



S.A.No.270 of 2025

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	13.10.2025
Pronounced on	09.01.2026

CORAM

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

S.A.No.270 of 2025 and
C.M.P. No.8176 of 2025

Muthu Naicker (Died)

1. M. Gunasekaran
2. M. Gangadharan
3. M. Arumugam
4. G. Bharathi
5. K. Shanmugam
6. S. Sivakumar
7. S. Loganathan

...Appellants

Vs.

1. Vijaya
2. Rani
3. S. Mala
4. Venda @ Keerthan
5. R. Anjala
6. A. Vinayagamoorthy

...Respondents



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Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 20.11.2021 passed in A.S. No.35 of 2018, on the file of the Subordinate Court, Arakkonam, confirming the Judgment and decree dated 22.03.2017 passed in O.S. No.99 of 2007, on the file of the District Munsif Court, Sholinghur.

For Appellants : Mr.S. Frangelin
For Respondents : Mr. V. Raghavachari, Senior Advocate
for Mr. A. Gowthaman for R1
Mr. R. Ramesh for R2 to R5
Ms. Saritha for R6

JUDGMENT

The present Second Appeal is directed against the judgment and decree dated 20.11.2021 made in A.S. No.35 of 2018 on the file of Sub Court, Arakkonam, confirming the judgment and decree dated 22.03.2017 made in O.S. No.99/2007 on the file of the District Munsif Court, Sholinghur.

2. The appellant is the 7th defendant in the above suit. The 1st respondent, as plaintiff, filed the above suit for partition against the defendants 1 to 6 and separate possession of her 1/6 share in the suit

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WEB COPY properties by metes and bounds and for permanent injunction restraining the 7th defendant from encumbering the suit properties to the third party.

3. The case of the plaintiff is that, the 5th defendant is the mother of the plaintiff and the defendants 1 to 4 and 6 respectively. They are the legal heirs of one Late Anandan. The scheduled mentioned properties were acquired by Late Anandan who died on 20.04.2006 leaving behind the plaintiff and the defendants 1 to 6 as his legal heirs. Despite repeated demands, the defendants 5 and 6 failed to come forward to divide the suit properties and alienated the suit item Nos.1 to 6 to the 7th defendant. The defendants 5 and 6 are not the absolute owners of the above properties and they have no right to sell the above suit properties to the 7th defendant. The alleged alienation done behind the back of the plaintiff is not valid and binding upon her. While so, the 7th defendant is attempting to alienate the suit properties to third parties. Hence, the plaintiff filed the above suit for partition.

4. On the contrary, the 6th defendant would submit that, his father did not receive any sale consideration for the power deed executed in



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favour of the 7th defendant and that he along with his mother executed the sale deed dated 20.11.2006 due to compulsion by the 7th defendant. His further contention is that on the date of the alleged sale deed, he was a minor and therefore, the sale deed is not valid and binding on him.

5. The 7th defendant would contend that, on 28.06.2004, the said Anandan executed a Power of Attorney deed after receiving a sum of Rs.1,66,250/- as sale consideration. Hence, the Power Deed is coupled with interest and the same cannot be terminated on the death of the plaintiff's father Anandan. Thereafter, the defendants 5 and 6 executed the sale deed on 20.11.2006 in his favour in respect of suit item Nos.1 to 6. Hence, prayed for dismissal of the suit.

6. The trial court, vide judgment and decree dated 22.03.2017 decreed the suit in favour of the plaintiff holding that the deed of power of attorney executed by the plaintiff's father came to an end on the death of plaintiff's father and the sale executed in respect of the suit item Nos. 1 to 6 by the defendants 5 and 6 is valid only with regard to the 5th defendant's 1/7 share. Since the 6th defendant was found to be a minor on



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the date of execution of the sale deed, the trial court held that the sale deed dated 20.11.2006 is not binding on the 6th defendant. The trial court allotted 1/6 share to the plaintiff in the suit item Nos. 7 to 9 and also granted permanent injunction restraining the 7th defendant from alienating the suit properties. Aggrieved by this, the 7th defendant preferred the appeal suit in A.S. No.35/2018 before Sub Court, Arakkonam. The first appellate court by its judgment and decree dated 20.11.2021 confirmed the judgment and decree passed by the trial court. But, also held that, the plaintiff is entitled to 1/7 share in the suit properties and 1/7 share of the 5th defendant in all the suit items 1 to 9 shall be adjusted to the share of the 7th defendant applying the principle of equity. Challenging the same, the present Second Appeal is preferred.

7. This Second Appeal is admitted on the following substantial questions of law:

“1. Whether the courts below are correct in permitting the plaintiff to pay court fee under Section 37(1) of the Tamil Nadu Court Fees and suit valuation Act, 1955, by paying 30 times of the survey assessment of the land when the 9th item being a house



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WEB COPY *and the same has to be valued at its market price?*

2. Whether the courts below are correct in granting partial partition leaving aside the lands situate in S.F. No.925/2 and 912 belonging to the respondents?"

8. Mr.S. Frangkelin, the learned counsel appearing for the appellant would contend that, the 6th defendant had not filed any suit for cancelling the sale deed executed by him on the ground of undue influence and coercion after attaining major. The 6th defendant and his mother namely the 5th defendant had set up the plaintiff to file the above suit for partition after executing the sale deed in favour of the appellant / 7th defendant in order to deceive the rights of the appellant / 7th defendant and grab the suit properties from him. He would submit that the 5th and 6th defendants executed the sale deed dated 20.11.2006 in favour of the appellant / 7th defendant in pursuant to the oral agreement entered between himself and the respondents' father Anandan, who received a sum of Rs.1,66,250/- towards his medical expenses and for performing his daughter's marriage. It is admitted fact that the appellant / 7th defendant is alone in possession and enjoyment of the suit properties. His further submission is that the



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WEB COPY suit is bad for partial partition for non inclusion of land situate in S.F.

No.925/2 and 912 in the suit schedule. His further contention is that since the respondents have been excluded from the possession of the suit properties, court fee paid under Section 37(1) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955, is incorrect and moreover, the suit item No.9, being a house property, was not properly valued. The suit ought to have been filed before the Sub Court and the District Munsif Court does not have jurisdiction to entertain the suit.

9. On the other hand, Mr. V. Raghavachari, learned Senior Advocate appearing for Mr. A. Gowthaman, learned counsel on record for the 1st respondent submits that, the first appellate court erred in passing a decree to adjust the 5th defendant's 1/7 share to the 7th defendant on the principle of equity. He would submit that, though the respondents have not preferred any appeal against the said judgment and decree passed by the first appellate court, this Court is empowered to grant an appropriate relief by invoking the provisions under Order 41 Rule 33 of CPC. He would submit that the alleged sale receipt is only a security deed, which merely creates charge on property but do not give right to



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WEB COPY possession. The appellant could claim charge amount, but not possession because, security deed does not create an interest in property. He would further submit that the appellant / 7th defendant failed to establish that the sale deed was executed by the 5th and 6th defendants after clearly understanding the nature of the transaction. Since both the courts below had fallen in error in this behalf and had not approached the case in light of correct law on subject, the same warrants interference by this Court, even if there is no appeal by the respondents. In support of his contentions, he relied on the following judgments.

- 1. Kharbuja Kuer vs. Jangbahadur Rai** reported in **AIR 1963 SC 1203.**
- 2. K. Varadhan vs. Pattammal and ors** reported in **1992-2-LW 209.**
- 3. K. Muthuswami Gounder vs. N. Palaniappa Gounder** reported in **AIR 1998 SC 3118**
- 4. Judgment of this Court dated 01.10.2015 in C.M.A. No.306 of 2014 (Universal Somp General Insurance Co. Ltd., vs. Uma and others)**



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WEB COPY 5. Eastern Coalfields Limited & ors vs. Rabindra Kumar

Bharti reported in 2022 LiveLaw (SC) 374

10. Heard on both sides. Records perused.

11. The contention of the appellant/7th defendant is that, at the time of execution of the sale deed, the 5th and 6th defendants suppressed the fact that the 6th defendant was a minor. The 6th defendant did not file any suit for cancelling the sale deed executed by him on the ground of undue influence and coercion after attaining majority. The father Anandan received a sum of Rs.1,66,250/- towards his medical expenses and for performing his daughter's marriage and issued a receipt of the same. It is further contended that the property in S.F. No.925/2 and 912 were not included in the suit and therefore, the suit is bad for partial partition. It is further contended that the suit item No.9 was not properly valued and the suit ought not to have been entertained by the District Munsif Court. Further it is submitted that, the respondents are not in possession of the suit properties and no relief was sought for recovery of possession. The Court fee paid under Section 37(1) of the Court Fee Act, is incorrect.



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WEB COPY 12. The instant suit was filed for partition and other reliefs by claiming that the plaintiff was a joint owner of 1/7 share of the suit properties and defendants 1 to 6 were the joint share holders. According to the plaintiff, the suit properties were acquired by her father Late Anandan. After his demise, the plaintiff and the defendants, as legal heirs of Late Anandan, are entitled to the suit properties. The defendants 1 to 6 supported the case of the plaintiff. The 7th defendant's contention is that, the father Late Anandan, during his life time, had executed a registered power deed in favour of his son M.Gangadaran on 28.06.2004 in respect of item numbers 1 to 6 empowering him to sell the properties and that the said Anandan on the same day, i.e., 28.06.2004 received a sum of Rs.1,66,250/- from this defendant as sale consideration for the abovesaid properties and also executed a sale receipt in his favour acknowledging the receipt of cash from this defendant. After the demise of the said Anandan, the 5th and 6th defendants, being the mother and son of Late Anandan, executed a registered sale deed dated 20.11.2006 in favour of the 7th defendant for the sale consideration of Rs.1,66,250/- admitting and acknowledging the sale already effected between Late Anandan and the 7th defendant. Hence, the plaintiff and the other defendants are not



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entitled to claim any share in the suit properties. The further contention of the 7th defendant in this appeal is that, the 6th defendant has signed the sale deed suppressing the fact that he was a minor at the time of executing the sale deed in favour of the 7th defendant and that he had not filed any suit for cancelling the sale deed executed by him on the ground of undue influence and coercion after attaining major.

13. At the outset, the courts below have rightly held that the sale deed executed by the 6th defendant, when he was a minor at the relevant period, is not valid in the eye of law. It cannot be disputed that a minor cannot independently execute a sale deed for immovable property. But, any sale of their property must be done by a legal guardian with prior court permission, ensuring it's for the minor's benefit, otherwise, the sale is voidable by the minor upon reaching majority. No infirmity or perversity is found in the above findings of the courts below.

14. The next contention of the appellant / 7th defendant is that, the courts below erred in permitting the plaintiff to pay court fee under Section 37(1) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955,



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for the 9th item of the suit properties, being a house and the same has to be valued at market price and that the District Munsif Court has no pecuniary jurisdiction to entertain the above suit. Generally, objections to pecuniary jurisdiction must be raised at the earliest opportunity under Section 21 of the Civil Procedure Code and cannot be allowed in a Second Appeal for the first time unless there is a failure of justice. By not objecting at the trial or first appeal, a party generally waives the objection for pecuniary matters. Hence, the appellant cannot raise a pecuniary jurisdiction point for the first time in a Second Appeal, as it is considered waived. Therefore, an objection with respect to territorial or pecuniary jurisdiction has to be raised at the first instance and cannot be raised at subsequent proceedings, after settlement of issues, unless failure of justice is caused. The appellant / 7th defendant failed to explain that the question of pecuniary jurisdiction has to be considered by this Court, otherwise, it would result in failure of justice. Moreover, the appellant / 7th defendant failed to establish that, the 9th item of the suit properties is under valued.



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WEB COPY 15. The appellant / 7th defendant would further contend that, the courts below erred in granting partial partition leaving aside the land situate in S.F. No.925/2 and 912 belonging to the respondents. On a perusal of the judgments of the courts below, it has been clearly held that the property in S.No.912 was purchased by the 5th defendant under Document No.830/1989 (Ex.B14), who in turn executed a settlement deed in favour the 6th defendant under Ex.B15 and therefore, the above said property cannot be subjected to partition. With regard to the property in S.F. No.925/2, the appellant / 7th defendant failed to establish that the same belongs to the family and it is available for partition.

16. Now coming to the issue about the correctness of judgment and decree dated 20.11.2021 passed in A.S. No.35/2018 raised by the respondents contending that the first appellate court erred in passing a judgment and decree that, the sale deed dated 20.11.2006 is valid only in respect of the share of the 5th defendant and allotting the share of the 5th defendant in all the suit items 1 to 9 are to be adjusted towards the share of the 7th defendant applying the principle of equity. The learned Senior Counsel would argue that though no cross appeal was preferred by the



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respondents in this regard, this Court is empowered to set aside the judgment and decree of the first appellate court invoking the provisions under Order 41 Rule 33 CPC.

17. No doubt, Order 41 Rule 33 grants appellate courts comprehensive authority. The appellate court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require. The Hon'ble Supreme Court in ***Eastern Coalfields Limited and others vs. Rabindra Kumar Bharti 2022 INSC 404*** established the foundational principle that “Order 41 Rule 33 no doubt clothes the appellate court with an extraordinary power, which however is a rare jurisdiction”. The Hon'ble Supreme Court emphasized that this power can be invoked only to reach justice in the special facts of a case and it is not an ordinary rule to be applied across the board in all appeals and that it must be exercised only in exceptional cases. Therefore, the courts cannot exceed its jurisdictional bounds by modifying the decree without the respondents' involvement through proper legal channels, i.e. Order 41 Rule 33 cannot be used to modify separable decree components without



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WEB COPY proper cross appellate participation, grant relief to passive respondents who have not challenged adverse decree parts and unilaterally enhance reliefs for parties who have not actively participated in appellate proceedings. An active participation by the respondents is required. Such part of the decree which essentially ought to have been appealed or objected to by a party cannot be modified if that party has chosen not to challenge it through proper appellate channels. Recent Supreme Court's decision consistently emphasize that Order 41 Rule 33 should be applied with care and caution and that it should not be used as a substitute for proper appellate participation through cross appeals or cross objections. It ensures that a party in whose favour a decree has been passed has a substantive and a valuable right which should not be likely interfered with preventing unilateral appellate modifications that could disadvantage decree holders. Therefore, the provision cannot be used to by pass cross appeal requirements and grant or modify independent decree components without proper challenging by the passive respondents as substitute for proper appellate procedure in routine cases. Hence, the arguments put forth by the learned counsel for the respondents in this regard is unsustainable.



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18. In the result,

- i. The Second Appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.
- ii. The decree and judgment dated 20.11.2021 passed in A.S. No.35 of 2018, on the file of the Subordinate Court, Arakkonam, is upheld.

09. 01.2026

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

bga

To

1. The Subordinate Judge, Arakkonam
2. The District Munsif, Sholinghur
3. The Section Officer, VR Section, High Court, Madras.

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K.GOVINDARAJAN THILAKAVADI,J.

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Pre delivery judgment in

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