K. Rajan.
C5	13-04-2016	Mahazar prepared by Commissioner Advocate Lenu Jamal.
C5(a)	13-04-2016	Rough Sketch prepared by Commissioner Advocate Lenu Jamal.
C5(b)	22-09-2016	Commission Report prepared by Commissioner Advocate Lenu Jamal.
C6	13-06-2018	Mahazar prepared by Commissioner Advocate Lenu Jamal.
C6(a)	24-06-2018	Commission Report prepared by Commissioner Advocate Lenu Jamal.

### **Third Party Exhibits**

X1	12-11-2007	Letter from District Social Welfare Office, Kollam.
X2	27-11-1973	Copy of Deed No.3099/1973.

X3	27-11-1973	True copy of Register of Thumb Impressions issued from Sub Registrar Office, Punalur.
X4	23-07-1994	Copy of Mutual Exchange Deed No.2934/1994.
X5	23-07-1994	Copy of Register of Thumb Impressions issued from Sub Registrar Office, Punalur.

Id/-

Civil Judge (Junior Division)

//True Copy//

Typed by : Reeja Jasmine M.V

Compared by :

**CIVIL JUDGE (Junior Division)**