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A.S. Nos. 243 & 245 of 2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

RESERVED ON : 24.11.2025  
PRONOUNCED ON : 16.06.2026

CORAM

**THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE**

A.S. Nos. 243 & 245 of 2021

A.S.No.243 of 2021:

Rajamani @palaniammal Died

1. P.Manian,S/o. Late Palani Gounder, Old No.1c,  
New No.3, Om Ganesh Nagar, Pillaiyarkoil  
Thottam, Vadavalli Post, Coimbatore - 641 041

2.M.Nandhagopal  
S/o. Manian, Old No.1c, New No.3, Om Ganesh  
Nagar, Pillaiyarkoil Thottam, Vadavalli Post,  
Coimbatore - 641 041

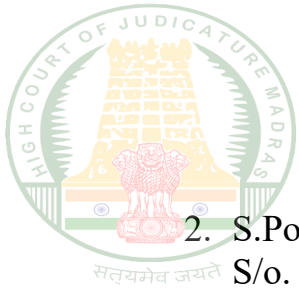
3.M.Umarani  
W/o. Swaminathan, Old No.109b, New No.9,  
Annaiappan St, Nallampalayam, Ganapathy Post,  
Coimbatore - 641 006

..Appellant(s)

Vs

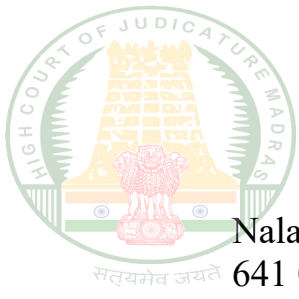
1. S.Marudakkal  
W/o.Subramanaia Gounder, Rottikarar Thottam,  
Edayarpalayam Road, Vadavalli Post,  
Coimbatore -41.

S.Mohan Died  
S.Manoharan Died.



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2. S.Ponnuswamy  
S/o. Subramania Gounder, No5, Nanjappa  
Gounder St, Thekku Thottam, Langanur,  
Vadavalli Post, Coimbatore -41
3. S.Nagaraj @vishnu Balaji  
S/o. Subramania Gounder, No.2/1854,  
Corporation Bank Colony, Edayarpalayam Road,  
Vadavalli Post, Coimbatore -41
4. M.Vijayalakshmi  
W/o. K.Mylswamy, No, 16 ranga Gounder Pudur  
Post, P.N.Pudur Post, Coimbatore-41
5. J.Gunasundari  
W/o. M.Janagaraj, No.473 A. Om Ganesh Nagar,  
V Cross, Langanur, Vadavalli Post, Coimbatore  
- 641 041
6. M.Thirumakkal  
W/o. Marudachala Gounder, No.37,  
Marudachala Gounder Thottam , Agasthiyar  
Thottam, Panamarathur, Thelugupalayam Post,  
Coimbatore - 641 039
7. M.Ramachandaran  
S/o. Marudachala Gounder, No.37, Marudachala  
Gounder Thottam, Agasthiyar Thottam,  
Panamarathur, Thelugupalayam Post,  
Coimbatore - 641 39.
8. M.Kannan  
S/o. Marudachala Gounder, No.37, Marudachala  
Gounder Thottam, Agasthiyar Thottam,  
Panamarathur, Thelugupalayam Post,  
Coimbatore - 641 039
9. M.Rangaraj  
W/o. Marudachala Gounder, No.29/64, H-3,  
Aruna Nagar, Near Ponmani Mandapam,



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Nalampalayam, Ganapathi Post, Coimbatore -  
641 006

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10.M.Margatham

W/o. S.Manian, Rottikarar Thottam,  
Edayarpalayam Road, Vadavalli Post,  
Coimbatore -41

11.M.Logesh

S/o. S.Manian, Rottikarar Thottam,  
Edayarpalaya M Road, Vadavalli Post,  
Coimbatore - 41

12.Niranjanadevi

W/o. Manoharan, No.55/1a-1 Rottikarar  
Thottam, Eb Colony , Vadavalli Post,  
Coimbatore - 641 041

13.Minor Uvasri

Rep By Her Guardian /mother, Niranjanadevi ,  
W/o. Manoharan, No.55/1a-1, Rottikarar  
Thottam, Eb Colony , Vadavalli Post,  
Coimbatore - 641 041

14.Minor Raghul

Rep By His Guardian/mother, Niranjanadevi,  
W/o. Manoharan, No.55/1a-1, Rottikarar  
Thottam, Eb Colony , Vadavalli Post,  
Coimbatore - 641 041

PRAYER: Appeal suit filed praying to set aside the common Judgment and Decree dated 29/01/2021 made in O.S.No.121/2011 on the file of IV Addl Dist and Sessions Court, Coimbatore.

For Appellants : Mr.P.Saravana Sowmiyan

For Respondents : Mr.V.P.Senguttuvel, Senior Counsel assisted by  
Mr.G.K.Muthukumar for R1 to R5 & R10 to R14.



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Mr.S.V.Karthikeyan for R6 to R9.

WEB COPY A.S.No.245 of 2021:

Rajamani @palaniammal Died

1.P.Manian, S/o. Late Palani Gounder, Old No.1c,  
New No.3, Om Ganesh Nagar, Pillaiyarkoil  
Thottam, Vadavalli Post, Coimbatore - 641 041

2.M.Nandhagopal  
S/o. Manian, Old No.1c, New No.3, Om Ganesh  
Nagar, Pillaiyarkoil Thottam, Vadavalli Post,  
Coimbatore - 641 041

3.M.Umarani  
W/o. Swaminathan, Old No.109b, New No.9,  
Annaiappan St, Anllampalayam, Ganapthy Post,  
Coimbatore - 641 006

..Appellant(s)

Vs

1.S.Marudakkal  
W/o.Subramanaia Gounder, Rottikarar Thottam,  
Edayarpalayam Road, Vadavalli Post, Coimbatore  
-41,

2.S.Ponnuswamy  
S/o. Subramania Gounder, No5, Nanjappa Gounder  
St, Thekku Thottam, Linganur, Vadavalli Post,  
Coimbatore -41

3.S.Nagaraj @vishnu Balaji  
S/o. Subramania Gounder, No.2/1854, Corporation  
Bank Colony, Edayarpalayam Road, Vadavalli  
Post, Coimbatore -41,

S.Manoharan Died.



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4.M.Vijayalakshmi

W/o. K.Mylswamy, No, 16ranga Gounder Pudur  
Post, P.N.Pudur Post, Coimbatore-41

5.J.Gunasundari

W/o. M.Janagaraj, No.473 A. Om Ganesh Nagar, V  
Cross, Linganur, Vadavalli Post, Coimbatore - 641  
041

6.M.Maragatham

W/o. S.Mainan, Rottikarar Thottam, Edayapalayam  
Road, Vadavalli Post, Coimbatore - 41

7.M.Lokesh

S/o. S.Manian, Rottikarar Thottam, Edayarpalayam  
Road, Vadavalli Post, Coimbatore - 41

8.M.Thirumakkal

S/o. Marudachala Gounder, No.37, Marudachala  
Gounder Thottam, Agasthiyar Thottam,  
Panamarathur, Thelugupalayam Post, Coimbatore -  
641 039

9.M.Rangaraj

W/o. Marudachala Gounder, No.29/64, H-3, Aruna  
Nagar, Near Ponmani Mandapam, Nalampalayam,  
Ganapathi Post, Coimbatore - 641 006

10.M.Ramachandran

S/o. Marudachala Gounder, No.37, Marudachala  
Gounder Thottam, Agasthiyar Thottam,  
Panamarathur, Thelugupalayam Post, Coimbatore -  
641 39.

11.M.Kannan

S/o. Marudachala Gounder, No.37, Marudachala  
Gounder Thottam, Agasthiyar Thottam,  
Panamarathur, Thelugupalayam Post, Coimbatore -  
641 39.



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12.Niranjanadevi

W/o. Manoharan, No.55/1a-1 Rottikarar Thottam,  
Eb Colony , Vadavalli Post, Coimbatore - 641 041

13.Minor Uvasri

Rep By Her Guardian /mother, Niranjanadevi ,  
W/o. Manoharan, No.55/1a-1, Rottikarar Thottam,  
Eb Colony , Vadavalli Post, Coimbatore - 641 041

14.Minor Raghul

Rep By His Guardian/mother, Niranjanadevi, W/o.  
Manoharan, No.55/1a-1, Rottikarar Thottam, Eb  
Colony , Vadavalli Post, Coimbatore - 641 041

PRAYER: Appeal suit filed praying to set aside the common Judgment and Decree dated 29/01/2021 made in O.S.No.331/2014 on the file of IV Addl Dist and Sessions Court, Coimbatore.

For Appellants : Mr.P.Saravana Sowmiyan

For Respondents : Mr.V.P.Senguttuvel, Senior Counsel assisted by  
Mr.G.K.Muthukumar for R1 to R7, R12 & R14.  
Mr.S.V.Karthikeyan for R8 to R11.

### **COMMON JUDGMENT**

These appeals arise from the common Judgment and Decree dated 29.01.2021 passed in O.S.Nos.121 of 2011 and 331 of 2014 on the file of the IV Additional District and Sessions Judge, Coimbatore. A.S.No.243 of 2021 has been filed by the plaintiffs in O.S.No.121 of 2011, and A.S.No.245 of 2021 has been filed by the plaintiffs in O.S.No.331 of 2014. As both appeals



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arise from the same common judgment, they were heard together and are disposed of by this common judgment.

2. For the sake of convenience, the parties are referred to as per their array in O.S.No.121 of 2011.

3. The brief averments in the plaint in O.S.No.121 of 2011 are as follows:  
The suit schedule property was purchased by one Ramana Gounder, who died intestate in the year 1961. He was survived by two sons, namely, Subramania Gounder, who died in the year 1998, and Marudhachala Gounder, who died in the year 1995, and one daughter. The daughter was the original plaintiff in the suit. She instituted the suit in the year 2011 and died during the pendency of the proceedings on 29.11.2015. Defendants 1 to 7 are the wife and children of Subramania Gounder, and defendants 8 to 11 are the wife and children of Marudhachala Gounder.

4. The original plaintiff filed the suit for partition, claiming a 1/3rd share in the suit schedule property. The present plaintiffs, who are the legal representatives of the deceased original plaintiff, state that they came to know in October 2015 that the deceased original plaintiff and the other defendants had entered into a partition deed dated 24.09.2014. According to them, the original plaintiff had been suffering from mental illness for about ten years



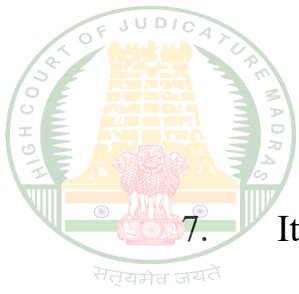
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prior to her death, and her condition had worsened in the year 2014. It is

further stated that the husband of the original plaintiff had filed an application under Order XXXII Rule 15 CPC seeking appointment as her next friend to conduct the suit, but the said application was dismissed.

5. The plaintiffs allege that the defendants fraudulently obtained the signatures of the deceased original plaintiff and created the partition deed dated 24.09.2014 and the settlement deed dated 10.12.2014. On that basis, they contend that the said partition deed and settlement deed are null and void, and seek partition of the suit schedule property.

6. The brief contents of the written statement filed by the 4th defendant, and adopted by defendants 1 to 3 and 5 to 7, are as follows: The relationship among the parties, as pleaded in the plaint, is admitted. According to these defendants, though the property stood in the name of Ramana Gounder, it was purchased under sale deed dated 26.06.1956 when he was the karta of the family, and his sons, Subramania Gounder and Marudhachala Gounder, had also contributed towards the purchase. At the time of Ramana Gounder's death, the plaintiff was a minor aged about eight years. She was brought up by her brothers, who maintained her and performed her marriage.



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7. It is further stated that the property had already been orally partitioned between the brothers, and that they had been in continuous possession and enjoyment of their respective shares. According to these defendants, the plaintiff remained silent for a long period and instituted the suit for partition only after several decades. On that ground, they contend that the suit is liable to be dismissed.

8. The brief contents of the written statement filed by the 10th defendant, and adopted by defendants 8, 9 and 11, are as follows: According to these defendants, the sons of Ramana Gounder had partitioned the property and had been in continuous possession and enjoyment of their respective shares for a long period, to the exclusion of the plaintiff. On that basis, they claim to have perfected title by adverse possession. They further contend that the plaintiff had been ousted from the suit property and, therefore, her claim for partition is not maintainable. It is also contended that the plaintiff was not in possession of the suit property and had paid court fee under an incorrect provision of law. Hence, according to these defendants, the suit is liable to be dismissed.

9. The brief contents of the additional written statement filed by the 4th defendant, and adopted by defendants 1, 5 to 7 and 12 to 16, are as follows:

According to these defendants, during the pendency of the suit, the original



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plaintiff and the defendants entered into a compromise, pursuant to which the plaintiff agreed to receive 60 cents and executed a Varthamana letter dated 29.08.2014. In continuation thereof, a private surveyor was engaged and the property was demarcated. Thereafter, a registered partition deed dated 24.09.2014 came to be executed, under which the “C” schedule property, measuring 70 cents, was allotted to the share of the plaintiff. It is further stated that, subsequent to the execution of the partition deed, the plaintiff executed a registered settlement deed dated 10.12.2014 in favour of her son and daughter, namely, the 3rd and 4th plaintiffs, settling 20 cents and 10 cents respectively out of the 70 cents allotted to her under the partition deed. According to these defendants, the plaintiff died before withdrawing the suit. They specifically deny the allegation that the deceased plaintiff was suffering from mental illness. It is their case that the partition deed was voluntarily executed by the plaintiff pursuant to the compromise and is valid. On these averments, they contend that the suit is liable to be dismissed.

10. The brief contents of the additional written statement filed by the 10th defendant, and adopted by defendants 8, 9 and 11, are as follows: According to these defendants, the original plaintiff instituted the suit on 13.03.2011. Subsequently, on 15.10.2015, the 2nd plaintiff, namely, her husband, filed an application under Order XXXII Rule 15 CPC, alleging that the psychiatric



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condition of the plaintiff had worsened from January 2014 onwards.

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However, in an earlier application in I.A.No.178 of 2013, filed by the plaintiff herself for appointment of an Advocate Commissioner to record her evidence, she had stated that she was suffering only from spondylitis. It is further stated that the deceased plaintiff voluntarily came forward for compromise, executed a Varthamana letter dated 29.08.2014, and thereafter entered into the partition deed dated 24.09.2014. In the said partition deed, the 3rd plaintiff, namely, the son of the deceased plaintiff, had signed as one of the witnesses. These defendants further contend that the plaintiff subsequently executed a settlement deed dated 10.12.2014, settling part of the properties in favour of her son and daughter. On these averments, they contend that the present suit is an abuse of process of law and is liable to be dismissed.

11. The trial Court framed the necessary issues concerning the validity and binding nature of the partition deed dated 24.09.2014. Upon consideration of the oral and documentary evidence, the trial Court held that the partition deed is true, valid and binding on the parties, and consequently dismissed the suit.

12. The brief averments in the plaint in O.S.No.331 of 2014 are as follows:

The plaintiff is the daughter of Ramana Gounder. The said Ramana Gounder purchased the property at Vadavalli Village in the year 1956 and was in

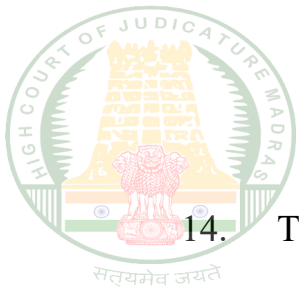
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enjoyment of the same. He died intestate in the year 1961, leaving behind the plaintiff as his daughter and two sons, namely, Subramania Gounder and Marudhachala Gounder. The plaintiff had already instituted O.S.No.121 of 2011 for partition, claiming a 1/3rd share in the property left behind by her father.

13. According to the plaintiff, after the demise of her father, Ramana Gounder, she, her brothers and their mother jointly cultivated and enjoyed the property left behind by him. It is her further case that the suit schedule properties in the present suit were purchased from and out of the income derived from the said property, though they stood in the names of her brothers. The first item of property was purchased on 06.02.1967 in the name of Subramania Gounder; the second item was purchased on 13.06.1973 in the names of Subramania Gounder and Marudhachala Gounder; and the third item was purchased on 10.04.1978 in the name of Marudhachala Gounder. According to the plaintiff, she is entitled to a 1/3rd share in all the three items of suit properties. It is further stated that whenever the plaintiff demanded partition, the defendants postponed the same and, thereafter, attempted to alienate the properties in favour of third parties. Hence, she was constrained to institute the suit.



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14. The brief contents of the written statement filed by the 12th defendant,

and adopted by defendants 9, 10 and 11, are as follows: While admitting that Ramana Gounder died intestate leaving behind property at Vadavalli, these defendants deny that, after his demise, the plaintiff and her brothers jointly enjoyed the said property. According to them, items 1 to 3 of the suit properties are the separate and self-acquired properties of Subramania Gounder and Marudhachala Gounder. It is further contended that the plaintiff had already instituted O.S.No.121 of 2011 and, if the present suit properties had in fact been purchased from and out of the income derived from the ancestral property left by her father, she ought to have included those properties in the earlier suit itself. On that basis, these defendants contend that the present suit is barred under Order II Rule 2 CPC and amounts to an abuse of process of law. It is their further case that Subramania Gounder and Marudhachala Gounder had been cultivating the lands as tenants from the year 1950 onwards and subsequently purchased the properties in their own names. These defendants also rely upon the Varthamana letter dated 29.08.2014 and the subsequent partition deed dated 24.09.2014 entered into between the parties, and contend that the suit is liable to be dismissed.

15. The trial Court framed the necessary issues and, upon appreciation of the evidence, held that the three items of properties involved in O.S.No.331



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of 2014 are the separate and self-acquired properties of Subramania Gounder and Marudhachala Gounder. Consequently, the suit was dismissed.

16. Aggrieved by the common Judgment and Decrees of the trial Court, the plaintiffs have preferred the present appeals, inter alia, on the following grounds: According to the appellants, the trial Court failed to properly appreciate that Exs.A15, A16, B4 and B5 were executed when the original plaintiff was allegedly suffering from mental illness. It is contended that the said mental illness had been established through the evidence of the medical officers examined as P.Ws.3 and 4. The appellants further contend that the trial Court failed to appreciate that the suit properties in O.S.No.331 of 2014 are joint family properties, jointly owned and enjoyed by the family members. According to them, the Court erred in appreciating that the deceased first plaintiff had executed the documents without understanding their contents, and the same had been obtained by fraud. It is also contended that the trial Court erred in holding that the suit properties in O.S.No.331 of 2014 are the separate properties of Subramania Gounder and Marudhachala Gounder, ignoring the appellants' case that the said properties had been purchased from and out of the income derived from the joint family properties. Hence, according to the appellants, the findings of the trial Court are unsustainable and liable to be set aside.



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**WEB COPY** 17. The learned counsel appearing for the appellants/plaintiff submitted that the suit property was purchased by late Ramanna Gounder under Ex.A2 dated 26.06.1956 and the same was his separate property. It was further submitted that Ramanna Gounder died intestate in the year 1961, leaving behind his wife Marudhakkal, two sons, namely Subramania Gounder and Marudachala Gounder, and one daughter, Rajamani @ Palaniammal, the deceased first plaintiff. Therefore, according to the learned counsel, succession opened immediately on the death of Ramanna Gounder and the deceased first plaintiff became entitled to a share in the suit property by operation of law under Section 8 of the Hindu Succession Act, 1956.

18. The learned counsel further submitted that after the death of Marudhakkal, the share of the deceased first plaintiff stood enlarged to 1/3rd share in the suit property. It was contended that the Trial Court itself had recorded a finding that the suit property was the separate property of Ramanna Gounder. Hence, the Trial Court ought to have granted a preliminary decree for partition in favour of the plaintiffs instead of dismissing the suit.



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19. It was also submitted by the learned counsel for the appellants that during the pendency of the suit, the defendants, taking advantage of the mental illness of the deceased first plaintiff, obtained Ex.A15 Partition Deed dated 24.09.2014 by fraud and misrepresentation, whereby only 60 cents was allotted to her, though she was legally entitled to about 1 acre 60 cents, being her 1/3rd share. The learned counsel pointed out that DW1 had also admitted in cross-examination that the deceased first plaintiff was entitled to 1 acre 60 cents.

20. The learned counsel further contended that the deceased first plaintiff was under treatment for mental illness and the evidence of PW3 and PW4 would establish the same. Therefore, when the plaintiffs had specifically pleaded fraud, misrepresentation and undue influence, the burden was upon the defendants, who were the beneficiaries under Ex.A15 Partition Deed and Ex.A16 Settlement Deed, to prove that the transaction was bona fide, voluntary and executed with full knowledge and understanding.



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21. Placing reliance upon Section 111 of the Indian Evidence Act, 1872, the learned counsel submitted that where one party stands in a position of active confidence and gains an advantage under a transaction, the burden of proving good faith lies upon such party. According to the learned counsel, the defendants had failed to discharge the said burden. Hence, Ex.A15 Partition Deed and the consequential Ex.A16 Settlement Deed are not valid and are not binding upon the plaintiffs.

22. The learned counsel for the appellants also relied upon the decisions of the Hon'ble Supreme Court in *Krishna Mohan Kul alias Nani Charan Kul and another v. Pratima Maity and others*, reported in (2004) 9 SCC 468, and *Ramathal and others v. K. Rajamani (dead) through LRs and another*, reported in 2023 AIR (SC) 3978, to contend that when the plea of fraud, misrepresentation, undue influence or *non est factum* is raised, the Court must examine whether the document was executed voluntarily, with full understanding and without any unfair advantage being taken by the dominant party.

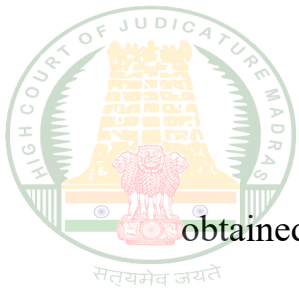


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23. Thus, the learned counsel for the appellants submitted that the judgment and decree of the Trial Court are contrary to law and evidence, and the appellants/plaintiffs are entitled to a preliminary decree for partition by allotting 1/3rd share in the suit property.

24. Per contra, the learned counsel appearing for respondents 1 to 5 and 10 to 14 in A.S.No.243 of 2021 and respondents 1 to 7 and 12 to 14 in A.S.No.245 of 2021 submitted that the Trial Court has rightly dismissed both the suits. It was contended that Ex.A15 Partition Deed dated 24.09.2014 was voluntarily executed by the first plaintiff, Rajamani @ Palaniammal, after mediation between the parties. Prior to Ex.A15, she had executed Ex.B4 Vardhamana Letter dated 29.08.2014 and Ex.B5 affidavit confirming the partition and expressing her intention to settle the dispute.

25. The learned counsel further submitted that Ex.A15 was acted upon by the first plaintiff herself. Pursuant to the said partition, she executed Ex.A16 Settlement Deed dated 10.12.2014 in favour of her son and daughter and also executed Ex.B6 Will on the same day in respect of the remaining property



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obtained by her under the partition. Therefore, the plaintiffs cannot now

contend that Ex.A15 was obtained by fraud or misrepresentation.

26. It was also submitted that the third plaintiff, being the son of the first plaintiff, had signed as a witness to Ex.B4, Ex.B5 and Ex.A15 and had also accompanied the first plaintiff to the Sub-Registrar's Office at the time of registration of Ex.A15 and Ex.A16. PW5 admitted in cross-examination that the Sub-Registrar had enquired about the nature of the document before registration. Hence, the first plaintiff was fully aware that she was executing a partition deed.

27. With regard to the plea of mental illness, the learned counsel submitted that there is no acceptable evidence to show that the first plaintiff was not in a sound disposing state of mind at the time of execution of Ex.B4, Ex.B5, Ex.A15, Ex.A16 and Ex.B6. In I.A.No.178 of 2013, filed for appointment of an Advocate Commissioner to record her evidence, the first plaintiff had stated only that she was suffering from spondylitis and radiculopathy and had not pleaded any mental illness. Further, the evidence of PW3 and PW4



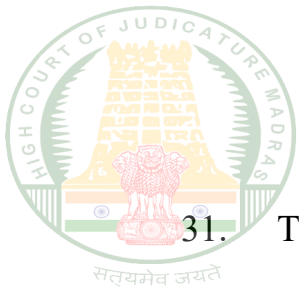
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doctors does not establish that she was incapable of understanding the nature and consequences of the documents.

28. The learned counsel also submitted that the allotment made under Ex.A15 cannot be judged merely on the basis of extent. The first plaintiff was allotted valuable land in one compact block, having good soil and without pits, well or burial ground. Therefore, the value and quality of the land allotted to her have to be taken into consideration.

29. It was further submitted that the properties involved in O.S.No.331 of 2014 were the separate and self-acquired properties of Subramania Gounder and Marudachala Gounder, purchased under registered sale deeds much after the death of Ramanna Gounder. Hence, the plaintiffs cannot claim partition over those properties. The learned counsel also contended that O.S.No.331 of 2014 is barred under Order II Rule 2 CPC, as the plaintiffs had knowledge of those properties even when the earlier suit was filed but failed to include them.

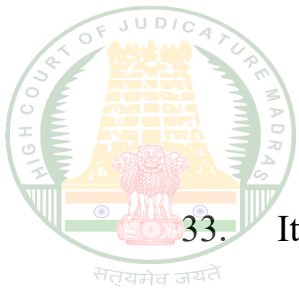
30. Therefore, the learned counsel prayed that the judgment and decree of the Trial Court may be confirmed and both the first appeals may be dismissed with costs.



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31. The learned counsel appearing for respondents 6 to 9 in A.S.No.243 of 2021 and respondents 8 to 11 in A.S.No.245 of 2021 submitted that the deceased first plaintiff, Rajamani @ Palaniammal, voluntarily executed the unregistered Vardhamana Letter dated 29.08.2014, acknowledging that the properties were the self-acquired properties of her brothers and that she had no right or claim for partition therein. Thereafter, she executed the registered Partition Deed dated 24.09.2014 along with the legal heirs of Subramania Gounder and Marudachala Gounder, under which she was allotted the “C Schedule” property representing her entitlement from her father’s estate. On the same day, she also executed a confirmation affidavit, which was attested by her own son, the third appellant, as witness.

32. The learned counsel contended that having accepted the partition and having received her share under the registered Partition Deed, the deceased first plaintiff was estopped from reopening the issue. A party who voluntarily executes and takes benefit under a partition deed cannot subsequently challenge the same, particularly when the document has been acted upon.



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33. It was further submitted that the suits are barred under Order II Rule 2 CPC, since both O.S.No.121 of 2011 and O.S.No.331 of 2014 were founded on the same alleged cause of action, namely the existence of a single joint family and the demand for partition. According to the learned counsel, the subsequent suit amounts to splitting up of the cause of action and is therefore not maintainable. It was also contended that the claim is barred by limitation, as the appellants themselves pleaded exclusion from possession from the year 1998, but the suit was filed only in the year 2011.

34. With regard to the plea of mental incapacity, the learned counsel submitted that the allegation that the deceased first plaintiff was of unsound mind is false, belated and unsupported by evidence. The evidence of PW3 and PW4 does not establish that she was incapable of understanding the nature and consequences of the documents. On the contrary, she had executed Ex.B4, Ex.B5, Ex.B6, Ex.A15 and Ex.A16 in a steady disposing state of mind and with full knowledge of their contents.

35. The learned counsel further submitted that after execution of Ex.A15 Partition Deed, the deceased first plaintiff executed Ex.A16 Settlement Deed

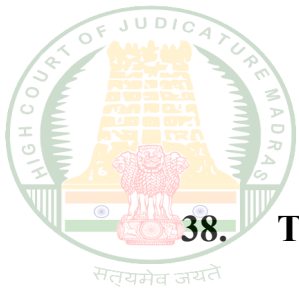


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and Ex.B6 Will, both dated 10.12.2014. These subsequent acts clearly show that she accepted and acted upon the partition. The application under Order XXXII Rule 15 CPC was filed only on 15.10.2015, more than one year after the execution of the Partition Deed, Settlement Deed and Will, which shows that the plea of mental incapacity is only an afterthought.

36. The learned counsel also submitted that the appellants failed to prove the existence of any joint family nucleus, joint cultivation, common accounts or common income after the death of Ramanna Gounder in 1961. On the contrary, the revenue records, mutation entries, adangal extracts and patta stood in the names of Subramania Gounder and Marudachala Gounder, showing their independent possession and enjoyment of the properties.

37. Therefore, the learned counsel prayed that the findings of the Trial Court are based on proper appreciation of oral and documentary evidence and do not warrant interference in appeal. Accordingly, both the appeals are liable to be dismissed with costs.



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**38. The points that arise for consideration in A.S.No.243 of 2021 are as**

**follows:**

1. Whether the partition deed dated 24.09.2014, marked as Ex.A15, is true, valid and binding on the plaintiffs?
2. Whether the prayer for declaration that the partition deed and settlement deed are null and void is maintainable?
3. Whether the Judgment and Decree passed in O.S.No.121 of 2011 are liable to be set aside?

**39. The points that arise for consideration in A.S.No.245 of 2021 are as**

**follows:**

1. Whether the suit is barred under Order II Rule 2 CPC in view of the earlier institution of O.S.No.121 of 2011?
2. Whether the suit properties are joint family properties purchased from and out of the income derived from the property left behind by Ramana Gounder?
3. Whether the Judgment and Decree passed in O.S.No.331 of 2014 are liable to be set aside?



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**40. Point No.1 in A.S.No.243 of 2021:** The legal representatives of the deceased original plaintiff have preferred the present appeal claiming a 1/3rd share in the suit property left behind by Ramana Gounder, as originally sought by the deceased plaintiff, while they dispute the partition deed dated 24.09.2014, marked as Ex.A15, which was executed by the deceased original plaintiff during the pendency of the suit.

41. The principal contention of the appellants is that, at the time of execution of the partition deed dated 24.09.2014, marked as Ex.A15 among the sharers, the deceased original plaintiff was not in a sound and fit state of mind to understand the nature and consequences of the transaction, as she was allegedly suffering from mental illness. According to them, the defendants took advantage of her mental condition and obtained the document by fraud. On that basis, they contend that Ex.A15 is liable to be ignored and declared null and void.

42. O.S.No.121 of 2011 was originally instituted on 18.03.2011, and the subsequent suit was filed on 19.06.2014. The plaintiffs contend that the deceased original plaintiff had been suffering from psychiatric/physiological

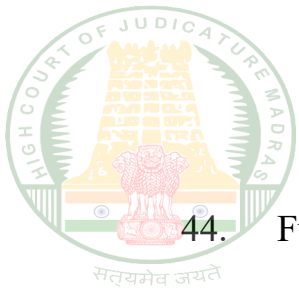


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ailments for nearly ten years, and that her condition became acute from January 2014 onwards. The impugned partition deed, marked as Ex.A15, was executed on 24.09.2014. According to the plaintiffs, they came to know about Ex.A15 only in October 2015. Thereafter, on 15.10.2015, they filed an application seeking appointment of the second plaintiff as next friend to continue the suit, on the ground that the deceased original plaintiff was suffering from mental illness. The deceased original plaintiff subsequently died on 29.11.2015.

43. The plea put forth by the plaintiffs does not inspire confidence. If, as contended, the deceased original plaintiff had been suffering from acute mental illness from January 2014 onwards, it remains unexplained as to how she could have independently instituted the subsequent suit in O.S.No.331 of 2014 on 19.06.2014 without being represented through a next friend. Further, the second plaintiff, who is the husband of the deceased original plaintiff and who was examined as P.W.1, marked Ex.A15, the certified copy of the partition deed. In his evidence, he admitted that the said certified copy had been obtained by him on 19.02.2015. Ex.A15 itself bears an endorsement to that effect, showing the said date. Therefore, the plea that the plaintiffs came to know about Ex.A15 only in October 2015 appears inherently improbable.

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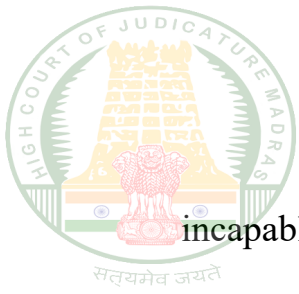
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44. Further, the third plaintiff, who is the son of the deceased original plaintiff and one of the attestors to the partition deed, was examined as P.W.5.

In his proof affidavit, he admitted that, on being informed over phone by the 11th defendant, he took his mother to the residence of the second defendant, where his mother's signature was obtained and his signature was also obtained as an attesting witness. He further admitted that, on enquiry, he was informed that the document was intended to settle the property dispute. Thus, the third plaintiff had knowledge of the execution of Ex.A15 from the date of its execution itself. In such circumstances, the contention of the plaintiffs that they came to know about Ex.A15 only in October 2015 is wholly unacceptable and appears to be an utter falsehood.

45. To establish the mental condition of the deceased original plaintiff at the time of execution of Ex.A15, the plaintiffs examined two medical officers in the relevant field as P.Ws.3 and 4. P.W.3 deposed that, generally, patients suffering from a similar ailment would not experience difficulty in reading documents or taking independent decisions. Similarly, P.W.4 deposed that a patient undergoing regular treatment and medication would normally remain in a stable condition. Thus, the medical evidence adduced on the side of the plaintiffs does not support their plea that the deceased original plaintiff was

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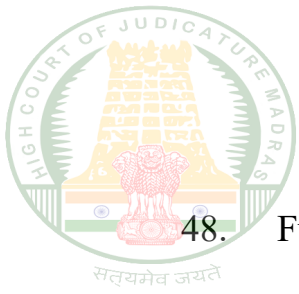
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incapable of understanding the nature of the transaction or of independently determining issues affecting her rights.

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46. Another significant circumstance requiring consideration is that the deceased original plaintiff had executed certain documents both prior to and subsequent to Ex.A15, which probalilise that she was in a stable and sound mental condition during the relevant period.

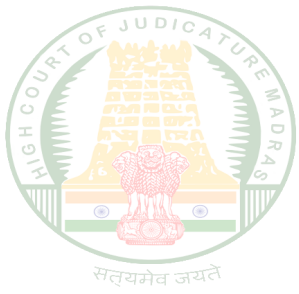
47. On 29.08.2014, nearly one month prior to the execution of Ex.A15, the deceased original plaintiff executed a Varthamana letter, marked as Ex.B4. The third plaintiff, her son, signed the said document as one of the attesting witnesses and admitted its execution. In Ex.B4, the deceased original plaintiff had clearly referred to the origin of the properties, the circumstances which constrained her to institute the suits, and her satisfaction in accepting 60 cents of land proposed to be allotted to her. It was only pursuant to the said understanding that the partition deed dated 24.09.2014, marked as Ex.A15, came into existence.



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48. Further, subsequent to the execution of Ex.A15, the deceased original plaintiff executed the settlement deed marked as Ex.A16, whereby she settled a portion of the property allotted to her under Ex.A15 in favour of her son and daughter, namely, the third and fourth plaintiffs. In the said settlement deed, she also acknowledged the execution of Ex.A15. Thus, the oral and documentary evidence probalilise and support the contention of the defendants that Ex.A15 is a true and valid document executed by the deceased original plaintiff while she was in a fit state of mind and health. Accordingly, this Court holds that the partition deed dated 24.09.2014, marked as Ex.A15, is true, valid and binding on the plaintiffs. This point is answered against plaintiff.

**49. Point No.2 in A.S.No.243 of 2021:** Plaintiffs 2 to 4, being the legal heirs of the deceased first plaintiff, were impleaded in the suit and thereafter amended the plaint by adding a prayer for declaration that the partition deed and settlement deed, marked as Exs.A15 and A16, are null and void. Though the trial Court framed a specific issue regarding the correctness of the court fee paid on the said relief, it later observed in the judgment that it was unnecessary to decide the said issue.



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50. In the present case, the documents challenged by the legal heirs of the deceased first plaintiff are the partition deed dated 24.09.2014, marked as Ex.A15, and the settlement deed, marked as Ex.A16. Both documents were admittedly executed by the deceased first plaintiff herself. The plaintiffs have assailed the said documents mainly on the ground that the executant was not in a fit state of mind to execute them. Once execution of the documents is admitted, and the challenge is confined to the voluntary nature of execution or to allegations of fraud, coercion or undue influence, the proper remedy is to seek cancellation of the documents alleged to have been so obtained. A mere declaration that the documents are null and void would arise only in cases where the plaintiff is not a party to the document, or where the document is executed by a third party without authority and is not binding on the true owner.

51. In the case on hand, the plaintiffs admit that the documents were executed by the deceased first plaintiff, but challenge them on the ground of her alleged mental incapacity. The present plaintiffs have stepped into the shoes of the deceased first plaintiff and claim rights over the suit properties



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only through her. Therefore, they ought to have sought cancellation of the partition deed and settlement deed, and not a mere declaratory relief.

52. In the event of seeking cancellation of an instrument, the plaint has to be valued under Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, and court fee is payable on the value of the document. However, in the present suit, the plaintiffs have sought only a declaration and valued the relief under Section 25(d) of the Act, by paying court fee on Rs.5,000/-, which is impermissible. Therefore, this point is answered by holding that, after amendment of the prayer, the plaint was not properly valued and the court fee paid is incorrect.

**53. Point No.1 in A.S.No.245 of 2021:** O.S.No.121 of 2011 and O.S.No.331 of 2014 were filed by the same plaintiff against the same defendants, seeking partition and separate possession of a 1/3rd share in the properties described in the respective plaint schedules. The second suit was instituted nearly three years after the filing of the earlier suit. From the cause of action pleaded in both plaints, it appears that the plaintiff had an opportunity to include the relief claimed in the subsequent suit even at the



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time of filing the first suit. Under Order II Rule 2 CPC, a plaintiff is bound to

claim all reliefs arising out of the same cause of action in one and the same suit. If any relief is omitted without obtaining leave of the Court, the plaintiff is precluded from subsequently suing for the omitted relief. Therefore, it has to be examined whether the causes of action for O.S.No.121 of 2011 and O.S.No.331 of 2014 are one and the same or distinct. If the causes of action are identical, the subsequent suit would be barred under Order II Rule 2 CPC.

54. The cause of action for O.S.No.121 of 2011 arose on account of the intestate death of Ramana Gounder, whereby succession opened under Section 8 of the Hindu Succession Act, 1956. The plaintiff, being one of his legal heirs, claimed partition in the properties left behind by Ramana Gounder. Insofar as O.S.No.331 of 2014 is concerned, the cause of action arose from the allegation that the suit properties therein were subsequently purchased by the plaintiff's brothers from and out of the income derived from the properties inherited from Ramana Gounder. Thus, the causes of action in the two suits are distinct and separate. Though a plaintiff may unite several causes of action against the same defendants in one suit, omission to combine different causes of action in a single suit is not fatal, nor does it bar the



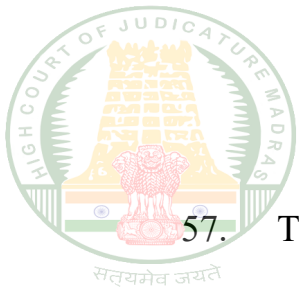
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institution of separate suits. Hence, the subsequent suit is not hit by Order II

Rules 2 and 3 CPC.

55. Under Order II Rule 2 CPC, where a plaintiff omits to sue for a relief arising out of the same cause of action in an earlier suit, she is barred from subsequently instituting another suit in respect of the omitted relief. Therefore, the crucial test is whether the claim made in the subsequent suit arose from the very same cause of action that existed at the time of institution of the earlier suit.

56. In the present case, the first suit was filed seeking partition of the self-acquired agricultural properties left behind by the father. The subsequent suit relates to properties purchased by the brothers in their own names, allegedly from and out of the income generated from the inherited agricultural properties. Though the daughter claims that the subsequently acquired properties are joint family/HUF properties, the foundation and nature of that claim are legally distinct from the claim advanced in the earlier suit.



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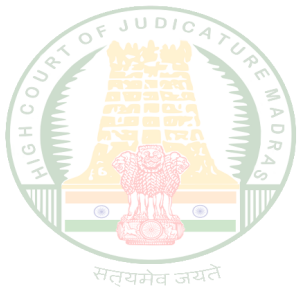
57. The first suit pertains to the estate that devolved upon the heirs under

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Section 8 of the Hindu Succession Act, 1956, whereas the second suit concerns the character of subsequent acquisitions made by the brothers. The determination as to whether those acquisitions are joint family properties or separate/self-acquired properties requires an independent enquiry into the source of funds, existence of sufficient nucleus, contribution of labour, blending of income, and the intention of the parties. Therefore, the causes of action in the two suits cannot be treated as identical.

58. Moreover, a partition suit stands on a different footing. So long as joint status continues and there has been no complete partition, the cause of action for partition may be regarded as a continuing one. Mere omission to include certain properties in an earlier partition suit does not automatically bar a subsequent suit in respect of the omitted properties, particularly where such properties are alleged to be joint family properties and their character is itself in dispute.

59. In the above circumstances, it is held that the subsequent suit in O.S.No.331 of 2014 is not barred under Order II Rule 2 CPC. Accordingly, this point is answered.



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**60. Point No.2 in A.S.No.245 of 2021:** The plaintiffs claim a 1/3rd share in the three items of properties described in the schedule to O.S.No.331 of 2014. According to them, the said properties were purchased in the names of the brothers of the deceased first plaintiff from and out of the income derived from the properties scheduled in O.S.No.121 of 2011, which were left behind by their father, Ramana Gounder. When the plaintiffs contend that the suit schedule properties were purchased from joint family funds, the burden lies upon them to establish the said plea by acceptable evidence.

61. The deceased first plaintiff was aged about eight years when her father, Ramana Gounder, died in the year 1961. She got married in the year 1969. P.W.1 admitted in his evidence that, having no independent income, he resided in his mother-in-law's house for about thirty years. \_On the side of the plaintiffs, there is no explanation regarding the extent of income derived from the properties left behind by Ramana Gounder, the expenses incurred by the alleged joint family, the amount spent towards the marriage expenses of the first plaintiff from the alleged joint family income, or the other family



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expenses said to have been met from the income of the alleged joint family properties.

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62. On the side of the defendants, it is contended that the three items of suit schedule properties were purchased by the sons of Ramana Gounder from and out of their independent earnings. Exs.A21 sale deed dated 13.06.1976 and A23 sale deed dated 13.06.1973 reveal that the sons of Ramana Gounder were tenants in respect of those properties even prior to their purchase. The recitals in the sale deeds also indicate that Subramania Gounder and Marudhachala Gounder had independent agricultural income, apart from the income derived from the properties left by their father, including income from leased agricultural lands. In such circumstances, the plaintiffs have not established that the three suit properties were purchased exclusively from the income derived from the properties left behind by Ramana Gounder. Further, in Ex.B4 vardhamana letter dated 29.08.2014 , the first plaintiff had specifically stated that the said three properties were purchased by her brothers out of their own earnings and had acknowledged that she had no right over those properties. In the above circumstances, the claim for partition made by the plaintiffs in O.S.No.331 of 2014 is unsustainable. Accordingly, it is held that the three items of suit properties are

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the self-acquired properties of the sons of Ramana Gounder. Accordingly, this point is answered against plaintiff.

**63. Point No.3 in A.S.Nos.243 and 245 of 2021:**

In view of the findings rendered on the other points for consideration, the common Judgment and Decrees passed in O.S.Nos.121 of 2011 and 331 of 2014 are liable to be confirmed. Consequently, both the appeals are dismissed. Considering the close relationship among the parties, there shall be no order as to costs. Consequently, connected civil miscellaneous petitions, if any, are closed.

**16.06.2026**

*ay*

Index: Yes / No

Speaking Order / Non-speaking Order

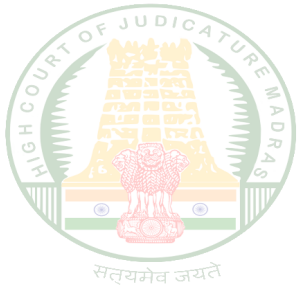
Neutral Citation: Yes / No

To

1.The IV Additional District & Sessions Court,  
Coimbatore.

2.The Section Officer,  
V.R.Section,  
High Court of Madras,  
Chennai.

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**DR. A.D. MARIA CLETE, J**

*ay*

PRE-DELIVERY COMMON JUDGMENT IN  
A.S. Nos. 243 & 245 of 2021

16.06.2026