

IN THE COURT OF THE IV ADDITIONAL DISTRICT JUDGE, MADURAI.

Present: Thiru.M.Udhayavelavan, B.L.,
IV Additional District Judge, Madurai.

Friday, the 7th day of August, 2026

APPEAL SUIT No. 72 of 2024
(CNR.No.TNMD01-05418-2021)

Mareeswari

..... Appellant/Plaintiff

-Vs-

1. R.Kanagaraj

2.K.Rakeshwaran

.... Respondents/Defendants 1 & 2

On appeal against the decree and judgment passed in O.S.No.914/2017 dated 15.06.2024, on the file of the Subordinate Court, Thirumangalam.

Mareeswari

.... Plaintiff.

-Vs-

1. R.Kanagaraj

2.K.Rakeshwaran

3. Nagammal (died)

.....Defendants.

This appeal has been originally filed before the Hon'ble Principal District Court, Madurai and made over to this court and coming for final hearing before this court on 30.07.2026 in the presence of Thiru.P.G.Alagarsamy, Advocate for Appellant and Thiru.M.Chandrasekaran, Advocate for the respondents, upon hearing both side arguments and on perusal of entire case records and having stood over for consideration till this day, this court delivered the following:-

JUDGMENT

1. This appeal has been filed by the appellant / plaintiff feeling aggrieved over the judgment of learned Sub Court, Thirumangalam passed in O.S.No. 914/2017 on 15.06.2024, wherein the relief of partition and mesne profit have been declined to the appellant, to set aside the same and decree the suit as prayed by her.

For the sake of convenience, both the parties herein will be referred as to their litigative status before the learned trial court.

The plaintiff has filed the suit for the relief of partition of her $\frac{1}{2}$ share in the suit properties and also for mesne profit.

2. The case of the plaintiff before the learned trial court is that she and the 1st defendant are children of 3rd defendant and one Ramanadha Reddiyar. The suit properties are ancestral properties of the Ramanaha Reddiyar and after his demise on 10.09.1997, the plaintiff, the 1st defendant and her mother / 3rd defendant have been jointly enjoying the suit properties. The 1st defendant, who has been working in the prison department is not in a position to receive any money apart from his remuneration and his agricultural income is also not a sumptuous one. As such, in the month of June 2009, the 1st defendant has requested the plaintiff and 3rd defendant to consent for sale of the property situated in S.P.Natham village for his urgent needs and on considering the same, the sale deed is came to be executed on 09.07.2009 in favour of one Irulayee; the 1st defendant with an ulterior motive fraudulently obtained

the signature of plaintiff and 3rd defendant, in a document while obtaining signature in the sale deed of Irulayee and created the release deed as if the plaintiff and 3rd defendant have relinquished, their right over the suit schedule properties in favour of the plaintiff. Further, as per the Hindu Personal law, the 3rd defendant is not entitled to equal share in the ancestral properties; but fraudulently it is stated as the plaintiff and 3rd defendant have relinquished their 2/3 shares in the suit properties upon receiving Rs.12,00,000/- from the 1st defendant, but as claimed by the 1st defendant they have not received any amount from the 1st defendant. The factum of creation of relinquishment deed dated 09.07.2009 came to the knowledge of plaintiff on 04.01.2011 only, through one Srinivasan and thereafter on obtaining the encumbrance certificate the plaintiff has approached the 1st defendant for amicable settlement. But, he has not come forward to divide the suit properties. Therefore, on 15.02.2011, the plaintiff and 3rd defendant has have cancelled the releases deed; but the 1st defendant has created a settlement deed in favour of his son, the 2nd defendant on 01.07.2011. The 2nd defendant has also filed a suit in O.S.No.204/2012 on the file of District Munsif Court, Thirumangalam against the plaintiff and 3rd defendant on 09.03.2012. Therefore, the plaintiff has filed the suit for the relief of partition of her ½ share in the suit properties and also for mesne profit.

3. The defendants 1 and 2, before the learned trial court while admitting the relationship pleaded in the plaint and original ownership of Ramanadha Reddiyar over the suit properties, would contend that the sale deed dated 09.07.2009 has been

executed in favour of Irulayee with an only view to honour the promise of Ramanadha Reddiyar, for the amount received from Irulayee and no consideration has been received on the date of execution of sale deed. Further, on the insistence of husband of plaintiff alone, as he demanded money in lieu of her share in the suit properties, the release deed has been executed by the plaintiff and 3rd defendant, upon receiving the due amount as recited in the release deed. Therefore, now the plaintiff could not contend that she has not received any amount under the release deed. Moreover, the plaintiff has not immediately taken any action despite the knowledge of existence of release deed through one Srinivasan. The defendants did not know the factum of cancellation deed executed by the plaintiff and 3rd defendant. Therefore, the defendants prayed for dismissal of the suit with costs.

4. 3rd defendant has died pending the suit.

5. The learned trial court upon perusing the plaint and written statement framed the following issues-

1. Whether the description of suit properties is correctly furnished?
2. Whether the suit has been correctly valued?
3. Whether the court fee is correctly paid ?
4. Whether the suit is bad for non joinder of necessary parties?
5. Whether the suit release deed has been legally cancelled?
6. Whether the gift settlement deed dated 01.07.2011 is a fraudulent one?
7. Whether the plaintiff is entitled to the relief of partition and to what share?
8. Whether the plaintiff is entitled to the relief of preliminary decree for partition as claimed by her?
9. Whether the plaintiff is entitled to the relief of mesne profit as claimed by her?

10. To what other relief the plaintiff is entitled to?

6. In order to prove their respective cases, the plaintiff has examined herself as PW.1 and one Srinivasan as PW.3 and produced Ex.A1 to Ex.A10 documents and the defendants 1 and 2 have examined the 1st defendant as DW.1 and one Irulayee as DW.2 and produced Ex.B1 to B3 documents.

7. The learned trial court upon considering the arguments of both the parties and perusal of records produced before it, dismissed the suit with cost of the defendants.

8. Feeling aggrieved and dissatisfied with the impugned judgment of trial court, the plaintiff has preferred this appeal on the following grounds,

i) that the learned trial court has failed to try the issue with regard to the fraudulent nature of Ex.A4 release deed and non passing of consideration under it and failed to consider the sale deed dated 09.07.2009 executed in favour of DW.2, the necessity of money for the 1st defendant on the date of disputed release deed has also not been taken into consideration by the learned trial court and he could not have paid the huge amount of Rs.12,00,000/-. Further, the 1st defendant has failed to prove the passing of consideration by examining the attested witnesses. The Ex.A3 and Ex.A4 documents have been prepared by the same scribe and the same itself would prove the falsity in the Ex.A4 release deed. Further, the source for payment of Rs.12,00,000/- is not pleaded in the written statement, further, the evidence adduced by defendants 1 and 2 in this regard is also falsified by the own answers of DW.1,

elicited during his cross examination. As the Ex.A4 release deed is a void one, there is no need to seek the relief for cancellation of the documents. The recitals of Ex.A10 document, would clearly establish the fraudulent plan devised by the 1st defendant. Further, when the possession of one co owner is for the benefit of other co owners, there is no need to pay court fees u/s.37(1) of TNCF Act, but without considering all these facts, the learned trial court has dismissed the suit. Hence the plaintiff prays for an order to set aside the impugned judgment of learned trial court and decree of the suit in O.S.No.914/2017 as prayed by her.

9. Points for consideration

1. Whether the Ex.A4 release deed has been obtained by the 1st defendant by playing fraud and misrepresentation with the plaintiff and deceased 3rd defendant?
2. Whether the Ex.A4 release deed is a void one for want of consideration?
3. Whether the learned trial court is not correct in dismissing the suit sustaining the validity of Ex.A4 release deed?
4. Whether this appeal is an allowable one?

DISCUSSION AND DECISION :-

10. Point No.1to 3:-

As all these points are interconnected with each other they are jointly taken up for consideration.

- i) The plaintiff has filed the suit for the relief of partition of her ½ share in the suit properties and for mesne profits.

ii) The case of the plaintiff is that the suit properties are ancestrally belongs to her father Ramanatha Reddiyar and after his demise, she has enjoyed the same along with the defendants 1 and 3 her brother and mother respectively, but in the guise of getting signature for the sale deed executed in favour of one Irulayee the PW.2 under Ex.A3 sale deed dated 09.07.2009, the 1st defendant has stealthily obtained the signature of plaintiff and 3rd defendant, without disclosing the factum of execution of Ex.A4 release deed and no consideration is passed under the same as recorded in it. Therefore, the Ex.A4 release deed is a void one and as a consequence of the same, the plaintiff is entitled to plaintiff of her ½ share in the suit properties with the mesne profits.

iii) The learned counsel appearing for the plaintiff would contend that when the defendants 1 and 2 are not able to prove the payment of Rs.12,00,000/- under Ex.A4 release deed the same must be construed as a void one and being a void one, there is no need to annul the release deed, but without considering all these facts, the learned trial court has dismissed the suit on the ground that unilateral cancellation is barred by law, but when the Ex.A4 sale deed is a void abintio one, the cancellation of the same under the cancellation deed dated 15.02.2011 is a valid one and based on the Ex.A4 release deed, the 1st defendant could not claim any right over the suit properties. Hence the plaintiff prays for an order to set aside the impugned judgment of learned trial court and decree the suit as prayed by the plaintiff.

iv) On the other hand, the learned counsel for defendants 1 and 2 relying on the

recitals of Ex.A6 cancellation deed, executed by the plaintiff and 3rd defendant, would contend that when they have executed the cancellation deed as if the 1st defendant has failed to pay the agreed amount under Ex.A4 release deed, the plaintiff and 3rd defendant must be construed as having sufficient knowledge about the Ex.A4 release deed on the date of its execution itself. Further, when the plaintiff is not able to substantiate her plea of fraud and misrepresentation, the question of proving the passing of consideration does not arise. Therefore, the suit filed in the year of 2013 is barred by law of limitation. Hence, the defendants 1 and 2 prayed for dismissal of the petition.

v) In this case, there is no dispute over the relationship between both the parties and nature of suit properties as the same are ancestrally belongs to father of plaintiff. Further, the execution of Ex.A4 release deed is also admitted by the plaintiff. Therefore, it is for the plaintiff to prove the alleged fraud and misrepresentation played by the 1st defendant. In this regard **Hon'ble Supreme Court** in a case between **Hemalatha vs. Tukaram** in **(2026 INSC 82)** on considering the nature of presumption available to a registered document and the standard of evidence required to prove the plea of fraud held as follows:

“31. It is a settled position of law that a registered Sale Deed carries with it a formidable presumption of validity and genuineness. Registration is not a mere procedural formality but a solemn act that imparts high degree of sanctity to the document. Consequently, a Court must not lightly or casually declare a registered

instrument as a “sham”. Adopting the principles enunciated in Prem Singh and Ors. vs. Birbal and Ors., (2006) 5 SCC 3531, Jamila Begum (Dead) Through Lrs. vs. Shami Mohd. (Dead) Through Lrs. and Anr., (2019) 2 SCC 7272, and Rattan Singh and Ors. v. Nirmal Gill & Ors., (2021) 15 SCC 3003, this Court reiterates that the burden of proof to displace this presumption rests heavily upon the challenger. Such a challenge can only be sustained if the party provides material particulars and cogent evidence to demonstrate that the Deed was never intended to operate as a bona fide transfer of title”

As per the above judgment of Hon’ble Supreme Court, the plaintiff has to produce strong evidence to repudiate the Ex.A4 release deed, as the same has been obtained by playing fraud and coercion. But in this case as contended by the defendants 1 and 2 the plaintiff and the 3rd defendant has admitted the voluntary execution of Ex.A4 release deed by way of their admission made in the Ex.A6 cancellation deed. In this regard, Ex.A6 reads as follows-

“கடந்த 09.07.2009 ஆம் தேதியில் மேற்படி கனகராஜ் அவர்கள் எங்கள் இரண்டு பேர்களிடம் நமது பொதுக்குடும்ப பொதுச்சொத்தில் மொத்தம் பாகம் மூன்றில் எங்கள் இரண்டு பாகத்தினை எனக்கு பாகப்பாத்திய விடுதலை எழுதிக்கொடுங்கள் உங்கள் பாகச்சொத்திற்கான சன்மானத்தொகையினை நான் கொடுத்துவிடுகிறேன் என்று கேட்டுக்கொண்டதற்கு இணங்க, நாங்கள் இரண்டு பேர்களும்

சம்மதித்துக்கொண்டு அதன்படி மேற்படி கனகராஜ் அவர்களுக்கு நாங்கள்
 இரண்டு பேர்கள் ஷை தேதியில் ஒரு பாகப்பாத்திய விடுதலை பத்திரம்
 எழுதிக்கொடுத்து அதனை கள்ளிக்குடி சார்பதிவகம் 1 புத்தகம் 1432/2009
 வது நம்பராக பாகப்பாத்திய விடுதலைப்பத்திரம் எழுதிக்கொடுத்தோம். ஷை
 பத்திரத்தில் சொல்லப்பட்ட எங்கள் இருவருக்கும் பேசியபடி எங்களுக்குக்
 கொடுக்க வேண்டிய விடுதலை பாகத்தொகையினை மேற்படி கனகராஜ்
 கொடுக்காமல் ஏமாற்றி விட்டார். எந்த தொகையும் எங்களுக்கு
 வழங்காமல் மேற்படி பாகப்பாத்திய விடுதலை பத்திரத்தின் மூலமாக
 எங்களுடைய பாகச்சொத்தினை கபடநாடகம் நடத்து ஏமாற்றி,
 சொத்தினை பறிக்க நினைக்கிறார். எனவே எங்களால் மேற்படி
 கனகராஜ்க்கு எழுதிக்கொடுத்துள்ள பாகப்பாத்திய விடுதலை
 பத்திரத்தினை இதன் மூலமாக நாங்கள் ரத்து செய்கிறோம்."

The above recitals of Ex.A6 makes it very clear that Ex.A4 document has been
 consciously executed by the plaintiff and the mother, deceased 3rd defendant and the
 plea of fraud and misrepresentation pleaded in the plaint has falsified by the own
 document of the plaintiff and 3rd defendant. Furthermore, to prove the alleged plea of
 fraud and misrepresentation the plaintiff has not examined any other witnesses.
 Moreover, the plea of plaintiff that the existence of Ex.A4 release deed came to her
 knowledge only through PW.2 Srinivasan is also falsified by the recitals of Ex.A6

release deed. Hence, this court comes to the conclusion that the plaintiff has had knowledge about the Ex.A4 released deed on the date of its execution itself and as a consequence of the same, this court is of the view that the plea of fraud and misrepresentation pleaded in the plaint is a clever drafting only as held by Hon'ble Supreme Court in the above referral **Hemalatha vs. Tukaram** wherein @ para 34 it is held that -

“34. The person alleging that a registered Deed is a sham must satisfy a rigorous standard of pleading by making clear, cogent, convincing averments and provide material particulars in his pleadings and evidence. This Court is of the view that the test akin to a test under Order VI Rule 4 CPC is applicable to such a pleading and clever drafting creating illusion of cause of action would not be permitted and a clear right to sue would have to be shown in the plaint”

Hence, this court is of the view that the plaintiff does not have any cause of action to file the suit as if the Ex.A4 release deed has been obtained by playing fraud and misrepresentation.

vi) In this case, the plaintiff has not sought for the relief of declaration of the Ex.A4 release deed as null and void or sought the relief of cancellation of the Ex.A4 release deed. For the same the plaintiff would contend that when Ex.A4 does not bear consideration the same must be construed as a void abinito and non-est one and in reason of the same there is no need to seek the relief of cancellation of Ex.A4 release deed. But in this regard, when the plaintiff has failed to prove the alleged fraud and

misrepresentation pleaded by her, she could not contend that the defendants 1 and 2 have to prove the factum of passing of consideration under Ex.A4 release deed. In this regard Hon'ble Supreme Court in Rattan Singh vs Nirmal Gill (AIR 2021 SUPREME COURT 899) held that when the executant is not able to prove the plea of non execution, the burden is not shifted to the transferee, in the following words-

"62.The plaintiff also asserted that she had not received the consideration in relation to the stated transactions and that the defendants had no means to pay the consideration. It has come on record that the defendants had mortgaged the joint lands several times as they were in need of money. Further, the defendant No. 4 after admitting to have mortgaged the land had said that he used that money to install tubewells and buy tractors. The said fact does not conclusively prove that they did not possess funds as the said loans were obtained to make investments on the joint lands and not on the personal property of the defendant No. 4. Further, the defendant No. 4 had deposed that the sale consideration was paid from the sale proceeds received by selling the land of their mother in the village Ashrafpur. Since the attesting witness had proved the execution of the sale deeds, the primary onus upon the plaintiff had not shifted unto the defendants. Further, the plaintiff was obliged to rebut the positive evidence produced by the defendants regarding payment of consideration amount to the plaintiff; but also ought to have independently proved her case of nonreceipt of the consideration amount."

Hence as per the above dictum of Hon'ble Supreme Court, until the plaintiff is

able to substantiate her plea of fraud and the initial onus raised by the plaintiff is shifted to the defendants, she could not contend that the defendants 1 and 2 have failed to prove the factum of passing of consideration under Ex.A4 release deed. Therefore, when the plaintiff has failed to prove the plea of fraud and misrepresentation this court could not expect the defendants 1 and 2 to prove the passing of consideration under Ex.A4 release deed. Further, though plaintiff has contended as 1st defendant is in such financial constraints, to execute Ex.A3 sale deed, on the date of execution of Ex.A4 release deed, as admitted by the plaintiff, her father himself has obtained money from the DW.2 Irulayee and to honour the same only, Ex.A3 sale deed is came to be executed. Therefore, it could not be concluded that the 1st defendant is not in a position to pay the consideration under Ex.A4 release deed. As the consequence of the same, this court is of the view that the plaintiff has failed to discharge the initial burden lies upon her, in proving the void nature of Ex.A4 release deed and as a consequence of the same this court is of the view that Ex.A4 release deed has been consciously executed by the plaintiff and deceased 3rd defendant for the valid consideration as recorded in the same.

Vii) As the Ex.A4 sale deed is held as a document executed consciously by the plaintiff and 3rd defendant after knowing well about the contents of it, but the suit filed after a lapse of three years from the date of execution of Ex.A4 release deed must be held as barred by law of limitation. In this regard, Hon'ble Supreme court in the above stated Rattan Singh vs Nirmal Gill case, on considering the plea of fraud

and benefit of limitation, saved under section 17 of Limitation Act held as follows -

"78. Therefore, for invoking Section 17 of the 1963 Act, two ingredients have to be pleaded and duly proved. One is existence of a fraud and the other is discovery of such fraud. In the present case, since the plaintiff failed to establish the existence of fraud, there is no occasion for its discovery. Thus, the plaintiff cannot be extended the benefit under the said provision"

As per the above dictum of Hon'ble Supreme Court if the plea of fraud is sustained, then only the plaintiff would get the benefit of sec.17 of Limitation Act to institute the suit from the date of knowledge of the alleged fraud. But in this case the plea of fraud and misrepresentation raised by the plaintiff is falsified by her own document. Hence, when the plea of fraud is not substantiated the cause of action to file the suit must be held as arose on the date of execution of Ex.A4 release deed dated 09.07.2009 itself, but the suit has been filed on 26.11.2013 only. Hence, this court is of the view that the suit filed by the plaintiff is barred by law of limitation.

Viii) Furthermore, when the void nature of Ex.A4 release deed is not proved by the plaintiff the suit for partition filed by the plaintiff without seeking the relief of cancellation of Ex.A4 release deed must also be held as not maintainable. Hence this court comes to the conclusion that the Ex.A4 release deed is a valid document and the plaintiff and 3rd defendant have relinquished their right over the suit property for valid consideration.

ix) Even if it is assumed as the Ex.A4 release deed does not bear consideration,

on the admitted case of plaintiff, as construed from recitals of Ex.A6 cancellation deed the Ex.A4 release deed has been executed on the consensus that the consideration would be paid in a future date. Therefore, irrespective of payment of consideration, the transfer of ownership is taken place on the date of execution of Ex.A4 release deed itself. In this regard Hon'ble Supreme Court in Vidhyadhar vs. Manikrao (AIR 1999 SC 1441) held as follows-

“ 40. The judgment of the High Court on this point is also erroneous for the reason that it totally ignored the provisions contained in Section 55(4)(b) of the Transfer of Property Act which are set out below:

55. In the absence of a contract to the contrary the buyer and seller of immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:

(1) ...

(2) ...

(3) ...

(4) The seller is entitled-

(a) ...

(b) Where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, any transferee without consideration or any transferee with notice of non-payment, for the amount of the purchase-money, or any part thereof remaining

unpaid, and for interest on such amount or part from the date on which possession has been delivered. (5) ...

(6) ...

41. Clause (b) extracted above provides that where the ownership of the property is transferred to the buyer before payment of the whole of the sale price, the vendor is entitled to a charge on that property for the amount of the sale price as also for interest thereon from the date of delivery of possession. Originally, there was no provision with regard to the date from which interest would be payable on the amount of unpaid purchase money. The Special Committee which suggested an amendment in this Section gave the following reason:

This clause is also silent as to the date from which the interest on the unpaid purchase money should run. It seems fair that it should run from the date when the buyer is put in possession.

42. It was on the recommendation of the Special Committee that the words "from the date on which possession has been delivered" were inserted into this clause by Section 17 of the Transfer of Property (Amendment) Act, 1929 (XX of 1929).

43. This clause obviously applies to a situation where the ownership in the property has passed to the buyer before the whole of the purchase money was paid to the seller or the vendor. What is contained in this clause is based on the English Doctrine of Equitable Lien as propounded by Baron Rolfe in *Goode and Anr. v. Burton* (1847) 74 RR 633 : 1 Ex. 189. This clause confers statutory recognition on the English Doctrine

of Equitable Lien. As pointed out by the Privy Council in *Webb and Anr. v. Macpherson* 30 Indian Appeals 238, the statutory charge under this paragraph is inflexible. The charge does not entitle the seller to retain possession of the property as against the buyer but it positively gives him a right to enforce the charge by suit.”

If this case is viewed as per the above dictum of Hon’ble Supreme Court, though normally a transfer of property should be for a price, when in this case as per the own document of plaintiff, the consideration is agreed to be paid in a future date at the maximum she could have sued the 1st defendant for the recovery of agreed consideration only and she could not totally ignore the Ex.A4 release deed, as the same is a void one.

x) In view of the above discussion this court comes to the conclusion that the plaintiff and the 3rd defendant have executed the Ex.A4 release deed after knowing its contents and receipt of consideration of Rs.12,00,000/- recorded in it and as a consequence of the same, the suit filed by the plaintiff after a lapse of three years from the date of document is barred by law of limitation and for want of the relief of cancellation of Ex.A4 release deed, the suit filed by the plaintiff is not maintainable and as a consequence of the same she is not entitled to the relief of partition and mesne profit. As a corollary of the same this court is of the view that the findings of the learned trial court requires no interference in this appeal. Accordingly these issues are answered.

11. Point No.4:

In view of the findings arrived to the preceding points, this court is of the view that this appeal is not an allowable one. Accordingly this point is answered.

In the result, this appeal is dismissed with cost, confirming the impugned judgment of learned Sub Court, Thirumangalam passed in O.S.No.914/2017 on 15.06.2024.

Dictated to the stenographer, transcribed and typed by her in computer, corrected and pronounced by me in open court on this the 7th day of August, 2026.

IV Additional District Judge,
Madurai.

List of additional Witnesses and Exhibits : NIL

IV Additional District Judge,
Madurai.

Copy to:

The learned Sub Court, Thirumangalam.