
(2015) 04 MAD CK 0021

In the Madras High Court

Case No : S.A.(MD)No.261 of 2012 and S.A.(MD)No.262 of 2012 & M.P.
(MD)Nos.1 and 1 of 2012 and MP(MD) No.1 of 2015 in
CROS.OBJ(MD).SR No.10503 of 2015 & S.A.(MD) No.261 of 2012

Venugopal

APPELLANT

Vs

Gangadevi

RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:

Citation : (2015) 3 MadWN(Civil) 403

Hon'ble Judges : C.S. Karnan, J.

Bench : Single Bench

Advocate : Mr. P. Valliappan, Advocate, for the Appellant in both second appeals; Mr. P. Valliappan, Advocate, for the Respondent No.1 in Cross-Objection; Mr. A. Arumugam for M/s. Ajmal, Associates, for the Respondents 1 & 2 in both second appeals and for Cross-objectors; Mr. M. Saravanan, Advocate, for the Respondents 3, 4, & 6 in S.A. No. 262 of 2012; Mr. M. Saravanan, Advocate, for the Respondent Nos. 2, 3 & 5 in Cross Objection

Final Decision : Disposed Off

Judgement

C.S. Karnan, J.—The brief facts of the case are as follows:-

The plaintiffs submit that the first defendant and his brother Logakannan had filed partition suit in O.S.No.814 of 1978, on the file of Sub Court, Trichy against the first plaintiff and brothers and second defendant herein. Subsequently, the first plaintiff (deceased) filed an appeal before the Hon'ble High Court. Under the circumstances, the defendants and their sons compelled the first plaintiff and made him to withdraw the appeal from the High Court. As such, the trial Court's decree and judgment passed in O.S.No.814 of 1978 had become confirmed. After a few months, the defendants had taken the said property before partition and separate possession as per the trial Court's decree. The first defendant and Logakannan and another brother viz., Kannan compelled the first plaintiff and made him to file an application for final decree. Accordingly, the first plaintiff filed

an application No.804 of 1992. The plaintiff, without disclosing his residential address to the first defendant, was living in a hidden place. Under the circumstances, the first defendant, with the help of his servants, traced about the whereabouts of the first plaintiff and tortured him. Besides, the first defendant had forcibly obtained signature of the first plaintiff in the blank papers, Government stamp papers, under threat. Under the circumstances, the second plaintiff herein had filed writ petition before the High Court to produce the first plaintiff before the High Court. Accordingly, when the first plaintiff appeared before the High Court, he had given statement that he is not willing to live along with the defendants. Therefore, he came along with Advocate Clerk Nallusamy.

2. The first plaintiff further stated that for more than 10 years, he was living outside and thereafter an arbitration was conducted in the year 1986 and then he came to his house at Valisipuram. The first plaintiff and his wife and married daughter, Gangadevi, the second plaintiff herein lived at Valisipuram and others were residing at the other village. The first plaintiff took his daughter, the third plaintiff herein and made her to live along with him. During this period, the first plaintiff had received a sum of Rs.1,000/- towards rental income for 4 shops. The first defendant viz., Logakannan and Kannan compelled the first plaintiff to give his daughter for marriage with a person of unsound mind, with malafide intention. Under the circumstances, all the plaintiffs went to the Court for partition. Hence, the defendants disturbed the second and third plaintiffs to live without peace. On 26.09.1991, the second defendant, on the instruction of first defendant, had taken the ration card of the third plaintiff and locked her in the inner room. The very next day i.e., on 27.09.1991, the first defendant called the village people numbering 10 persons and in front of them abused the first plaintiff and his daughter, the third plaintiff herein and the household articles were thrown out from the house and the first and third plaintiffs were driven out from the house and both of them stayed at a charitable home at Srirangam. Thereafter, the second and third plaintiffs lived at the back portion of the house at Valisipuram from 04.01.1991. The first plaintiff lived at first floor of house at Thuraiyur. On 12.12.1991, the first defendant and his brother Kannan came and attempted to attack him. Hence, the first plaintiff was forced to come and stay along with his daughter at the back portion of house at Valisipuram. The very next day, the defendants had forcibly tried to obtain signature on blank papers from the plaintiff and his two daughters viz., the second and third plaintiffs. Fortunately, all of them escaped. Thereafter, the second plaintiff had filed writ petition before the High Court stating that the first plaintiff had been illegally detained by his sons. The same statement was given before the High Court in the Writ Petition (HCP).

3. The plaintiffs further submit that the defendants have obtained signature of Rangasamy Reddiar in the blank papers and the first defendant had written stating that the property had been sold in his favour against the sale consideration. Actually, the first plaintiff/Rangasamy Reddiar had not received any amount from the first defendant. As such, the created documents dated

08.07.1994 is not valid. Hence, the plaintiffs prayed for permanent injunction restraining the defendants from interfering with the plaintiffs property.

4. The first defendant had filed written statement stating that he had not compelled the first plaintiff to withdraw an appeal which has been filed against judgment in O.S.No.814 of 1978. The defendants denied that Rangasamy Reddiar had been detained under their custody. They also denied that they had obtained any signature in the blank stamp papers. Actually, the plaintiff is under the custody of Advocate Clerk Rangasamy, who is attached to Advocate Mr.Sivasankaran and they have filed the above false case. The defendant further denied that he had compelled the second plaintiff viz., Gangadevi to marry a person of unsound mind. Further, the defendant denied that he had kidnapped the first plaintiff to Kerala and obtained signature in the blank stamp papers. Further, the above case has been filed after limitation period. The first plaintiff had filed the above case on the instigation of third parties. Hence, the first defendant prayed to dismiss the suit.

5. After recording the averments of both parties, the trial Court had framed three issues, viz.,

(i) Whether the plaintiffs are entitled to receive share and separate possession?

(ii) Whether the Will dated 10.03.1997 had been written by the first plaintiff to and in favour of the second and third plaintiffs?

(iii) Whether the second and third plaintiffs are entitled to receive relief as per prayer in the suit?"

6. The plaintiffs viz., Kumudha and Gangadevi had filed another suit in O.S.No.143 of 1990 on the file of Sub Court, Trichy. The averments in the plaint is as follows:-

The plaintiffs submit that the suit schedule mentioned property belongs to joint family property and owned by the plaintiffs, defendants 1 to 4 and 6th defendant. The suit schedule mentioned property had been purchased through the income derived from the ancestral property of the first defendant and earnings of plaintiffs, defendants 2 to 4 and 6. The first plaintiff, being the kartha of the joint family had purchased all properties and the same was enjoyed by the plaintiffs and defendants as joint family. The first defendant Rangasamy Reddiar had expired on 16.08.1998, after executing a Will dated 10.3.1997 in favour of plaintiffs and given his property. As such, the first plaintiff is entitled to receive 2/10th share and the second plaintiff is also entitled to receive 2/10th, in total, they are entitled to get 2/5th share. The plaintiffs further prayed to partition the said property and pass preliminary decree and also prayed to appoint an Advocate Commissioner to maintain the suit property and deposit the income before the Court. Till partition and separate possession of the property, the plaintiffs pray to grant relief under Order 20, Rule 18 of C.P.C.

7. The second defendant had filed written statement and the same was adopted

by third and fourth defendants. The defendants denied that the plaintiffs and defendants lived as joint family. Further, as per the Hindu Succession Act, 1/90, the plaintiffs are not entitled to get any relief. Already, a suit has been filed in O.S.No.814 of 1978 for partition pertaining to the suit property and the preliminary decree was passed. As such, the suit property had been divided into 4 equal shares. In the said suit, the second and third defendants were allotted two equal shares. The defendant denied that as per the Panchayat decision, dated 05.06.1986, the defendants 1 to 6 lived as joint family. Further, the defendants had already divided the property and living in separate family as per preliminary decree passed in O.S.No.814 of 1978. As such, the final decree is not required. The defendants denied that the plaintiffs are also in joint possession with the suit property.

8. After recording the averments of both parties, the trial Court had framed four issues, viz.,

"(i) Whether the plaintiffs are entitled to receive 2/5th share?

(ii) Whether the defendants are liable to pay income derived from the suit property to the plaintiffs?

(iii) Whether the plaintiffs are not entitled to share as per the Act 1 of 1990?

(iv) What other relief are the plaintiffs entitled to?"

9. On the side of plaintiffs, the second plaintiff Gangadevi was examined as P.W.1 and one Namasivayam was examined as P.W.2 and 11 documents were marked as Exs.P1 to P11, viz., Ex.P1-copy of judgment dated 03.10.1991 made in writ petition in High Court, Ex.P2-original Will dated 10.03.1997 executed by Rangasamy, who is the father of the plaintiffs, Ex.P3-copy of sale deed dated 05.04.1959 executed by Rangasamy Reddiar to and in favour of Kalasamuppan, Ex.P4-copy of sale deed dated 03.06.1960 executed jointly by Rangasamy Reddiar and Krishnasami Reddiar to and in favour of Perumal Reddy, Ex.P5-Rules Form for preventing payment of lower stamp charges, Ex.P6-copy of printed Judgment dated 30.09.1980 made in O.S.No.814 of 1978, Ex.P7-copy of plaint and counter made in the above suit, Ex.P8-copy of petition for maintenance made in Judicial Magistrate's Court, Ex.P9-copy of petition made by the first respondent in M.C.No.16 of 1991, dated 04.10.1996, Ex.P10-copy of petition dated 04.10.1996 showing that the second respondent in above M.C. did not have any objection, Ex.P11-copy of case in O.S.No.27 of 1999 and petition affidavit in I.A.No.61 of 1999.

10. On the side of the defendants three witnesses were examined viz., Venugopal, Kannan and Kesavan as D.W.1 to D.W.3 and 5 documents were marked as Exs.D1 to D5, viz., Ex.D1-original sale deed dated 12.10.1979 executed by Chellapappa, Kannan, Venugopal, Logakannan to and in favour of Kesavan, Ex.D2-original sale deed dated 15.10.1979 executed by the above four persons to and in favour of Elangovan, Ex.D3-copy of judgment dated

06.04.1992 on the file of this Court in the writ petition, Ex.D4-copy of affidavit showing summons issued to Rangasami Reddiar in the writ petition, to appear before it, Ex.D5-copy of sale deed dated 17.08.1994 executed by Rangasami Reddiar and Chellapappa to and in favour of Venugopal.

11. P.W.1, Gangadevi had adduced evidence that she is the second plaintiff and her elder sister Kumudha is the first plaintiff in O.S.No.143 of 1990. The sixth defendant Vedavalli is her elder sister. The first defendant, Rangasamy Reddiar is her father. The defendants 2 to 4 are her brothers. The fifth defendant Chellapappa is her mother. The plaint schedule mentioned property situated at Venkateshwarapuram consists of land and house. The properties viz., shop, building, vacant portion and house is situated at Thuraiyur. All the properties are ancestral properties. P.W.1 further stated that the first plaintiff has married in the year 1981, the sixth defendant had married in the year 1980 and the 2nd respondent has not married. The first defendant i.e., her father was the family kartha. She and her sisters, father, and brothers lived as joint family. The sixth defendant is living along with her husband at Chennai. All of them are residing in the ancestral property. The second defendant, Venugopal is running a hotel at Thuraiyur. The third defendant, Logakannan is residing at Thuraiyur and the fourth defendant, Kannan is residing at Srirangam.

12. P.W.1 further stated that her father put up a shop for the second defendant, wherein her brother is running a paddy husk shop. Subsequently, her brother has converted the business as general store. Venugopal is having own shop at Thuraiyur and besides, he has let out 13 shops on rent and is receiving the rent. She denied that the property had been divided. The entire properties is being enjoyed by Venugopal. Her father lived with her and other brothers and 4 sisters. On 21.11.1992, Venugopal had broken her father's leg and taken him to his house. As per the maintenance case filed in the year 1996, her father lived along with her and her sister, Kumudha at Srirangam. Thereafter in the year 1998, he had expired. Till his life time, he was physically and mentally in good condition. Before his death, her father had executed a Will dated 10.03.1997, in favour of her and her sister Kumudha.

13. As per the Will, both are entitled to equal share. As per the Will and as per the Act, the plaintiffs are entitled to receive 2/5 share of property. P.W.1 further stated that she is the first plaintiff in O.S.No.977 of 2002 and her elder sister Gangadevi is the second plaintiff. During the pendency of the said suit, her father, the first defendant had expired. The defendants 2 to 4 are her elder brothers. The fifth defendant, Chellapappa is her mother and the sixth defendant, Vedavalli is another elder sister. The defendants forcibly threw her and her sister Gangadevi out of the house and had taken the property in an unjustified manner. She further stated that the second plaintiff i.e., her elder sister, her mother, father, sister Kumudha's two children lived at the ancestral house situated at Venkatesapuram as joint family upto 26.09.1991. On that day, her brothers forcibly threw them out. Thereafter, writ petition has been filed

before the Madras High Court and order was obtained for re-occupation of said property. Accordingly, they occupied the property. Subsequently, on 13.12.1991, again her brother threw them out of the house. Hence, a complaint had been lodged before the Thuraiyur Police Station. Again writ petition has been filed before the Madras High Court and order was obtained and they have occupied the property. P.W.1 further stated that she has filed the above suit in O.S.No.143 of 1990 and claimed her share. To proceed with the said case, her sister Kumudha had extended her assistance. Hence, the defendants had driven them out of the house, with an intention that they would not proceed with the case. An Advocate Commissioner came to the house and inspected the property. After Commissioner's inspection, the second defendant threatened her father. The Advocate Commissioner noted the household articles which were under the custody of defendants 2 to 5. In order to claim the said articles, O.S.No.977 of 2002 had been filed. Thereafter, she and her sister left the place and went to Thuraiyur. Now, they are living at Edamilaipatti, Pudur.

14. P.W.1 further stated that she is the second plaintiff and that the third plaintiff in O.S.No.89 of 2004 is her sister. Her father had expired after filing the said case. Hence, she and her sister had been brought on record as legal-heirs. The first defendant, Venugopal is her elder brother, Chellapappa is her mother. Her brothers kidnapped her father to Kerala, wherein they had obtained his signature in blank stamp papers. Hence, her father had filed suit for declaration that the sale deed is not valid. Further, the said sale deed had been registered at Kerala. As per the Will dated 10.03.1997, she and her sister are added as necessary parties. Her father was living with her sister at Srirangam. Her father had filed O.S.No.814 of 1978 for partition, wherein a preliminary decree was passed. Against the said preliminary decree, appeal has been filed. The same was withdrawn in the year 1987, under threat. Thereafter, petition has been filed for final decree. However, no final decree was passed. Her father has executed the Will in the presence of others belonging to the same village, including Advocate Namasivayam. The Will had been executed by her father in a sound mind. After executing the Will, he had expired after 1? years. As per the Will, she and her sisters are entitled to receive share in the suit property.

15. P.W.2 had adduced evidence that he is the practicing Advocate and notary public. He submits that he knows the plaintiff's father and that he had executed a Will in the presence of Rangasamy, Parthasarathy and Ramajeyam and they have also signed in the Will. He had certified the same. He further stated that he has to submit returns every year regarding the number of documents he had attested. But, he had not submitted the attested documents including the Will. P.W.2 further had spoken in support of P.W.1.

16. After recording the evidence of the witnesses, the trial Court dismissed the suit in O.S.No.143 of 1990, O.S.No. 977 of 2002 and O.S.No.89 of 2004, without costs.

17. Against the said decree and judgment passed in the above suits, the

plaintiffs have filed an appeal suit in A.S.No.235 of 2008, against the decree and judgment in O.S.No.143 of 1990 and A.S.No.22 of 2011 against the decree and judgment passed in O.S.No.977 of 2002 and A.S.No.46 of 2011 against the decree and judgment passed in O.S.No.89 of 2004. The appellate Court, after hearing the arguments of counsel for the appellant as well as counsel for the respondents and after perusing the decree and judgments passed in the suits and on perusing the exhibits marked by both parties, partly allowed the appeal suit in A.S.No.235 of 2008 in O.S.No.143 of 1990 and ordered 1/10th share to the first plaintiff and 3/10 share to the second defendant. The rest of the order passed by the trial Court was confirmed.

18. The appeal suit in A.S.No.22 of 2011, filed against O.S.No.977 of 2002 was dismissed and the decree and judgment passed by the trial Court was confirmed. The appeal suit in A.S.No.46 of 2011, filed against O.S.No.89 of 2004, was partly allowed and it was declared that the sale deed marked as Ex.P2, dated 08.07.1994, is null and void. Further, the appellate Court declared that the said sale deed is cancelled. The prayer of permanent injunction rejected by the trial Court was confirmed by the appellate Court.

19. The second defendant/first respondent/appellant herein has filed the appeal in S.A.(MD)No.261 of 2012, against the decree and judgment passed in A.S.No.46 of 2011 in O.S.No.89 of 2004. The same appellant has filed the S.A. (MD)No.262 of 2012 against the decree and judgment passed in A.S.No.235 of 2008 in O.S.No.143 of 1990. The plaintiffs 1 and 2 have also filed a Cross Objection in MP(MD) No.1 of 2015 in CROS.OBJ(MD).SR No.10503 of 2015.

20. The highly competent counsel Mr.P.Valliappan appearing for the appellant in both appeals has filed written arguments which are as follows:-

(i) The captioned Second Appeals arise as necessary sequel to the Judgments and Decrees passed by the Additional District Court at Tiruchirapalli on 07.12.2011 in A.S.Nos.235 of 2008 and 46 of 2011 reversing the judgment and decree passed by the First Additional District Court at Tiruchirapalli on 30.04.2008 in O.S.Nos.143 of 1990 and 89 of 2004, respectively. The suit in O.S.No.143 of 1990, was filed by Gangadevi and Kumudha for partition and separate possession. Whereas the suit in O.S.No.89 of 2004, was filed by Rangasamy Reddiyar to declare that the sale deed dated 08.07.1994 is null and void and for permanent injunction.

(ii) Appellant's father Rangasamy Reddiyar had three sons viz., appellant, Venugopal, Logakannan and Kannan and three daughters viz., Kumudha, Gangadevi, Vedavalli. The said Rangasamy Reddiyar along with his three sons constituted an Hindu undivided family (HUF) which owned ancestral properties. During the year 1978, the appellant and his brother Logakannan filed the suit in O.S.No.814 of 1978, before the Subordinate Judge's Court at Tiruchirapalli for partition and a preliminary decree was passed on 30.09.1980. The said decree was challenged by the appellant's father Rangasamy Reddiyar in A.S.No.421 of

1982 before the Court. Subsequently, on 05.06.1986, the parties compromised the matter and a family arrangement took place. In pursuance of the same, the appellant's father Rangasamy Reddiyar withdrew the said appeal in A.S.No.421 of 1982, before this Court. There was severance in status and the parties were put in separate possession. As such, the partition amongst the family members concluded in the year 1986 itself and the parties are in separate possession and enjoyment of the same. Only due to the said compromise, the appellant's father Rangasamy Reddiyar, had withdrawn the appeal in A.S.No.421 of 1982, filed before this Court. Therefore, the daughters of Rangasamy Reddiyar are not entitled to claim any share in view of the concluded partition and also because they were not entitled either to the benefit of Tamil Nadu Act 1 of 1990 or Hindu Succession Amendment 39 of 2005.

(iii) However, the respondents Gangadevi and Kumuda ventured into false and vexatious litigation by filing the suit in O.S.No.143 of 1990, before the First Additional Subordinate Judge's Court at Tiruchirappalli claiming 2/5th share over the suit properties. The appellant's father Rangasamy Reddiyar had filed the suit in O.S.No.89 of 2004, before the First Additional Subordinate Judge's Court at Tiruchirappalli seeking to cancel the sale deed executed by him on 17.08.1994 in favour of the appellant and for a consequential permanent injunction.

(iv) During the pendency of the suits, the appellant's father Rangasamy Reddiyar died on 16.08.1998. Gangadevi and Kumuda also set up a fraudulent Will dated 10.03.1997 alleged to have been executed by the appellant's father Rangasamy Reddiyar.

(v) The trial Court by Judgment and decree dated 30.04.2008 came to the conclusion that Gangadevi and Kumuda are not entitled to any share as they cannot reopen the concluded partition and upheld the sale deed in favour of the appellant and consequently dismissed both the suits.

(vi) As against the same, Gangadevi and Kumuda preferred appeals in A.S.Nos.235 of 2008 and 46 of 2011, before the Additional District Court (FTC-II) at Tiruchirappalli. The lower appellate Court by judgment and decree dated 07.12.2011, oblivious of the well established tenets in law, decreed both the suits excepting the relief of injunction. Aggrieved thus, the appellant preferred the above second appeals.

(vii) The lower appellate Court failed to see that since there was severance of status by virtue of the decree in the suit for partition which culminated in compromise in the year 1986, the same being saved under the provisions of Tamil Nadu Act of 1990, the respondents 1 and 2 cannot stake any claim over the suit properties.

(viii) Moreover the appellant's father Rangasamy Reddiyar having executed Ex.B6 sale deed 08.07.1994 in favour of the appellant, was estopped from challenging the validity of the same, which was only an afterthought, at the instigation of the respondents 1 and 2. The lower appellate Court also erred in

being skeptical about Ex.B6 sale deed, without any legal basis and overlooking the fact that the appellant had paid the deficit stamp duty.

(ix) The lower appellate Court also failed to see that merely because final decree was not passed, the preliminary decree would not become invalid and that the present suit for partition is not maintainable. Even assuming without admitting that the respondents 1 and 2 have any right, it was not open to them to file another suit for partition, as law does not contemplate filing of numerous suits for partition.

(x) The lower appellate Court failed to see that pursuant to the preliminary decree in the earlier suit, the sharers had arrived at a family arrangement in the year 1986 and are in enjoyment of their respective shares, which is the reason why the father of the appellant had withdrew the appeal in A.S.No.421 of 1982, filed before this Court. Hence, the respondents 1 and 2 are precluded from seeking partition.

(xi) The lower appellate Court ought to have seen that as per Section 29-A(V) of the Hindu Succession Act, 1956, the daughters/respondents 1 and 2 are not entitled to claim any share, since partition had been effected prior to commencement of Tamil Nadu Act I of 1990 of the Hindu Succession Act, 1956, since there is severance of joint family status and such situation is irreversible. The lower appellate Court ought to have seen that the provisions of Tamil Nadu Act 1 of 1990 do not contemplate a registered deed of partition so as to bar the right of the daughters and only contemplated partition resulting in severance of status. In the instant case, after the preliminary decree, a family arrangement was admittedly entered into, due to which the respondents 1 and 2 are not entitled to seek partition, on the basis of Tamil Nadu Act 1 of 1990. The lower appellate Court has misconstrued the dictum laid down in 1993-3-SCC-647. The lower appellate Court failed to see that in the aforesaid case, an application for passing of final decree was pending and the matter had not been compromised. But, there was no such application in the present case. It is also appropriate to mention here that the respondents 1 and 2 had admitted the family arrangement. The following decision will support the case of the appellant. In Smt Krishanabai Bhritar Ganpatrao Deshmukh v. Appasaheb Tuljaramarao Nimbalkar, AIR 1979 SC-1880, it was held as follows:-

"17. The division of the joint status may be brought about by any adult member of the joint family by intimating, indicating or representing to the other members in clear and unambiguous terms, his intention to separate and enjoy his share in the family property, in severality. Such intimation, indication or representation may take diverse forms. Sometimes it is evidenced by an explicit declaration (written or oral); sometimes, it is manifested by conduct of the members of the family in dealing separately with the former family properties. Service of notice or institution of a suit by one member coparcener against the other members/ coparceners for partition and separate possession may be sufficient to cause disruption of the joint status."

(xii) The lower appellate Court failed to see that the daughters of Rangasamy Reddiyar are not entitled to claim any share in view of the concluded partition and also because they were not entitled either to the benefit of Tamil Nadu Act 1 of 1990 or Hindu Succession Amendment 39 of 2005. In *Sundarambal v. Deivanayagam*, 1991 (1) LW 97, it was held as follows:-

" 19. If it impossible to imagine that the State Legislature intended to divest the female heirs in whom definite shares had already vested of a portion thereof and reduce the quantum considerably. Therefore, the only harmonious interpretation of Section 29-A that will be in consonance with the other provisions of the Act is that the daughter of a coparcener can become a coparcener only if her father is alive on 25.03.1989. She can become a coparcener only with her father and not with her brothers if her father had already passed away before the Amendment Act.

20. In the present case, the father of the fourth appellant, viz., Velayutha, died in 1976 even before the suit was filed. Hence, the fourth appellant cannot claim that she had, become a coparcener with her deceased; father and entitled to a share equal to that of respondents 1 and 2."

(xiii) The lower appellate Court also failed to consider the admissions made by the second respondent examined as P.W.1 wherein she categorically admitted that the appellant's father Rangasamy Reddiyar died in the year 1998, that the appellant's father Rangasamy Reddiyar rejoined the family in the year 1986, only after the compromise before panchayatdars, that the appellant, his brothers and father partitioned their property by metes and bounds on 05.06.1986, before the Panchayatards and consequently her father Rangasamy Reddiyar withdrew the appeal before this Court, that her father had sold four shops and the purchasers have not been impleaded in the suit, the four shops that were sold by Rangasamy Reddiyar, were the ones allotted to him before the Panchayatars and that is the reason why the said shops were not included in the suit in O.S.No.89 of 2004, that provision for payment of money was made to her and the first respondent before the Panchayatars, that after the partition by compromise, the appellant and her brothers sold few properties in which she and the first respondent stood as attesting witnesses and they have not included those parties in the present suit, that her father had not seen any advocate till the year 1996, that her father had accepted the partition before the Panchayatars, that she had not filed any document to prove her claim under the alleged Will executed by her father and that though there is no enmity between her and the alleged attesting witnesses to the Will, she was not examined as attesting witnesses though there were four of them.

(xiv) The Notary public who was examined as P.W.2 admitted that he had not followed the procedure under the Notaries Act by maintaining any register, that the Sub Registrar's Office was hardly 150 meters away from the residence of Rangasamy Reddiyar, but he had not registered the alleged Will, that he is not aware about the physical condition of Rangasamy Reddiyar, that he is not aware

about any of the attesting witnesses and that he had signed in the alleged Will only as a Notary public and not as an attesting witness. In AIR-1997-Karnataka-275, it was held as follows:-

"When a Notary/Oath Commissioner administers an oath/affirmation, he is mandatorily required to enter the name and particulars as prescribed and obtain the signature of the deponent in their registers. Such entries are required to be made serially by assigning a separate serial number for each transaction. The prescribed procedure for attesting affidavits makes it clear that making of endorsements on the affidavit and recording the particulars and obtaining the signature in the Register, is an integral part of the act of attestation or act of administering oath/affirmation. It, therefore, follows that while making necessary endorsements in the affidavit, the Attesting Officer will have to mention the reference number of the transaction (as entered in the Register) in the endorsement made at the end of the affidavit. It is also necessary that the Attesting Officer should mention his address to show the place where the affidavit is attested. Judicial notice can be taken of the fact that only some of the Notaries and Oath Commissioners note the serial number (reference number) of the attestation as entered in their Register in the affidavit/document and state their address while making the endorsement. In most of the affidavits, it is seen that merely the official seal of the Notary is affixed and the endorsement that "the affidavit is sworn to or solemnly affirmed in his presence" is made giving only the date of attestation and the name of the Notary Public. The serial number of the transaction and the place of attestation (address) is not mentioned. Having regard to the requirement of the relevant Rules, this is insufficient. For attestation or administration of oath affirmation, to be complete, necessary particulars have to be entered and signatures affixed in the Register and the endorsement made on the affidavit should contain the serial number of the transaction as entered in the Register and also contain the place of attestation (address of the Notary/Oath Commissioner). Mentioning the serial number of the transaction (as entered in the Register) in the affidavit while making the endorsement of attestation is the only way of ensuring that a record of attestation is maintained by the Oath Commissioner/Notary. This requirement is also evident from a combined reading of the relevant provisions governing the matter. Unless the transaction particulars are entered, and the signatures are affixed in the Register as required, and the serial number of the transaction in the Register and the place of attestation (address) are mentioned in the endorsement made, the act of administration of oath/affirmation will be incomplete, and it cannot be said that in such circumstances the affidavit is duly attested. It will be a defective affidavit.

There is no point in providing a Rule, if it is to be observed only in breach and the breach is to be justified by pleading practical difficulties and hardship. Observance of any Rule involves discipline and effort. So long as the Rules require that the transactions will have to be entered in the manner provided, they will have to be complied with.?

(xv) The lower appellate Court erred in upholding Ex.A2 Will dated 10.03.1997, by overlooking the several suspicious circumstances surrounding its execution and the fact that the alleged Will relied on by the respondents 1 and 2 was not proved. In this regard, the lower appellate Court failed to see that Ex.A2 Will dated 10.03.1997 was not proved in accordance with Section 63(c) of the Indian Succession Act, 1925 read with Section 68 of the Evidence Act, 1872, by examining any of the attestors. The finding of the lower appellate Court that Ex.A2 Will is a Holographic Will is not based on any legal evidence. Even the judgments relied on by the lower appellate Court with respect to proof of execution of Holographic Will do not mandate that the attestors need not be examined to prove a Holographic Will. Therefore, the lower appellate Court has misdirected itself in so far as the proof regarding execution of Ex.A2 Will is concerned. It is not known on what basis the lower appellate Court had arrived at the erroneous conclusion that A2 is a Holographic Will. In *Janki Narayan Bhoir v. Narayan Namdeo Kadam*, 2003-1-CTC-308, it was held as follows:

"Person propounding will has to prove not only that will was duly and validly executed but also that it was duly attested - Execution of will has to be proved by examining at least one of attesting witnesses.

10. Section 68 of the Evidence Act speaks of as to how a document required by law to be attested can be proved. According to the said Section, a document required by law to be attested shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving an evidence. It flows from this Section that if there be an attesting witness alive capable of giving evidence and subject to the process of the Court, has to be necessarily examined before the document required by law to be attested can be used in an evidence. On a combined reading of Section 63 of the Succession Act with Section 68 of the Evidence Act, it appears that a person propounding the Will has got to prove that the will was duly and validly executed. That cannot be done by simply proving that the signature on the Will was that of the testator but must also prove that attestations were also made properly as required by clause (c) of Section 63 of the Succession Act. It is true that Section 68 of the Evidence Act does not say that both or all the attesting witnesses must be examined. But at least one attesting witness has to be called for proving due execution of the will as envisaged in Section 63.?

(xvi) The lower appellate Court ought to have seen that the suit for partition cannot be maintained in the absence of all the sharers and therefore, the suit filed by the respondents 1 and 2 will have to be dismissed, since the purchasers had not been impleaded. In *Ramachandra Pillai v. Valliammal*, 1987 (100) LW 486, it was held as follows:-

"C.P.C., 0.1, R9-Non-joinder of parties in a suit - Effect - Failure to implead all the sharers in a partition suit will result in suit being dismissed for non-joinder. The decision in *Kanakarathanammal v. V.S. Loganatha Mudaliar*, AIR 1965 S.C.

271 is authority for the position that in a suit for partition, all the sharers are necessary parties and also for the position that the suit is liable to be dismissed for non-joinder of anyone of the parties. In *T. Panchapakesan and others v. Peria Thambi Naicker and others* 85-L.W. 841 (D.B.) also, a Division Bench of this Court has taken a similar view. We are accordingly of the view that the finding of the learned Subordinate Judge on issue No.10 holding that the suit is not bad for non-joinder of Nagarathinam's heirs is unsound and liable to be set-aside. Accordingly, we hold that the suit is liable to be dismissed for non-joinder of the heirs of Nagarathinam."

(xvii) The lower appellate Court ought to have seen that the respondents are precluded from disputing the right of the appellant in the backdrop of their attestation of the sale deeds executed by the appellant and others. In *Ramaswamy Gounder, Chinnasami Goundar alias Chinna Goundar v. Ananthapadmanabha Iyer*, 1971 Volume 84-Law Weekly 176, it was held as follows:-

"Held, on the facts, it was not necessary for the purpose of the case, for the Court to rest its conclusion, on the basis of the attestation of the concerned parties to the relevant document and the prima facie position and presumption resulting therefrom. From the attendant and surrounding circumstances it is impossible to state that when the concerned parties attested the document, they were not aware of the contents. All the circumstances of the case point to the conclusion that they attested the document with the full knowledge of the contents of the document."

(xviii) The lower appellate Court failed to see that Ex.B6 sale deed dated 08.07.1994 is a valid document and not vitiated because of it being registered at Kerala. There is no legal impediment for registering documents in one state if there are properties in two different states. Moreover the appellant had also paid the deficit stamp duty. In this respect, the lower appellate Court ought to have considered the decision in *Palanisamy, M. v. State of Tamil Nadu*, 2009-4-CTC-692, it was held as follows:-

"2. The petitioners had purchased immovable properties, of which, some are situate in the State of Tamil Nadu and the rest of the State of Kerala, under common sale deeds and they were registered by the Sub-Registrar concerned in the State of Kerala. Under Section 67 of the Registration Act, the Sub-Registrar concerned, after the registration is over, is required to forward a copy of the sale deed to the jurisdictional Sub-Registrar in the State of Tamil Nadu. Selection 19-B was introduced in the Stamp Act making such purchaser to pay differential stamp duty in respect of the properties situate in the State of Tamil Nadu covered in such common sale deeds.

4. In the cases on hand, the sale deeds in question were registered in the State of Kerala on 22.05.1992. Un-amended Proviso to Selection 19-B(4) of the Act, provides for proceedings under Section 19-B(4) of the Act for collecting the

differential Stamp Duty."

On a cumulative consideration of all the facts and materials on record, the lower appellate Court ought to have seen that the appellant is absolutely entitled to the suit properties and that the respondents 1 and 2 are not entitled to any share over the same. As such, it can be concluded that both the suits are liable to be dismissed. That apart, in the event of the suit in O.S. No.84 of 2004 being dismissed, consequently the other suit in O.S. No.143 of 1990, will automatically fail, as Ex.B6 would have been upheld. Besides, the judgment and decree rendered by the lower appellate Court are perverse, to say the least. Hence, the highly competent counsel appearing for the appellant in both second appeals and first respondent in M.P.(MD)No.1 of 2015 in Cros. Obj.(MD)SR. No.10503 of 2015 entreats the Court to allow the above appeals.

21. The highly competent counsel Mr. A.Arumugam appearing for the first and second respondents in both second appeals and cross objectors in MP(MD) No.1 of 2015 in CROS.OBJ(MD).SR No.10503 of 2015, submits that the respondents had filed suit in O.S. No.143 of 1990, for partition and separate possession to an extent of 2/5 share and other reliefs. The plaintiffs had filed another suit, to declare the document dated 08.07.1994 as null and void. Besides, they sought for permanent injunction. Further, a preliminary decree was passed in O.S.No.814 of 1978. Against the said decree, the respondent's father Rangasamy Reddiar had filed an appeal before the Hon'ble High Court. The defendants threatened their father Rangasamy Reddiar to withdraw the said appeal. Accordingly, the appeal had been withdrawn. Before passing final decree, the defendants had forcibly occupied the suit properties. Hence, the plaintiffs had filed partition in application No.804 of 1992 for passing final decree. Hence, the defendants continuously threatened the plaintiffs and also obtained signatures in the blank stamp papers from Rangasamy Reddiar (now deceased). Therefore, the document dated 08.07.1994 is not valid since the first plaintiff (deceased) had not executed the said document freely before the Sub Registrar concerned. Hence, the highly competent counsel entreats the Court to dismiss the appeals and decree the suit.

22. The highly competent counsel Mr. M.Saravanan appearing for the respondents 3, 4 and 6 in S.A.(MD)No.262 of 2012 and for respondents 2, 3 and 5 in MP(MD)No.1 of 2015 in CROS.OBJ(MD).SR No.10503 of 2015 submits that the plaintiffs have not lived with the defendants as joint family. As such, they have no rights to claim any right over the said property. Actually, the defendants had filed O.S. No.814 of 1978 for partition and separate possession. After contest, a decree was passed on 30.09.1980 and the property was divided into 4 equal shares. Further, in the said preliminary decree, the marriage expenses of the then two unmarried daughters had been provided. Therefore, the suit in O.S. No.143 of 1990 for partition is not maintainable since the same property has already been divided. Further, Rangasamy Reddiar (deceased), father of the appellant had filed appeal suit in A.S. No.421 of 1982, before the High Court and

the same was withdrawn on 05.06.1986 since compromise was made among the parties. As such, there was no compulsion to withdraw the said appeal. The father of the appellant, originally filed the suit in O.S. No.89 of 2004, before the Sub Court, Trichy to cancel the sale deed executed by him on 17.08.1994 in favour of the appellant. The said suit has been filed after around a lapse of 10 years which is as an afterthought. On the basis of sale deed dated 17.08.1994, all the documents pertaining to the property have been mutated, including revenue records. Further, the sale deed had been registered on the file of Sub Registrar, which is a public office. As such, the sale deed had not been executed under threat. The partition suit in O.S.No.143 of 1990 is not maintainable since similar suit has already been filed and preliminary decree was passed and compromise made thereafter. The plaintiffs made several allegations against the appellants stating that the father of the plaintiff, viz., Rangasamy Reddiar (now deceased) had been kidnapped by the appellant. This is their own opinion and not based on any circumstantial evidence as no criminal case had been filed.

23. From the above discussions, this Court is of the view that the defendants had filed suit in O.S.No.814 of 1978 on the file of Sub Court, Trichy for partition and separate possession. The trial Court had passed preliminary decree on 30.09.1980 after trial and ordered for partition among the parties in 4 equal shares. Subsequently, the father of the plaintiffs and father of the appellants, viz., Rangasamy Reddiar had filed an appeal before the High Court in A.S.No.421 of 1982. The same was withdrawn by the appellant/Rangasamy Reddiar (deceased). The said decree is therefore in force for the same property. As such, the suit in O.S.No.143 of 1990, on the file of 1st Additional Sub Court is not maintainable, since an earlier suit in O.S.No.814 of 1978, has been filed on the same cause of action, same parties, same property and same Court with the same prayer. Therefore, Section 11, i.e., Res-judicata arises in the instant case.

24. The Original Suit in O.S.No.89 of 2004 has been filed by the plaintiffs/first and second respondents herein to declare the sale deed dated 08.07.1994 as null and void. The suit has been filed in the year 2004 i.e., after a lapse of around 10 years and could only be considered as an afterthought. If the sale deed has been forged, the aggrieved person ought to have initiated criminal proceedings, but this was not done. As such, the suit in O.S.No.89 of 2004 is not maintainable and also barred by limitation.

25. Thus the plaintiffs seeking partition under Tamilnadu Act 1 of 1990 are bound to show that their case is not hit by partition already affected. It is their own case that partition was "effected" in the year 1986, long prior to the coming into force of Tamilnadu Act 1 of 1990. Further there is no allegation of the said partition being vitiated by fraud, misrepresentation or coercion. In fact, DW1 deposed as follows, regarding which there was no cross examination by the plaintiffs:

1986 y; Chpy; g";rhaj;jhh;fs; itj;J v";fSf;Fs; ghfk; bra;J Koj;J bfhz;nlhk;/ mjd;go nky;KiwaPl;oid ghfk; bra;J bfhs;tjhf Twp vd; mg;gh thgR bgw;whh;/ vd;

mg;gh g";rhaj;jhh;fis Tg;gpl;L te;J ghfg;gphptpid bra;a Vw;ghL bra;jhh;/ mnjnghy; Chpy; bghpa kdpjh;fis itj;J Vw;gl;l ghfg;gphptpidia eh";fs; midtUk; kdg;g{h;tkhf Vw;Wf;bfhz;nllhk;/ ghfg;gphptpidf;F gpwF ,e;j ghfgphptpidia Vw;Wf;bfhs;stpy;iy vd;nwh kPz;Lk; brd;id cah;ePjpkd;wj;jpy; ghfk; bra;J bfhz;l nky;KiwaPl;il kPz;Lk; elj;jg;nghtjhf xU nghJk; brhy;ytpy;iy/ 1970. 72y; ,Ue;J vd; jfg;gdhh; v";fs; tPl;oy; ,Ug;gjpy;iy/ brhj;ij gukhpg;gjpy;iy/ tPl;ow;F ntz;oa bryt[f;fhd cjt看fs; vJt[k; bra;tjpy;iy/ epiwa fld; th";fp bryt[bra;jhh;/ vd; mg;gh; tPl;ow;nf tuhky; ,Ue;J te;j fhuzj;jpdhy; eh";fs; tHf;F jhf;fy; bra;a ntz;oa mtrpak; Vw;gl;lJ/ v";fs; rnfhjhpfs; jpUkzj;jpw;F vd; mg;gh ahbjhU Vw;ghLk; bryt[fisa[k; bra;atpy;iy vd; mg;gh brhj;Jf;fis mtutuhfnt tpw;W tpiuak; bra;J te;jhh; Chpy; bghpath;fis itj;J vy;nyhUk; xj;Jf;bfhs;Sk; tifapy; ghfg;gphptpid Vw;gl;Lt看l;jhy; v";fSf;Fs; ,Ue;j gpur;rid Kw;wpYkhf Koe;Jt看l;lJ//// @brhj;Jghfk; gphpf;fg;gl;L gpur;ridfs; Kotile;J t看l;ljh; tHf;fpw;F ntiyapy;yhky; Koe;Jt看l;lJ

26. It is admitted by the plaintiffs that the decision before the Panchayatdars was accepted by one and all in the family. So, the very basis of dispute between father and sons came to a close, when the father joined the family fold and amicably partitioned the properties as well. Neither the father nor his sons challenged the said "partition effected". It is not the case of plaintiffs that the partition theory is a mere make believe one to browbeat their claim under Tamilnadu Act 1 of 1990. That being so, failure to suggest that partition was not over and there were still several disputes remained unsettled waiting to be resolved by final decree, leads to the inference that the plaintiffs have accepted the case of ?partition effected?. Moreover, in a Hindu joint family, the severance in status takes place the moment the intention to separate is conveyed. After disruption of joint status, the parties take only as tenants in common and not as joint tenants. So survivorship which is the special characteristic of joint tenancy vanishes. The Act, which is prospective, cannot relate back to a disrupted family and so nothing survives for the plaintiffs. The following decisions support the case of the appellant:

27. If according to plaintiffs, the "partition effected" will not bind them, then all alienees should have been included. They have not been included in the suit. They know by verification of encumbrance certificates that four shops were sold by their father, mother & brothers and also the identity of properties sold. Under Exhibits B1 and B2, lands have been sold and PW1 is one of the attestors in the year 1979. PW1 knows the consequences of not impleading the purchasers. In this regard the evidence of PW1 is as follows:

1979;F gpwF v";fs; FLk;g epy";fis fpuak; gz;zpdhh;fs; vd;why; rhpjhd;/ mjhtJ vd; jhahh; kw;Wk; vd; rnfjhuh; fpuak; bra;jhh;fs; vd;why; rhpjhd;/ me;j fpua Mtz";fspy; bgz; kf;fshfpa eh";fSk; rhl;rp ifbaGj;J nghl;Ls;nshk;/ rhl;rpalk; 2 fpua gj;jpu";fis fhl;o nfl;l nghJ mjpYs;s rhl;rp ifbaGj;Jf;fs; jd;Dila ifbaGj;J vd;W xg;g[f;bfhz;lhh;/// 15/10/79y; vd; jhahh; bry;yghg;gh. rnfjhuh;fs; fz;z; ntQqnfhghy;. nyhffz;z; . Mfpnahn;fs; ,s";nfhtd; mth;fSf;F vGjpf;bfhLj;j fpua gj;jpuk; gp/th/rh/M/ mjpYs;s rhl;rp ifbaGj;J vd;DilaJ jhd;/ ,ij jtpu nfhtpe;juh\$;.

rjhrptk;. nfhghy; MfpnahUk; v";fs; brhj;ij fpuak; th";fpa[s;shh;fs; vd;w tptuKk; bjhpa[k;/ mt;thW fpiuakhd brhj;Jf;fSk; ,t;tHf;fpy; fhl;oapUf;fpnwd; vd;why; rhpjhd;/ tpy;y";f rhd;W bgw;W ghj;j;jpgd; nkw;brhd;d fpua";fs; Vw;gl;Ls;sJ vd;gij tHf;F jhf;fy; bra;tjw;F Kd;ng bjhpe;J bfhz;nld;/ me;j fpuak; bgw;w egh;fs; ahiaa[k; ,e;j tHf;fpy; jug;gpdh;fshf nrh;f;ftpy;iy

Therefore, viewed from any angle, the plaintiffs, who are the daughters of Rangasamy Reddiyar, are not entitled to the relief of partition.

28. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on all sides and on perusing the typed-set of papers and the views of this Court expressed above, this Court sets aside the common judgments and separate decrees passed by the lower appellate Court in A.S.No.46 of 2009 and A.S.No.235 of 2008, dated 07.12.2011, on the file of I Additional District Judge, Trichirapalli, and confirms the dismissal of the suit in O.S.No.89 of 2004 and O.S.No.143 of 1990, dated 30.04.2008, on the file of I Additional Sub Judge, Trichirapalli, is confirmed.

29. In the result, both the second appeals filed by the second defendant are allowed and Cross Objection filed by the plaintiffs is rejected. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.