

**IN THE COURT OF THE ADDITIONAL SUBORDINATE JUDGE,
TIRUCHENGODE**

**Present: Mrs.G.Rubana, B.Sc., M.L.,
Additional Subordinate Judge, Tiruchengode.**

On Tuesday, this the 14th day of July 2026

A.S. No: 06 of 2021

(CNR No.TNNM-06-000375-2021)

1. Mrs. Chellammal, (died)
2. Mrs. Manimegalai,
3. Mr. Ravichandren,
4. Mrs. Umamaheswari, Appellants / Plaintiffs.

/Versus/

1. Mr. Arunachalam,
2. Mrs. Bharathi,
3. Mr. Sengodan, (died)*
4. Mr. Nallaiyan,
5. Mr. Jayavel,
6. Mrs. Saraswathi,
7. Mrs. Sivagami,
8. Mrs. Rajammal,*
9. Mrs. Sumathi,*
10. Mrs. Chitra,*
11. Mrs. Sasikala,* Respondents /Defendants .

(* During the pendency of the appeal, the 3rd respondent died on 17.05.2022. His legal heirs, namely the 8th to 11th Defendants, were subsequently impleaded as per the order passed in I.A. No.3 of 2022, dated 01.07.2025 and Amended as per order in I.A.No:4/2025 dated 26.08.2025.)

Between in O.S. No.344 of 2015

1. Mrs. Chellammal, (died)
 2. Mrs. Manimegalai,
 3. Mr. Ravichandren,
 4. Mrs. Umamaheswari, Plaintiffs.

/Versus/

1. Mr. Arunachalam,
 2. Mrs. Bharathi,
 3. Mr. Sengodan,
 4. Mr. Nallaiyan,
 5. Mr. Jayavel,
 6. Mrs. Saraswathi,
 7. Mrs. Sivagami, Defendants.

This appeal having been filed on 23.02.2021 and taken on file on 27.04.2021 and came up for final hearing on 01.07.2026 before this court, in the presence of Mr. T.K,Ampalatharasu, B.Sc., B.L., learned counsel for the Appellants/ Plaintiffs in the appeal and Mr.S.Chandrasekar, B.A., B.L., learned counsel for the Respondents/Defendants 1 and 2 and the Respondents / Defendants 3 to 11 are called absent set exparte and upon perusing the records of the trial court and upon perusing the Judgment and Decree of the trial court and hearing the both side arguments, having stood over for consideration till this day, this court doth delivers the following:

JUDGMENT

The appellants/plaintiffs have filed this appeal under Section 96 read with Order XXXXI Rule 1 of the Code of Civil Procedure against the judgment and decree dated 23.11.2020 passed in O.S. No. 344 of 2015 on the file of the Additional District Munsif, Tiruchengode.

2. The gist of the amended plaint filed by the plaintiffs is as follows: -

2.1. The case of the plaintiff is that the suit properties, comprising an extent of 23.42 acres of punja land and certain other properties measuring 6 acres of punja land, are the joint family properties of Nallayagounder, son of Sengodagounder. Nallayagounder enjoyed the properties jointly with his wife and two sons. He died around the year 1950, leaving behind his wife, Thevayee, and his two sons, Gurusami and Periyasami, as his legal heirs to inherit the properties.

2.2. Gurusami had two sons and one daughter, namely Arunachalam (the first defendant), Krishnamurthy, and Sivagami (the seventh defendant). Krishnamurthy, the second son of Gurusami, died intestate, leaving behind his mother, Velayammal, his wife, Subbulakshmi, and his two daughters, Sudha and Bharathi, as his legal heirs. Subsequently, Velayammal, Subbulakshmi, and Sudha also died, leaving Bharathi, the second defendant herein, as the sole legal heir to inherit the share of Krishnamurthy.

2.3. After the death of Nallayya Gounder, his wife, Thevayee, and his second son, Periyasami, sold their respective $\frac{2}{3}$ share in the 6 acres of nanja land to Gurusami's sons i.e., 1st defendant herein and his son Krishnamurthy. Consequently, Gurusami, Thevayee, and Periyasami were jointly entitled to the remaining punja land.

2.4. Further, the plaintiff submits that, on 15.07.1978, the legal heirs of the deceased Nallayya Gounder sold the first item of the suit property, measuring 4.57 acres of punja land, to M.S. Nallayya Gounder, son of Sengodan Gounder. On the same day, they sold the second item of the suit property, measuring 4.21 acres of punja land, to Sellappa Gounder, son of Sengodan Gounder.

2.5. After the death of M.S. Nallayya Gounder, his wife, Nallammal, and his daughter, Kulandayi, inherited his estate. Upon the death of Nallammal, Kulandayi succeeded to her share. Thereafter, Kulandayi died, leaving behind her son, Jayavel, and her daughter, Saraswathi, who are arrayed as the fifth and sixth defendants herein. After the death of Sellappa Gounder, his legal heirs, Sengodan and Nallayan, inherited his estate. They are arrayed as the third and fourth defendants herein.

2.6. After the above said sale of the first and second items of the suit properties, the remaining joint family property that vested with the legal heirs of Nallayya Naidu was only the third item of the suit property, measuring an extent of 14.64 acres of punja land. The said property belonged to Thevayee, and her sons, namely Periyaswamy and Guruswamy. Each of them inherited an equal share in the said property. Subsequently, Thevayee died, and hence, Guruswamy and Periyaswamy became entitled to half share each in the third item of the suit property, i.e., 7.32 acres each. The plaintiffs are in constructive joint possession and enjoyment of their half share in the third item of the suit property along with the defendants 1 and 2.

2.7. The above said purchasers filed O.S. No.839 of 1982 before the file of the Principal Subordinate Court, Salem, against the legal heirs of the deceased Nallayya Gounder. Subsequently, the suit was transferred to the Sub Court, Sankagiri, and renumbered as O.S. No.123 of 1985. A preliminary exparte-decree was passed in the said suit on 19.08.1991.

2.8. Further, the plaintiffs submit that, after the death of the first plaintiff's husband, Periyasamy, in the year 1996, the first defendant Arunachalam, his father Gurusamy, his mother Velayammal, and the second defendant Bharathi jointly filed a final decree application in I.A. No.484 of 1999 before the Sub Court, A.S.06 of 2021,

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Sankagiri. In the said final decree proceedings, the first plaintiff's husband Periyasamy and the plaintiffs 1 to 4 were arrayed as respondents 9 to 13 respectively.

2.9. The said final decree application was subsequently transferred to the Additional District Munsif Court, Tiruchengode and renumbered as I.A. No.590 of 2004 in O.S. No.338 of 2004. After receipt of summons in the said proceedings, as the husband of the second plaintiff was residing at Bhavani, Erode District, the plaintiffs 1, 2, and 4 gave vakalat to Mr. Aruljothi, Advocate, in the year 1999 to represent them in the above said final decree proceedings.

2.10. At that time, the said advocate obtained the signature of the first plaintiff herein in several blank sheets for his own convenience. The third plaintiff herein, who was the 12th respondent in the said final decree application, was called absent and set ex parte on 29.10.1999 itself. Whenever the plaintiffs 1, 2, and 4, who were respondents 10, 11, and 13 respectively, contacted their advocate, he informed them that the case was still pending. The first defendant also informed them that the final decree proceedings were pending and further assured them that the third item of the suit property would be divided into two equal shares. Believing the said representations, the plaintiffs did not take further steps. Subsequently, the said advocate died in the year 2013.

2.11. Further, the plaintiffs submit that the first defendant and his father, Guruswamy, created a fraudulent, invalid, forged, and fabricated document as if the first plaintiff's husband, Periyaswamy, had executed a release deed dated 15.07.1978 in favour of Guruswamy, releasing his share in the entire joint family properties for a meagre consideration of Rs.2,000/-.

2.12. The plaintiffs further submit that, even assuming that Periyaswamy had executed such a release deed, he was entitled to release only his own share in the third item of the suit property and had no right to release the share of his mother, Thevayee, or the shares of his children, namely, the plaintiffs 2 to 4 herein. It is further submitted that the alleged release deed does not contain the market value of the property, survey number, extent, or specific boundaries. Therefore, the said release deed is vague, invalid, and unenforceable. Further, the required stamp duty has not been paid, and hence, the said document is inadmissible in evidence.

2.13. The plaintiffs further submit that Guruswamy and others produced the alleged release deed in the final decree proceedings only at the time of enquiry. They filed I.A. No.1206 of 2005 seeking to receive the said release deed as an additional document, without issuing notice to the plaintiffs, who were respondents 10, 11, and 13 therein. The said application was allowed, and an order was passed without affording sufficient opportunity to the plaintiffs to file their objections.

2.14. The plaintiffs further submit that, if Periyaswamy had really executed the alleged release deed, Guruswamy and the 1st defendant ought to have filed an appropriate application to set aside the exparte decree, preferred an appeal, or sought modification of the preliminary decree. The final decree court has no jurisdiction to modify the shares declared in the preliminary decree and cannot go beyond the scope of the preliminary decree. Any alteration or modification of the shares allotted under the preliminary decree can be made only by the appellate court and not by the same court which passed the preliminary decree.

2.15. It is further submitted that, without properly proving and marking the alleged release deed, the final decree was passed on 30.09.2005 in I.A. No.590 of 2004, allotting the entire share in the suit properties to Guruswamy and others. The A.S.06 of 2021,

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first item of the suit property was allotted to the 5th and 6th defendants herein, and the second item of the property was allotted to the 3rd and 4th defendants herein, who are the legal heirs of the purchasers, namely M.S. Nallayya Gounder and Sellappa Gounder respectively.

2.16. According to the plaintiffs, the 1st and 2nd defendants and Guruswamy played fraud upon the Court. Hence, the final decree passed in I.A. No.590 of 2004 is a nullity, inexecutable, unenforceable, and not binding upon the plaintiffs. The plaintiffs further submit that the defendants colluded with each other and deprived the plaintiffs of their 1/2 share in the third item of the suit property, measuring 7.32 acres of punja land.

2.17. The plaintiffs came to know about the passing of the final decree only on 09.10.2014, when the first plaintiff obtained the certified copies of the final decree proceedings, fair order, decree, and judgment from the Principal District Court, Namakkal, through her present counsel. On perusal of the said records, the plaintiffs were shocked and surprised to find that, though they had given vakalat only to Advocate Mr. Arunjothi of Bhavani in the year 1999, Advocates Mr. Panneer Selvam and Ms. Kalaiselvi of Erode and Mr. Ramalingam of Kumarapalayam had appeared on their behalf in the proceedings. The plaintiffs submit that they do not know the said advocates and had neither engaged them nor even seen them. They further submit that they had given vakalat only to Advocate Mr. Arunjothi in the year 1999 and that the said vakalat was misused by him. Therefore, the plaintiffs are not responsible for the acts done by the said advocates and the same are not binding upon them.

2.18. The plaintiffs further submit that, until obtaining the above said certified copies on 09.10.2014, they had no knowledge about the alleged release

deed dated 15.07.1978. They came to know about the contents of the said document only on 16.11.2014, after obtaining a certified copy from the Sub-Registrar Office through their advocate Mr. Prabhakar. The plaintiffs submit that the first plaintiff's husband, Periyaswamy, never executed any release deed in favour of Guruswamy at any point of time. Further, there was no necessity for him to execute such a release deed, as he was having three children and a wife, who are the plaintiffs herein.

2.19. Further, the plaintiffs submit that, during the lifetime of Periyaswamy, he submitted an objection before the Sub-Registrar, Velagoundampatti, on 09.09.1996. However, the said objection was subsequently returned on 09.09.1996 itself. Thereafter, Periyaswamy submitted a fresh petition on 30.09.1996, and the Sub-Registrar issued a reply on the same day itself. The above said proceedings would clearly establish that Periyaswamy had not executed the alleged document in favour of his brother, Guruswamy. Hence, the alleged release deed is invalid, inadmissible, and not binding upon the plaintiffs. Therefore, the said document is liable to be declared null and void.

2.20. Thereafter, the plaintiffs issued a legal notice dated 17.03.2015 to the defendants 1 to 6. The said notice was received by the defendants on 18.03.2015 and 19.03.2015 respectively. Thereafter, the first and second defendants issued a reply notice containing false and baseless allegations. However, the defendants 3 to 6 did not issue any reply. In the reply notice issued by the first and second defendants, they stated that the final decree petition in I.A. No.590 of 2014 had already been disposed of. They further stated that the first and second defendants, along with Sivagami, the seventh defendant herein, had partitioned the disputed properties on 05.03.2010.

2.21. The first and second defendants further stated that the plaintiffs had also filed a final decree application in I.A. No.463 of 2001 before the Sub Court, Sankagiri, and that the said proceedings were subsequently transferred to the District Munsif Court and renumbered as I.A. No.589 of 2004. The said application was dismissed on 30.09.2005. The said application was filed under Order XXVI Rule 13 of the Code of Civil Procedure for appointment of a Commissioner.

2.22. The plaintiffs further submit that the partition deed dated 05.03.2010, executed under the guise of the final decree passed in I.A. No.590 of 2004, is not enforceable and is not binding upon the plaintiffs insofar as the third item of the suit property is concerned. Hence, the said partition deed is liable to be declared null and void and not acted upon. The plaintiffs further submit that the said partition deed is a sham and nominal document created with an intention to defeat the rights of the plaintiffs. Further, the required stamp duty has not been paid to the Government. The value of the entire extent of 14.64 acres of land has been shown as only Rs.6,000/-, which is improper and insufficient.

2.23. After receipt of the above said reply notice, the plaintiffs came to know that Advocate Ms. R. Kalaiselvi, who was not the actual counsel engaged by the plaintiffs, had filed I.A. No.589 of 2004. The plaintiffs further submit that, at the time of filing the said petition, the third petitioner, Manimeghalai, and the fourth petitioner, Ravichandran, were working at Muscat, Oman. However, the said petition states that they appeared through their power agent, Sellammal. No such power deed was produced along with the petition.

2.24. The plaintiffs further submit that Advocate Mr. Aruljothi, who obtained vakalat from the second, third, and fifth petitioners, had no authority to file the final decree petition on behalf of the third petitioner, Manimeghalai, in a A.S.06 of 2021, A.S.J.Court, Tiruchengode.

representative capacity. Hence, it is clear that I.A. No.589 of 2004 was filed by Mr. Aruljothi and Ms. Kalaiselvi on their own accord, by giving an incorrect description of the property and without any instructions from the plaintiffs. The plaintiffs further submit that they had never filed the said final decree petition and that the proceedings and the result thereof are not binding upon them. The respondents therein and the advocates colluded with each other and played fraud upon the plaintiffs and the Court. Hence, the present suit is not barred by limitation and the case falls within the exception provided under Section 17 of the Indian Limitation Act.

2.25. The plaintiffs further submit that the defendants, who are colluding with each other, are now attempting to alienate, mortgage, or create encumbrances over the third item of the suit property by creating false documents. The defendants 1 to 3 have no right or authority to deal with the said property. On 06.11.2015, the defendants attempted to alienate the third item of the suit property in favour of third parties, which was prevented. However, they proclaimed that they would create encumbrances over the third item of the suit property. The plaintiffs further submit that Sellammal died on 24.06.2018, leaving behind Manimegalai, Ravichandran, and Umma Maheswari as his legal heirs.

2.26. The plaintiffs have filed the present suit seeking to set aside the final decree passed in I.A. No.590 of 2004 in O.S. No.338 of 2004 dated 30.09.2005; To declare the release deed dated 15.07.1978, registered as Document No.24 of 1978 on the file of the Sub-Registrar, Tiruchengode, as null and void and not binding upon the plaintiffs; To declare the partition deed dated 05.03.2010, entered into between the defendants 1, 2, and 7 and registered on 08.03.2010 as Document No.728 of 2010 on the file of the Sub-Registrar, Velagoundampatti, Tiruchengode as null and void and not binding upon the plaintiffs insofar as their half share in A.S.06 of 2021,

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the suit property is concerned; To grant a permanent injunction restraining the defendants 1 to 7 from alienating or encumbering the third item of the suit property; and to award the costs of the suit.

3. The gist of the written statement filed by the 1st and 2nd defendants are as follows:-

3.1. The defendants admit the relationship between the parties and also admit that the properties measuring 23.42 acres of punja land and 6 acres of nanja land belonged to the family of Nallayya Gounder. However, they deny the alleged sale of 2/3 share by Thevayee and Periyasamy in favour of the first defendant and his brother Krishnamurthy. The defendants further deny the averments of the plaintiffs that the said properties are joint family properties and that the plaintiffs are having any right, title, or interest over the same.

3.2. The defendants admit the sale of 4.57 acres of land to M.S. Nallayya Gounder on 15.07.1978. They further state that, after the demise of M.S. Nallayya Gounder, his legal heirs, namely his wife Nallammal and daughter Kulandayee, inherited his estate. After the demise of Nallammal and Kulandayee, the 5th and 6th defendant herein inherited their estate. The defendants also admit the sale of the second item of the suit property to Sellappa Gounder. After the death of Sellappa Gounder, his legal heirs, namely the 3rd and 4th defendants herein, inherited his estate.

3.3. The defendants deny the averment that the balance property i.e 3rd item property properties belonged to the legal heirs of Nallayya Gounder and that his legal heirs, namely Thevayee, Gurusamy, and Periyasamy, were each entitled to 1/3 share in the said properties. The defendants further deny the averment that, after the demise of Thevayee, Gurusamy and Periyasamy became entitled to half share each in the suit property. The defendants also deny the averment that the

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plaintiffs are in possession and enjoyment of the half share measuring 7.32 acres in the third item of the suit property.

3.4. Further, the defendants admit that M.S. Nallayya Gounder and Sellappa Gounder filed a suit in O.S. No.839 of 1982 on the file of the Sub Court, Salem. Subsequently, the said suit was transferred to the Sub Court, Sankagiri, and renumbered as O.S. No.123 of 1985, in which an ex parte decree was passed. Thereafter, the final decree petition in I.A. No.484 of 1999 in O.S. No.123 of 1985 was also transferred to the District Munsif Court and renumbered as I.A. No.590 of 2004 in O.S. No.338 of 2004.

3.5. Further, the defendants deny the averment that, after receipt of notice in the final decree petition, the plaintiffs engaged an advocate, namely Mr. Aruljothi of Bhavani, gave vakalat, and affixed her signatures in blank sheets. The said averment is false and denied. The defendants further deny the averment that the said advocate failed to inform the plaintiffs about the pendency and stages of the final decree proceedings. They also deny the averment that the first defendant informed the first plaintiff that the final decree proceedings were either pending.

3.6. The defendants further deny the averment regarding the death of Advocate Mr. Aruljothi in the year 2013 and the contention that the delay on the part of the plaintiffs occurred due to their failure to collect documents. The defendants deny the allegation that the first defendant's father, Guruswamy, created a forged document in the form of a release deed dated 15.07.1998 in the name of Periyaswamy for a meagre consideration of Rs.2,000/-. The said allegation is false and denied.

3.7. Further, the defendants deny the averment that, after the lifetime of the deceased Thevayee, the plaintiffs are entitled to a share in the suit property. The

defendants also deny the averment that no consideration was paid under the release deed and that, since the schedule of property was not properly mentioned in the release deed, the said document is inexecutable and has not come into force. The defendants further deny the averment that the required stamp duty was not paid on the said document.

3.8. The defendants deny the averment that the alleged release deed was not produced at the time of filing the final decree petition in I.A. No.590 of 2004. They further deny the averment that the said release deed is not acceptable and that the final decree passed on the basis of the said document is without jurisdiction.

3.9. The defendants deny the averment that the final decree court has no jurisdiction to alter the shares and that such alteration can be made only by the appellate court and deny that since the final decree was obtained by fraud that the same is unenforceable, has not come into force, or is not binding upon the plaintiffs. Further deny the averment that the plaintiffs received all the documents through their counsel and only thereafter came to know that their Advocate Mr. Aruljothi failed to furnish necessary information to them. They also deny the averment that the order passed in the final decree proceedings will not bind the plaintiffs' share in the suit property.

3.10. The defendants deny the allegation that the defendants cheated the plaintiffs and that there was no necessity for executing such release deed in favour of Guruswamy, since the legal heirs of Periyasamy, namely the plaintiffs, were available. The defendants further deny the averments regarding the petition filed before the Sub-Registrar and the reply issued by the Sub-Registrar. The defendants also deny the averment that the plaintiffs came to know about the final decree

dated 30.09.2005 and the release deed only after receipt of the reply notice. All such allegations are false and denied.

3.11. The defendants further deny the averments made in the plaint regarding the execution of the partition deed dated 05.03.2010 between the defendants 1, 2, and 7 and the averments made thereon. The defendants deny the averment that the plaintiffs had not engaged any counsel or authorised any person in I.A. No.589 of 2004 and that they had not filed the said final decree application. The defendants further deny the averment that the plaintiffs had not filed the final decree application. They also deny the averment that the said advocate obtained signatures of the plaintiffs in blank sheets and misused them. The defendants also deny the averment that, at the time of filing I.A. No.463 of 2001, the petitioners Manimegalai and Ravichandran were working at Muscat, Oman, and that no power of attorney deed was executed by them.

3.12. The defendants deny the allegation that all the defendants and advocates colluded with each other and filed the proceedings without the knowledge and instructions of the plaintiffs. The defendants further deny the averment that the present suit is not barred by limitation under Section 17 of the Limitation Act. The defendants further deny the allegation that defendants 1, 2, and 7 are attempting to create any encumbrance over the suit property.

3.13. The defendants further submit that the properties mentioned in the plaint are the joint family properties of the plaintiffs and the defendants 1, 2, and 7. The defendants submit that the legal heirs of Nallayya Gounder sold the properties comprised in Survey Nos.111/2 and 114/3 to Sengoda Gounder, father of the third and fourth defendants, under Document No.986 of 1978 dated 15.07.1978. On the same day, they also sold the properties comprised in Survey Nos.98/1 and 113/1 to

Nallayya Gounder, grandfather of the fifth and sixth defendants, under Document No.985 of 1978.

3.14. The purchasers of the said properties filed O.S. No.123 of 1985, in which a decree was passed on 19.08.1991. Thereafter, the first and second defendants filed a final decree application in I.A. No.484 of 1999. Subsequently, the said proceedings were transferred to the District Munsif Court and renumbered as I.A. No.590 of 2004. The defendants further submit that, since the first plaintiff's husband, Periyasamy, executed a release deed dated 15.07.1978 in favour of Gurusamy, father of the first defendant, the third item of the suit property was allotted to the share of the first and second defendants in the final decree proceedings.

3.15. The defendants further submit that the final decree application filed by the first plaintiff in I.A. No.463 of 2001, which was subsequently renumbered as I.A. No.589 of 2004, seeking partition of the third item of the suit property, was dismissed by the District Munsif Court. Both the final decree applications, namely I.A. No.589 of 2004 and I.A. No.590 of 2004, were tried together, and orders were passed in both the applications on 30.09.2005. The final decree application filed by the defendants was allowed, whereas the final decree application filed by the plaintiffs in I.A. No.589 of 2004 was dismissed.

3.16. The defendants further submit that, in the final decree application filed by them, the release deed dated 15.07.1978 was specifically referred. The plaintiffs herein had also filed their counter in the said final decree proceedings on 30.08.2000. Further, the first plaintiff signed the vakalat in I.A. No.589 of 2004 on 14.09.2000. The defendants submit that the alleged release deed was within the knowledge of the plaintiffs from the year 2000. Therefore, the present suit, having A.S.06 of 2021,

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been filed after a lapse of about 15 years, is barred by limitation, and the plaintiffs are not entitled to any relief.

3.17. The defendants further submit that the plaintiffs have neither any right nor any entitlement to file a final decree application in respect of the third item of the suit property. The plaintiffs have not preferred any appeal against the order passed in the final decree proceedings. Therefore, they are not entitled to maintain the present suit, and the same is barred by the principles of res judicata.

3.18. The defendants further submit that, since the plaintiffs have failed to seek a declaratory relief, the suit is not maintainable. After a full-fledged enquiry, the final decree application in I.A. No.590 of 2004 was allowed on 30.09.2005. Hence, the plaintiffs are not entitled to seek a declaration that the said final decree is null and void. If at all aggrieved, the proper remedy available to the plaintiffs was to prefer an appeal against the final decree. The defendants further submit that, since the issues have already been finally adjudicated in O.S. No.338 of 2004, the present suit is also barred under Order II Rule 2 of the Code of Civil Procedure.

3.19. The defendants further submit that, after the partition between the defendants 1 and 2, the revenue records were mutated in their names, and pattas were issued in favour of the first and second defendants bearing Patta Nos.1043 and 1048 respectively. The defendants further submit that the plaintiffs have not sought any relief in respect of the sale deeds executed in favour of Nallayya Gounder and Sellappa Gounder and have sought relief only against the release deed. The plaintiffs have suppressed the material facts and, therefore, the suit is not maintainable. The defendants further submit that, in the absence of any relief claimed against the defendants 3 to 6 in respect of the first and second items of the suit properties, they are not necessary parties to the suit.

3.20. The defendants also contend that the plaintiffs have not sought any substantive relief in respect of the third item of the suit property and, on that ground also, the suit is liable to be dismissed. The defendants further submit that the third item of the suit property comprised in Survey No.88 has been subdivided into Survey Nos.88/1 and 88/2, and Survey No.89 has been subdivided into Survey Nos.89/2A and 89/2B. Therefore, the suit schedule property has been incorrectly described. The inclusion of Items 1 and 2 in the suit schedule is unnecessary and has been made only to sustain the plaintiffs' false and baseless claim. Hence, the suit is liable to be dismissed.

5. On consideration of the plaint, written statement and the other materials available on record, the learned Trial Judge framed the following issues:-

1. திருச்செங்கோடு மாவட்ட உரிமையியல் நீதிமன்றத்தில் இ.ம.எண்.590/ 2004 in O.S.No : 338 / 2004 வழக்கில் 30.09.2005-ம் தேதியில் பிறப்பிக்கப்பட்டுள்ள இறுதிநிலைத் தீர்ப்பாணை ரத்து செய்யக் கூறியுள்ள பரிகாரம் வாதிகளுக்கு கிடைக்கத்தக்கதா?
2. ஈரோடு சார்பதிவாளர் அலுவலக ஆவண எண்.24/1978 ஆக 15.07.1978-ம் தேதியில் பதிவு செய்யப்பட்டுள்ள விடுதலை ஆவணம் இல்லாத நிலையது என விளம்புகை செய்யக்கோரியுள்ள பரிகாரம் வாதிகளுக்கு கிடைக்கத்தக்கதா ?
3. தாவா III-வது அயிட்ட சொத்தை பொறுத்து நலந்திகடு கண்டு பாகப்பிரிவினை ஏற்படும் வரையில் 1, 2 மற்றும் 7-ம் பிரதிவாதிகளோ அவர்களது ஆட்களோ எவ்வித வில்லங்க பாராதீனமும் செய்யக்கூடாது எனக்கோரியுள்ள பரிகாரம் வாதிகளுக்கு கிடைக்கத்தக்கதா?
4. வாதிகளுக்கு கிடைக்கத்தக்க இதர பரிகாரங்கள் யாவை?

5.2. Additional issues framed on 20.11.2020:-

1. Whether the final decree petition I.A. No : 589 of 2004 will not bind the plaintiffs ?
2. Whether the Plaintiffs are entitled to get the relief of declaration regarding the partition deed dated 05.10.2010 is Null and void and not binding the plaintiffs ?
3. Whether the suit is barred by limitation?
4. Whether the suit is maintainable without praying declaration?
Regarding 3rd item of suit property?

5.3. Witness and Evidences on Both Side: -

On the side of the plaintiffs, the first plaintiff, Mrs. Sellammal, was examined as P.W.1, and Ex.A:1 to Ex.A:28 were marked. On the side of the defendants, the second defendant, Ms. Bharathi, was examined as D.W.1, and Ex.B:1 to Ex.B:3 were marked.

6. Findings rendered by the Trial Court in O.S.No.344 of 2015:-

Upon consideration of the pleadings, oral and documentary evidence, and other materials available on record, the learned Additional District Munsif, Tiruchengode, dismissed the suit in O.S.No.344 of 2015 by judgment dated 23.11.2020.

7. Aggrieved by the judgment and decree of the Trial Court, the plaintiffs have preferred this appeal on the following grounds :-

7.1. The appellants, in the grounds of appeal, submit that the judgment and decree of the Trial Court are contrary to law, against the weight of evidence and probabilities of the case. It is contended that the Trial Court failed to frame proper
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issues, particularly as to whether the respondents/defendants 1 to 6 had committed fraud upon the Court in obtaining the final decree and whether the said respondents had obtained a collusive final decree in the suit. The Trial Court, therefore, failed to properly appreciate the oral evidence of PW1 and the documentary evidence marked as Ex.A1 to Ex.A28 available on record and erroneously dismissed the suit in O.S.No.344 of 2015.

7.2. Grounds relating to the final decree proceedings in I.A. No.590 of 2004: -

7.2.1. The appellants further contend that the Trial Court failed to note that the final decree application in I.A. No.590 of 2004 was filed under Sections 146 and 151 of the Code of Civil Procedure. According to the appellants, the said petition was filed without seeking appointment of a Commissioner and without seeking any relief for effecting partition by metes and bounds as contemplated under Order XX Rule 18 of the Code of Civil Procedure. The appellants further contend that the Trial Court failed to consider the legality and maintainability of the said proceedings in the proper perspective.

7.2.2. The appellants further contend that the Trial Court failed to properly appreciate Exs.A:1 to A:4, Ex.A:28, the plaint the judgment and decree passed in the preliminary decree proceedings, and the other oral and documentary evidence available on record. The appellants further contend that the final decree petition, marked as Ex.A3, was not properly considered by the Trial Court and that the allotment of shares sought therein was contrary to the preliminary decree. According to the appellants, without properly understanding the scope and effect of the preliminary decree, the pleadings, and the materials available on record, the final decree was passed erroneously. The Trial Court failed to appreciate the evidence in its proper perspective while upholding the final decree proceedings.

7.2.3. The appellants further contend that the preliminary decree had recognised the share of Periyasamy, husband of the first plaintiff, in the third item of the suit property. However, without considering the share declared under the preliminary decree, the final decree Court relied upon the release deed produced by the defendants and allotted the entire share in favour of the defendants, thereby altering the shares declared under the preliminary decree. According to the appellants, the final decree Court has no jurisdiction to go beyond the preliminary decree or modify the shares declared therein, and such alteration can be made only by the appellate Court.

7.2.4. The appellants further contend that the fourth defendant was a minor at the time of passing of the preliminary decree and that, after attaining majority, no petition was filed under Order XXXII Rule 12 of the Code of Civil Procedure to record the attainment of majority. They further contend that the Court guardian was not discharged under Order XXXII Rule 9 of the Code of Civil Procedure before permitting the fourth defendant to participate in the final decree proceedings.

7.2.5. The appellants further contend that, though certain parties died, the dates of death were not properly disclosed and the legal representatives were not brought on record by following the mandatory procedure. However, a prayer was made to declare certain persons as legal representatives of the deceased parties and the proceedings were continued without complying with the prescribed procedure, which vitiated the final decree proceedings.

7.2.6. The appellants further contend that the Trial Court failed to notice that, at the time of filing the final decree application, the respondents had not produced the alleged release deed executed by Periyasamy. According to the appellants, without producing the said document, the respondents obtained the

final decree allotting the entire third item of the suit property in favour of the defendants. The appellants contend that the Trial Court failed to consider this material aspect while deciding the suit.

7.2.7. The appellants further contend that the seventh respondent in the final decree proceedings filed a counter on 07.08.2000 and made specific averments regarding the alleged release deed, even though the said document had not been produced before the Court at that stage. According to the appellants, such conduct creates a doubt regarding the genuineness of the proceedings and indicates collusion between the respondents and the defendants.

7.2.8. The appellants further contend that an application under Order VII Rule 14 of the Code of Civil Procedure in I.A. No.1206 of 2005 was filed only on 24.05.2005 seeking permission to receive the release deed dated 15.07.1978. However, without issuing notice to the plaintiffs and without affording a proper opportunity of hearing in the said interlocutory application, the application was allowed and the final decree was passed relying upon the alleged release deed executed by Periyasamy.

7.2.9. The appellants further contend that the first plaintiff herein, who was the tenth respondent in the final decree proceedings, allegedly filed her counter on 14.09.2000. However, according to the appellants, the said counter was not actually filed by her and the signature obtained by her counsel, Mr. Aruljothi, was misused. The appellants contend that she had disputed the filing of such counter in the final decree proceedings.

7.2.10. The appellants further contend that, even before the production of the alleged release deed, the seventh and tenth respondents claimed to have filed counters referring to the said document. According to the appellants, these material

facts were not properly considered by the Trial Court while upholding the final decree passed on the basis of the alleged release deed.

7.2.11. The appellants further contend that the Trial Court failed to consider the admission made by Guruswamy in his affidavit regarding the correctness of the preliminary decree. According to the appellants, Guruswamy had admitted the preliminary decree and the share declared therein, including the entitlement of Periyasamy to a half share in the third item of the suit property.

7.2.12. The appellants further contend that the Trial Court failed to consider the admission of D.W.1 that Guruswamy had not preferred any appeal against the preliminary decree. According to the appellants, in the absence of any challenge to the preliminary decree, the final decree Court could not have altered or modified the shares declared under the preliminary decree.

7.2.13. The appellants further contend that the Trial Court failed to consider the admission of D.W.1 that the release deed dated 15.07.1978 was available with Guruswamy and the first respondent, but the same was not produced in the earlier suit in O.S. No.123 of 1985. According to the appellants, the non-production of the said document in the earlier proceedings creates a serious doubt regarding the reliance placed upon the said document in the final decree proceedings.

7.2.14. The appellants further contend that the Trial Court failed to consider the admission of D.W.1 that the alleged release deed does not contain the proper description of the property, including the village, district, survey number, extent, and other particulars. According to the appellants, the said document is vague and incapable of being acted upon. However, the Trial Court failed to record any finding or consider the above said material aspects while deciding the suit.

7.2.15. The appellants further contend that the Trial Court failed to consider that the alleged release deed was not marked as an exhibit in the final decree proceedings. According to the appellants, even in Ex.A10, the property description was mentioned and in Ex.A11 no such document relating to the alleged release deed was shown. The Trial Court failed to appreciate these material discrepancies while upholding the final decree.

7.2.16. The appellants further contend that the Trial Court failed to consider that Ex.A12 is the final decree petition filed by the appellants herein and that the said petition was filed through Advocate Ms. R. Kalaiselvi, who was not the counsel on record for the appellants. The appellants contend that no power of attorney deed was filed along with the said petition in I.A. No.463 of 2001, subsequently renumbered as I.A. No.589 of 2004.

7.2.17. The appellants further contend that, in the final decree petition filed in I.A. No.589 of 2004, only the third item of the suit property was mentioned and the other items of properties were not included. According to the appellants, Advocate Mr. Aruljothi had no authority to file the affidavit marked as Ex.A:13 and had misused the signed blank papers obtained from the appellants. The appellants contend that the said signed papers were misused for filing the counter in I.A. No.590 of 2004 and the affidavit in I.A. No.589 of 2004, which were filed through Advocate Ms. Kalaiselvi on 14.09.2000. The Trial Court failed to consider these material aspects.

7.2.18. The appellants further contend that, in the fair and decretal orders marked as Exs.A:15 and A:16, no proper reasons were assigned for disposal of the said petitions. According to the appellants, the Trial Court failed to consider that no finding was given regarding the maintainability of the final decree proceedings.

7.2.19. The appellants further contend that the Trial Court failed to consider the objection submitted by Periyasamy before the Sub-Registrar, marked as Ex.A:20, and the reply issued by the Sub-Registrar, marked as Ex.A:21. According to the appellants, the said documents clearly establish the circumstances relating to the alleged release deed, but the Trial Court failed to appreciate the same.

7.2.20. Further, the appellants submit that the Trial Court failed to frame an issue as to whether the second final decree application filed in I.A.No.589 of 2004 by the plaintiffs herein, during the pendency of the final decree application in I.A.No.594 of 2004 filed by the defendants 1 and 2 herein, was maintainable in law. The Trial Court also failed to give any finding or make any observation on the said aspect, and thereby rendered a perverse judgment.

7.2.21. The appellants further contend that the Trial Court erroneously held that the plaintiffs had not sought any relief in respect of the first and second items of the suit properties and, therefore, defendants 3 to 6 were unnecessary parties. According to the appellants, the said defendants are the purchasers of the first and second items of the suit properties and they were parties to the final decree proceedings in I.A. No.590 of 2004. Hence, the Trial Court failed to properly appreciate their status and the pleadings in the proceedings.

7.2.22. The appellants further contend that the Trial Court failed to consider the admissions made by D.W.1 and failed to properly appreciate Exs.B:2 and B:3, which were created subsequent to the filing of the suit. The Trial Court failed to discuss the evidentiary value of the said documents.

7.2.23. The appellants further contend that the Trial Court failed to properly appreciate the judgments relied upon by the appellants and did not assign any reason for rejecting the authorities produced on behalf of the appellants, while

accepting the authorities relied upon by the defendants. The appellants contend that an advocate acts as an agent only within the scope of the authority given by the party and that the acts beyond such authority cannot bind the party. According to the appellants, they had never engaged Advocate Ms. Kalaiselvi.

7.2.24. The appellants further contend that the Trial Court failed to consider that the existence of the alleged release deed came to their knowledge only on 16.11.2014 and, therefore, the suit is not barred by limitation. According to the appellants, the fraud played by the defendants attracts the exception under Section 17 of the Limitation Act and the limitation period cannot be reckoned against the appellants.

7.2.25. The appellants further contend that the Trial Court framed two additional issues on 20.11.2020, but no sufficient opportunity was given to the appellants to address the said additional issues before pronouncing the judgment on 23.11.2020. According to the appellants, the Trial Court failed to consider the averments made in paragraph 26 of the plaint regarding fraud committed by the defendants and the applicability of Section 17 of the Limitation Act.

7.2.26. The appellants further contend that the Trial Court failed to properly appreciate Ex.A:26, namely the partition deed dated 05.03.2010, which according to the appellants is a sham and nominal document created to defeat their rights. The Trial Court, without properly considering the said document and the other materials available on record, erroneously dismissed the suit.

8 . Points for Determination:-

8.1. The following points arise for consideration:

1. Whether the final decree proceedings in I.A. No.590 of 2004 are vitiated on account of the alleged procedural irregularities, including non-compliance

with Order XXXII Rules 9 and 12 CPC, omission to disclose the dates of death of the deceased parties, and the filing of the application under Sections 146 and 151 CPC?

2. Whether the final decree Court exceeded the scope of the preliminary decree by relying upon the release deed dated 15.07.1978 and thereby altering the shares declared under the preliminary decree?
3. Whether the release deed dated 15.07.1978 was validly relied upon and whether the appellants have established fraud so as to attract Section 17 of the Limitation Act?
4. Whether the plaintiffs are entitled to the reliefs sought in the suit?
5. Whether the judgment and decree of the Trial Court warrant interference?

8.2. Arguments advanced on behalf of the Appellants:

8.2.1. The learned counsel appearing for the appellants submitted that the Trial Court failed to properly appreciate the pleadings, oral evidence and documentary evidence available on record and had erroneously dismissed the suit. It was contended that the final decree proceedings in I.A. No.590 of 2004 were not validly conducted, as the required procedure under the Code of Civil Procedure was not followed. The learned counsel further submitted that the final decree Court exceeded the scope of the preliminary decree by allotting the entire third item of the suit property on the basis of the alleged release deed dated 15.07.1978, though the preliminary decree had already declared separate shares in favour of the parties.

8.2.2. It was further argued that the alleged release deed dated 15.07.1978 was not properly proved and that the same could not have been relied upon to
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deprive the appellants of their lawful share. According to the appellants, the said document was subsequently introduced in the final decree proceedings and the signatures obtained by the Advocate on blank papers were misused for filing the counter and other proceedings without their knowledge and consent. Hence, it was contended that the final decree was obtained by fraud and that the appellants were entitled to invoke Section 17 of the Limitation Act.

8.2.3. The learned counsel further submitted that the Trial Court failed to consider the effect of the death of Thevayee and Periyasamy and the consequent devolution of their shares upon their legal heirs. It was contended that the final decree Court ought to have worked out the shares in accordance with the preliminary decree and could not have allotted the entire property merely based on the release deed executed by Periyasamy. Therefore, the learned counsel prayed that the judgment and decree of the Trial Court be set aside and the suit be decreed as prayed for.

8.2.4. The learned counsel appearing for the appellants relied upon various judgments in support of his contention. The learned counsel relied upon the judgment of the Hon'ble Supreme Court in *Ganduri Koteshwaramma and another vs. Chakiri yanadi and another*, reported in 2011 CJ(SC) 113, and contended that the final decree proceedings are governed by the provisions of Order XX Rule 18 CPC and argued that any number of preliminary decree can be passed, however that the rights of the parties cannot be altered without following the procedure contemplated under law.

8.2.5. The learned counsel further relied upon the judgment in *Sarup Singh and another vs. Union of India and another*, reported in 2011 (1) MLJ 1014, and *Shankar Balvant Lokhande (Dead) by LRs vs. Chandrakant Shankar Lokhande*,

reported in (1995) 3 SCC 413, to contend that the final decree proceedings must strictly conform to the preliminary decree and that the Court cannot travel beyond the rights declared under the preliminary decree.

8.2.6. The learned counsel also relied upon the judgment in *S.P. Chengalvaraya Naidu (Dead) by LRs vs. Jagannath (Dead) by LRs*, reported in AIR 1994 SC 853, and contended that any decree obtained by fraud is liable to be set aside and that fraud vitiates all judicial proceedings.

8.2.7. The learned counsel further placed reliance upon the judgments in *Smt. Veda vs. M. Manoranjitham*, in C.S.No.1012 of 2007, decided on 28.11.2016, and *Santosh vs. Jagatram and another*, reported in 2010 (2) CTC 489, in support of his contention regarding the effect of fraud, limitation and the requirement of following the proper procedure in final decree proceedings.

8.3. Arguments advanced on behalf of the Respondents:-

8.3.1. Per contra, the learned counsel for the respondents supported the judgment and decree of the Trial Court and contended that the appellants had failed to establish any fraud or misuse of signatures. It was submitted that the release deed dated 15.07.1978 is a registered document and that the appellants had knowledge of the same much prior to the institution of the suit. It was further contended that the procedural objections raised by the appellants are not sufficient to invalidate the final decree proceedings, that the proper remedy against the final decree was by way of appeal, and that the present suit is barred by limitation. It was therefore prayed that the Appeal be dismissed.

8.3.2. This Court has carefully perused the pleadings, oral and documentary evidence available on record and the submissions made by the learned counsel appearing for both sides. The plaintiffs are the appellants herein and the defendants

are the respondents herein. For convenience, the parties are referred to as plaintiffs and defendants as originally arrayed in O.S.No.344 of 2015.

8.4. Admitted facts and effect of preliminary decree:-

8.4.1. On consideration of the pleadings and evidence available on record, the following facts remain admitted and undisputed between the parties.

8.4.2. The relationship between the parties and the fact that the suit properties originally belonged to Nallayya Gounder are not in dispute. The properties consisted of about 23.42 acres of punja land and 6 acres of nanja land. After the death of Nallayya Gounder, his legal heirs succeeded to the properties and derived their respective shares.

8.4.3. Further, it is admitted that the legal heirs of Nallayya Gounder dealt with portions of the punja properties and sold portions of the properties in favour of M.S. Nallayya Gounder and Sellappa Gounder. However, denied that the shares of Thevayee and Periyasamy in respect of the nanja properties were dealt with in favour of Arunachalam and Krishnamurthy.

8.4.4. The purchasers thereafter filed O.S.No.123 of 1985 seeking partition and separate possession of their alleged rights. In the said suit, the legal heirs of Nallayya Gounder were impleaded as parties. During the pendency of the suit, M.S.Nallayya Gounder died and his legal representatives were brought on record.

8.4.5. The preliminary decree passed in O.S.No.123 of 1985 was marked as Ex.A1. As per the said decree, the suit properties were directed to be divided into nine equal shares. Out of the said nine shares, eight shares were allotted jointly to Plaintiffs therein and Gurusamy, Arunachalam, Periyasamy and Thevayee, who were arrayed as D1, D2, D5 and D6 respectively. The remaining 1/9 share was allotted to minor Bharathi, represented through her guardian.

8.4.6. The decree further directed that Items 1 and 2 of the suit properties, which were the properties covered under the sale transactions in favour of M.S. Nallayya Gounder and Sellappa Gounder, should be allotted to the concerned sharers, enabling the purchasers to work out their rights. The third item of the suit property represented the remaining joint family property after excluding the properties covered under the sale transactions.

8.4.7. It is not in dispute that no appeal was preferred against the preliminary decree passed in O.S.No.123 of 1985. D.W.1 Bharathi, in her evidence, admitted that neither Gurusamy nor any other party preferred any appeal against the said preliminary decree. Therefore, the preliminary decree attained finality between the parties.

8.4.8. The dispute in the present proceedings is not regarding the correctness of the preliminary decree, but regarding the manner in which the final decree was worked out and the effect given to the alleged release deed dated 15.07.1978. The third item of the suit property represents the remaining joint family property after excluding the properties sold in favour of M.S. Nallayya Gounder and Sellappa Gounder. The properties sold under the above said transactions together measured 8.78 acres, and the remaining extent of 14.64 acres was shown as Item No.3 of the suit property.

8.4.9. It is an admitted fact that the purchasers have initiated suit in **O.S.No: 839 of 1982** on the file of the file of Subordinate Court, Salem and subsequently, the same was transferred to the Subordinate Court Sankari and renumbered as **O.S.No: 123 of 1985** and decreed on 19.08.1991. The Defendants thereon namely Gurusamy, Arunachalam, Velayammal and the minor Bharathi filed a final decree application in **I.A. No.484 of 1999 in O.S. No.123** of 1985 on the file of the Subordinate Court, Sankagiri. Subsequently, the said proceedings were transferred A.S.06 of 2021,

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to the District Munsif Court and **renumbered as I.A. No.590 of 2004 in O.S. No.338 of 2004.**

8.4.10. It is also an admitted fact that another final decree application in **I.A. No.463 of 2001 in O.S. No.123 of 1985** was purportedly filed on behalf of the present plaintiffs. The said proceedings were also transferred to the District Munsif Court and **renumbered as I.A. No.589 of 2004 in O.S. No.338 of 2004.**

8.5. POINTS 1 TO 4: Maintainability of I.A.No.590 of 2004 :-

8.5.1. The appellants/plaintiffs contend that the final decree application in I.A.No.590 of 2004 is not maintainable, since the same was filed under Sections 146 and 151 of the Code of Civil Procedure instead of Order XXVI Rule 13 CPC. On perusal of the records, it is seen that I.A.No.590 of 2004 was filed by the defendants for working out the rights declared under the preliminary decree. Though the application was filed invoking Sections 146 and 151 CPC, the substance and nature of the proceedings have to be considered rather than the mere provision of law quoted in the application.

8.5.2. The object of filing a final decree application is to give effect to the rights declared under the preliminary decree. Mere wrong mentioning of the provision of law, by itself, will not render the proceedings invalid unless it is shown that such omission has caused prejudice to any party.

8.5.3. Mere invocation of Sections 146 and 151 CPC, instead of the specific procedural provision, does not render the proceedings void, particularly when the Court had jurisdiction to entertain the final decree application and no prejudice has been shown to have been caused to the appellants.

8.5.4. Hence, merely because the application was filed by referring to Sections 146 and 151 CPC instead of specifically mentioning the relevant procedural provision, the final decree proceedings cannot be held to be invalid. The appellants/plaintiffs have failed to establish that any prejudice was caused to them solely on account of such omission.

8.6. Effect of non-compliance with Order XXXII Rules 9 and 12 CPC:-

8.6.1. The appellants/plaintiffs contend that Bharathi was a minor at the time of filing of O.S.No.123 of 1985 and was represented through a court guardian. According to them, after she attained majority, a separate application under Order XXXII Rule 12 CPC ought to have been filed for recording her attainment of majority and an application under Order XXXII Rule 9 CPC ought to have been filed for discharge of the guardian.

8.6.2. On perusal of Ex.A28, namely the ammended copy of the plaint in O.S.No.123 of 1985, it is seen that Bharathi was aged about five years at the time of institution of the suit and was represented through a court guardian. However, the final decree application in I.A.No.590 of 2004 (I.A.No: 484 / 1999) was filed only in the year 1999. By that time, Bharathi had admittedly attained majority. In Ex.A3 final decree application, she was described as having attained majority after being represented by her court guardian.

8.6.3. Though the appellants/ plaintiffs contend that separate applications under Order XXXII Rules 9 and 12 CPC were not filed, they have not established that Bharathi continued to be a minor or that any prejudice was caused to her rights.

8.6.4. The object of Order XXXII Rules 9 and 12 CPC is to protect the interest of minors. Once the minor has attained majority and has participated in the

proceedings without any prejudice being established, mere non-filing of separate applications will not invalidate the entire final decree proceedings. Therefore, the contention of the appellants regarding violation of Order XXXII Rules 9 and 12 CPC cannot be accepted.

8.7. Maintainability of two final decree applications:-

8.7.1. The appellants/ plaintiffs further contend that when one final decree application was already pending, filing of another final decree application was not permissible. On perusal of the records, it is seen that I.A.No.590 of 2004 was filed by defendants 1 to defendants4 seeking allotment of the properties on the basis of their claim. Another application in I.A.No.589 of 2004 was filed claiming rights on behalf of the plaintiffs. Both applications arose out of the same preliminary decree passed in O.S.No.123 of 1985.

8.7.2. The mere filing of two final decree applications by different parties claiming their respective rights under the same preliminary decree cannot render the proceedings invalid. Both applications were considered and orders were passed.

8.7.3. The appellants / plaintiffs have not established that any prejudice was caused to them due to consideration of both applications together. Further the second final decree application in I.A. No.589 of 2004 had been filed by the appellants / plaintiffs herein. Therefore, the contention that two final decree applications could not be maintained simultaneously cannot be accepted.

8.8. Alleged misuse of signatures and plea of fraud:-

8.8.1. The appellants/plaintiffs contend that they had not appeared through any counsel in I.A.No.590 of 2004 (I.A.No: 484 / 1999) and had not filed any counter therein. They further contend that they had not filed I.A.No.589 of 2004

(I.A.No: 463 / 2000) also. According to them, they had engaged Advocate Mr. Aruljothi only in the year 1999 and, at that time, the said Advocate obtained their signatures in blank papers and subsequently misused the same for filing the counter, affidavit and other proceedings. However, admitted fact is that the appellants have received notice in the final decree proceedings and also admitted that they have engaged advocate.

8.8.2. Further, during the cross-examination of P.W.1, she admitted her signatures found in the vakalat, namely Ex.A:27, the counter filed in I.A.No.590 of 2004 marked as Ex.B:6, and the affidavit filed in I.A.No.589 of 2004. Though the 1st appellant admitted that the signatures belonged to her, she contended that the said signatures were misused by the Advocate.

8.8.3. On perusal of Ex.A:27, it is seen that the signatures of Ms.Chellammal Periyasamy, R.Manimegalai and S.Uma Maheswari are found therein. The said vakalat also contains the signatures of Advocate Mr. Aruljothi and Advocate Mr. Panneerselvam. Further, Ex.A:13, namely the affidavit filed in I.A.No.589 of 2004, contains the name of Advocate Mr. Aruljothi and the Advocate Ms. Kalaiselvi.

8.8.4. On careful perusal of Ex.B:6 and Ex.A:13, this Court finds that the signatures of the 1st appellant is affixed in the appropriate place meant for the signature of the deponent. If the contention of the appellants that the 1st appellant's signatures were obtained in blank papers and subsequently misused is accepted, normally such signatures would appear at an unusual place or at the bottom portion of the document. However, in the present case, the signatures are found in the proper place.

8.8.5. Further, the appellants, having admitted receipt of notice in the final decree proceedings and engagement of Advocate Mr. Aruljothi, were expected to be vigilant about the proceedings. Though they alleged misuse of signatures, they have not taken any action against the concerned Advocate alleging professional misconduct or misuse of signed papers. They have also not produced any independent evidence to establish that the counter, affidavit, or other proceedings were filed without their knowledge or authority. Further, though the names of Advocates Mr. Aruljothi, Mr. Panneerselvam, Ms. Kalaiselvi and Mr. Ramalingam are found in the relevant proceedings, the documents also contain the signatures of the concerned Advocates. Hence, the mere allegation of misuse of signatures, in the absence of supporting evidence, cannot be accepted.

8.8.6. Mere allegation that signatures were obtained in blank papers and misused, without any supporting evidence, cannot be accepted. Hence, this Court holds that the appellants failed to establish that the counter and affidavit were filed without their consent or knowledge.

8.9. Knowledge of the Release Deed dated 15.07.1978 and Limitation:-

8.9.1. The appellants/ plaintiffs sought a declaration that the registered release deed dated 15.07.1978 executed by Periyasamy in favour of Gurusamy is null and void. According to the appellants, they came to know about the existence of the said document only in the year 2014 after obtaining copies from the office of the Sub-Registrar.

8.9.2. This contention cannot be accepted. As already discussed, Ex.B6, namely the counter filed in the final decree proceedings in I.A. No.590 of 2004 (I.A.No: 484 / 1999), contains a specific reference to the release deed dated 15.07.1978. This Court has already held that the appellants/ plaintiffs failed to

establish that the said counter was filed without their knowledge or by misuse of their signatures. The counter was filed on 14.09.2000. Therefore, the appellants/ plaintiffs had actual knowledge of the existence of the release deed at least from the date of filing of the said counter and cannot now contend that they came to know about the document only in the year 2014.

8.9.3. It is further seen from the records that the final decree application was originally filed as I.A. No.484 of 1999 and was subsequently renumbered as I.A. No.590 of 2004. Gurusamy, the first petitioner therein, had specifically referred to the release deed dated 15.07.1978 in the affidavit filed in support of the final decree application itself. P.W.1, namely the first appellant, has admitted in her evidence that notice in the final decree proceedings was served upon her. Once notice of the final decree application containing a specific reference to the release deed had been served, it cannot be accepted that she remained unaware of the existence of the document until the year 2014. Thus, the materials on record establish that the appellants/ plaintiffs had knowledge of the release deed from the inception of the final decree proceedings.

8.9.4. The appellants/ plaintiffs further contended that the release deed was not produced during the pendency of O.S. No.123 of 1985 and was produced only during the final decree proceedings. However, it is an admitted fact that all the defendants in the suit, except the minor fourth defendant(Bharathi), remained ex parte, and the preliminary decree came to be passed only in the year 1991. Periyasamy admittedly died only in the year 1996 and the final decree proceedings were initiated in the year 1999. Therefore, the mere fact that the release deed was not relied upon during the trial of the suit does not by itself establish fraud or render the document invalid.

8.9.5. The records further disclose that, during the final decree proceedings, I.A. No.1206 of 2005 was filed seeking permission to receive the release deed in evidence. The petition along with docket order sheet, marked as Ex.A:7, shows that notice was ordered to the respondents and sufficient opportunity was granted to file objections. Counters were filed by some of the respondents, while time was granted to the present appellants to file their counter. Since they failed to file any objection, the application was ultimately allowed on 08.08.2005. Further, P.W.1 has admitted in her cross-examination that the appellants/ plaintiffs had appeared through counsel in the final decree proceedings. Having entered appearance through counsel, it was incumbent upon them to remain vigilant and pursue the proceedings. If they were aggrieved by the order permitting reception of the release deed or by the final decree ultimately passed, the proper remedy available to them was to challenge the same before the competent appellate or revisional Court. Having failed to avail such remedy, they cannot now contend that the document was received without affording them an opportunity.

8.9.6. It is also relevant to note that the release deed is a registered document executed on 15.07.1978. However, this Court does not rest its conclusion merely on the fact of registration, since the materials available on record clearly establish that the appellants/ plaintiffs had actual knowledge of the document during the earlier final decree proceedings. The plea of fraud cannot extend the period of limitation unless the alleged fraud is specifically pleaded and proved. As already held, the appellants/ plaintiffs have failed to establish any fraud, on the part of the respondents/defendants. Consequently, the benefit of Section 17 of the Limitation Act is not available to them.

8.9.7. In such circumstances, this Court holds that the appellants/ plaintiffs had knowledge of the release deed and the final decree proceedings long prior to

the institution of the present suit. This Court has also held that the appellants/ plaintiffs participated in the final decree proceedings by filing a counter in I.A. No.590 of 2004 and by filing I.A. No.589 of 2004. Having participated in the proceedings, if they were aggrieved by the order receiving the release deed or by the final decree ultimately passed, the proper remedy available to them was to challenge the same before the competent appellate Court in the manner known to law. Having failed to avail such remedy within the prescribed period and having failed to establish the plea of fraud, the appellants/ plaintiffs cannot maintain the present suit seeking to set aside the final decree proceedings. Accordingly, the challenge to the release deed dated 15.07.1978 and the consequential final decree is barred by limitation.

8.10. Effect of release deed and whether final decree travelled beyond preliminary decree:-

8.10.1. The appellants/ plaintiffs contend that the release deed dated 15.07.1978 executed by Periyasamy cannot affect the shares declared under the preliminary decree. According to them, even assuming that Periyasamy executed the release deed, it could operate only to the extent of his own share and could not affect the independent share of Thevayee or the rights of other legal heirs.

8.10.2. It is not in dispute that the preliminary decree passed in O.S.No.123 of 1985 declared independent rights in favour of Thevayee. As per the said decree, eight out of the nine shares were allotted jointly to the plaintiffs and defendants 1, 2, 5 and 6, namely Gurusamy, Arunachalam, Periyasamy and Thevayee.

8.10.3. The release deed executed by Periyasamy, even if accepted as genuine and valid, could convey only the right and interest possessed by Periyasamy. The said document cannot affect the independent share declared in favour of Thevayee under the preliminary decree.

8.10.4. The final decree Court is required to work out the rights declared under the preliminary decree and cannot alter or modify the shares already declared therein. If any subsequent event occurs, such as death of a sharer, the final decree Court has to determine the devolution of such share and then effect partition.

8.10.5. According to the appellants/plaintiffs, the final decree Court, while allotting the third item of the suit property on the basis of the release deed executed by Periyasamy, did not examine the effect of the share declared in favour of Thevayee under the preliminary decree or the subsequent devolution of her share. It is their contention that the final decree Court thereby travelled beyond the scope of the preliminary decree.

8.10.6. Even assuming that the appellants/plaintiffs have a grievance that the final decree Court did not properly work out the shares declared under the preliminary decree or exceeded the scope of the preliminary decree while relying upon the release deed dated 15.07.1978, such grievance relates to the correctness and legality of the final decree. The proper remedy available to the appellants/plaintiffs was to challenge the final decree by way of appeal or other proceedings known to law. Having failed to do so and having failed to establish fraud, the appellants/plaintiffs cannot seek to reopen the final decree by way of the present suit.

8.11. Devolution of shares of Thevayee and Periyasamy:-

8.11.1. The appellants/plaintiffs contend that, under the preliminary decree, Thevayee was declared entitled to a share along with Gurusamy, Arunachalam and Periyasamy. According to them, after the death of Thevayee, her share devolved upon her legal heirs and the same ought to have been worked out in the final decree proceedings.

8.11.2. The appellants/ plaintiffs further contend that the final decree Court ought to have determined the legal heirs of Thevayee and the devolution of her share before effecting allotment of the third item of the suit property. It is further contended that, even assuming the release deed dated 15.07.1978 executed by Periyasamy is genuine and valid, the same could operate only to the extent of the right, title and interest of Periyasamy and could not affect any independent rights of other sharers.

8.11.3. The appellants/plaintiffs also contend that, after the death of Periyasamy in the year 1996, his rights, if any, devolved upon his legal heirs in accordance with law and that such devolution also required consideration while passing the final decree. According to the appellants/plaintiffs, the daughters of Periyasamy, namely Manimegalai and Uma Maheswari, being Class-I heirs under the Hindu Succession Act, 1956, were also entitled to succeed to his estate, further Ravichandran, who was shown as a minor represented by Periyasamy in the sale transactions dated 15.07.1978, also had rights requiring consideration while examining the effect of the release deed.

8.11.4. All the above contentions relate to the correctness of the manner in which the final decree Court worked out the rights declared under the preliminary decree. Even assuming that such grievances are available to the appellants, the proper remedy was to challenge the final decree before the competent appellate forum. In the absence of proof of fraud, the appellants cannot seek to reopen those issues by way of the present suit.

8.12. Whether final decree is liable to be set aside:-

8.12.1. The appellants/plaintiffs contend that the final decree passed in I.A.No.590 of 2004 was obtained by fraud and, therefore, they are entitled to

maintain the present suit. However, as already discussed, the appellants/plaintiffs have failed to establish the alleged fraud regarding misuse of signatures, filing of proceedings without their knowledge, or suppression of material facts.

8.12.2. The materials available on record establish that the appellants/plaintiffs had knowledge of the final decree proceedings and the release deed during the pendency of the earlier proceedings. Having participated in the proceedings and having knowledge of the documents relied upon therein, if they were aggrieved by the final decree, the proper remedy available to them was to challenge the same by way of appeal or other proceedings known to law within the prescribed period of limitation.

8.12.3. A mere allegation that the final decree Court wrongly appreciated a document or committed an error in working out the shares cannot, by itself, amount to fraud. The benefit of Section 17 of the Limitation Act can be invoked only when fraud is specifically pleaded and proved by acceptable evidence.

8.12.4. In the present case, the appellants/plaintiffs have failed to establish that the final decree was obtained by practising fraud. Therefore, they cannot seek to set aside the final decree by filing a separate suit after a long delay. Consequently, the suit filed by the appellants/plaintiffs seeking to set aside the final decree is not maintainable.

8.13. Effect of Judgments relied upon by the appellants:-

The learned counsel for the appellants/plaintiffs relied upon various judgments and contended that a final decree Court cannot alter or travel beyond the rights declared under the preliminary decree and that a decree obtained by fraud can be challenged by way of a separate suit. However, the principles laid down in the said judgments cannot be applied to the facts of the present case, since

the appellants have failed to establish that the final decree was obtained by fraud. Further, the grievance regarding the manner in which the shares were worked out or the alleged exercise of jurisdiction beyond the preliminary decree relates to the correctness of the final decree, for which the appellants ought to have availed the appropriate appellate remedy. Hence, the said judgments do not advance the case of the appellants.

8.14. Conclusion: -

8.14.1. In view of the above discussions, this Court holds that the appellants/plaintiffs have failed to establish that the final decree proceedings were obtained by fraud or that their signatures were misused by the Advocate. The appellants had knowledge of the final decree proceedings and the release deed during the earlier proceedings and failed to avail the appropriate remedy of appeal.

8.14.2. A mere allegation of fraud, without acceptable evidence, cannot confer a right to maintain a separate suit for setting aside the final decree. Consequently, the present suit filed by the appellants/plaintiffs is not maintainable.

8.14.3. On a thorough consideration of the facts and circumstances of the case, the oral and documentary evidence available on record, and the legal principles applicable thereto, this Court is of the view that there are no infirmities or irregularities in the judgment and decree passed by the Trial Court in O.S. No.344 of 2015 dated 23.11.2020. Accordingly, this Court finds no merit in the present appeal, and the same is liable to be dismissed.

Accordingly, Points Nos.1 to 4 are answered against the appellants/plaintiffs.

8.15. Point No.5: -

In view of the findings under points 1 to 4, which are against the appellant, no further relief survives for consideration. Hence, issue no.5 is answered against the appellants.

9. In the result, for the reasons discussed above, the appeal is dismissed. The judgment and decree passed by the learned Additional District Munsif, Tiruchengode in O.S. No. 344 of 2015 dated 23.11.2020 are hereby confirmed. There shall be no order as to costs.

This judgment is dictated to the Steno-typist, directly in the computer typed by her, corrected and pronounced by me in the open court on the 14th day of July 2026.

Additional Subordinate Judge,
Tiruchengode.

Both side witnesses and documents : NIL

Additional Subordinate Judge,
Tiruchengode.

Fair/Draft/Judgment

AS No.06 of 2021

Dated : 14.07.2026.