

A.S.No.332, 333 & 433 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2026

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CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE M. JOTHIRAMAN

A.S.Nos.332, 333 & 433 of 2022

and

C.M.P.Nos.12130 of 2022

A.S.Nos.332 of 2022 :

S.D.S.Selvam

... Appellant

Vs.

1.D.Ilavarasi

2.S.Duraimanickam

Sakunthala (deceased)

3.Bharathi

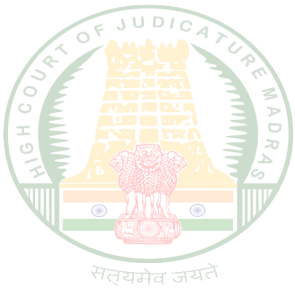
... Respondents

Prayer : Appeal filed under Section 96 r/w. Order XLI Rules 1 and 2 of the Code of Civil Procedure against the judgment and decree dated 17.12.2021 passed in O.S.No.8953 of 2019 on the file of the XVI Additional City Civil Court, Chennai, decreeing the suit as prayed for.

For Appellant : Mr.V.Ashokpathy
for M/s.Pass Associates

For R1 and R3 : Mr.Niranjan Rajagopalan

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For R2 : Mr.P.R.Raman
Senior Counsel
for Mr.M.Stalin

A.S.Nos.333 of 2022 :

S.D.S.Selvam ... Appellant

Vs.

Sakunthala (deceased)
1.S.Duraimanickam
2.Bharathi
3.D.Ilavarasi

... Respondents

Prayer : Appeal filed under Section 96 r/w. Order XLI Rules 1 and 2 of the Code of Civil Procedure against the judgment and decree dated 17.12.2021 passed in O.S.No.8954 of 2019 on the file of the XVI Additional City Civil Court, Chennai.

For Appellant : Mr.V.Ashokpathy
for M/s.Pass Associates

For R1 : Mr.P.R.Raman
Senior Counsel
for Mr.M.Stalin

For R2 and R3 : Mr.Niranjan Rajagopalan



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A.S.Nos.433 of 2022 :

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S.Duraimanickam

... Appellant

Vs.

1.D.Ilavarasi
2.S.D.S.Selvam
Sakunthala (deceased)
3.Bharathi

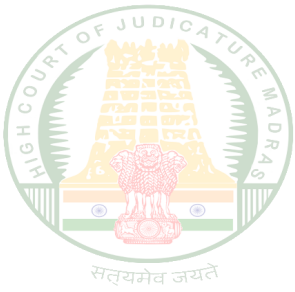
... Respondents

Prayer : Appeal filed under Section 96 r/w. Order 41 Rules 1 and 2 of the Code of Civil Procedure against the judgment and decree dated 17.12.2021 passed in O.S.No.8953 of 2019 on the file of the XVI Additional City Civil Court, Chennai, declaring the 1st respondent/plaintiff as the absolute owner of the suit property and directing the appellant/1st defendant to deliver possession of the suit property to the 1st respondent/plaintiff.

For Appellant : Mr.P.R.Raman
Senior Counsel
for Mr.M.Stalin

For R1 and R3 : Mr.Niranjan Rajagopalan

For R2 : Mr.V.Ashokpathy
for M/s.Pass Associates



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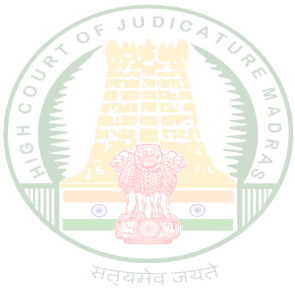
COMMON JUDGMENT

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(Judgment was delivered by **N. SATHISH KUMAR, J.**)

Challenging the common judgment and decree passed by the learned XVI Additional Judge, XVI Additional City Civil Court, Chennai, dated 17.12.2021, decreeing the suit in O.S.No.8953 of 2019, declaring the plaintiff therein as the absolute owner of the suit property and dismissing the suit in O.S.No.8954 of 2019 seeking partition filed by the paternal uncle of the plaintiff in O.S.No.8953 of 2019, the Appeals in A.S.Nos.332 and 333 of 2022 have been filed respectively by the paternal uncle of the plaintiff in O.S.No.8953 of 2019.

2.Challenging the judgment and decree passed by the learned XVI Additional Judge, XVI Additional City Civil Court, Chennai, dated 17.12.2021, decreeing the suit in O.S.No.8953 of 2019 declaring the plaintiff therein as the absolute owner of the suit property and directing the 1st defendant therein/father of the plaintiff in O.S.No.8953 of 2019 to hand over the possession of the suit property, the 1st defendant has filed the Appeal in A.S.No.433 of 2022.



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3.The parties shall be referred to as per their rank before the trial Court.

4.Since one of the suit schedule properties, i.e., B-Schedule property in the suit for partition in O.S.No.8954 of 2019 is the subject matter of the suit for declaration in O.S.No.8953 of 2019, both the suits were tried together and common evidence was recorded in O.S.No.8953 of 2019 (suit for declaration) and were jointly disposed of the trial Court by common judgment and decree dated 17.12.2021.

5.Since all these three Appeals arise out of the common judgment and decree of the trial Court, we are inclined to dispose of all the Appeals by this common judgment. Considering the factual matrix and for the sake of convenience, the suit for partition in O.S.No.8954 of 2019 is taken as the lead case.



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O.S.No.8954 of 2019 (Suit for partition) :

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6.The plaintiff in O.S.No.8954 of 2019 (S.D.S.Selvam) and the 2nd defendant therein (S.Duraimanickam) are the sons of one S.D.Somasundaram, former Cabinet Minister of State of Tamil Nadu. The 1st defendant (Sakunthala) is the mother of the plaintiff and the 2nd defendant. The 3rd defendant (Bharathi) is the wife of the 2nd defendant. The 4th defendant (Ilavarasi) is the daughter born to the defendants 2 and 3.

7.It is the case of the plaintiff that the suit A-Schedule and B-Schedule properties are the joint family properties of the plaintiff's father Late S.D.Somasundaram and in particular, B-Schedule property was purchased with the income derived from the joint family nucleus. Since A-Schedule property was yielding surplus income, the father of the plaintiff and the 2nd defendant, Late S.D.Somasundaram, purchased a site in B-Schedule property in the name of his elder son, viz., the 2nd defendant, since he being a coparcener. According to the plaintiff, the said purchase is for the benefit of the family, not intending to benefit the 2nd defendant alone. The 2nd defendant had no wherewithal to purchase the said property. After purchase,



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construction had been put up by using the joint family income. The

plaintiff's father and his family were also residing in the B-Schedule

property ever since the construction was made by the plaintiff's father. The

B-Schedule property was always treated as a joint family property. The

plaintiff's father died on 06.12.2001 leaving behind the plaintiff (younger

son), 1st defendant (mother) and the 2nd defendant (elder son) as legal heirs.

The 2nd defendant married the 3rd defendant on 18.01.1991. Out of the

wedlock, the 4th defendant was born. In view of some misunderstanding

between the defendants 2 and 3 in the matrimonial life, their marriage was

dissolved by a decree of divorce and the 3rd defendant ceased to live in the

B-Schedule property after the divorce proceedings were initiated. The 1st

defendant (mother) was in-charge of the joint family properties and the

income from the joint family properties was in her custody. The 1st

defendant (mother) gave a sum of Rs.20 Lakhs to the 3rd defendant, which is

more fully described in the suit C-Schedule. D-Schedule properties are the

movables belonging to the joint family. It is the further case of the plaintiff

that the 2nd defendant executed a Gift Deed in favour of his minor daughter,

i.e., the 4th defendant by way of a registered settlement deed dated

25.03.2022, which is not binding on the plaintiff. According to him, he

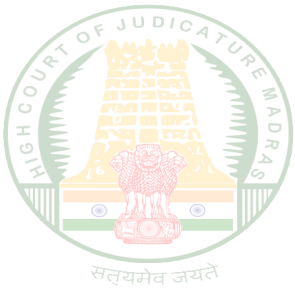


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came to know about the settlement deed and the sum of Rs.20 Lakhs being given as alimony, only a month before filing of the suit. It is the plaintiff's

case that, even after the settlement deed, the property is in joint possession by the plaintiff, his brother and mother. The gift deed has not been acted upon and hence, it would have not been accepted. According to the plaintiff, as a coparcener, he is entitled to 4/9 share in all the suit schedule properties. Hence, he filed the suit for partition in O.S.No.8954 of 2019.

8.The mother/1st defendant filed a written statement admitting the character of the properties as joint family properties. She has stated that the B-Schedule property was purchased out of the income from the joint family nucleus and construction was put up by the manager of the family. It is also her case that, though the B-Schedule property stands in the name of the 2nd defendant, the same was purchased for the benefit of the entire family out of the joint family income. Further, she has stated that she had entrusted a sum of Rs.16 Lakhs to the 2nd defendant out of the income derived from the A-Schedule property which was thereafter paid to the 3rd defendant in the divorce proceedings. It is her further case that the 4th defendant cannot claim any independent right over the B-Schedule property.



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9. The 2nd defendant/father of the 4th defendant also supported the case of the plaintiff and the 1st defendant. According to him, the B-Schedule property was purchased out of the joint family nucleus and he had no funds at the relevant point of time to purchase the property. Though his father was a Cabinet Minister of Government of Tamil Nadu, he was not having any residential house in Madras. Therefore, he constructed the building in the B-Schedule property. The plaintiff and the 2nd defendant contributed physical help in the construction work. As such, it is his case that the B-Schedule property is also a joint family property. Further, it is his contention that the settlement deed was not voluntarily executed out of free will, but due to mental and physical condition due to the death of his father on 06.12.2001. According to him, the 2nd defendant, plaintiff and their mother/1st defendant continue to live in the suit property and the settlement has not been acted upon.

10. Whereas, the 3rd defendant/wife of the 2nd defendant filed a written statement admitting the marital status with the 2nd defendant and divorce proceedings. It is clearly her stand that, during the matrimonial proceedings,



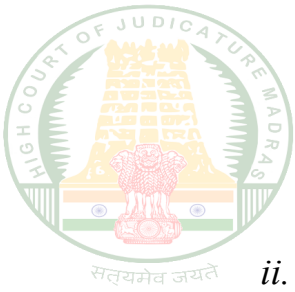
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it was agreed by the 2nd defendant to settle the B-Schedule property in favour of her daughter, i.e., the 4th defendant and thereby, he executed the settlement deed, dated 21.03.2002, and the same has been acted upon. The settlement deed is also handed over at the time of granting of divorce. The 4th defendant has attained majority on 04.11.2009 and she is mature enough to maintain and enjoy the suit property as lawful owner as per the registered deed of settlement. Hence, she disputed that the property is a joint family property. Sum and substance, it is her stand that the suit property was the individual property of the 2nd defendant, which, the 2nd defendant, during the matrimonial proceedings, settled in favour of her daughter, the 4th defendant.

11.The 4th defendant/daughter of defendants 2 and 3 filed a written statement stating that the suit property is the absolute property of the 2nd defendant and he has settled the same in her favour. Further, she is also entitled to a share in the A-Schedule property also.

12.Based on the above pleadings of the parties, the trial Court framed the following issues in O.S.No.8954 of 2019 :

i. Whether the suit schedule properties are joint family



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properties ?

- ii. Whether the registered Gift Settlement Deed dated 21.03.2002 executed by the 2nd defendant in favour of the 4th defendant is true, valid and enforceable ?*
- iii. Whether the plaintiff, defendants 1 and 2 had played fraud or committed perjury in O.P.No.433 of 2002 on the file of the Principal Family Court at Chennai ?*
- iv. To what reliefs, the parties are entitled ?*

O.S.No.8953 of 2019 (Suit for Declaration) :

13.The 4th defendant in the partition suit in O.S.No.8954 of 2019/daughter (Ilavarasi) has filed the suit in O.S.No.8953 of 2019 seeking declaration of title over the suit property which is mentioned as B-Schedule in the other suit for partition in O.S.No.8954 of 2019, in terms of the settlement deed dated 21.03.2002 executed by her father S.Duraimanickam, and for delivery of possession.

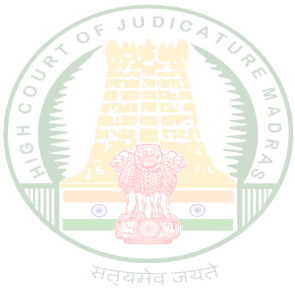
14.According to the plaintiff in O.S.No.8953 of 2019, at the time of dissolution of marriage between her parents, she was a minor aged about 10 years. The divorce was obtained by mutual consent. At that time, in order to make provision for the living and maintenance of the plaintiff, as a part of



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the terms of dissolution of marriage and out of love and affection towards his daughter, i.e., the plaintiff, her father/1st defendant S.Duraimanickam (2nd defendant in O.S.No.8954 of 2019) had gifted the suit property by way of registered settlement deed dated 21.03.2002. Since the date of settlement, the plaintiff is also in possession of the property along with her father and mother and the settlement deed has been acted upon. Since she has attained majority on 04.11.2009, she seeks declaration and delivery of possession of the suit property.

15.The 1st defendant/father, who is the 2nd defendant in the other suit for partition, has filed a written statement stating that the suit property was purchased by his father Late S.D.Somasundaram out of the joint family nucleus, in his name. Though he has admitted the execution of the settlement deed dated 21.03.2002, it is his contention that the settlement deed was not executed voluntarily out of his own will, but it was obtained only by threat and coercion at the time of divorce proceedings. Hence, he disputed the claim of the plaintiff/daughter for declaration.



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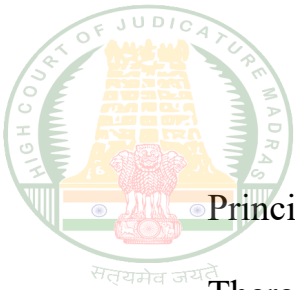
16.The 2nd defendant (S.D.Selvam) who is the plaintiff in the partition suit, 3rd defendant/grandmother of the plaintiff and the 4th defendant/mother of the plaintiff have filed individual written statements in similar lines as that filed in the other suit for partition in O.S.No.8954 of 2019.

17.Based on the pleadings of the parties, the trial Court has framed the following issues in O.S.No.8953 of 2019 :

- i. *Whether the 1st defendant was the sole and absolute owner of the suit schedule property by virtue of the registered sale deed dated 04.05.1989 ?*
- ii. *Whether the registered Settlement Deed dated 21.03.2002 executed by the 1st defendant in favour of the plaintiff is true and valid ?*
- iii. *Whether the suit schedule property is a joint family property ?*
- iv. *Whether the plaintiff is entitled to a decree for declaration and permanent injunction as prayed for with costs ?*
- v. *To what relief the plaintiff is entitled ?*

18.Originally, the suit for declaration was filed by Ilavarasi (daughter) in C.S.No.51 of 2011 before this Court. The paternal uncle of the said Ilavarasi, namely S.D.S.Selvam, filed the suit for partition before the

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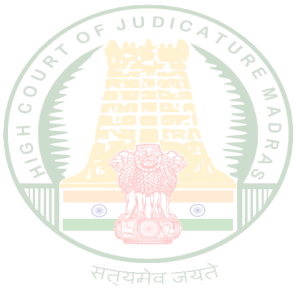
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Principal District and Sessions Court, Tanjore, in O.S.No.121 of 2009.

Thereafter, on a transfer application, the suit in O.S.No.121 of 2009 (partition suit) was transferred to this Court and renumbered as C.S.No.266 of 2013 and joint trial was conducted in both the suits and few witnesses were also examined and documents were marked before this Court. Thereafter, based on pecuniary jurisdiction, both the cases were transferred to the City Civil Court, Chennai, and renumbered as O.S.No.8953 of 2019 (declaration suit) and O.S.No.8954 of 2019 (partition suit) and joint trial was conducted in the declaratory suit in O.S.No.8953 of 2019.

19.On the side of the plaintiff/Ilavarasi, P.W.1 was examined and Exs.A1 to A11 were marked. On the side of the defendants, D.W.1 to D.W.4 were examined and Exs.B1 to B62 were marked.

20.Based on the evidence and materials on record, the trial Court, by its common judgment and decree dated 17.12.2021, dismissed the suit for partition in O.S.No.8954 of 2019 in entirety and decreed the suit for declaration and recovery of possession filed by the daughter/Ilavarasi in O.S.No.8953 of 2019.



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21.Challenging the decree and judgment of the trial Court, decreeing the suit for declaration and recovery of possession in O.S.No.8953 of 2019, the 1st defendant/father of the plaintiff therein/executant has filed A.S.No.433 of 2022 and the 2nd defendant/paternal uncle of the plaintiff therein has filed A.S.No.332 of 2022.

22.Challenging the decree and judgment of the trial Court, dismissing the suit for partition in O.S.No.8954 of 2019, the plaintiff therein/paternal uncle of Ilavarasi has filed A.S.No.333 of 2022.

23.For the disposal of the three Appeals, the relationship of the parties is relevant. The plaintiff in O.S.No.8954 of 2019 (partition suit) namely S.D.Selvam and the father of the plaintiff in O.S.No.8953 of 2019 (declaratory suit), who is the 2nd defendant in the partition suit, namely S.Duraimanickam are brothers and sons of Late S.D.Somasundaram, former Cabinet Minister of Tamil Nadu. S.Duraimanickam is the elder son and S.D.Selvam is the younger son. The 1st defendant in O.S.No.8954 of 2019 (partition suit) is the wife of Late S.D.Somasundaram and the mother of the



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plaintiff and the 2nd defendant therein.

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24.The undisputed facts in this case are as follows :

The elder son S.Duraimanickam married the 3rd defendant in O.S.No.8954 of 2019, namely Bharathi, and their marriage was solemnised on 18.01.1991 and from the said wedlock, the plaintiff in the declaratory suit in O.S.No.8953 of 2019, namely Ilavarasi, was born. When she was aged about 10 years, there arose some misunderstanding between the husband and wife in their matrimonial life and a divorce petition came to be filed by the husband S.Duraimanickam, which later culminated into divorce by mutual consent in the year 2022. It is admitted case of all the parties that, during settlement in the divorce proceedings, Ex.A3-settlement deed dated 21.03.2002 came to be executed by S.Duraimanickam/father of the plaintiff in O.S.No.8953 of 2019 in favour of his daughter, when she was a minor through her guardian mother. These facts are not in dispute.

25.The settlee/daughter, after attaining majority, has filed the present suit for declaration and recovery of possession in O.S.No.8953 of 2019. Whereas, her paternal uncle, i.e., younger brother of S.Duraimanickam,



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namely S.D.S.Selvam, has filed the another suit in O.S.No.8954 of 2019

seeking partition alleging that the subject matter of the settlement deed (described as B-Schedule property in the said suit) is a joint family property purchased out of the joint family nucleus derived from the A-Schedule property in the partition suit.

26.In the above admitted facts, it is the submission of Mr.V.Ashokpathy, learned counsel appearing for the appellant in A.S.Nos.332 and 333 of 2022/plaintiff in partition suit, namely, S.D.S.Selvam, that the A-Schedule property is a joint family property, to which, the appellant and his brother, who is the 2nd defendant in the said suit, are coparceners along with their father Late S.D.Somasundaram. The A-Schedule property comprises of vast extent of Nanja lands yielding surplus income and only out of the income derived from the A-Schedule property, the B-Schedule property was purchased by their father Late S.D.Somasundaram in the name of the elder son, viz., 2nd defendant S.Duraimanickam. It is his contention that, admittedly, the 2nd defendant did not have any other income except earning a paltry sum of around Rs.2,300/- per month at the relevant point of time. Therefore, it is the contention of the



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learned counsel that the B-Schedule property could not have been purchased by the 2nd defendant individually out of his own income. He would further submit that the construction on the B-Schedule property was also put up out of the joint family nucleus. It is his further contention that, once the plaintiff in the partition suit has shown sufficient joint family nucleus and the family had vast Nanja lands, it has to be presumed that the B-Schedule property purchased in the name of one co-sharer is also a joint family property. Therefore, it is his contention that the settlement deed executed by the 2nd defendant in favour of his daughter is not binding on the appellant. Therefore, he would submit that the appellant is certainly entitled to a share in both the suit schedule properties. It is his further contention that the trial Court has not appreciated the evidence properly and in fact, dismissed the suit for partition even in respect of A-Schedule property also. According to him, the trial Court is not right in dismissing the suit in entirety.

27.Mr.P.R.Raman, learned Senior Counsel appearing for the appellant in A.S.No.433 of 2022, namely S.Duraimanickam (executant of the settlement deed under Ex.A3), filed against the decree for declaration and recovery of possession based on Ex.A3 settlement deed, would submit that



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the father S.Duraimanickam did not have any wherewithal to purchase the property and he had just joined the Port Trust of India and was earning only a sum of Rs.2,305.85 per month and documents are also filed to prove the nature of salary earned by him. Therefore, the appellant has got no wherewithal to purchase the property, it has to be held that the suit property is a joint family property. Further, it is his contention that, though the execution of the settlement deed is admitted, the settlement deed had been obtained only by intimidation and coercion in the matrimonial dispute and the same was not executed out of his own free will.

28.Whereas, Mr.Niranjan Rajagopalan, learned counsel appearing for the respondents/plaintiff in O.S.No.8953 of 2019, would submit that the partition suit is nothing but a collusive one, only to non-suit the settlement deed executed in favour of the daughter Ilavarasi. Now, the father of the plaintiff and his brother colluded together and filed the partition suit only to non-suit the document which has not been challenged all these years. Though it is alleged by the executant that the settlement deed is a result of coercion, misrepresentation and threat, the said document has not been challenged by him all these years. Therefore, as long as the document is not

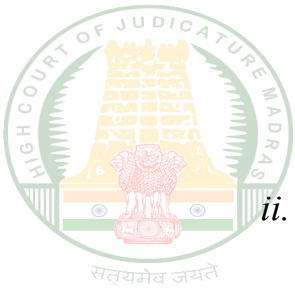


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challenged by the executant. Now, it is too late for the father to contend that the settlement has not been acted upon. It is his further contention that, even in the mutual divorce proceedings (Ex.A4 – judgment passed by the Family Court), handing over of the gift deed has been clearly recorded. Therefore, once the gift deed has been handed over, that too, when the donee was a minor and she was residing along with her father, it has to be held that the settlement has been acted upon and accepted by the minor through her guardian. Further, it is his contention that, even during the pendency of the suits, substantial portion of A-Schedule property has already been transferred by both the brothers. Therefore, the trial Court is right in dismissing the suit in respect of both the schedules. Hence, he prayed for dismissal of all these Appeals.

29.In the light of the above submissions, the points that arise for consideration in these Appeals are as follows :

- i. *Whether the subject matter of the settlement deed (Ex.A3) dated 21.03.2002 (mentioned as B-Schedule property in O.S.No.8954 of 2019) was purchased out of the joint family nucleus or only from the individual income of the executant S.Duraimanickam ?*



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ii. *Whether the executant S.Duraimanickam can challenge the settlement deed under Ex.A3 without any challenge being made all these years ?*

iii. *To what relief, the parties are entitled to ?*

Points (i) to (iii) :

30.It is not in dispute that Ex.A3 settlement deed was executed by the father of the plaintiff in O.S.No.8953 of 2019, S.Duraimanickam, who is arrayed as 1st defendant in O.S.No.8953 of 2019 and 2nd defendant in O.S.No.8954 of 2019. The factum of execution is not in dispute. Though it is alleged by the executant that the settlement deed was not out of his own will and it was obtained during the divorce proceedings between him and his wife out of coercion, the fact remains that the said settlement deed has not been challenged on the ground of such coercion or undue influence or fraud, etc. It is relevant to note that, even assuming that the document is a result of any of the circumstances like coercion, undue influence or misrepresentation, etc., as stated by the executant, such document ought to have been challenged by the executant within a period of three years. Merely because a document is a result of any such circumstances, such document is not *void ab initio*, but is only voidable in nature. It has to be



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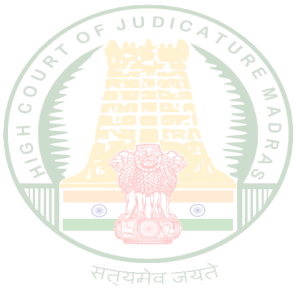
challenged by the executant within three years, which has not been done so.

Be that as it may.

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31.It is the case of the executant and his brother that the B-Schedule property in the partition suit, which is the subject matter of Ex.A3-settlement deed, was purchased only as a vacant site under Ex.A1 dated 04.05.1989. On perusal of the document Ex.A1-sale deed, it is clear that the property was purchased as vacant site in the name of the 2nd defendant, viz., S.Duraimanickam. At that time, he was aged 25 years and the sale consideration was stated as Rs.1,04,250/-.

32.It has been much argued that he had joined duty only in the year 1988 in the Port Trust of India and he was receiving a salary of Rs.2,305.85 per month and with that salary, he could not have purchased the property and hence, the property could have been purchased only out of the joint family nucleus. It is the specific case of the executant and his brother that the property was purchased in the name of elder son S.Duraimanickam only out of the joint family nucleus.



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33.It is the admitted case of the parties that the father of the two sons, namely S.D.Somasundaram, was a Cabinet Minister of Tamil Nadu from 1974 to 1984 and from 1991 to 1996 and he was also having independent income at the relevant point of time. Though it is admitted that the A-Schedule property is a vast joint family property, the entire evidence of S.Duraimanickam/executant of Ex.A3 (D.W.1), when scanned, shows that he was as Income Tax assessee since his appointment in January, 1987. Further his entire evidence in the cross-examination, when carefully seen, he is not in a position to say what was the nature of income yielded from the joint family property. Similarly, the brother of S.Duraimanickam, namely S.D.S.Selvam (plaintiff in the partition suit in O.S.No.8954 of 2019) who deposed as D.W.2, has admitted in his evidence that, though his father was a Cabinet Minister, he never paid Income Tax, since he did not have sufficient income; while the B-Schedule property was purchased under Ex.A1 by his elder brother, he was only 18 years and he was in his College. He has further admitted in the cross-examination dated 20.04.2021 that, now, there is no agricultural operation in the property; further, he did not know what was the nature of income yielded from the property and he does not know



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whether any agricultural operation was carried out during his father's time in the property. His further evidence shows that he has not overseen the construction activities in the B-Schedule property and he does not even remember the date till which he was residing in the B-Schedule property. He has further admitted that he does not know that, after the death of his father, his mother was in-charge of the joint family properties; he did not know who is in management of the joint family properties after the death of his father; he did not know whether the family had any jewels and he does not now know whether he asked for any share in the same; he is also not aware about the jewels and other movable properties. Further, he has specifically admitted in his evidence that, while he contested the elections, he declared his assets, wherein, he has categorically declared only A-Schedule property as family property.

34. Therefore, from the above facts, it can be inferred that A-Schedule property is a dry land which did not yield any surplus income. Merely because some dry lands were allotted in the partition deed, without establishing the nature of surplus income yielded from the property, one cannot assert that the other property (B-Schedule property) has been



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purchased only out of the surplus income derived from the A-Schedule property and therefore, it belongs to the joint family. Though some dry lands were available with the joint family, in the absence of any evidence to show that the lands yielded sufficient income which was surplus in nature, it cannot be inferred that the other property was purchased only out of the surplus income from the joint family properties. If really there was surplus income from the joint family properties, atleast, the father of two sons, Late S.D.Somasundaram, who served in the rank of Cabinet Minister of Tamil Nadu, would have filed his Income Tax Returns declaring the agricultural income also. Whereas, the evidence of D.W.2 clearly indicates that, since there was no sufficient income for his father, he did not even become an assessee of Income Tax at the relevant point of time.

35.All these factors clearly show the contention of the plaintiff in O.S.No.8954 of 2019 as an afterthought and only in order to non-suit the settlement deed under Ex.A3 validly executed by his brother S.Duraimanickam. It is relevant to note that the B-Schedule property was purchased under Ex.A1 in the year 1989. At the time of purchase, the said S.Duraimanickam had already joined service in the Port Trust of India.



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Though it is stated that he was earning only a sum of Rs.2305.85 per month, it is relevant to note that he had joined service much prior to the purchase.

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The evidence of D.W.4 (Bharathi/wife of the 1st defendant S.Duraimanickam) clearly indicates that, before joining the Port Trust, the 1st defendant was working in TVS Company. Her evidence has not been refuted. Therefore, when a person is already in some job earning a reasonable salary, possibility of purchase of property by him is more probable and any such purchase made by the person out of his salary and personal income cannot be construed as a joint family purchase and the same is exempted as per the Hindu Gains of Learning Act, 1930. Be that as it may. When the very factum of surplus income and sufficient nucleus has not been established by the parties to the *lis*, the purchase in the name of an individual cannot be, at any stretch of imagination, held as one purchased out of the joint family nucleus.

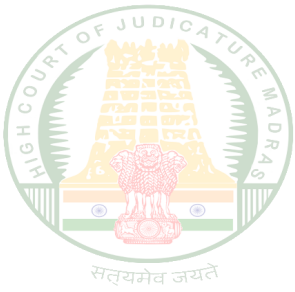
36.It is further to be noted that, in the settlement deed Ex.A3 itself, it has been categorically admitted by the executant himself that it is his absolute property. Similarly, in the matrimonial proceedings before the Family Court, the order of which is marked as Ex.A4 dated 11.04.2002, the



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husband/executant has asserted that he has executed the gift settlement deed in favour of his daughter. Therefore, once the settlement has been consciously executed in favour of his minor daughter through the guardian and the deed of settlement had also been handed over to the mother, which is also incorporated in the judgment in the divorce proceedings, now, it is highly improbable to contend that the document has not been acted upon.

37.Yet another contention is also raised as if the settlement has not been acted upon since the possession had not been handed over immediately. The evidence adduced by the parties clearly show that, at the relevant point of time, the minor daughter/settlee was also residing along with her father. Though the very recitals in the settlement deed and the judgment in the divorce proceedings clearly show that the settlement deed had not been handed over immediately and the executant held the document as a guardian and that he will hand over the same when the daughter becomes major, the fact remains that the very settlement deed has been properly and duly executed by the father/executant. Merely because the document had not been handed over immediately, it cannot be said that the settlement deed has not been acted upon.



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38.It is also contended that possession has not been taken over by the settlee. It is relevant to note that settlement is a transfer *in praesenti*. Handing over possession is not *sine qua non* for valid gift under Section 123 of the Transfer of Property Act, 1977. What is required is only acceptance. The gift has been accepted on behalf of the minor by her guardian which is also evidenced from the judgment in divorce proceedings in F.C.O.P.No.433 of 2002 (Ex.A4). Therefore, now, after many years, the appellant, being the executant of the document, cannot challenge the same indirectly in a suit filed by his brother for partition. Further, it is pertinent to note that, no counter claim, whatsoever, has been filed by him in the suit, challenging the settlement deed. Such being the position, the plea of undue influence or coercion or misrepresentation has no significance in deciding the matter and thus fails.

39.Further, as stated above, it is to be noted that D.W.2, who is the plaintiff in the partition suit, in his evidence, has clearly admitted that he does not know the nature of income yielded in the A-Schedule property and he has also admitted that, after the death of his father, he does not know



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whether the property has been cultivated or not and the nature of income out of the same. All these factors clearly show that the A-Schedule property did not yield any surplus income. This is further fortified by the fact that their father S.D.Somasundaram, being the Cabinet Minister, did not even have sufficient income to file Income Tax Returns at the relevant point of time.

40.Further, D.W.2 (plaintiff in partition suit) has stated in his evidence that he came to know about the settlement deed under Ex.A3 only in the year 2004 or 2005. Such a contention, in our view, is improbable. When the brothers are living as joint family all along, feigning ignorance of the divorce proceedings between his brother and his wife and the fact that their mother gave Rs.16 Lakhs as alimony to his brother's wife, is against normal human conduct. Further, it is also relevant to note that the mother of the parties is also a witness to the settlement deed. The settlement deed was executed on 21.03.2002. Therefore, the contention of D.W.2 that he came to know about the settlement deed only in the year 2004 or 2005, is unbelievable. Even assuming that he got knowledge only in the year 2004 or 2005, the suit ought to have been filed within a reasonable period. However, the present suit for partition has been filed in September, 2009,



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after four years of the alleged knowledge. This also clearly indicates that the partition suit filed by the brother of the executant is nothing but a scheme of both the brothers together to somehow or other defeat the right of the daughter in whose favour the property was settled. It is an admitted fact that, despite the settlement executed in favour of the daughter, the father has remarried and he continued to hold the property. Therefore, we are of the view that, only for that purpose to continue to hold the property, the partition suit has been filed in collusion.

41. For all these reasons, while holding that the B-Schedule property in O.S.No.8954 of 2019 is the individual property of S.Duraimanickam and not purchased out of the joint family nucleus, we are of the view that the trial Court ought not to have dismissed the partition suit in respect of A-Schedule property also. However, the fact remains that, during the pendency of the suit, both the brothers have sold a portion of the A-Schedule property, which has been clearly admitted by D.W.2 in his evidence. In such view of the matter, when a substantial portion of the A-Schedule property has already been sold, without any details of the same and the names of the purchasers, it is difficult to grant a preliminary decree in respect of A-Schedule property.



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Therefore, we are not inclined to interfere with the judgment of the trial

Court dismissing the partition suit in entirety. However, we are of the view that, whatever properties left in A-Schedule in O.S.No.8954 of 2019 after the alienation made by the two brothers, the parties are entitled to share as per their entitlement, and that has to be worked out in a separate proceedings as per law. Accordingly, all these points are answered.

42.As a result, we do not find any merit in these Appeals. Therefore, all these Appeals are dismissed, confirming the impugned judgment and decree of the trial Court. No costs. Consequently, connected miscellaneous petition is closed.

(N.S.K., J.) (M.J.R., J.)
30.07.2026

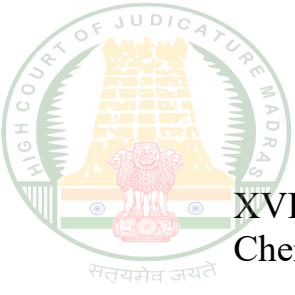
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Internet : Yes
Index : Yes / No
Speaking Order
Neutral Citation : Yes

To

1.The XVI Additional Judge,

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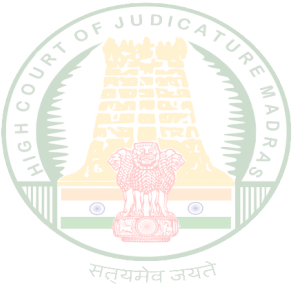
XVI Additional City Civil Court,
Chennai.

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2.The Section Officer,
VR Section,
High Court, Madras.

N. SATHISH KUMAR, J.
and
M. JOTHIRAMAN, J.

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