Dayalan Rajes, vs Vijayan Rajes,

Dayalan Rajes, vs Vijayan Rajes,

SooperKanoon Citation : sooperkanoon.com/1413625

Court : Chennai

Decided On : Feb-27-2026

Judge : Honourable Mr Justice N. Sathish Kumar,Honourable Mr.Justice R.Sakthivel

Appeal No. : AS/772/2005

Appellant : Dayalan Rajes,

Respondent : Vijayan Rajes,

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.02.2026

Pronounced on : 27.02.2026

CORAM :

The Hon'ble Mr.Justice N.SATHISH KUMAR and The Hon'ble Mr.Justice R.SAKTHIVEL A.S.No.772 of 2005 : 1.Dayalan Rajes 2.Mohan Rajes .. Appellants Vs. 1.Vijayan Rajes 2.Soundra Rajes 3.Gowri Pandiyanathan .. Respondents A.S.No.1003 of 2005 : Vijayan Rajes .. Appellant Vs. 1.Soundara Rajes 2.Mohan Rajes 3.Dayalan Rajes 4.Gowri Rajes @

Gowri Pandianathan .. Respondents A.S.No.856 of 2025 : Vijayan Rajes .. Appellant Vs. Soundara Rajes (died) 1.Dayalan Rajes 2.Mohan Rajes 3.Gowri Pandiyanadhan Bhanumathi (died) M.S.P.Rajes (died) 4.P.Jayaraj 5.Ulagaswari 6.Sankaraswari 7.Rajalakshmi 8.Vijayalakshmi 9.Madhana Ramamoorthy 10.Suguna Mahaendran 11.Rarthika Prabu 12.Periyasamy Ramesh Rajah 13.Preetha V.Kannan 14.Ramraj 15.Aswini Ramesh Rajah 16.Ashok Mohan Rajes .. Respondents

A.S.No.772 of 2005 has been filed under Section 100 of the Civil Procedure Code, 1908 against the judgment and decree dated 31.12.2004 passed in O.S.No.74 of 2004 by the learned Additional District Judge, Fast Track Court, Salem. A.S.No.1003 of 2005 has been filed under Section 96 of the Civil Procedure Code, 1908 against the judgment and decree dated 31.12.2004 made in O.S.No.73 of 2004 on the file of the Fast Track Court No.II, Salem (Additional District Judge).

A.S.No.856 of 2025 has been filed under Section 96 read with Order 41 of the Civil Procedure Code, 1908 against the judgment and decree dated 24.03.2025 in O.S.No.116 of 2004 on the file of the III Additional District Court, Salem. For Appellants : Mr.P.J.Rishikesh for 1st appellant in AS No.772 of 2005 Mr.S.Parthasarathy, Senior counsel for Mr.S.Sethuraman for 2nd appellant in AS No.772 of 2005 Mr.Sharath Chandran for Mr.N.H.Rahamadullah in A.S.Nos.1003 of 2005 and 856 of 2025 For Respondents in AS No.772/2005 : Mr.Sharath Chandran for Mr.N.H.Rahamadullah for R-1 R-2 died Mr.R.Baskar for R-3 For Respondents in AS No.1003/2005: R-1 died Mr.S.Parthasarathy, Senior counsel for Mr.S.Sethuraman for R-2 Mr.P.J.Rishikesh for R-3 Mr.R.Baskar for R-4 For Respondents in AS No.856/2025 : Mr.S.Parthasarathy, Senior counsel for Mr.S.Sethuraman for R-2 and R-16 Mr.P.J.Rishikesh for R-1 Mr.R.Baskar for R-3 ----

COMMON JUDGMENT

N.SATHISH KUMAR, J.

A.S.Nos.772 and 1003 of 2005 have been preferred against a common judgment made in O.S.Nos.74 and 73 of 2004 dated 31.12.2004 on the file of the learned Additional District Judge, Fast Track Court No.2, Salem. A.S.No.772 of 2005 has been preferred by the plaintiffs in O.S.No.74 of 2004 which was dismissed by the trial court. A.S.No.1003 of 2005 has been filed by the plaintiff in O.S.No.73 of 2004 which was also dismissed by the trial court by the aforesaid common judgment dated 31.12.2004. 2.A.S.No.856 of 2025 has been preferred by the plaintiff in O.S.No.116 of 2004 which was also dismissed by the trial court by a

judgment and decree dated 24.03.2025. To be noted, the plaintiff in both

O.S.Nos.73 and 116 of 2004 is one and the same person. 3.O.S.No.73 of 2004 has been preferred seeking declaration to declare that the family arrangement dated 19.05.1971 is not valid. O.S.No.74 of 2004 has been filed for partition of the suit property into 15 shares and to allot 8 shares to the plaintiffs therein. O.S.No.116 of 2004

has been preferred seeking preliminary decree for partition and for permanent injunction. 4.Since the issues in all the three appeal suits are connected with each other and the suit properties in the above three suits are also connected to each other, this Court was inclined to hear the above three appeal suits together and these three appeals are being disposed of by this common judgment. In this common judgment, the parties herein shall be referred to as per their rankings in the trial court in a judgment in O.S.No.74 of 2004. 5.The suit filed before the trial court in O.S.No.74 of 2004 is taken as a lead case in this common judgment. 6.The facts as discernible from the pleadings of the parties are as follows: (i)The plaintiffs and first defendant are sons of the second defendant. The third defendant is the mother of plaintiffs 1 and 2 and first defendant and she is the wife of second defendant Mr.M.S.P.Rajes. The

4th defendant is the daughter of second and third defendants. The 5 th and 6th defendants are the son and daughter respectively of the first defendant Mr.Vijayan Rajes.

(ii)One Mr.M.S.Periasamy Nadar, a Coffee planter owned a vast estate in the Shevaroy Hills in the then State of Madras which includes the present States of Karnataka and Kerala. His two sons are one Mr.M.S.P.Rajes and Mr.M.S.P.Rajah. As per the partition deeds dated 06.09.1954 and 14.07.1954, the properties in State of Madras and Travancore-Cochin were partitioned between Mr.M.S.Periasamy Nadar, Mr.M.S.P.Rajes and Mr.M.S.P.Rajah. After the death of Mr.M.S.Periasamy Nadar on 21.01.1955, a partition deed was entered into between Thangammal (wife of M.S.Periasamy Nadar) and her sons Mr.M.S.P.Rajah and Mr.M.S.P.Rajes on 11.10.1956. The suit properties were allotted to Mr.M.S.P.Rajes, namely the second defendant herein. Later, there was a partition on 15.10.1956 between the second defendant and his two minor sons, namely plaintiffs herein. At the time of aforesaid partition, only both the plaintiffs were born to the second defendant. In the said partition, the second defendant Mr.M.S.P.Rajes was allotted to A-Schedule properties, Mr.Dayalan Rajes was allotted to B-Schedule and Mr.Mohan Rajes was allotted to C Schedule. Similarly, on 16.10.1956, there was a partition between the second defendant and plaintiffs in respect of the properties situated in Travancore-Cochin, wherein the first plaintiff Mr.Dayalan Rajes was allotted to B-Schedule, 1/4th share in the

land and premises known as Karapara Estate, Cardamom and Coffee plantations with bungalows, etc. in Nemmara Taluk of Trichur District. The second plaintiff Mr.Mohan Rajes was allotted to C-Schedule, 1/4th share in the land and premises known as Karapara Estate, Cardamom and Coffee plantations with bungalows etc, in Nemmara taluk of Trichur District. The second defendant was allotted A Schedule Pothundy Estate.
(iii)After such allotment, the first defendant Mr.Vijayan Rajes was born in the year 1960 and the 4th defendant in the year 1957. As plaintiffs 1 and

2 got divided, the birth of further son and daughter meant that the second defendants share had to be further divided and that is what had happened. This would mean that the first and second defendants had to share the properties allotted to the second defendant and the accretions and that provision was also made for fourth defendant and maintenance had to be provided for the third defendant. All these out of the second defendants share of properties alone. The properties allotted to plaintiffs 1 and 2 in Karapara Estate in Kerala were very high income yielding coffee and cardamom plantations and the yearly net income was a very sizeable amount. Both the plaintiffs were getting more income than the first defendant and the fourth defendants from the properties allotted to the plaintiffs. Therefore, in the year 1971, the family felt that the divided

sons would be better because of their Kerala properties and the others in the family would be deprived of their substantial income. The 4 th defendant had to be given her share and was suitably married and the third defendant also had to be suitably provided for as she was in her twilight years and therefore, a family arrangement was necessary. (iv)The plaintiffs 1 and 2 were persuaded by well wishers to agree for family arrangement. As divided sons, they were not heirs and therefore, they would not get a share in the fathers property but would get an equal share only if they were equally placed as that of the first defendant, third defendant and fourth defendant. But in order to be eligible, they have to be voluntarily transfer some of their high yielding properties to others as decided in the family arrangement. Hence, at the intervention of certain well wishers of the family, a family arrangement was arrived on 21.01.1971 between all the parties as members of the family. The family arrangement was later reduced into writing on 29.05.1971. The mother of the parties has acted as guardian for the first and fourth defendants in the said family arrangement. In pursuance of the said family arrangement, the first plaintiff transferred a portion of his share in Karapara estate in Kerala to the first defendant and a portion to the fourth defendant, while the second plaintiff transferred a portion of

his share in Karapara estate, Kerala to the third defendant. These transfers were effected by registered settlement deeds dated 01.04.1971, 01.04.1971 and 27.05.1971. Only after these transfers, the family arrangement was reduced into writing on 29.05.1971. On behalf of first and fourth defendants, who were minors then, the third defendant received the properties and administered the properties till the first and fourth defendants attained majority and assumed responsibility for the properties. Therefore, it was implicitly agreed that as and when the properties standing in the name of the second defendant were to be divided, they shall be equally divided among all the family members as mentioned in the family arrangement and just like the immovables, the movables also were to be divided. It was implied and it was agreed that all the parties entitled to share the properties, would consent to the division to be made later on. But for many years the second defendant has been in inimical terms with plaintiffs and third and fourth defendants. From the year 1971, the third defendant has been living with the second plaintiff owing to misunderstandings with the second defendant. The second defendant has been causing all kinds of inconvenience and problems to the plaintiffs. The first defendant supported the second defendant in all his deeds.

(v)Thereafter, quite contrary to the family arrangement, defendants 1 and 2 have colluded together and the second defendant filed a suit in collusion with the first defendant, for partition of all the properties between themselves in O.S.No.663 of 1993 on the file of the Sub Court, Salem on 14.06.1993 and a final decree was passed on 28.04.1994 on a compromise petition. The most of the valuable properties were allotted to the first defendant. This is nothing but fraud on plaintiffs, third and fourth defendants. The main purpose of the suit was to cheat them of their rights and dues. The decree in O.S.No.663 of 1993 does not bind on the plaintiffs and will not affect or take away their rights in the properties and the same is in derogation and against the terms of the family

arrangement. As the family arrangement had been acted upon, the first defendant had enjoyed the income from Karapara property transferred to him and he would have made Rs.10 to 12 Lakhs in the period of ten years that he owned it. Further, he has also sold the same confirming the family arrangement. The first defendant cannot aprobate on one side by accepting the Karapara property and reprobate by eschewing the family arrangement. He is estopped for doing so. The second defendant is bound by the family arrangement. Besides, the defendants 1 and 2 have divided the family jewels between themselves by ignoring the plaintiffs and third

and fourth defendants. The properties mentioned in the E-Schedule are joint properties in which plaintiffs and fourth defendants have a share. But the second defendant in order to defeat the rights of plaintiffs has fraudulently transferred them by way of sale deeds in favour of fifth and sixth defendants who were minors and they are children of the first defendant. The first defendant has been instrumental in perpetrating the fraudulent act of transfer in the name of his children. The sales are not binding on the plaintiffs. The plaintiffs and fourth defendant issued a notice dated 18.03.1996 to defendants 1 and 2 demanding cancellation of the decree in O.S.No.663 of 1993 and sought for division of properties. Later, the second defendant died subsequent to the suit on 25.12.2000 and he died testate. He has devised and bequeathed his properties to the plaintiffs and fourth defendant equally by the Will dated 10.03.1996. The first defendant having received notice, filed a suit in O.S.No.309 of 1996 for declaration that the family arrangement as null and void and hence, plaintiffs have constrained to file the suit for partition. 7.It is the contention of the first defendant that the family arrangement dated 29.05.1971 is a concocted one and could not have come into existence on 29.05.1971. The plaintiffs and defendants 2 to 4 have purposely conspired together and concocted the document with the

sole object of dislodging the validly passed final decree passed by the court in O.S.No.663 of 1993. It is his contention that the first defendant was a minor at the time of alleged family arrangement. Therefore, the family arrangement is not valid in the eye of law. The mother cannot be a lawful guardian for her minor son and she is not a natural guardian as the father was very much alive. The family arrangement is the result of forgery and purposely antedated to 1971 to suit the convenience of plaintiffs to dislodge the compromise final decree in O.S.No.663 of 1993. There have been litigations after litigations between the parties from 1974 and in none of them, the so called memorandum has been put forward. The family arrangement have been introduced only after 25 years after the alleged existence of the memorandum. The first defendant denied that the O.S.No.663 of 1993 was fraudulently filed. The E-Schedule property was purchased by defendants 5 and 6 and hence, the first defendant opposed the suit. 8.It is case of third defendant that the plaintiffs are entitled to 2/5th share in A to E Schedule properties as per the family settlement dated 29.05.1971 between the plaintiffs and defendants 1 to 4. The third defendant is entitled to the relief of specific performance of the contract of conveyance in respect of suit items 3 and 4 in A-Schedule properties.

She has also filed a suit in O.S.No.307 of 1996 for specific performance of contract dated 29.05.1971. Hence, she has no objection for decreeing the suit as prayed for. 9.The fourth defendant has also filed a written statement stating that she has no objection for decreeing the suit and she sought for allotment of 1/5th share for her. 10.The defendants 5 and 6 have adopted the written statement of first defendant. 11.Based on the said pleadings, the following issues were framed by the trial court in O.S.No.74 of 2004 : (i)Whether the family arrangement dated 21.01.1971 is true and valid and acted upon? (ii)Whether the family arrangement agreement dated 29.05.1971 is true and valid and binding on the parties? (iii)Whether the decree and judgment in O.S.No.663 of 1993 on

the file of the Sub Court, Salem is binding on plaintiffs and defendants 1 to 3? (iv)Whether the E-Schedule property is not a family property? (v)Whether the plaintiffs are entitled for partition?

(vi)To what other relief, the plaintiffs are entitled to?

12.The first defendant has filed O.S.No.73 of 2004, wherein he has sought to declare the family arrangement dated 29.05.1971 as void. His contention is that the family arrangement has been created only to non suit the compromise decree already passed between him and his father. The main contention in the suit was that the family arrangement was antedated only to non suit the validly passed partition in the earlier suit between his father and himself. According to him, the family arrangement is totally antedated, a created one and not valid. 13.The third defendant has filed written statement that the decree passed in O.S.No.663 of 1993 will not be binding on defendants herein and is a collusive one between the first defendant son and father. It is stated that the family arrangement was made at the intervention of the well wishers in the family. As the first defendant and 4 th defendant were minor at the time of family arrangement, the third defendant had acted as their guardian. Accordingly, a memorandum dated 29.05.1971 was written to record the family arrangement reached on 21.01.1971. It was agreed between the parties that if any division is to be made in the family consisting of first defendant and defendants 2 and 3, all the properties

belonging to the joint family of defendants 2 and 3 should be divided equally between defendants 1 to 5 in the suit in O.S.No.73 of 2004. But contrary to the family arrangement, the first defendant and his father had collusively filed the suit in O.S.No.663 of 1993. The third defendant filed a suit for specific performance of the contract dated 29.05.1971 in O.S.No.307 of 1996. Having come to know about the said suit, the first defendant as a counter blast has filed the suit. The family arrangement was not a concocted one and not created for causing wrongful loss to the

first defendant and therefore, she prayed for dismissal of the suit filed by the first defendant. 14.The plaintiffs [defendants 2 and 3 in O.S.No.73 of 2004] have filed written statement and they have made pleadings as that of the one made in the plaint filed by them in O.S.No.74 of 2004. It is their main contention that they were divided from their father by way of partition and later in order to make equitable balance and as the first defendant was also born later and to address the inadequate share, the second defendant decided that the plaintiffs could transfer their share in the properties and accordingly certain properties were settled in favour of the first defendant and later a family arrangement came into existence between the parties and these defendants agreed to divide the properties

equally. They have stated that O.S.No.663 of 1993 is the result of collusion and hence, they oppose the suit in O.S.No.73 of 2004. The 4 th defendant has adopted the written statement filed by the plaintiffs. 15.Based on the said pleadings, the following issues were framed by the trial court in O.S.No.73 of 2004 : (i)Whether the suit has been valued properly ? (ii)Whether the suit was filed in time? (iii)Whether the family arrangement dated 29.05.1971 is the result of fraud and binding on the plaintiffs? (iv)Whether the decree and judgment in O.S.No.663 of 1993 is the result of collusion and binding on defendants and whether it is hit by section 33 of the Transfer of Properties Act? (v)Whether the plaintiff is entitled for declaration? (vi)To what other relief, the plaintiff is entitled to?

16.Common evidence was recorded in both the suits. On the side of the plaintiffs, four witnesses were examined as P.Ws.1 to 4 and Exs.A.1 to A.38 were marked. On the side of the defendants, D.W.1 to

D.W.3 were examined and Exs.B.1 to B.136 were marked. Exs.X-1 to X.4 and Exs.C.1 to C.6 were also marked. 17.On appreciation of evidence and pleadings, the trial court dismissed both the suits. Aggrieved over the same, two appeals, namely A.S.Nos.772 and 1003 of 2005 came to be filed as stated above. 18.In the meanwhile, another suit

in O.S.No.116 of 2004 has been filed by Mr.Vijayan Rajes, first defendant in O.S.No.74 of 2004, seeking for preliminary decree for partition and for permanent injunction and after contest, the said suit was dismissed. The facts in O.S.No.116 of 2004 are almost same as averred in the other two suits and therefore, pleadings in this suit are not necessary to be detailed in this common

judgment and accordingly, A.S.No.856 of 2025 which arises out of the

judgment and decree made in O.S.No.116 of 2004, is also disposed of by

this common judgment. 19.The learned senior counsel and learned counsel appearing for plaintiffs in O.S.No.74 of 2004 submitted that the trial court has not appreciated the entire facts properly and has mechanically dismissed the suit for partition on the ground that a compromise decree between defendants 1 and 2 has not been challenged. It is their further contention that P.Ws.1 and 3 have clearly spoken about the family arrangement

Ex.A.4. Ex.B.22 and Ex.B.23, gift deeds executed in favour of first defendant and fourth defendant proved the family arrangement. It is the contention that though there was division of the family property between plaintiffs and their father on 11.10.1956, such division had been effected before the birth of first defendant and fourth defendant. Therefore, as per Exs.A.2 and A.3, partition deeds, the plaintiffs have become divided sons as far as the family properties are concerned. Later, in the properties allotted to their father under said partition, the after born son, namely first defendant in O.S.No.74 of 2004 became the sharer with his father. Though this position is not disputed, later the elders in the family realized that since the major portions have been allotted to plaintiffs in the earlier partition deeds, it has been decided to give certain properties in favour of

the after born son, namely the first defendant and 4th defendant who is the daughter of the second defendant. Accordingly, the gift settlement deeds were executed under Exs.B.22 and B.23 gifting larger extent of properties to first and fourth defendants. Later, the family arrangement took place and the same was reduced into writing on 29.05.1971 which was marked as Ex.A.4. The execution of the family arrangement among the family members has been clearly spoken to by third defendant, the mother of the parties and one Sivasamy who was the attesting witness and was

examined as P.W.3. The other evidence produced by the witnesses examined on the side of the plaintiffs also proved not only the gift deeds, but also the execution of the family arrangement. It was further submitted that in the family arrangement, it was decided that though the plaintiffs were divided from the family by virtue of partition deeds between the plaintiffs and their father, the fact remains that in view of the family arrangement, certain properties allotted to the plaintiffs were retransferred to the after born children and in order to balance the allotments, the family arrangement came to be executed, wherein it has been specifically agreed by all the family members that properties allotted to the second defendant will be divided equally among all family members. Therefore, it is clearly established that as per the family arrangement, all the sharers are equally entitled to the properties. 20.It is the further contention of the learned senior counsel and counsel appearing for plaintiffs that though there were earlier litigations between the plaintiffs and their father and the relationship was not good, later all have joined together and further the second defendant was not getting along with the first defendant. There are ample evidence to show that the relationship between the first and second defendants became very strained. Therefore, the second defendant has also executed a Will

bequeathing the properties in favour of the plaintiffs and fourth defendant under Ex.A.20. The said Will is a holographic Will which has been clearly

proved by the plaintiffs by examining the attesting witnesses, besides the first defendant in his cross examination has also admitted the signature of the father. The Will has been written by the second defendant in respect of his properties excluding the first defendant. Such exclusion is quite probable due to strained relationship between the father and son. Hence, it is their contention that the plaintiffs are certainly entitled to partition in respect of the properties of their father. Though there was compromise decree entered into between defendants 1 and 2, the same is not binding in view of the family arrangement entered into under Ex.A.4. The suits have been filed by the second defendant suppressing the family arrangement dated 29.05.1971 and therefore, the same was not binding on other defendants. Therefore, the trial court was not right in dismissing the suit filed by the plaintiffs. 21.Mr.Sharath Chandran, the learned counsel appearing for the first defendant in O.S.No.74 of 2004 has submitted that the entire suit filed by the plaintiff is nothing but abuse of process of law. The family arrangement Ex.A.4 dated 29.05.1971 has been created by the entire family members at a later point of time to take away the rights of the first

defendant. It is his contention that the family arrangement is antedated and created at the later point of time, particularly when there was strained relationship between the first defendant and others. It is further contended that in the year 1971, during the time when the alleged family arrangement took place, there was no cordial relationship between the parties, namely, the second and third defendants and the plaintiffs were also not getting along with their father Therefore, entering into the family arrangement is highly improbable. Hence it is submitted that Exs.B.63 and B.24 and B.25 if read together would indicate that the gifts executed in favour of first and fourth defendants is only in order to reduce the wealth tax in the entire estate known as Karapara. In fact, a plan has been envisaged by Mr.M.S.P.Rajah who was owning a larger extent in Karapara coffee estate and only in order to avoid the wealth tax, a plan has been devised to show that there are many owners in the estate.

Accordingly, Exs.A.6 and A.7 came to be executed in favour of fourth and first defendants respectively. Besides, there are other gift deeds also in favour of said family members. The plaintiffs have conveniently suppressed those settlement deeds executed in favour of other family members. They have conveniently chosen to rely upon Exs.A.6 and A.7 gift deeds alone which were executed at the relevant point of time to

show as if the said deeds were executed only in pursuance to the family arrangement. 22.It is his further contention that if really the family arrangement came into effect in the year 1971, there was no reason as to why such family arrangement has not been given effect to and have not spoken till suits are filed. The very correspondences between the parties and various litigations initiated among parties after 1971 clearly indicate that till 1996, there was no whisper whatsoever in any of the pleadings or correspondences as to the existence of the family arrangement entered into between the parties. This fact alone clearly shows that the family arrangement has been antedated and only during the year 1996 to suit the convenience of the plaintiffs some how or the other to take away the rights of the first defendant, it has been brought into existence. The first defendant is, admittedly, after born son of the second defendant. The plaintiffs have already divided from the second defendant by virtue of partition deeds Exs.A.2 and A.3. In the said partition, the second defendant was allotted properties. Therefore, the first defendant being after born son, he will become coparcenor in the property already allotted to his father. Later, in view of several disputes arose between the father and son, in fact, the father (second defendant), has filed a suit in

O.S.No.663 of 1993 and a compromise decree was passed in which properties have been allotted to the first defendant and certain properties were allotted to the father. Therefore, in the absence of any challenge to the compromise decree between defendants 1and 2, now the plaintiffs have filed the suit based on alleged family arrangement of the year 1971

which is concocted and created only for the purpose of the suit. 23.The learned counsel further submitted that various correspondence from 1971 till 1996 clearly establishes the fact that the family arrangement has been created by antedating it. The correspondence between lawyers and auditors filed as documents on the side of the first defendant clearly show that the family arrangement was completely cooked up. If the family arrangement has been written on 29.05.1971, there could have been some mentioning about the family arrangement in the documents executed at the later point of time. The family arrangement has not even seen the light of the day till 1996. None of the documents prior to 1996 mentions about the family arrangement and the alleged attesting witnesses signature is also doubtful. Hence, it is submitted that the alleged family arrangement is concocted and cannot be believed.

24.Insofar as the Will is concerned, it is submitted by the learned counsel that the alleged Will is said to have been executed by the father in respect of his properties and the Will has not been established in the manner known to law. The signature of the executant differs considerably. The signature dated 09.03.1996, 10.03.1996 and 11.03.1996 differs with each other. Similarly, if the Will was admittedly known to all the parties, the same would have been reflected in the pleadings, whereas in the plaint filed on 14.06.1993 marked as Ex.A.16, different stand has been taken. The attesting witness is highly connected with the plaintiffs, his evidence cannot be given much importance. He was instrumental for creating all the documents including the family arrangement. Therefore, his evidence cannot be relied upon to prove the Will Ex.A.20.

25.This Court has heard the submissions made by both sides and perused the materials available on record. In the light of the above submissions made by both sides, now the points that arise for consideration in these appeals are as follows: (i)Is it true that there was family arrangement in the family on 21.01.1971 and the same was

reduced into writing on 29.05.1971?

(ii)Whether Ex.A.4 family arrangement has been antedated? (iii)Whether the Will dated 10.03.1996 said to have been left by second defendant M.S.P.Rajes is valid and true? (iv)To what other relief, the parties are entitled to? Issue Nos.(i) and (ii) :

26.O.S.No.74 of 2004 has been filed by the elder sons of Mr.M.S.P.Rajes, who is second defendant in the said suit. The first defendant is the younger son of the second defendant. The 4th defendant is the daughter of the second defendant. The third defendant is the mother of plaintiffs and first and fourth defendants. It is the admitted case of both sides that the vast properties of one Mr.M.S.Periasamy Nadar was divided between his two sons, namely Mr.M.S.P.Rajes and Mr.M.S.P.Rajah. The plaintiffs and first and fourth defendants are sons and daughter of said Mr.M.S.P.Rajes. After the death of Mr.M.S.Periasamy Nadar, under Ex.A.1, once again partition has been entered into between Ms.Thangammal, wife of Mr.M.S.Periasamy Nadar and Mr.M.S.P.Rajes and Mr.M.S.P.Rajah. Later, once again there was

partition between the second defendant and plaintiffs under Ex.A.2, wherein the second defendant father was allotted five properties and shares as per A-Schedule properties in the said document. The first plaintiff was allotted the B-schedule properties and the second plaintiff was allotted the C-Schedule properties. Similarly, under Ex.A.3, partition was effected between them in respect of the properties situated in Travancore-Cochin. Both sons, namely Mr.Dayalan Rajes and Mr.Mohan Rajes each were allotted 1/4th share in Karapara Estate. Their father Mr.M.S.P.Rajes, the second defendant was allotted Pothundy Estate. By virtue of partition deeds, both plaintiffs each were allotted 71.07 acres in Glazebrook estate. Similarly, each were allotted to 287 acres, i.e., 1/4th share in Karapara Estate. It is relevant to note that the first defendant was not born at the time of said partitions. Only the plaintiffs were allotted

shares and partition was completed between themselves. In the said partition, their father, namely, the second defendant was also allotted more than 450 acres. As far as the first defendant is concerned, he was after born son of Mr.M.S.P.Rajes. Therefore, he became the coparcenor along with his father only in respect of the properties allotted to his father under Exs.A.2 and A.3, partition deeds. Later, the second defendant has also purchased certain properties out of the income from the allotted

properties. These facts are not in dispute. Since the first defendant became the co-sharer in the fathers properties along with him and since he was after born child, there was partition between the first and second defendants by virtue of compromise decree passed in Ex.A.17, dated 28.06.1994 and properties were divided between defendants 1 and 2 later. There is no dispute upto these facts. 27.The only contention of plaintiffs is that compromise decree is collusive and prior to that in the year 1971 itself, there was family arrangement wherein parties agreed to share properties of their father equally. In pursuance of the said family arrangement, gift deeds were also executed under Exs.A.6 and A.7 and substantial properties have already been gifted to defendants 1 and 4, after born children. Therefore, their contention is that only in order to balance and equalize the allottment, the family arrangement came into existence, whereas the first defendant denied the family arrangement and according to him the family arrangement has been a created one. In the light of the above admission and denial, now it has to be seen whether there was any family arrangement between the parties. 28.It is relevant to note that at the time of division of properties between plaintiffs and second defendant under Exs.A.2 and A.3,

admittedly, the first defendant was not born and that he was born only on 21.09.1960. This fact has been clearly established and recorded. A perusal of the records would show that the plaintiffs have originally filed a suit and thereafter, sought permission to withdraw the suit to file a fresh suit on the same cause of action including the suit for declaration and

also filed an application in I.A.No.383 of 1998 and that application has been dismissed. As against the dismissal, a revision has been filed and revision was also dismissed as withdrawn in CRP(PD)No.2107 of 1999, dated 14.10.2003. The plaintiffs prayer to include declaratory relief has already been rejected. Be that as it may, it is the contention of plaintiffs that Ex.A.4 is the family arrangement executed only to balance and equalize the division in the family. P.W.1, the mother, who is said to be the guardian of the first defendant, has signed in the family arrangement. When Ex.A.4 family arrangement is carefully seen, it is clear that the family arrangement was reduced into writing to record the past events said to have taken place on 21.01.1971 among family members. It is relevant to note that though the father was the natural guardian of the minor first defendant, he has not represented the minor at that point of time and only the mother has signed as guardian. All the signatures of the parties were signed in different inks. Leaving this as it is, it is the

contention that instruction was originally taken on 21.01.1971 and later, the same has been reduced in the form of writing, namely Ex.A.4. 29.It is relevant to note that it has been clearly averred in Ex.A.4 that by a deed of settlement No.573 of 1971 dated 01.04.1971, 1/12 share in Karapara Estate has been transferred in the name of 4th defendant and by a deed of settlement No.574 of 1971, dated 01.04.1971, 1/12 share in the said Karapara Estate has been transferred to the first defendant. According to the plaintiffs, Ex.A.4 family arrangement was typed at Coimbatore though decision was taken at some other place. The decision was originally said to have been taken place at different places and later, it was reduced into writing at Coimbatore. The evidence of parties clearly shows that in every place, the family has engaged separate lawyers and auditors including Coimbatore, Virudhunagar and Madras and also separate lawyers for family affairs. However when Ex.A.4 has come into existence, none of the lawyers and auditors help has been taken note of. Whereas the evidence of P.W.2 indicates that he himself had typed the family arrangement. It is relevant to note that if really, the family arrangement

came into existence as pleaded by the plaintiffs, the very contents found in Ex.A.4 creates a serious doubt about the family arrangement for the following reasons.

30.In the family arrangement, it is the contention of the plaintiffs that gift deeds were executed by plaintiffs in favour of first and fourth defendants. As per Exs.A.6 and A.7, gift deeds, 1/12 share of Karapara Estate were originally gifted to each first and fourth defendants. After the gift deeds were executed, the family decided to enter into the family arrangement to share the properties equally. It is to be noted that according to plaintiffs and witnesses P.Ws.1 to 4, the family arrangement came into existence on 29.05.1971, wherein they referred to gift deeds registered as document Nos.573 and 574 of 1971. It is relevant to note that Exs.A.6 and A.7 filed by plaintiffs when carefully perused would show that the gift deeds were presented in the office of the Sub Registrar, Nemmara at 11.30 a.m. and 11.40 a.m. respectively on 09.07.1971 and paid a fee of Rs.2500/- each by Mr.Dayalan Rajes. Therefore, the gift deeds Exs.A.6 and A.7 were presented for registration only on 09.07.1971, registered and assigned numbers as document Nos.573 and 574 of 1971. Referring those documents numbers which were registered later in the family arrangement which came into existence on 29.05.1971, it is highly doubtful that the family arrangement has come into existence on 29.05.1971. When the documents themselves have not been registered and have been presented only on 09.07.1971 and mentioning document

numbers in the family arrangement which was prepared on 29.05.1971, in fact, clearly probabilise the case of first defendant that the family arrangement was created later to suit the convenience of the plaintiffs. When the gift deeds have not even been presented for registration and not even registered as on date of family arrangement, i.e., Ex.A.4, referring document numbers in Ex.A.4, in fact probabilise the defence theory that Ex.A.4 is antedated and signed by the family members at a later point of time. 31.It is further to be noted that the evidence of parties,

particularly P.W.1 the mother of parties in the suit clearly shows that there is no cordial relationship between herself and her husband from the year 1971. Her cross examination clearly shows that she has admitted that the relationship between her and her husband was not cordial and the first plaintiff was also not maintaining good relationship with his father and that he has married against the wishes of his parents and he was residing separately in Mangalore. Her evidence also clearly shows that there was dispute between her husband and his brother and that plaintiffs and P.W.1 all have joined in support of her husbands brother. If really, there was family arrangement between the family and when the husband and wife was not maintaining cordial relationship, the husband being the natural

guardian of the minor son, he ought to have signed as guardian of the minor. There was no reason as to why the mother stood as guardian. This creates serious doubt about the family arrangement. Further, the very chief examination of P.W.1 clearly shows that due to tax issues, they decided to settle the properties in the name of the first defendant. Ex.B.15 document when carefully perused would show that the power agents of Karapara Estate have written a letter to the co-owners of the estate that the co-owners were not getting along with them and they expressed their intention that unless the co-owners who are still at Yercaud agree to leave Yercaud, they could not act as power agents and carry out their functions. Further, a perusal of Ex.B.115 would show that it was a letter written by Mr.M.S.P.Rajah to his brother, namely second defendant, wherein he had suggested selling of Karapara Estate to the new partnership to be formed be considered and the wealth tax on agricultural lands to be divided into 10 and estate duty on Karapara will be distributed between 10 and if sales of timber is effected, the income or capital gain to be distributed among 10, thereby he requested his brother to give a thought to the above suggestion and therefore, they can decide the further course of action in Coimbatore. This letter was addressed on 10.02.1970.

32.A letter Ex.B.116, dated 28.02.1970 of the Chartered Accountant of the family was addressed, wherein he has stated that an outright sale has many advantages in the long run though they have to pay heavy stamp duty on the sale deed. Thereafter, vide Ex.B.117, a letter was addressed by Mr.M.S.P.Rajah to the auditor Mr.S.Venkatasubbu, wherein he has suggested that Dayalan gives a sum of Rs.1,25,000/- to his wife and profit of Karapara Estate also to be transferred to his wife when the other partners profits are transferred on 31 st instant. Further, under Ex.B.118, again Mr.M.S.P.Rajah has written a letter to his brother Mr.M.S.P.Rajes, wherein he has suggested that all estates both in Kerala and Tamilnadu be divided equally amongst them and though the stamp duty and gift tax may be high, they can save a lot in future years. Again on 13.06.1970 under Ex.B.119, Mr.M.S.P.Rajah addressed a letter to his brother, second defendant, wherein he has suggested that the agricultural lands near the municipal limits are now included in the definition of capital asset and there may be a chance for extending the definition even to agricultural estates and if the capital gains tax is to be levied, it may be beneficial to divide the gains between 10 persons instead of 4 persons and he further suggested that the auditor Mr.Venkatasubbu would meet him in Coimbatore on 15th instant at 8.00 p.m. and then he goes to Trichur to

meet Mr.Bhimarao and also to Madras to discuss with Mr.Krishnamoorthy, advocates. Later, under Ex.B.33, dated 23.07.1970, a partnership deed was entered into between the parties to undertake the coffee curing business. By letter dated 16.03.1971 under Ex.B.24 addressed to Bank, it is suggested to transfer the properties in the name of Mr.M.S.P.Rajah, Thangammal and plaintiffs to the name of other persons. Later, on 01.04.1971, various settlement deeds were executed settling

enlarged to 11 persons. Accordingly, Exs.B.59, B.60, B.61, B.62, Exs.A.6 and A.7 came to be executed by family members. Later, the bank has sent a response Ex.B.25, wherein it has been clearly indicated that the Banks central office has agreed to the proposed settlement of Karapara Estate subject to the specific stipulations. The Bank has also indicated to obtain personal guarantee of Mrs.Hema Dayalan along with the guarantee of the natural guardians on behalf of minors for the advances to be given. The bank has also imposed condition that the court sanction should be obtained to mortgage the share of the minors. 33.Later, on 28.05.1971 vide Ex.B.26, the M.S.P.Nadar Sons had informed the bank that the second plaintiff Mr.Mohan Rajes will settle

taken in respect of minor shares which would be mortgaged to the Bank. Ex.A.5 dated 27.05.1971 came to be executed in favour of P.W.1. On 28.05.1971, Ex.A.9, power of attorney came to be executed to present the settlement deed before the Sub Registrar Office. On 07.06.1971, Karapara Estate manager has written a letter Ex.B.120 to Mr.Venkatasubbu informing him that the Sub Registrar has raised queries regarding stamp duty and certain defects in the settlement deed. Under Ex.B.121, the follow up letter was sent informing the Auditor Venkatasubbu that the Sub Registrar was contacted on 29.06.1971 and he made certain suggestions in the draft settlement deed. Later, all the settlement deeds document Nos.572, 573, 574, 576 and 578 of 1971 namely Exs.B.60, A.6, A.7, B.61 and A.5 were registered only on 09.07.1971. Thereafter, ratification deed was registered on 28.12.1971 under Ex.B.34. A careful perusal of Exs.B.26, B.27, B.30 and B.63 would show that application was filed before the concerned district court seeking permission to deal with the minors property. These facts clearly indicate that only for the purpose of avoiding wealth tax and planning tax, certain documents have been executed after the plaintiffs were divided from the family. Now, taking advantage of the settlements in favour of the first defendant and another in favour fourth defendant, the

plaintiffs have sought to project as if there was family arrangement and accordingly, they have settled the property. 34.As discussed above, all the documents were presented for registration only on 09.07.1971 and therefore, giving numbers of these documents in the family arrangement which was prepared in the month of May, 1971 is highly doubtful and in fact, the narrations above would probabilise the defence theory that certain documents have been executed in favour of first and fourth defendants for tax planning, not only by plaintiffs father but their uncle in respect of larger extent of property. The settlement deeds have been taken note of and the family arrangement has been created later. It is relevant to note that the family arrangement came to be executed on 29.05.1971. The said family arrangement has not seen the light of the day till 1996. There was no whisper whatsoever in any of the correspondence between the parties with regard to the alleged family arrangement entered into between the parties. In Ex.B.2, reply notice dated 10.04.1975 sent by P.W.1, she has clearly averred that there was partition between her husband and plaintiffs herein. Even in the said reply notice, there was no whisper whatsoever was made with regard to the alleged family arrangement, namely Ex.A.4 said to have been taken place in the year 1971. The evidence of P.W.2, first plaintiff when carefully

seen, he had admitted that even in the year 1974, there was dispute arose between himself and his father and his uncle. Both plaintiffs have also taken action against their father. At that time also, they have never whispered about Ex.A.4, family arrangement. His evidence further indicates that even in the year 1975, there was a suit in Palakad court. For the first time under Ex.B.10, the family arrangement has been pleaded by the plaintiffs P.W.2. Before that, though there was serious dispute cropped up with regard to the property in the year 1974, the family arrangement has not been whispered or intimated and the parties never claimed right under the so-called Ex.A.4 family arrangement. His

evidence also indicates that in the year 1970 itself, he was not maintaining cordial relationship with his father and he was residing separately due to the marriage against the wishes of his parents. Therefore, when there is serious dispute between father and son even in the year 1971 and the wife of second defendant also was residing separately and not with his husband, namely second defendant, all joining together in the year 1971 and executing the family arrangement is highly doubtful. Whereas the letters referred to above clearly show that Exs.A.6 and A.7 was the result of tax planning in the larger family. Further, the evidence of witnesses also clearly indicate that in every place, the family has lawyers and

auditors. However, none of their advise was taken. P.W.2 has stated that he himself has typed the document which creates serious doubt. Further, in the gift deeds also, there is no whisper whatsoever made with regard to the family arrangement and in pursuance to which, the gift deeds have been executed. If really, the gift was the result of the family arrangement, in the gift deeds in favour of other family members, there should have been reference about the family arrangement which was said to have been recorded prior to the gifts. However, these documents are silent about the family arrangement. The evidence of P.W.2 clearly shows that from 1971 onwards, his parents were residing separately due to dispute between them. In the year 1982, there was dispute between the plaintiffs, his mother, his sister and their uncle and a suit has been filed. In that suit also, there was no whisper anything about the family arrangement which came into existence in the year 1971. 35.P.W.3, who was the attesting witness to the family arrangement, has deposed that he did not know who has typed the family arrangement. P.W.3 was working in the estate. Therefore, there is a possibility of P.W.3 signing the document Ex.A.4 at the instance of the parties and the fact that he was loyal to them also cannot be ruled out. The evidence of P.W.4 shows that P.W.3 was appointed as one of the Directors in the M.S.P.

Plantation Private Limited. Though under Ex.A.7, 1/12 share in Karapara estate has been gifted to the first defendant, his evidence clearly shows that the said property has been again given to Mohan Rajes. Therefore, the retransfer by way of sale of the property to Mr.Mohan Rajes would clearly indicate that they have been made only for the purpose of avoiding the tax in the larger extent. Having made such arrangements, later when the relationship between the parties got strained and again all parties have joined together and the so-called family arrangement was pressed into service, would clearly indicate that from 1971 onwards, the relationship between the second and third defendants, namely husband and wife, was not cordial and they were residing separately and there was problem between plaintiffs and their father and in fact, their father has also given a complaint against the plaintiffs in the year 1974 for alleged trespass, etc. Therefore, the evidence would further indicate that the plaintiffs and their mother, namely, the third defendant have joined with the brother Mr.M.S.P.Rajah, the brother of M.S.P.Rajes, the father of the parties and only the first defendant was residing with his father M.S.P.Rajes. It is relevant to note that at the time of execution of partition deed Ex.A.2, dated 15.10.1956, the first defendant was not born and he was born only on 21.09.1960 after the allotment. Therefore, normally, the

first defendant will become a sharer along with his father, whereas the plaintiffs status would become divided sons. Later, the second defendant has filed a suit for partition in O.S.No.663 of 1993 and a final decree has been passed on the basis of compromise, wherein the father and first defendant were allotted shares as per decree in O.S.No.663 of 1993. It is relevant to note that after the division of properties between the two sons and the second defendant, the second defendant Mr.M.S.P.Rajes purchased certain properties which was subject matter of the suit in O.S.No.663 of 1993 and there was division of properties between the first and second defendants. The final decree came to be passed was known to every one and the same was not challenged so far. Therefore,

only later, it appears that in view of the serious dispute arose between the family members, all others have joined together and the family arrangement came into existence at a later point of time by antedating taking advantage of the fact that certain gifts were executed to avoid the tax liability in the larger extent of estate. 36.It is relevant to note that the property gifted to the first defendant was also once again gone to other brothers as per the evidence of D.W.1. This fact is not disputed. When the family arrangement is shrouded with serious doubt and gift deeds were executed to avoid the

tax, this court is of the view that the family arrangement pressed into service cannot be believed for the reasons as discussed above, since it has been created. The evidence of the parties clearly show that all the three sons of Mr.M.S.P.Rajes were not getting along with their father and from the year 1971, the plaintiffs and their mother were not at all residing with the second defendant. In fact, in 1974, there was a criminal complaint given by the father against the plaintiffs for alleged trespass into the property. Ex.B.36, copy would clearly show that the father has already given a complaint against the plaintiffs in the year 1974. Later, the evidence also clearly show that in the year 1996, after the partition of the properties between the first defendant and his father, i.e., second defendant, again dispute arose between them and the father has given two complaints against the first defendant on 07.01.1996 and 03.02.1996. Subsequently, it appears that once again the entire family members have joined together and antedated the family arrangement Ex.A.4. The evidence of D.W.1 indicates that only after the allotment of the property in the final decree proceedings, there arose dispute between him and his father and several criminal complaint were also lodged by the first defendant. It is relevant to note that Ex.A.16 is the plaint filed by the father against the first defendant, wherein the father of the first defendant

has clearly pleaded that after the division of the properties between himself and his two sons, the first defendant was born later. Therefore, the property allotted to him is to be divided only with himself and his after born son. He has also pleaded that out of the property allotted to him, he has also made accretions to the property with resources of family funds and the shares of the said properties belong to him and first defendant. Therefore, he sought for partition. The plaint was presented on 14.06.1993. If really, there was family arrangement in the year 1971, the father of the parties would have pleaded the same in the plaint and if really, it was intention of the father to distribute the properties equally including the earlier partitioned properties, he would have pleaded family arrangement and made others as parties in the suit when he filed the suit in the year 1993. This aspect also creates serious doubt and is clearly probablise the fact that Ex.A.4 came into existence after the dispute arose between the parties, particularly dispute arose between the father and first defendant and after that, all of them have joined together with the help of P.W.3, who was also one of the Directors in the estate company, in executing the family arrangement Ex.A.4 and the same came into force. All these facts clearly show that Ex.A.4 is antedated and created only for the purpose of the case later. Further the final decree passed in the suit in

O.S.No.663 of 1993 has not been challenged and thus reached finality. 37.Admittedly, the plaintiffs have divided from their father by virtue of the registered partition deeds dated 15.10.1956 marked as Ex.A.2 and Ex.A.3 dated 16.10.1956. Thus, division was effected by registered documents with father and two sons and the father is separated from two sons by that division. Admittedly the first defendant was after born son and he will become coparcenor along with the father, particularly only in respect of shares allotted to the father. Later, the father and the after born son have divided the properties in a partition suit. The law is well settled that the after born son cannot challenge the earlier partition deed

between the father and his two sons and at the most, he is entitled to share from the fathers share allotted in the earlier partition which has been properly followed in the case. The father and the after born son have already divided the properties as per the compromise entered into between them and that decree has also reached finality. Therefore, in the view of this court, the family arrangement is pressed into service only later. Only after serious dispute arose between the first defendant and the father, a document styled as Family Arrangement has been pressed into service, taking advantage of certain gift deeds executed in favour of the first defendant and his sister fourth defendant from the

properties allotted to the plaintiffs. As discussed above, there are more settlement deeds executed during a particular period only to avoid the tax. Therefore, that cannot be construed that there was reunion by the parties thereby all the properties were once again thrown into the family for division. The evidence of the parties clearly shows that none of them in the family have maintained cordial relationship with the father, particularly plaintiffs have never maintained cordial relationship with their father and even in the year 1974, a criminal complaint was lodged against them by the father. Therefore, when the relationship was strained and there was no cordial relationship, reunion in the year 1971 is highly improbable. If really, any such decision is taken, the same should have been reflected in the further correspondences, whereas only after the dispute between the first defendant and his father arose and serious police complaint came to be filed against the first defendant, the document has been created by other family members. 38.Further, the evidence of P.Ws.1 and 2 and D.W.1 clearly shows that there was no cordial relationship between the family members, there were several litigations filed one after another and that the third defendant was living separately from her husband and there were serious disputes right from the year 1970 when the first plaintiff married against

the wishes of his parents and they were residing separately and there were police complaints. Later in the year 1996, there was dispute between the father and the first defendant. All these facts clearly show that there was no intention for reunion by the parties in the estate and interest in the family. Such question of intention of parties of reunion in the estate and interest cannot be inferred merely because of unregistered document, namely family arrangement, which is a created one. In this regard, it is useful to refer to a judgment of the Apex Court in Bhagwan Dayal Vs. Reoti Devi reported in AIR 1962 SC 287 and paragraphs 21 and 22 of the said judgment are relevant and the same are as follows: 21. The next question is whether there was a reunion between Kashi Ram, Raghubar Dayal and Bhagwan Dayal. The learned Attorney-General contends that on the assumption that there was a partition of the family, the consistent conduct of the parties for a period of 50 years unambiguously establishes that there was a reunion between Kashi Ram, Raghubar Dayal and Bhagwan Dayal during the lifetime of Kashi Ram, or at any rate there was a reunion after the death of Kashi Ram between Raghubar Dayal and Bhagwan Dayal. Mr Viswanatha Sastri, on the other hand, argues that when there was a partition in the family, the members of the family who allege a reunion must strictly prove the same, and that the documentary evidence filed in this case spread over a long period of time is destructive of any such claim.

22. For the correct approach to this question, it would be convenient to quote at the outset the observations of the Judicial

Committee in Palani Ammal v. Muthuvenkatacharla Moniagar [(1924) LR 52 IA 83, 86] : It is also quite clear that if a joint Hindu family separates, the family or any members of it may agree to reunite as a joint Hindu family, but such a reuniting is for obvious reasons, which would apply in many cases under the law of the Mitakshara, of very rare occurrence, and when it happens it must be strictly proved as any other disputed fact is proved. The leading authority for that last proposition is Baldbux

Ladhuram v. Rukhmabai [(1903) LR 30 IA 190] . It is also well settled that to constitute a reunion there must be an intention of the parties to reunite in estate and interest. It is implicit in the concept of a reunion that there shall be an agreement between the parties to reunite in estate with an intention to revert to their former status of members of a joint Hindu family. Such an agreement need not be express, but may be implied from the conduct of the parties alleged to have reunited. But the conduct must be of such an incontrovertible character that an agreement of reunion must be necessarily implied therefrom. As the burden is heavy on a party asserting reunion, ambiguous pieces of conduct equally consistent with a reunion or ordinary joint enjoyment cannot sustain a plea of reunion. The legal position has been neatly summarized in Mayne's Hindu law, 11th Edn., thus at p. 569: As the presumption is in favour of union until a partition is made out, so after a partition the presumption would be against a reunion. To establish it, it is necessary to show, not only that the parties already divided, lived or

traded together, but that they did so with the intention of thereby altering their status and of forming a joint estate with all its usual incidents. It requires very cogent evidence to satisfy the burden of establishing that by agreement between them, the divided members of a joint Hindu family have succeeded in so altering their status as to bring themselves within all the rights and obligations that follow from the fresh formation of a joint undivided Hindu family. As we give our full assent to these observations, we need not pursue the matter with further citations except to consider two decisions strongly relied upon by the learned Attorney- General. Venkataramayya v. Tatayya [AIR 1943 Mad 538] is a decision of a Division Bench of the Madras High Court. It was pointed out there that mere jointness in residence, food or worship or a mere trading together cannot bring about the conversion of the divided status into a joint one with all the usual incidents of jointness in estate and interest unless an intention to become reunited in the sense of the Hindu law is clearly established. The said proposition is unexceptionable, and indeed that is

the well settled law. But on the facts of that case, the learned Judges came to the conclusion that there was a reunion. The partition there was effected between a father and his sons by the first wife. One of the sons was a minor. The question was whether there was a reunion between the brothers soon after the alleged partition. The learned Judges held that as between the sons there was never any reason for separation inter se, and that the evidence disclosed that on their conduct no explanation other than reunion was possible. They also pointed

out that though at the time of partition one of the brothers was a minor, after he attained majority, he accepted the position of reunion. The observations relied upon by the learned Attorney- General read thus: In our view, it is not necessary that there should be a formal and express agreement to reunite. Such an agreement can be established by clear evidence of conduct incapable of explanation on any other footing. This principle also is unexceptionable. But the facts of that case are entirely different from those in the present case, and the

conclusion arrived at by the learned Judges cannot help us in

arriving at a finding in the instant case.

39.It is further to be noted that if really, the family arrangement in the year 1971 has been recorded under Ex.A.4, the normal prudence of the parties would be to implement the same, but the plaintiffs and defendants 2 and 3 were mute spectators even when the father had dealt with the property independently in the year 1979 as per Ex.B.64. Similarly under Ex.B.65, the plaintiffs father has sold the property. If really, the entire properties were to be repartitioned, the plaintiffs and others would have definitely made objections for such sale. Whereas no objection whatsoever was made by plaintiffs. The sale deed executed by the father also does not refer to any family arrangement Ex.A.4 and plaintiffs have never shown any objections. These facts clearly indicate

that the family arrangement has come into existence at a later point of time by antedating it and such family arrangement was introduced for the first time by the legal notice in the year 1996. After the receipt of Ex.B.5 legal notice dated 19.02.1996, the first defendant has addressed a letter to the auditor intimating about the so-called family arrangement and has also asked the auditor as to whether he has any prior knowledge of the document, for which a reply has been sent by the lawyer under Ex.B.69 that he is not aware of the family arrangement referred to in para 2 of the letter. It is relevant to note that all along the period, the auditors and lawyers were consulted in all matters. They themselves were not aware of the family arrangement and for the first time, it was brought to the knowledge under Ex.B.5 legal notice. Further, in all subsequent correspondences till 1996, the family arrangement has not seen the light of the day. Further, the third defendant though filed the suit to enforce the said family arrangement, has not prosecuted the same. The family arrangement has been pressed into service by third defendant in the suit filed in the year 1996 in O.S.No.307 of 1996, wherein she sought for specific performance for enforcement of family arrangement and later, the suit was also dismissed and was not prosecuted as evident from the evidence of D.W.1. Only after 1996, the family arrangement came to be

known to the entire world. All these facts clearly show that the family arrangement has not come into existence and was created only at a later point of time when relationship between the first defendant and second defendant became rancor and hatred. 40.From the above narrative and discussions and as seen in the evidence and the conduct of parties, this court is of the view that there was no reunion whatsoever and Ex.A.4 family arrangement has been created at a later point of time by antedating it and the same has not been proved. Accordingly, issue Nos.(i) and (ii) are answered. Issue No.(iii) : 41.The plaint in O.S.No.74 of 2004 has been amended after the death of the father during the pendency of the suit inter-alia contending that their father died on

25.12.2000 leaving behind the Will dated 10.03.1996. As per the Will, legatees under the Will alone are entitled to share in the property of the second defendant, namely their father. The will left by the father was marked as Ex.A.20 and it is a holographic Will. 42.To prove the Will, the plaintiffs have examined one of the attesting witnesses Mr.Sivasamy. Admittedly, Mr.Sivasamy was examined as P.W.3 and from the evidence of other witnesses, it is clear that P.W.2 was also made one of the Directors of the company. P.W.3 has

also signed in the family arrangement. Though this court has disapproved the family arrangement on various other reasons as stated above, with regard to the Will, P.W.3 has clearly spoken that on 10.03.1996, the Will was written by the testator on his own handwriting and he and one Mr.M.K.Rajan have signed as attesting witnesses in the Will. When his evidence is carefully seen, he has clearly spoken that at the request of the testator, he was present while the testator was writing the holographic Will and he has seen the testator writing the Will and signing the Will. Later, on instructions, he has signed the document and later the other attesting witness has also signed the Will and the testator has seen the Will being signed by him and the other attesting witness. The evidence of P.W.3 when carefully seen, it is clear that he has spoken not only about the execution but attestation of the Will. It is to be noted that the first defendant has been totally excluded in the Will. It is relevant to note that mere exclusion itself will not be sufficient to suspect the will. The reason for exclusion are abundant. Though the other sons of the testator and the wife of the testator were not getting along with the testator for some time from the very inception, later all of them have joined together. The first defendant, the after born son, though was residing with his father till 1993, there arose a dispute between himself and his father in sharing the

properties allotted to the father in the partition deeds in the year 1956. The evidence of D.W.1 itself clearly shows that from the year 1993

onwards, there was serious dispute arose between them. After the allotment of the properties in O.S.No.663 of 1993, the relationship between the first and second defendants became rancor and widened and it is evident from the very admission of D.W.1. It is clearly admitted in his evidence that there was criminal case filed against him by his father and the first defendant was also removed from the Directors post in the company and the first defendant has filed a suit against his father in O.S.No.8354 of 1995 on the file of the City Civil court, Bangalore and obtained an injunction against his father and others, the plaint copy was also filed as Ex.B.86. He has also filed another suit in O.S.No.8382 of 1995 which was marked as Ex.B.87 and based on the injunction order, he has also removed certain items from the property which has been admitted by D.W.1 in his cross examination and he has removed his articles from the house with the help of police. The suit filed by the first defendant against his father was later decreed and this was marked as Ex.B.88. Only thereafter, all the family members have ganged up and the mother has also filed a suit against the first defendant to enforce the alleged family arrangement in O.S.No.307 of 1996 and the legal notice

was also issued by the others pressing into service the family arrangement for the first time. That apart, the father has also filed FIR against his son, which is also evident from Ex.B.98. Again another complaint was also lodged under Ex.B.99 as against the first defendant by the father. These facts clearly show that the relationship between the father second defendant and the son first defendant became rancor and widened to such level that each are accusing the other leading criminal complaints against the son and the son filing civil suit against the father seeking injunction. 43.These facts clearly show that the father was totally against his younger son, namely the first defendant at the relevant point of time after

1995. At this stage, he has written the Will Exs.A.20, holographic Will.

When the Will was brought on record by the legal representatives, the same was objected to by the first defendant. However, the same has been allowed by the trial court after evidence in I.A.No.72 of 2001 in O.S.No.494 of 1996. The execution of the Will was not seriously disputed in the pleadings by the first defendant. P.W.3, one of the attesting witnesses has clearly spoken about the execution as well as attestation of the Will. The Will was also a holographic Will and the evidence of D.W.1 when carefully seen, he has not disputed the execution of the Will by his

father. The only contention is that the Will has been forcibly obtained by others. He has admitted during his deposition as follows:

th/rh/M/20 cs;s capy;vdJ jfg;gdhu;tpUg;gk; ,y;yhky; fl;lhag;gLj;jp vGjpa capy; MFk;/ vy;nyhUf;Fk; bjhy;iy bfhLf;f ntz;Lk;/ vdf;Fk ; vdJ rnfhjuUf;Fk ; bjhy;iy bfhLf;f ntz;Lk ; vd;nw fhntup gPf;fpy ; trpg;gjhf vGjp cs;shu;/ mtu;fs ; brhy;tJ nghy ; mJ cz;ikahd capy;,y;iy/ th/rh/M/20 cz;ikahd capy; my;y mJ jahupf;fg;gl;l capy ; MFk;/ cz;ikapy; jahupf;fg;gl;L ,Ue;jhy; Vw;fhl;oy; cs;s me;j tpyhrj;J byl;lu;ngoy; vGjp ,Ug;ghu;/ nkYk; tHf;fwp"u;. Mol;liu fye;J Mnyhrf;fhky; mt;thW vGjp itj;Js;shu;/

44.The above evidence of D.W.1 clearly shows that he has not disputed the handwriting of his father in the will. The only contention of him is that the same has been forcibly obtained. However, there is no evidence to show that it was forcibly obtained from his father. Further, the admission of D.W.1 in his cross examination with regard to Ex.A.20

is as follows:

vk;/v!;/gp/ uhn$c&; capy; vGJtjw;F Kd;g[tHf;fwp"u; kw;Wk; Mol;liu fye;J Mnyhrpj;jhuh vd;W nryk ; tHf;fwp"iua[k; v';fs ; Mol;liua[k; nfl;nld;/ tp/nfhtpe;juh$d ; vd;w tHf;fwp"iu me;j rkaj;jpy;ngha;nfl;nld;/ ehd; tp/nfhtpe;juh$id nfl;l nghJ ehd; capy ; vGJtjw;F khjpup bfhLj;Js;nsd; vd;W

brhd;dhu;/ vdJ je;ijapd; Mol;lu; bt';flRg;g[it ngha; nfl;nld;/ mJ jtpu vk;/v!;/gp/ uhn$c&;f;F tf;fPy;kw;Wk; Mol;lu;fs; cs;shu;fs;/ th/rh/M/20y; cs;sJ/ vdJ jfg;gdhupd; ifbaGj;Jk; ifbahg;gKk; vd;why; rupjhd;/

45.The above admission of D.W.1 makes it clear that he has also enquired the lawyer about the Will. The lawyer has informed that he has given the draft copy for writing the Will by his father. Further, he has also candidly admitted that Ex.A.20 Will was written by his father and his signature was also found very much in the Will. Though much emphasis was made by the learned counsel for the first defendant that on

09.03.1996 when his father has participated in the Board meeting, he has signed differently and later on 11.03.1996 also, he has signed differently. But the fact remains that the first defendant has clearly admitted not only the handwriting of his father, but also his signature in the Will. P.W.3 has clearly spoken about the Will. That apart, the other attesting witness was also examined during the interlocutory application stage in I.A.No.72 of 2001 in O.S.No.494 of 1996, i.e., the present suit in O.S.No.74 of 2004. He has also spoken about the execution and attestation of the Will and as he died later, his evidence alone was filed. His evidence was also marked under Section 33 of the Indian Evidence Act, 1872. Therefore, once the holographic Will has been clearly admitted and the execution and attestation was also established as per the law, considering the nature of the dispute between the father and son which arose after 1994, the father excluding such son is natural and there cannot be any suspicion over the Will. Further the evidence of D.W.1 makes it clear that when the relationship between himself and his father strained after 1994, his sisters, brothers and mother all have joined together and they reunited with the father. Further his admission clearly shows that in the year 1995, his father has filed a suit in O.S.No.765 of 1995 not to enter the estate. These facts clearly show that the relationship between the father and son

became so rancor and widen and each were showing hatred against other. At that stage, all other family members, who were not getting along with the father, joined together and the Will was executed by the father. The family arrangement is one such document which has been antedated after they joined together. However, the Will has been left by the father by his own handwriting and it is a holographic Will and its execution has been proved in the manner known to law. Further, D.W.1 in her evidence has also not disputed the handwriting and signature of his father.

46.One of the attesting witnesses was examined as P.W.3, who is the close friend of his father. As per Ex.B.87 plaint filed by the plaintiffs in O.S.No.8382 of 1995 not only against the father, but also against P.W.3 attesting witness, he has clearly pleaded that P.W.3 is the close friend of the father. Further, in his cross examination, the first defendant had admitted that even in the subsequent suit filed by him which was filed as Ex.A.27, he had never pleaded that the Will was obtained by coercion. When the handwriting and the signature of the Will was also admitted and one of the attesting witness was also examined, the reasons for writing the Will excluding the first defendant are more at the relevant point of time. The relationship between the testator and his son, namely

the first defendant was strained and so widened and there are many cases filed against testator, therefore, the father writing the Will excluding the son who has filed cases against him, is quite normal and cannot be unnatural. Under the Will Ex.A.20, he has bequeathed all his properties only to plaintiffs 1 and 2, elder sons and to his only daughter fourth defendant.

47.Honble Supreme Court in a decision in Joyce Primrose Prestor Vs. Vera Marie Vas reported in (1996) 9 SCC 324 has dealt with a case regarding holograph Will and how to examine the same. The relevant

paragraph in the said case is paragraph 18 which reads as follows: 18. In applying the above general principles to particular cases, the

nature of the Will, the pleadings of the parties in the case, facts

admitted or proved and the presumptions available in law, will have to be carefully given effect to. The case of a holograph Will which is admittedly in the handwriting of the testator, is a special case which will require a different approach in considering the evidence in the case, to find whether the Will has been duly executed and attested. The approach to be made in such cases has been stated by the Constitution Bench in Shashi Kumar Banerjee case [AIR 1964 SC 529] , at p. 532 paragraph (5). In that case, the Court referred to certain undisputed preliminary facts as follows: The testator, a well- known wealthy lawyer, who died at the age of 97, had executed a Will when he was 93 years' old. He had made provision for his heirs by executing a number of documents, and the Will referred to the remaining property. The Will was witnessed by two persons. The

entire Will was in the handwriting of the testator, corrected in various places and the corrections were initialled by him. It was admitted that the signature at the bottom of the Will was of the testator. The dispositions were very clear and detailed and it could not be said to be an unnatural document. There was no evidence to show that the propounders took any part in the execution of the Will. After stating these preliminary facts, the Court stated the approach to be made in the case of a holograph Will, thus: Further the fact that the Will is a holograph Will and admittedly in the hand of the testator and in the last paragraph of the Will the testator had stated that he had signed the Will in the presence of the witnesses and the witnesses had signed it in his presence and in the presence of each other raise strong presumption of its regularity and of its being duly executed and attested. On these facts there is hardly any suspicious circumstance attached to this Will and it will in our opinion

require very little evidence to prove due execution and attestation of the Will. There is no doubt about the genuineness of the signature of the testator, for it is admitted that the signature at the foot of the Will is his. The condition of the testator's mind is also not in doubt and he apparently had full testamentary capacity right up to March 1947, even though he was an old man of about 97 when he died on 1-4-1947. There is nothing to show that the dispositions were not the result of the free will and mind of the testator. Further, the propounders (namely, the appellants) had nothing to do with the execution of the Will and thus there are really no suspicious circumstances at all in this case. All that was required was to formally prove it, though the signature of the testator was admitted and it was also admitted that the whole Will was in his handwriting. It is in the background of these circumstances that we have to consider the evidence of the two attesting witnesses. (emphasis supplied)

48.It is relevant to note that though the description of properties have not been mentioned in the Will, the fact remains that the intention of the testator to bequeath the properties was sufficiently identified from the very nature of the Will itself. Admittedly, all the properties were originally allotted to the testator as per the partition deeds marked as Exs.A.2 and A.3 between him and elder sons and the other properties purchased by the father have been later divided between the father and his after born son, namely first defendant. Therefore, what are all properties allotted to the father under the compromise decree, other properties purchased by him thereafter alone will be the subject matter of the Will. Therefore, the father taking note of his age and probably to balance the allotment, has written the Will only to his two elder sons and one daughter to balance the equity and therefore, the same cannot be ignored altogether. Accordingly, the issue no.(iii) regarding the Will is answered.

49.In the result, (i)A.S.No.772 of 2005 is partly allowed by setting aside the judgment and decree of the trial court dated 31.12.2004 made in O.S.No.74 of 2004 for partition and a preliminary decree is passed only

in respect of item nos.1 and 6 of A-schedule properties and B and C Schedule properties of the plaint and they shall be divided into three equal shares and both the plaintiffs together are entitled to 2/3rd share as per the Will and the 4th defendant is entitled to 1/3rd share in the above items. The remaining properties, namely item nos. 2,3,4,5 and 7 of the plaint in A-schedule properties are the absolute properties of the first defendant in which plaintiffs and other family members have no share and as far as D-Schedule properties are concerned, absolutely there is no material whatsoever to show that movable properties are available and therefore, plaintiffs are not entitled to D-Schedule properties. As far as E- Schedule properties are concerned, the very plaint averments clearly show that the second defendant has already transferred the properties in favour of defendants 5 and 6, namely the children of the first defendant. Though it is stated that the first defendant has been instrumental in perpetrating the fraudulent acts, absolutely there is no evidence in this regard. Further the properties have already been dealt with by the second defendant during his life time. In the absence of any evidence to show that these properties are also joint family properties, the plaintiffs are not entitled to any share in the E-Schedule properties. Accordingly, preliminary decree is passed in O.S.No.74 of 2004 as indicated above. In

respect of item nos.2,3,4,5 and 7 of A-Schedule properties and D and E- Schedule properties, the judgment and decree of the trial court dismissing the suit in O.S.No.74 of 2004 is confirmed. (ii)A.S.No.1003 of 2005 stands allowed by setting aside the

judgment and decree of the trial court dated 31.12.2004 made in

O.S.No.73 of 2004 which has been filed seeking for declaration to declare the family arrangement dated 29.05.1971 as null and void. The suit in O.S.No.73 of 2004 is hereby decreed declaring that Ex.A.4 family arrangement dated 29.05.1971 is void and unenforceable since the same

has been created by antedating the same. (iii)In respect of A.S.No.856 of 2025 which has arisen out of O.S.No.116 of 2004 seeking partition of 1/5th share in the suit properties which includes the properties allotted to the father in the compromise decree and also the separate properties and belongings of the second defendant and permanent injunction, this Court is of the view that the execution of the Will by the second defendant in favour of plaintiffs and fourth defendant excluding the first defendant and the validity of the Will is upheld in this common judgment and therefore, the first defendant is not entitled to any share in respect of the suit properties in O.S.No.116 of

2004. Accordingly, A.S.No.856 of 2025 filed by the first defendant is

dismissed, confirming the judgment and decree of the trial court dated 24.03.2025 dismissing the suit filed in O.S.No.116 of 2004. (iv)There shall be no order as to costs. (N.S.K., J.) (R.S.V., J.) 27.02.2026 Index : Yes / No

Speaking Order /Non speaking order

Neutral Citation : Yes / No vvk To

1. Additional District Judge, Fast Track Court No.2, Salem. 2.III Additional District Court, Salem. 3.Section Officer, VR Section, Madras High Court, Chennai.

N.SATHISH KUMAR, J.

and

R.SAKTHIVEL, J.

vvk Common judgment in 27.02.2026