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S.A.No.696 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 22 / 08 / 2024

JUDGMENT PRONOUNCED ON : 22 / 11 / 2024

CORAM

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.696 OF 2021
AND C.M.P.NO.13932 OF 2021

1.Palaniammal

2.Perumayee

... Appellants / Respondents /
Plaintiffs

Vs.

1.Thasi @ Sukkadan

2.Selvi

... Respondents / Appellants /
Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated January 27, 2021 passed in A.S.No.15 of 2019 on the file of the Subordinate Court, Paramathi reversing the Judgment and Decree dated March 21, 2019 made in O.S.No.99 of 2012 on the file of the District Munsif Court, Paramathi.

For Appellants	:	Mr.C.Jagadish
For Respondent-1	:	Mr.R.Jayaprakash
For Respondent-2	:	Mr.S.Shanmuga Sundaram for Mr.L.Parvin Banu

J U D G M E N T



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This Second Appeal is directed against the Judgment and Decree dated January 27, 2021 passed in A.S.No.15 of 2019 by the 'Subordinate Court, Paramathi' [henceforth 'First Appellate Court'], whereby the Judgment and Decree dated March 21, 2019 passed in O.S.No.99 of 2012 by the 'District Munsif Court, Paramathi' [henceforth 'Trial Court'] was reversed.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFFS' CASE:

3. The 1st and 2nd plaintiffs are the wife and the daughter of 1st defendant respectively. The 2nd defendant is the daughter of one Karuppayee, with whom the 1st defendant was in a relationship with, however 2nd defendant was not born to 1st defendant. The Suit Property is separate property of the 1st defendant. On September 7, 1983, the 1st defendant executed a Settlement Deed in favour of the 1st plaintiff in respect of Suit Property and the same was accepted and acted upon. Title Deeds were handed over to the 1st plaintiff and she got into joint



possession and enjoyment of the Suit Property along with 1st defendant.

Revenue records stand in the name of the plaintiffs and they have been paying Kist. The 1st plaintiff had filed a Suit in O.S.No.174 of 1998 on the file of District Munsif Court, Paramathi, seeking permanent injunction *inter alia* against the said Karuppayee's father, who is 1st plaintiff's neighbouring land owner too, and obtained Decree dated March 26, 1999 in her favour in respect of Suit Property.

3.1. While the said Settlement Deed stipulated that the 1st defendant cannot cancel it, on the ill advice of said Karuppayee, 2nd defendant and others, the 1st defendant cancelled it vide Cancellation Deed dated February 22, 2012 and executed two Settlement Deeds, one in favour of 2nd plaintiff and another in favour of 2nd defendant. The defendants are trying to dispossess the plaintiffs of the Suit Property under the guise of the aforesaid three documents, which are void. On April 29, 2012, the defendants and their men attempted to dispossess the plaintiffs of the Suit Property. Hence the Suit for declaration that the said Cancellation Deed is null and void, for permanent injunction restraining the defendants from alienating or evicting or dispossessing the plaintiffs of the Suit Property,



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for costs and for other reliefs. To be noted, permanent injunction is sought for without any prejudice to the 1st defendant's joint possession and enjoyment with 1st plaintiff.

DEFENDANTS' CASE:

4. The defendants filed written statement denying the plaint averments. According to the defendants, Suit Property is self-acquired property of 1st defendant. The 1st plaintiff used to often quarrel with the 1st defendant and leave for her maternal house. Hence, the Settlement Deed dated September 7, 1983 was executed sham and nominally on the condition that she shall live along with the 1st defendant, that too on the insistence of the 1st plaintiff. However, the 1st plaintiff did not live along with the 1st defendant and she never got into joint possession and enjoyment of Suit Property. Therefore, the Settlement Deed dated September 7, 1983 was never acted upon. Since the 1st plaintiff failed to comply with the terms and conditions stipulated in the Settlement Deed dated September 7, 1983, 1st defendant has got every right to cancel it. The 1st defendant married the said Karuppayee with the consent of 1st plaintiff



in *vaigasi* month of Tamil calendar in 1977 and in their wedlock, the 2nd defendant was born. The Cancellation Deed dated February 22, 2012, executed for equitable division of Suit Property between 1st plaintiff and 2nd defendant, is perfectly valid. Accordingly, the defendants sought to dismiss the Suit.

TRIAL COURT:

5. At trial, Perumayee (2nd plaintiff) was examined as P.W.1 and Palaniammal (1st plaintiff) was examined as P.W.2 and Ex-A.1 to Ex-A.19 were marked on the side of the plaintiffs. Thasi @ Sukkadan (1st defendant) was examined as D.W.1 and Selvi (2nd defendant) was examined as D.W.2 and Ex-B.1 to Ex-B.4 were marked on the side of the defendants.

6. After completion of trial and hearing both sides, the Trial Court concluded that as per the terms of Ex-A.3 - Settlement Deed dated September 7, 1983, the 1st defendant has got no right to cancel it unilaterally, that too after 29 years of its execution. Unilateral cancellation of Settlement Deed is impermissible and invalid in law. Consequently, Ex-



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A.10 - Cancellation Deed dated February 22, 2012 is null and void.

Accordingly, decreed the Suit as prayed for.

FIRST APPELLATE COURT:

7. Dissatisfied with the Trial Court's Judgment and Decree, the defendants / appellants preferred an appeal in A.S.No.15 of 2019 before the First Appellate Court. The First Appellate Court after hearing both sides and perusing the documents available on record, concluded that the nature of a document should not be gathered solely on the basis of its nomenclature. The recitals of Ex-A.3 – Settlement Deed would show that it is a Will and not a Settlement Deed. Ex-A.3 was never acted upon as the 1st defendant / executor is still alive and the property is still in his possession and enjoyment. Accordingly, allowed the appeal and set aside the Judgment and Decree of the Trial Court.

SECOND APPEAL:

8. Feeling aggrieved by the Judgment and Decree passed by the First Appellate Court, the plaintiffs have preferred this Second Appeal, which was admitted on August 24, 2023 on the following Substantial



Questions of Law:

- “(a) *Whether the Lower Appellate Court is right in law in dismissing the Suit holding that Ex-A.3 Settlement Deed is a Will and that the Cancellation Deed Ex-A.10 dated 22.02.2012 is valid particularly when the Settlement Deed is absolute and irrevocable?*
- (b) *Whether the Lower Appellate Court has properly considered Ex-A.3 Settlement Deed and the recitals therein while reversing the well considered judgment of the Trial Court?”*

ARGUMENTS:

9. Mr.C.Jagadish, learned Counsel for the appellants / plaintiffs would argue that Ex-A.3 – Settlement Deed was acted upon and the plaintiffs are in possession and enjoyment of the Suit Property. To prove their possession, the plaintiffs filed Ex-A.19 series containing nine Kist Receipts. Further, 1st defendant did not file anything except Ex-A.13= Ex-B.3 – Computer Patta, which was issued just before the Suit, to assert his possession over the Suit Property. Since the neighbouring land owner including the grandfather of the 2nd defendant interfered with the plaintiffs’ possession and enjoyment of Suit Property, 1st plaintiff filed the



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Suit in O.S.No.174 of 1998 on the file of District Munsif Court, Paramathi

and the same was Decreed as prayed for. The plaint, Decree and Judgment

therein are marked as Ex-A.4 to Ex-A.6 respectively. Further, the 1st defendant examined as D.W.1 has clearly admitted the execution of Ex-A.3 and the recitals thereof. Ex-A.3 coupled with the evidence of D.W.1 would show the intention of the parties behind the execution of Ex-A.3. While nobody's case is that Ex-A.3 is a Will, the First Appellate Court erred in considering it as a Will. Further, the First Appellate Court failed to appreciate Ex-A.4 to Ex-A.6 and Ex-A.19 in the right perspective. Further, as per Section 126 of the Transfer of Property Act, 1882, Ex-A.3 cannot be revoked unilaterally. Hence, unilateral cancellation is invalid. Accordingly, he would pray to allow the Second Appeal, set aside the Judgment and Decree of First Appellate Court and restore that of the Trial Court.

10. On the other hand, Mr.R.Jayaprakash, learned Counsel for the Respondent No.1 / Defendant No.1 would argue that Ex-A.3 – Settlement Deed, a sham and nominal document executed only with a view to persuade 1st plaintiff to live along with 1st defendant, was never acted upon. The 1st plaintiff did not live along with the 1st defendant as per the



recitals of Ex-A.3. Hence, the 1st defendant is entitled to cancel the same.

The Suit Property was never parted to the plaintiffs exclusively. Hence, there is no need to interfere with the Judgment and Decree of the First Appellate Court. Accordingly, he would pray that the Second Appeal be dismissed, and the Judgment and Decree of First Appellate Court be confirmed.

11. Mr.S.Shanmuga Sundaram representing Mr.L.Parvin Banu, learned Counsel on record for the Respondent No.2 / Defendant No.2 would argue that the 1st defendant married said Karuppayee, and the 2nd defendant was born in their wedlock. Ex-B.1 – Transfer Certificate as well as recitals of Ex-B.4 – Settlement Deed executed by 2nd defendant's grandfather in favour of 2nd defendant's mother – Karuppayee would corroborate the same. Hence, 2nd defendant is a legitimate child of 1st defendant. Further, comprehensive reading of Ex-A.3 would show that it is not a Settlement Deed but a Will. The 1st defendant has every right to cancel the Will (Ex-A.3). The said document was never acted upon, even while assuming that it is a Settlement Deed. In these circumstances, the 1st defendant cancelled Ex-A.3 vide Ex-A.10 - Cancellation Deed dated



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February 22, 2012 and executed two Settlement Deeds, one in favour of 2nd plaintiff [Ex-A.11] and another in favour of 2nd defendant [Ex-A.12], for equitable distribution of Suit Property to his daughters. He would rely on the Judgment of Hon'ble Supreme Court in *S. Sarojini Amma v. Velayudhan Pillai Sreekumar*, reported in (2019) 11 SCC 391, wherein on the facts and circumstances of that case, it was held that conditional gifts can be cancelled when the conditions therefor are not fulfilled.

11.1. Further would argue that the plaintiffs challenged Ex-A.10 - Cancellation Deed dated February 22, 2012 alone and have not challenged Ex-A.11 and Ex-A.12 – Settlement Deeds executed on the same day by 1st defendant. Further, in the absence of prayer seeking declaration of title to Suit Property, prayer for declaring Ex-A.10 - Cancellation Deed as null and void alone is not sufficient. Hence, the Suit as framed by the plaintiffs is not maintainable. Accordingly, he would pray to dismiss the Second Appeal, and confirm the Judgment and Decree of First Appellate Court.

DISCUSSION:

12. This Court has heard on either side and perused the



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materials available on record in light of the Substantial Questions of Law:

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13. Perused Ex-A.3. Relevant portion thereof reads thus:

“ . . . வீரன் மகன் தாசி ஆகிய நான்
எழுதிக்கொடுத்த செட்டில்மெண்ட் பத்திரம்
என்னவென்றால்

நீ என் மனைவி. உன்னை நான் 20
ஆண்டுகளுக்கு முன் திருமணம் செய்து
கொண்டேன். அது சமயம் நான் உனக்கு ஒரு
ஆதரவு செய்வதாக சொன்ன வாக்குறுதியை
நிறைவேற்றும் பொருட்டும் நம் சந்ததிகளின்
நன்மையைக் கருதியும் உன் பேரில் உள்ள
அன்பினாலும் பிரியத்தாலும் கீழ்க்கண்ட சொத்தினை
உம்மால் எவ்விதமான தொகையும் பெறாமல் இந்த
செட்டில்மெண்ட் மூலம் கீழ்க்கண்ட
நிபந்தனைக்குட்பட்டு எழுதி வைத்திருக்கிறேன். இனி
கீழ்க்கண்ட சொத்தினை நீயும் நானும் சேர்ந்து
அனுபவித்து வரவேண்டியது. இதன் மூலம் ஏற்படும்
வருமானத்தைக் கொண்டு என்னால் உமக்குப்பிறந்த
வாரிசுகளையும் இனி பிறக்கப்போகும்
வாரிசுகளையும் நாம் காப்பாற்றி வரவேண்டியது.
கீழ்க்கண்ட சொத்தின் மீது வில்லங்கம்
செய்வதாயிருந்தால் நீயும் நானும் சேர்ந்து
வில்லங்கம் செய்ய வேண்டியதே தவிர நீயோ அன்றி
நானோ தனித்து வில்லங்கம் செய்தால் அவைகள்
ஏதும் செல்லாது. நம் இருவருடைய ஆயுளுக்குப்பின்
மீதி இருக்கும் சொத்துக்களை என்னால் உனக்கு



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ஏற்பட்ட வாரிசுகளே அடைய வேண்டியதும் மற்றவர்களுக்கு எவ்வித பாத்திய உரிமையும் இல்லை. இந்த செட்டில்மெண்ட் பத்திரத்தை ரத்து செய்யவோ புதுப்பிக்கவோ எனக்கு அதிகாரம் இல்லை. மீறி செய்தாலும் அவைகள் யாவும் செல்லாது. இந்தப்படி என் சம்மதியில் எழுதிக் கொடுத்த செட்டில்மெண்ட் பத்திரம்.”

14. There is no dispute that the subject matter of Ex-A.3 – Settlement Deed dated September 7, 1983, being the Suit Property, is separate property of the 1st defendant; that the 1st plaintiff married the 1st defendant around the year 1963 and in their wedlock, the 2nd plaintiff alone was born; that on the date of execution of Ex-A.3 – Settlement Deed *i.e.*, September 7, 1983, the 2nd plaintiff had already been born.

15. On bare reading of Ex-A.3, one can easily deduce that Ex-A.3 – Settlement Deed was executed by 1st defendant for three reasons : (i) with a view to fulfil his promise to the 1st plaintiff made at the time of their marriage that he would support and safeguard her life, (ii) for the wellbeing of their child(ren) and (iii) out of love and affection as well. Further it can be easily discerned that Ex-A.3 lacks passing of any monetary consideration. Furthermore, one can easily ascertain that the



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primary object behind Ex-A.3 is to ensure that the 1st plaintiff takes good care of and properly raises the child(ren) born in her wedlock with the 1st defendant. On comprehensive reading, it can be observed that Ex-A.3 was executed on the following terms and conditions:

- (i) Under Ex-A.3, ownership and possession of the Suit Property was transferred absolutely in favour of the 1st plaintiff *in praesenti* on the condition that, upon such absolute transfer of ownership and enjoyment, the 1st defendant shall be entitled to enjoy the Suit Property jointly. [This could be understood from the lines : கீழ்க்கண்ட சொத்தினை உம்மால் எவ்விதமான தொகையும் பெறாமல் இந்த செட்டில்மெண்ட் மூலம் கீழ்க்கண்ட நிபந்தனைக்குட்பட்டு எழுதி வைத்திருக்கிறேன். இனி கீழ்க்கண்ட சொத்தினை நீயும் நானும் சேர்ந்து அனுபவித்து வரவேண்டியது];
- (ii) The 1st plaintiff and 1st defendant out of the income derived from the Suit Property, shall maintain the children born or to be born to them;



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- (iii) In case, any encumbrance / alienation is to be made on the Suit Property, it has to be made jointly. Any unilateral encumbrance / alienation shall be invalid;
- (iv) Post their life time, the remaining property shall be vested in the hands of their children. No one else shall have any right or claim over the Suit Property;
- (v) The 1st defendant shall have no right to cancel or modify Ex-A.3. Any such modification or cancellation, if done, would not be valid.

16. It is an admitted fact that 2nd plaintiff alone was born in the wedlock between the 1st plaintiff and 1st defendant. Notably, the 2nd plaintiff did not take a stand that she was not taken good care or she was not raised with proper love and affection. Bare perusal of the plaint shows that the 2nd plaintiff grew up in the care and custody of 1st plaintiff. P.W.1/ 2nd plaintiff has deposed that she was married off in 1985 to a person working as a Manager at Central Bank and that she is working at a play



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school (அங்கன்வாடி). On cumulative consideration of the above facts, this Court is of the view that the primary object behind Ex-A.3, which is the welfare of the child(ren) born to 1st plaintiff and 1st defendant, has been fulfilled by the 1st plaintiff.

17. Further, the 1st plaintiff along with the 2nd plaintiff filed a Suit in O.S.No.174 of 1998 against three persons whereby she saved the Suit Property from risks such as wastage, encroachment, mischief and interference. This shows that the plaintiffs are in possession and enjoyment of the Suit Property and have taken proactive steps to safeguard it from potential dangers / threats.

18. Further, plaintiffs in Paragraph Nos.9 and 10 of the plaint has averred that they're in joint possession and enjoyment of the Suit Property; that they have no objection for joint cultivation of the Suit Property by the plaintiffs and the 1st defendant; and that however, the second defendant has no right over the Suit Property. This shows that the plaintiffs did not violate the condition *qua* joint possession in Ex-A.3 nor is there any intention to do so.



19. Further, 1st defendant in O.S.No.174 of 1998 is none other

than the grandfather of 2nd defendant and father of Karuppayee.

Karuppayee was in a relationship outside of marriage with the 1st defendant herein. The said relationships were not controverted by the grandfather of the 2nd defendant in O.S.No.174 of 1998. However, the grandfather executed Ex-B.4 – Settlement Deed in favour of his daughter – Karuppayee, wherein he has described his daughter as the ‘junior wife’ of the 1st defendant. The defendants in their statement have averred that in 1977, the 1st defendant married Karuppayee as 2nd wife. Ex-B.1 – Transfer Certificate of 2nd defendant, and Ex-B.2 – Family Card of said Karuppayee would strengthen the averment that 1st defendant married said Karuppayee. Admittedly, the parties are Hindus. Hence, this Court is of the considered view that though the marriage between the 1st defendant and said Karuppayee is void, 2nd defendant is a legitimate child of 1st defendant under Section 16 of the Hindu Marriage Act, 1955. Further, from the cumulative facts set out in this paragraph, it can be discerned that the 1st plaintiff bears a sufficient and reasonable cause to live estrange from 1st defendant.



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20. The plaintiffs' side filed Ex-A.13 – Computer Patta obtained on March 22, 2012, which shows that the concerned Patta for the Suit Property is Patta No.374 standing now in the name of 1st defendant and another. That is the only document which is in favour of the defendants when it comes to proving their alleged possession. The defendants have not filed any other documents in this regard. Whereas the plaintiffs filed Ex-A.19 series containing nine Kist Receipts, out of which, seven receipts relating to Patta No.374 and pertaining to the time period between 1985 and 1994 were issued in the names of the 1st and 2nd plaintiffs. Moreover the plaintiffs have filed Ex-A.1 and Ex-A.2, which are original Title Deeds of the Suit Property standing in the name of 1st defendant, as well as Ex-A.3, which is the original Settlement Deed dated September 7, 1983. Presence of the originals of the Title Deeds and the Settlement Deed dated September 7, 1983 in the hands of the plaintiffs are also indicative of plaintiffs' ownership and possession. Hence, the contentions of the defendants that Ex-A.3 is sham and nominal and was never acted upon is untrue and deserves to be rejected.



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21. As stated *supra*, the originals of the Title Deeds and the Settlement Deed dated September 7, 1983 were handed over to the plaintiffs. On the basis of Ex-A.1, Ex-A.2, Ex-A.3 and Ex-A.19 – Kist Receipts, the plaintiffs presented the plaint in O.S.No.174 of 1998 (Ex-A.4) and obtained Decree and Judgment in their favour (Ex-A.5 and Ex-A.6). As stated *supra*, ownership was transferred and possession was handed over *in praesenti* under Ex-A.3. Ex-A.3, recitals whereof clearly show that it is irrevocable and that it is a Settlement Deed. From the intention of the parties also, it can be gathered that Ex-A.3 is a Settlement Deed. Moreover, the defendants neither through their Written Statement nor through their sides' evidence, took a stand that Ex-A.3 is a Will. Not even a single suggestion was put to the plaintiffs during their cross-examination that Ex-A.3 is a Will.

22. It is a settled principle of law that interpretation of a document has to be done in a comprehensive manner. The document has to be read in its entirety and interpreted considering the recitals, import of words, relationship between the parties, unique facts and circumstances of the case, *etc.* Conjoint reading has to be done. Interpretation should not be based on a single dissected line or portion from the document. Moreover,



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the defendants being the executant of Ex-A.3 filed written statement and even deposed to the effect that Ex-A.3 is a Settlement Deed. In this regard, it is apposite to extract hereunder the evidence of D.W.1:

' . . . 07.09.83- தேதியிட்ட 1ம் வாதியின் பெயரில் பதிவு செய்யப்பட்ட செட்டில்மெண்ட் ஆவணத்தை ஏற்படுத்தி கொடுத்துள்ளேன் என்றால் சரிதான். மேற்படி வா.சா.ஆ.3 ஆவணத்தை 1ம் வாதியின் பெயரில் உள்ள அன்பினாலும் பாசத்தினாலும் சுயவிருப்பத்தின்படி தான் எழுதி வைத்தேன் என்றால் சரிதான். மேற்படி வா.சா.ஆ.3 ஆவணத்தில் நிபந்தனையில் இனி எந்தகாலத்திலும் நீயோ நானோ ரத்துசெய்ய இயலாது என்றுதான் எழுதி கொடுத்துள்ளேன் என்று சொன்னால் சரிதான். அவ்வாறு வில்லங்கம் ஏற்படுத்தினால் மேற்படி வில்லங்கம் செல்லாது என்று குறிப்பிட்டுள்ளேன் என்று சொன்னால் சரிதான். மேற்படி ஆவணத்தில் நம் இருவரின் ஆயுளுக்குப்பின் என்னால் உனக்கு ஏற்பட்ட வாரிசுகளை அடையவேண்டும் என்றும் மற்றவர்களுக்கு எவ்வித பாத்திய உரிமையும் இல்லை என்று எழுதப்பட்டுள்ளது என்றால் சரிதான். 1ம் வாதிக்கு 2ம் வாதி மட்டுமே வாரிசு என்றால் சரிதான். வா.சா.ஆ-1 மற்றும் 2 ஆவணங்கள் என்னால் கிரையம் பெறப்பட்ட சொத்துக்களின் அசல் ஆவணங்கள் என்று



சொன்னால் சரிதான். தாவா சொத்துக்ள்
கிரையம் பெற்ற தேதியில் நானும் வாதியும்
ஒன்றாகத்தான் வசித்து வந்தோம் என்றால்
சரிதான். வா.சா.ஆ.3 ஆவணம் எழுதப்படும்
காலத்தில் நானும் வாதிகளும் தாவாசொத்தில்
தான் குடியிருந்து வந்தோம் என்றால் சரிதான்.
...

22.1. Further, at this juncture, it is apposite to cite the decision of Hon'ble Supreme Court in ***P.K.Mohan Ram v. B.N.Ananthachary and others***, reported in ***(2010) 4 SCC 161***, wherein, in a similar factual matrix, the Hon'ble Supreme Court held as hereunder:

“19.Having noticed the distinction between vested interest and contingent interest, we shall now consider whether Ext. A-2 was a settlement deed or a will. Although, no straitjacket formula has been evolved for construction of such instruments, the consistent view of this Court and various High Courts is that while interpreting an instrument to find out whether it is of a testamentary character, which will take effect after the lifetime of the executant or it is an instrument creating a vested interest in favour of a person, the Court has to very carefully examine the document as a whole, look into the substance thereof, the treatment of the subject by the settlor/executant, the intention appearing both by the expressed language employed in the instrument and by necessary implication and the prohibition, if any,



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contained against revocation thereof. It has also been held that form or nomenclature of the instrument is not conclusive and the court is required to look into the substance thereof.

29.A careful reading of Ext. A-2 shows that in the title itself the document has been described as a settlement deed. By executing that document, Shri K. Perumal Iyer expressed his intention, in no uncertain terms, to settle the property in favour of 16 persons who were none else than his own relatives and declared that “from this day onwards I and you shall enjoy the land and house without creating any encumbrance or making any alienation whatsoever”. This was an unequivocal creation of right in favour of sixteen persons in præsenti. Though, the beneficiaries were to become absolute owners of their respective shares after the death of the settlor, the language of the document clearly shows that all of them were to enjoy the property along with the settlor during his lifetime and after his death, each of the beneficiaries was to get a specified share. In the concluding portion, the settlor made it clear that he will have no right to cancel the settlement deed for any reason whatsoever or to alter the terms thereof.

30.The mere fact that Beneficiaries 1 and 2 and after them their heirs were to receive honours at the temple or that shares were to be divided after disposal of the property cannot lead to an inference that Ext. A-2 was a “will”. If Ext. A-2 is read as a whole, it becomes clear



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that it was a “settlement deed” and the trial court and the lower appellate court did not commit any error by recording a finding to that effect. As a sequel to this, it must be held that the High Court committed serious error by setting aside the concurrent judgments and decrees of the two courts.”

22.2. On the strength of afore-cited authority, this Court is of the view that Ex-A.3 is a Settlement Deed and not a Will.

23. In short, the primary object as well as the conditions stipulated in Ex-A.3 has been fulfilled. The plaintiffs have not made any alienation or encumbrance so far. They do not have the right to do so unilaterally during the life time of 1st defendant and the 1st plaintiff. The 1st plaintiff has been proactive in protecting the Suit Property. Hence, this Court is of the view that the plaintiffs have not violated any condition stated in Ex-A.3. Moreover, they seem to have no intention to do so in the near future as stated *supra*. Therefore, Ex-A.3 cannot be revoked under Section 126 of the Transfer of Property Act, 1882. Assuming that the plaintiffs alienate the Suit Property in the future, even then the 1st defendant cannot cancel Ex-A.3 unilaterally in view of the express



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irrevocability clause contained therein. The only remedy available to him is to file a Civil Suit [See ***Latif Estate Line India Ltd. v. Hadeeja Ammal***, reported in ***2011 SCC OnLine Mad 215 : (2011) 1 LW 673 (FB)***].

24. In ***S. Sarojini Amma's Case*** (cited *supra*), on facts Hon'ble Supreme Court held that conditional gifts can be revoked when conditions therefor are violated. In that case, the donor retained possession with her and imposed a condition that the donee shall look after her and her husband during their lifetime. Further, there was a clear clause that the gift would take effect only after the death of the donor and her husband. Whereas in the instant case, as stated *supra*, possession was handed over *in praesenti* under Ex-A.3, and Ex-A.3 was accepted and acted upon immediately. ***S. Sarojini Amma's Case*** turns on its own facts and therefore it cannot be applied to the instant case.

25. Further, since ownership and possession were given *in praesenti* under Ex-A.3, and since the plaintiffs are still in possession and enjoyment of the Suit Property, this Court is of the view that the Suit, for declaration that Ex-A.10 - Cancellation Deed dated February 22, 2012, is maintainable even in the absence of prayer for declaration of title in respect of Suit Property.



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26. In these circumstances, the Trial Court rightly appreciated the evidence available on record and concluded that Ex-A.3 is a Settlement Deed. The First Appellate Court, without appreciating the evidence in the right perspective, erred in concluding that Ex-A.3 is a Will merely on the ground that Ex-A.3 recites that the Suit Property shall be vested with the child(ren) of the 1st plaintiff and 1st defendant post their lifetime, that too when there is no whisper that Ex-A.3 is a Will. Accordingly, Substantial Questions of Law are answered in favour of the plaintiffs.

CONCLUSION:

27. Resultantly, the Second Appeal stands allowed. The Judgment and Decree of the First Appellate Court is hereby set aside and the Judgment and Decree of the Trial Court is hereby confirmed. Keeping in mind the relationship between the parties, there shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

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Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
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To
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- 1.The Subordinate Court
Paramathi.
- 2.The District Munsif Court
Paramathi.



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R. SAKTHIVEL, J.

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