THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 07.11.2025	Judgment pronounced on : 09.01.2026

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

A.S.No.1108 of 2024
and CMP. No.28199 of 2024

1.C.S.Senthilkumar
2.C.S.Karthikeyan
3.S.Krishnasai
4.C.Santhosh Karthikeyan

..Appellants

Vs.

1.R.Komalavalli
2.R.Kanchanamala
3.A.Vijaya
C.E.Selvaraj (Since Deceased)

..Respondents

Prayer: Appeal Suit filed under Section 96 and Order XLI, Rule 1 of CPC to set aside the Judgment and Decree dated 05.09.2024 made in O.S. No.5829 of 2019 on the file of the III Additional City Civil Court, Chennai thereby allowing the First Appeal.

For Appellants : Mr.M.Vijay Anand

For Respondents : Mr.V.Manohar for R1 to R3

JUDGMENT

The defendants 2 to 5 in a suit for partition and separate possession are the appellants in this First Appeal.

II. PLEADINGS:

2.1. PLAINT, IN BRIEF:

The suit property, an ancestral joint family property of the plaintiffs and the defendants, originally belonged to C.Ekamabara Chetty and Munuswamy Chetty. The said Munuswamy Chetty and his son Shanmuga Chetty executed a deed of release in favour of Ekambara Chetty, way back in the year, 1937, relinquishing their rights in the suit property in favour of Ekamabara Chetty. The first defendant is the son of Ekambara Chetty. The first defendant had two sisters by name C.Sulochana and C.Saraswathi. They had also executed a Release Deed in favour of the first defendant. The defendants 1 to 3 have sold an extent of 2,044 sq.ft out of 3,836 sq.ft to one Krishnamurthy, under sale deed dated 21.08.1986 and retained the remaining 1,792 sq.ft. which is the suit property. The property has been in joint possession and enjoyment of the plaintiffs and the defendants 1 to 3. The plaintiffs requested the defendants 1 to 3, claiming their share in the property but however, the defendants evaded an amicable partition. The plaintiff thereafter applied for an Encumbrance Certificate and came to know that on 19.02.2019, the first defendant, behind the back of the plaintiffs had settled the property in favour of defendants 4 and 5,

who are sons of the defendants 2 and 3, respectively. The first defendant had no right to execute the settlement deed and they are not valid and binding on the plaintiffs. The suit property will fetch not less than Rs.15,000/- per month if rented out and the plaintiffs claiming partition and mense profits, issued a notice on 01.03.2019 and despite receipt of the notice, the defendants did not comply with the demands made by the plaintiffs, necessitating the plaintiffs to file the suit for partition.

2.2. WRITTEN STATEMENT OF THE FIRST DEFENDANT IN BRIEF:

The first defendant, being the father of the plaintiffs, filed a written statement stating that he has no objection for the suit being decreed.

2.3. WRITTEN STATEMENT OF THE SECOND DEFENDANT AND ADOPTED BY THE FOURTH DEFENDANT, IN BRIEF:

The suit property was a separate property of C.E.Selvaraj, the first defendant by virtue of Release Deeds in Doc. Nos.2754 and 2785 of 1978 and on and from the said dates of the registered Release Deeds, the properties lost its character of joint family property and had become absolute property of the first defendant. The first defendant sold a portion of the property measuring 2044 sq.ft only in order to meet the marriage expenses of the plaintiff and

retained the remaining property and he was in separate and absolute enjoyment of the same. The first and second defendants have already released their rights in the property in favour of defendants 2 and 3, but however, the said document was not registered since the plaintiffs had no title over the suit property and the defendants also believed that the plaintiffs would not claim any right in future. The plaintiffs cannot challenge the settlement deeds, in and whereby, the first defendant has settled the properties and divested himself of all his rights in the suit property in favour of his minor grandchildren. The settlement deeds were acted and revenue records were also mutated in the name of the minor children and taxes and other public outgoing are paid only in the names of the minor children. The suit property is not fetching any rental incomes and it is in dilapidated condition. The plaintiffs were informed even in 2010 that the suit property has been settled in favour of the grandchildren and therefore, the suit for partition is barred by limitation. Though the defendants received a notice from the plaintiffs, the second defendant handed over the said notice to the first defendant, father and believing that he would be responding to the same, the second defendant did not choose to send an independent reply. The first defendant also died on 23.10.2020, pending the suit. The plaintiffs are not entitled for any relief.

2.4. WRITTEN STATEMENT FILED BY THE DEFENDANTS 3

AND 5, IN BRIEF:

These defendants sided with the claim for partition and supported the plaintiffs' action for partition. Subsequently, an additional written statement has been filed going back on the averments in the earlier written statement and contending that the property was the absolute and separate property of Selvaraj/the first defendant and the property was not a joint family property, but the independent property of the first defendant. The settlement deed executed by the first defendant was voluntary and while he was in sound and disposing state of mind and the settlement deed has been acted upon and there is no cause of action for filing the suit.

2.5.REPLY STATEMENT FILED BY THE FIRST PLAINTIFF, IN BRIEF:

Meeting the additional written statement, taking a u-turn by the defendants 3 and 5, the first plaintiff filed a reply statement stating that the plaintiffs continued to be members of joint family and they are entitled to 1/6th share each. The allegations made in the additional written statement are self-serving and do not merit any consideration.

2.6. ISSUES FRAMED BY THE TRIAL COURT:

(1) Whether the plaintiff is entitled for declaration of the settlement deed dated 08.09.2010 by 1st defendant in favour of 4th defendant as null and void and not binding

upon him?

(2) Whether the plaintiff is entitled for declaration of the Settlement deed dated 08.09.2010 by 1st defendant in favour of 5th defendant as null and void and not binding upon him as prayed?

(3) Whether the plaintiff is entitled for a preliminary decree of partition as prayed for?

(4) Whether the plaintiff is entitled for future mesne profits as prayed for?

(5) Whether the plaintiff is entitled for permanent injunction as prayed for?

(6) To what other relief the plaintiff is entitled?

2.7. TRIAL:

On the side of the plaintiffs, the first plaintiff and one Shanthakumari were examined as P.W.1 and P.W.2 respectively and Ex.A1 to Ex.A8 were marked. On the side of the defendants, the second defendant examined herself as D.W.1 and marked Ex.B1 to Ex.B6.

2.8.FINDINGS OF THE TRIAL COURT:

The Trial Court finding that the property retained the character of joint family property, proceeded to grant a preliminary decree in favour of the plaintiffs and also declare that the settlement deeds executed by the first defendant in favour of defendants 4 and 5 was null and void and not binding on the plaintiffs. The Trial Court also granted a decree for permanent injunction

to restrain the defendants 2 to 5 from creating any encumbrance or alienating the suit schedule property till the partition was effected by metes and bounds.

3. I have heard Ms.S.Meenakshi and Mr.M.Vijay Anand, learned counsel for the appellants and Mr.V.Manohar, learned counsel for the respondents 1 to 3.

4. ARGUMENTS OF THE LEARNED COUNSEL FOR THE APPELLANTS:

4.1. Ms.S.Meenakshi, learned counsel for the appellants would submit that even in and by Release Deed of the year 1937, the parties had put an end to the ancestral/joint family character of the suit property and clear intent has been made out even in the covenants of the said documents. She would further state the very fact that the first defendant exercised absolute right and interest over the suit property has also sold a substantial portion of the property, that too only to conduct the marriages of the plaintiffs, would only evidence the same.

4.2. As regards the Release Deed executed by the two sisters, Ms.S.Meenakshi, learned counsel would contend that the Release Deeds were executed for consideration and taking me through the documents, in this regard,

would submit that the sisters were thereafter estopped from claiming any right in the suit property especially after taking benefit of the consideration reflected in the Release Deeds.

4.3. She would further state that the daughters, C.Sulochana and C.Saraswathi already executed registered Release Deeds in favour of the first defendant and the first defendant became the absolute owner of the suit property and he had every right to deal with the same. She would further state that the suit was filed even during the lifetime of the first defendant, father and since the first defendant was under the care and control of the daughters, the written statement has been filed in a manner supporting the plaintiffs' case for partition. The learned counsel would further state that in cross examination, it has been brought out that it was only the daughter who arranged an Advocate to appear for the father, the first defendant. In such circumstances, it is the contention of Ms.Meenakshi, learned counsel for the appellants that the daughters taking advantage of the father residing with them, have brought about a collusive written statement favourable to the case of the plaintiffs. She would further state that having executed Ex.B3, Release Deed in favour of the first defendant, no claim for partition can lie and the consequent encumbrance and alienation by the first defendant cannot be questioned by the plaintiffs, that too, belatedly in the year 2019.

4.4. It is the also the contention of Ms.Meenakshi, learned counsel for the appellants that even according to the plaintiffs they had knowledge of the alienations and encumbrances even in February 2019 and therefore, the suit having not been filed within a period of three years, the reliefs are also time barred. She would further state that the plaintiffs have not adduced any evidence or proof in support of their claim that the property is a joint family property or that it has been in joint possession and enjoyment of the parties. In fact, she would submit that to the contrary, the defendants have established that the settlees are in absolute possession and enjoyment of the same and the Trial Court has erroneously proceeded to decree the suit, that too based on the written statement filed by the first defendant, without noticing that the written statement was prepared only at the instance of the plaintiffs, taking advantage of the father, the first defendant residing with his daughters and further, the first defendant died pending the suit and therefore, no credence can be given to the written statement filed by him, when there has been no evidence in support of the averments in the said written statement.

4.5. Also referring to the cross examination of P.W.1, Ms.S.Meenakshi, learned counsel would submit that P.W.1 admitted to the fact that she was aware of Ex.A1 and Ex.A2, even in 2015 when she made a claim and she only

states that her father did not agree and give any share to the plaintiffs. She would also invite my attention to the categorical admissions of P.W.1 that she knew about the settlement deed executed by first defendant, father in 2015/2016. The learned counsel would therefore states that the Trial Court has clearly committed a grave error in decreeing the suit for partition. Learned counsel for the appellants has relied on the following judgments in support of her contentions:-

(i) *Angadi Chandranna Vs. Shankar and Others,* reported in (*2025) SCC Online SC 877;*

(ii) *Uma Devi & Others Vs. Ananda Kumar and Others,* reported in *(2025) 5 SCC 198*

(iii) *K.S.Nanji and Co., Vs. Jatashankar Dossa and others,* reported in *AIR 1961 SC 1474;* and

(iv) *B.L.Sreedhar and others Vs. K.M.Munireddy (Dead) and others,* reported in *(2003) 2 SCC 355.*

5. ARGUMENTS OF THE LEARNED COUNSEL FOR THE RESPONDENTS:

The primordial argument of Mr.V.Manohar, learned counsel for the respondents/plaintiffs is that the character of the property which admittedly was

ancestral in nature can never loose its character and would continue to remain as ancestral/coparcenary property and the Release Deeds would not put an end to the ancestral nature of the property. He would further states that except the second defendant, all the other defendants had virtually submitted to a decree for partition, ofcourse, excepting defendants 3 and 5, who had initially supported the claim for partition, but however subsequently by filing an additional written statement, they have gone back on their original stand. He would also invite my attention to the cross examination of D.W.1, where the second defendant admits that the properties are ancestral in nature. He would further contend that the documents executed in 2010 were brought about by exercising undue influence and coercion, when the father was admittedly in the hospital and the defendants had not adduced any evidence to show that the execution of settlement deed in 2010 was voluntary.

5.1. He would further contend that right from 2010, the settlement deeds were not acted upon until 2018 and there is absolutely no explanation on the side of the appellants as to why in furtherance of the settlement deeds, no steps were taken to even mutate revenue records. He would further state that the defendants have not established that the plaintiffs had knowledge only in 2015/2016 and therefore, the claim for partition cannot be said to be time barred. It is his further argument that when the plaintiffs' right continues, there

can be no limitation for the plaintiffs seeking partition. Learned counsel relies on the following decisions in support of his contentions:

(i) *N.Kalavathy Vs. Sriramulu Naidu and others,* reported in *(2023) SCC Online Mad 3855;*

(ii) *Shyam Narayan Prasad Vs. Krishna Prasad and others,* reported in *(2018) 7 SCC 646;* and

(iii) *Thamma Venkata Subbamma (Dead) by LR Vs. Thamma Rattamma and Others,* reported *(1987) 3 SCC 294*.

6. I have carefully considered the submissions advanced by the learned counsel for the parties.

7. Upon consideration of the pleadings, oral and documentary evidence, the grounds of appeal and the arguments of the learned counsel, I frame the following points for consideration:

(1) Whether the suit property continued to remain an ancestral properties at the hands of the first defendant, entitling the plaintiffs to claim partition?

(2) Whether the suit is barred by limitation?

8. The relationship between the parties and also execution of documents per se, is admitted all round. Though the first defendant has alienated the

property in 2010, when the suit for partition was filed, he has chosen to file a written statement supporting the plaintiffs. However, there was no occasion for the first defendant to enter the witness box and depose in support of the claims in the written statements, since he passed away pending the suit and in fact even before, trial commenced. The plaintiffs who have come to Court with a specific case that the suit property is an ancestral property and they are entitled to a share by birth, the burden is only upon them to prove the character of the property and consequently, they are entitled to claim a right for claim partition of the said suit property.

9. Admittedly, even in 1937, there was a Release Deed Ex.B1. It is seen from the said document that the property originally belonged to Ekambara Chetty and Munuswamy Chetty. Munuswamy Chetty and his son Shanmuga Chetty released all their rights and interest in favour of Ekamabara Chetty under the said Release Deed marked as Ex.B1 dated 29.09.1937. In the said Release Deed, it is seen that the parties have mentioned that the property was purchased by the father of Munuswamy Chetty and Ekamabara Chetty viz., C.Venkata Swamy Chetty from his self acquired funds, by sale deed dated 18.05.1903 in the joint names of himself and his wife, Bangarammah. The parents of Ekambara Chetty and Munuswamy Chetty died even 20 years prior to 1937, leaving behind three sons, two of them being Munuswamy Chetty and

Ekamabara Chetty and one another son Guruswamy Chetty, and a daughter Ankammah. The other son Guruswamy Chetty is said to have left the family house and has not been heard of and the other two sons have alone been in absolute possession and enjoyment of the property ever since the demise of their parents. There was a clear mention that the brothers Munuswamy Chetty and Ekambara Chetty have already divided their status and they are living separately in different portions of the property for last five years and the suit property is the only remaining joint property and that it has been decided that Ekambara Chetty would take the share of his brother Munuswamy Chetty for a consideration of Rs.1,250/- and across receipt of the same, Munuswamy Chetty and his son Shanmugam have released all their rights for consideration in favour of the first defendant.

10. It is thus clear from the 1937, Release Deed that there is no ancestral nucleus for the following reasons:

(i) the property was the self acquired property of the father of Munuswamy Chetty and Ekambara Chetty, which has been admittedly purchased by him out of his self acquired funds. Therefore, the property has not been passed on by way of inheritance to their father, for the plaintiffs to even claim that it is an ancestral properties.

(ii) the property had been purchased jointly in the names of the parents

viz., the father and the mother. In such circumstances, I am unable to see how the character of ancestral property can even be attributed to such a purchase, when there is a specific mention in Ex.B1 Release Deed that the property was purchased by his father, Venkataswamy Chetty in his name as well as his wife's name, out of his self acquired funds.

(iii) the daughters of the first defendant have already executed registered Release Deeds for consideration vide Ex.B2 and Ex.B3, releasing and relinquishing their share for consideration of Rs.8,000/- each in favour of the first defendant. Even in the preamble to the Release Deeds, there is a clear mention that the suit property belonged absolutely to Ekambara Chetty, the first defendant and consequent to his demise, the two daughters became entitled to a 1/3rd share each and they have released their respective 1/3rd share after receiving a sum of Rs.8,000/- in favour of the brother, the first defendant. Therefore, it is clear from Ex.B2 and Ex.B3 that what all rights, if any, the sisters had, the same has been given up for consideration, in favour of the first defendant.

11. Despite the Release Deeds, it is contended by the plaintiffs that the first defendant held the property as ancestral property and despite the Release Deeds, the character and nature of the property will not change, I am unable to

countenance the argument of Mr.V.Manohar, learned counsel in this regard.

12. From over all assessment of the above, it is very clear that the property was never an ancestral property of the first defendant. Even though it is contended that the documents executed in 2010 vide Ex.A3 & Ex.A4 when the first defendant was admitted in the hospital were brought about by undue influence, it is the burden of the plaintiffs to establish that the documents are vitiated by undue influence and coercion. There is absolutely no evidence to support such fanciful and unilateral claims made by the plaintiffs.

13. As already discussed, even though the plaintiffs had the support of their father when the suit for partition was filed, the contents of the written statement were never established during trial. No steps have been taken by the plaintiffs to invalidate Ex.A3 and Ex.A4 settlement deeds. However, unfortunately, the Trial Court has solely relied on the uncorroborated written statement of the first defendant to decree the suit without independently testing whether the plaintiffs had any right at all to seek for partition of the suit property. Moreover, when the first defendant exercised his independent and absolute right by disposing of a portion of the property admittedly, there is no question of contending that the property was a joint family/ancestral property at his hands.

14. The reliance placed on the *Vineeta Sharma Vs. Rakesh Sharma*, reported in *(2020) 9 SCC page 1*, is wholly misplaced and without adverting to the facts of the case on hand. The Trial Court ought to have placed the burden on the plaintiffs to establish that the registered settlement deeds in favour of defendants 2 and 3 were obtained fraudulently and were not binding. The Trial Court has come to an erroneous conclusion by rendering perverse findings which cannot sustained in law.

15. The Hon'ble Supreme Court in *Angadi Chandranna*'s case (referred herein supra), has held that for a property to be considered as ancestral property, it has to be inherited from any of the paternal ancestors upto three generations. Admittedly, it is not so in the present case. In *B.L.Sreedhar*'s case, (referred herein supra), the Hon'ble Supreme Court held that if, by words of conduct, a person consents to an act which could not lawfully have been done without such consent, and others are thereby led to do that which they otherwise would not have done, then such person cannot challenge the legality of the act he authorised, to the prejudice of those who have acted relying on the fair inference to be drawn from his conduct. In the present case, the first defendant, by alienating major portion of the suit property, treating it to as his self acquired property and subsequently, his two daughters have also admitted the suit

property to be the absolute property of the first defendant and proceeded to release their respective 1/3rd shares in favour of the brother, the first defendant. The ratio laid down by the Hon'ble Supreme Court in *B.L.Sreedhar*'s case, (referred herein supra), would squarely apply here and the plaintiffs and the first defendant are estopped by conduct from claiming to the contrary. In view of the above, I am inclined to set aside the erroneous and perverse findings rendered by the Trial Court. Point 1 is answered in favour of the appellants/defendants and against the plaintiffs/respondents.

16. Point No.2:

No doubt, normally in a suit for partition, it is a continuing cause of action and as long as the co-owner/coparcener's right is available, there is no time limit for seeking partition, by filing a Civil Suit. However there are certain exceptions viz., when there is clear adverse and hostile right or interest exhibited by other co-owners or coparceners, to the detriment of the plaintiff who seeks for partition, or when there is an ouster of the right of the plaintiff. In the present case, as already found, after executing the Release Deeds, the sisters had no right to institute a suit for partition in the first place. Further, P.W.1, categorically admitted in cross examination that she came to know about the 2010 document executed by the first defendant in 2015/2016. The suit admittedly has been filed only after a lapse of 3 years in the year 2019. The suit

also does not seek for declaration to set aside the Release Deeds executed by the two daughters of the first defendant vide Ex.B2 and Ex.B3. They knew about the first defendant executing a settlement deed in favour of the grandchildren through the son. Though it is their case that the documents were brought about fraudulently, by taking advantage of the fact that the father was in the hospital, it is not known why despite coming to know of the same even in 2015, the plaintiffs kept quite and they have not questioned the settlement deed executed by the first defendant. Therefore, the claim for partition as well as declaration was clearly time barred.

17. The Hon'ble Supreme Court in *Umadevi*'s case, (referred herein supra), held that when a person is excluded from the joint family property, to enforce right to share therein, Article 110 of the Limitation Act would apply and it would commence from when the exclusion becomes known to the plaintiff. The Hon'ble Supreme Court also discussed the effect of doctrine of constructive notice under Section 3 to Explanation 1 of the Transfer of Property Act, and held that the claim for partition was hopelessly time barred, especially when after partition, the family members had also dealt with the properties and registered sale deeds also came to be executed.

18. In *K.S.Nanji*'s case, the Hon'ble Supreme Court held that the burden

of proving knowledge is on the plaintiffs to bring the action in time. In the present case, as already discussed, it has come out in cross examination, not at one place, but at two places, that the plaintiff had knowledge about the first defendant executing the settlement deeds in 2010, even in 2015. Therefore, the claim is hopelessly barred by limitation. Without challenging the settlement deeds and being successful in such challenge, the plaintiff cannot be entitled to any relief of partition. Therefore, when the relief of declaration challenging the settlement deeds is time barred, the plaintiffs are consequently, not entitled to the relief of partition as well.

19. Coming to the decisions relied on by the learned counsel for the respondents in *Thamma Venkata Subbamm*a's case, (referred herein supra), the Hon'ble Supreme Court held that when there is an alienation of coparcenary property by way of gift or relinquishment, a gift of the donor's undivided coparcenary interest, reserving life interest would amount in renunciation in favour of the other coparceners and that the same would be valid. In *Sham Narayan Prasad*'s case, the Hon'ble Supreme Court held that the property inherited by a male Hindu from his father, father's father or father's father's father, is an ancestral property and the essential feature of ancestral property according to Mitakshara Law is that sons, grandsons and great grandsons of persons who inherited and acquired interest and rights attached to such property

at the moment of their birth, the share which the coparcener's obtained for partition of his ancestral property, as regards his male issue, and even after partition, the property in the hands of the son will continue to be the ancestral property and would go only by survivorship. The ratio laid down by the Hon'ble Supreme Court will not apply to the facts of the present case as I have already found that the property has lost its character of being ancestral in nature even in 1937 or atleast in 1978 when the two sisters of the first defendant, released their respective 2/3rd share. Therefore, this decision will also not apply, moreseo when I have already found that the property itself was purchased in the name of the father and the mother and it cannot be characterised as an ancestral property available for partition by survivorship.

20. Insofar as reliance placed on by the Hon'ble Division Bench, to which I was a party, in *N.Kalavathy*'s case, (referred herein supra) that was a case where following *Thamma Venkata Subbamma*'s case, (referred herein supra), we held that a gift was amounting to renunciation in favour of remaining coparceners and that consent of other coparceners was immaterial. In the facts of the said case, we had found that the property was a coparcenery property with the birth of the son, even though there was only a single coparcener. In the present case, I have already found that the property is not an ancestral property for the plaintiffs to even stake a claim in the property. Therefore, the ratio laid

down by the Hon'ble Division Bench is also not applicable.

21. In fine, point No.2 is also answered against the plaintiffs and in favour of the appellants.

22. For all the above reasons, the First Appeal is allowed and the Judgment and Decree passed by the III Additional City Civil Court, Chennai, in O.S. No.5829 of 2019, on 05.09.2024 is hereby set aside. Consequently, connected Miscellaneous Petition is closed. considering the relationship of the parties, there shall be no order as to costs.

09.01.2026

Neutral Citation Case : Yes
Internet: Yes
Index : Yes
To

1. The Judge, III Additional City Civil Court, Chennai

2. Section Officer, V.R. Section,
   Madras High Court,
   Madras.

P.B.BALAJI.J,

rkp

22/23

Pre-delivery judgment made in
A.S.No.1108 of 2024
and CMP. No.28199 of 2024

09.01.2026