



AS.No.661 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2024

CORAM:

THE HONOURABLE Mr. JUSTICE **R.SUBRAMANIAN**  
AND  
THE HONOURABLE Mr.JUSTICE **C.KUMARAPPAN**

**A.S.No.661 of 2018**  
**and**  
**CMP.Nos.18064 of 2018, 15923 & 15925 of 2024**

N.Karuppanna @ Karuppa Gounder

... Appellant

-Vs-

C.Nacimuthu Gounder (Died)

2. Susilamani @ Marayal

3. Sivamani @ Sivagami

4. V.Kasiappa Gounder

5. S.Rangasamy

6. S.Maragatham

(R2 to R6 brought into record as Lrs of the deceased 1<sup>st</sup> respondent  
viz., (C.Nachimuthu Gounder) vide order dated 25.02.2022  
made in CMP.No.3086 of 2019

... Respondents/Defendants

**PRAYER:** First Appeal filed under Section 96 R/W Order 41 Rule 1 & 2 of the Code of Civil Procedure against the Judgment and decree dated 31.07.2018 made in O.S.No.1 of 2016 (O.S.No.04 of 2016 District Court, Erode) on the file of the Fourth Additional District Sessions Court, Erode District, Bhavani.



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For Appellant : Mr.N.Manokaran  
For Respondents : Mr.E.P.Senniyangiri for R1  
Mr.A.Murugavel for R2 & R3  
R4-No Appearance

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## **J U D G M E N T**

[Judgment of the Court was delivered by **R.SUBRAMANIAN, J**]

The defendant in OS No.1 of 2016 on the file of the IV Additional District Court, Erode is on Appeal aggrieved by the judgment and decree made in the suit declaring that the Settlement Deed dated 29.08.2013 executed by the plaintiff in the said suit in favour of the defendant/appellant as invalid having been obtained by undue influence and fraud.

2. The parties will be referred to as per their ranks for the purpose of convenience.

3. The plaintiff is the father of the defendant. He had purchased the suit properties under Sale Deeds during the year 1971 and 1979. He had one son and 4 daughters. The son namely the defendant had been in Government service and retired in the year 2012. The wife of the plaintiff Valliammal died on 14.07.2013. Thereafter, the plaintiff executed a settlement deed on



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29.08.2013 in favour of the defendant, who is his only son. Soon thereafter, he filed a suit in February, 2013 as an indigent person, seeking a declaration of settlement deed is invalid on the ground that fraud, undue influence and coercion. The plaintiff would plead that he was taken by the defendant and his friends in a car and made to affix his thumb impression in certain stamp papers. He has also claimed that the defendant and his friends threatened to throw him in River Cauvery, if he does not affix his left hand thumb impression in the document. It is also claimed that on 17.10.2013 the defendant and his friends came to the house and has attempted to dispossess him. He lodged a complaint with the Commissioner of Police, Land Grabbing Cell, Erode, the District Collector, Erode regarding the highhanded actions of the defendant. He would claim that the police did not take action because of the influence of the defendant. On the above contentions, the plaintiff sought for the declaration as stated above.

4. The suit was resisted by the defendant contending that the settlement deed was executed by the plaintiff out of his own free will. He would also contend that the suit has been filed at the instance of the daughters of the plaintiff, who did not like the property being gifted to the defendant. It was



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also contended that the defendant was only taking care of the plaintiff and only after the plaintiff went to stay with his daughter Sivagami, the suit came to be filed. He would plead that the suit itself is at the instance of his daughters, who wanted to grab the property.

5. On the above pleadings, the learned Additional District Judge framed the following issues:-

1. Whether the settlement deed dated 29.08.2013 has been obtained by fraud and undue influence?
2. Whether the plaintiff is entitled to declaration as sought for?
3. To what relief is the plaintiff entitled?
4. Whether the suit has been valued and properly?

6. At Trial, the plaintiff was examined as PW1. Exs.A1 to A9 were marked. The defendant was examined as DW1 and 3 other witnesses including an attester and the scribe of the settlement deed dated 29.08.2013 were examined as DW2 to DW4.

7. The Trial Court concluded that the evidence of PW1 would be sufficient to prove that the document has been obtained by fraud and coercion



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considering the age of the plaintiff. The fact that the daughters of the plaintiff did not accompany him at the time of execution of the settlement and was given lot of weight by the Trial Court in it reaching the conclusion that it has reached. The issue relating to valuation was answered in favour of the plaintiff. On the above findings, the learned Trial Judge decreed the suit as prayed. Aggrieved, the defendant is on appeal.

8. We have heard Mr.N.Manokaran, learned counsel appearing for the appellant and Mr.E.P.Senniyangiri, learned counsel appearing for the first respondent.

9. The plaintiff died pending appeal and his daughters and the heirs of the pre-deceased daughter were brought on record as respondents 2 to 6.

10. From the arguments, the only point that arises for consideration is as to whether the plaintiff has established that the settlement deed dated 29.08.2013 has been obtained by undue influence and coercion. Mr.N.Manokaran, learned counsel for the appellant would take us through the evidence of PW1 and would contend that the evidence of PW1 is wholly



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insufficient to support the claim made in the plaint to the effect that the document has been obtained by fraud, coercion and undue influence. Drawing us to a specific admission made by PW1, the learned counsel would submit that the conclusion of the Trial Court is directly contrary to the evidence on record. The learned counsel would submit that the relationship between the father and the son was quiet cordial till the execution of the settlement deed and thereafter, when the father was taken away by the daughter, his mind was poisoned to file the present suit. The following portions of the evidence in cross examination of PW1 would according to the learned counsel support his contentions.

“முதல் இரண்டு மகள்களுக்கு நகைகள் போட்டு சீர் செய்து திருமணம் செய்து வைத்தேன். அவர்களுக்கு கடன் வாங்கி தான் திருமணம் செய்தேன். எனது மகள் சுசீலாவின் திருமணத்திற்கு எனது மகன் ரூ.15,000/- கொடுத்தார் என்றால் சரியல்ல. ரூ.10,000/- கொடுத்துவிட்டு ரூ.15,000/- என்று சொல்கிறான். சிவகாமிக்கு திருமணம் செய்யும் போது என்னிடம் கையில் பணம் இல்லை. சிவகாமி திருமணத்தை எனது மகன் தான் நகை போட்டு திருமணம் செய்து வைத்தான் என்றால் சரியல்ல. நான் செலவு பாதி, ஏன் மகன் செலவு பாதி போட்டு திருமணம் செய்து வைத்தோம். சிவகாமி திருமணத்திற்கு ரூ.6,00,000/- செலவாகியிருக்குமா என்றால் இருக்கும் எனது மனைவி இறந்த பின்னிட்டு கடந்த 1 1/2 ஆண்டு காலமாக எனது மகன் சண்முகம் என்பவரை வைத்து எனக்கு சமைத்து போட்டு பராமரித்து வந்தான். அதன் பிறகு என் மகள் சிவகாமி என்னை கூட்டி சென்றார் பொதுவாக சார்பதிவாளர் பணம் வாங்கி கொண்பார்களா என்று கேட்டு கொண்டு தான் பத்திரம் பதிவார் என்றால் சரிதான். எனது மகனுக்கு சொத்தை தானமாக கொடுத்து பத்திரம் எழுதி வைத்தேன். அப்போது சார்பதிவாளர் உங்கள் மகனுக்கு பத்திரம் எழுதி வைக்கிறார்களா என்று கேட்டார். நான் ஆமாம் என்று சொன்னேன்.”

11. The learned counsel would also draw our attention to Sub-Section



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(2) of Section 60 of The Registration Act, which creates a presumption regarding the endorsements made by the Registrars while registering the instrument. Sub-Section (2) of Section 60 reads as follows:-

**“60. Certificate of registration.-(1)**

.....

*(2) Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsement, referred to in Section 59 have occurred as therein mentioned.”*

12. The learned counsel would also draw support from the judgment of the Hon'ble Supreme Court in ***Jamila Begum (Dead) through legal representatives Vs. Shami Mohd.(Dead) through legal representatives and another*** reported in ***(2019) 2 SCC 727***, wherein the Hon'ble Supreme Court has invoked the presumption under Section 114 of The Evidence Act to conclude that the Act of Registration by itself done by the usual course of the performance of the official duty by the Sub Registrar would lend credence to the instrument.

13. Contending contra, Mr.E.P.Senniangiri, learned counsel appearing



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for the first respondent would submit that the plaintiff was aged about 80 years at the time of execution of the instrument and the instrument was executed within 1 ½ months from the date of death of his wife. The plaintiff, who had four daughters and a son would not have preferred the son alone and executed a settlement deed in his favour. He would also point out to the conduct of the plaintiff in lodging the complaint to the Authorities soon after registration and also filing the suit within six months from the date of registration of the instrument. The learned counsel would also point out that the deceased plaintiff was in the care and custody of the daughter, since the defendant refused to maintain him after having obtained the settlement deed. The learned counsel would also submit that when fraud and undue influence are the alleged presumption, that is raised under Section 60(2) of The Registration Act will be of no avail and it is for the defendant to establish that the document was executed by the plaintiff with full understanding of the effect of the document.

14. We have considered the rival submissions.

15. The relationship between the parties is admitted. The fact that the settlement document marked as Ex.A8 was executed and registered on



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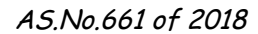
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29.08.2013 is also admitted. The only plea that is taken is that the document was obtained by coercion and undue influence. The question of fraud may not arise on the plea that is taken to the effect that he was threatened to affix his thumb impression in the document. So it could be only undue influence or coercion. We have extracted the portions of the evidence of PW1 in his cross examination, which demonstrate that the relationship between the father and son was very cordial. The father admits that the son has spent monies for the marriage of his sisters. He would also admit that the son has purchased the property at Thindal in Erode out of his own monies and he [the father] had not contributed for the said purchase. There were also specific admissions regarding the contribution made by the defendant for the marriage of his sisters. To top it all, PW1 would specifically admit that he answered in the affirmative, when the Sub Registrar put a question to him regarding the nature of the document and the execution of it. He has stated that he had answered in affirmative when the Sub Registrar asked him as to whether he is executing a document in favour of his son. In the above circumstances, we are clearly of the opinion that the presumption enacted under Section 60(2) of the Registration Act would stand attracted. Section 35 of The Registration Act imposes an obligation on the Registering Officer to enquire as to whether the



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executant admits execution of the document. If the answer is yes, he is required to register the document as directed in Sections 58 to 61 [both inclusive].



18. Section 60 declares that after complying with the requirement of Sections 34, 35, 58 and 59 the registering officer shall endorse thereon a certificate containing the word “registered”, together with the number and page of the book in which the true copy has been filed. It is after all these compliance that Section 62 kicks in and creates a statutory presumption as to the happening of the facts mentioned in the endorsement referred to Section 51. Therefore, once the Registrar makes an endorsement as required under Section 60 and a Certificate of Registration is created, then the contents of the certificate shall be presumed to have happened and it is for the person denying



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it to prove otherwise. If we have to look into the evidence available in the case on hand, we do not have any other evidences except the oral evidence of PW1 in support of his case. The said oral evidence is completely insufficient, particularly in the light of the admissions contained therein, to dislodge the presumption that is created by operation of law. The learned Trial Judge had gone by the fact that PW1 has not taken any of the relatives with him to have the instrument registered. That by itself, in our considered opinion, cannot be a ground to disbelieve the endorsement made by Registering Officer. Something more than the interested testimony of PW1 is required to dislodge the presumption. We find that nothing has been elicited either from the witnesses examined from the defence side namely, the scribe and the attesting witness to show that the document has been obtained by undue influence.

19. The Hon'ble Supreme Court in ***Jamila Begum's*** case [cited supra] has adverted to the presumption created under Section 114 of The Evidence Act with reference to the official Act and has held that the registration of an instrument reinforces valid execution of the instrument. While doing so, the Hon'ble Supreme Court has referred to the judgment in ***Vishwanath Bapurao Sabale Vs. Shalinibai Nagappa Sabale*** reported in (2009) 12 SCC 101,



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wherein the Hon'ble Supreme Court observed as follows:-

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"16. ....

*'27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption.'*"

20. Apart from the above, we find that the evidence of DW2 and DW3 the scribe and attesting witness to the instrument are cogent and convincing as to the happenings on the date of execution of the settlement deed and its registration. The Trial Court has unfortunately rejected the said evidence and concluded that the evidence of PW1 alone would be sufficient to hold that the document was obtained by undue influence and coercion. We are unable to affirm the said conclusion of the Trial Court in the light of the law declared by the Hon'ble Supreme Court with reference to the presumption regarding a registered instrument. Hence, we set aside the judgment and decree of the Trial Court.

21. This Appeal is allowed. The suit in O.S.No.1 of 2016 will stand dismissed. Considering the relationship between the parties, we direct the parties to bear their own costs in the appeal. It is brought to our notice that the



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decree in the suit has been registered. Upon communication of this judgment, the Sub Registrar concerned will make an endorsement to the effect that the suit and decree in O.S.No.1 of 2016 has been set aside by this Court.

[R.S.M., J] [C.K., J]  
06.11.2024

Internet : Yes

Index : No

Speaking Order

NCC : No

*kmi*

To  
The IV Additional District Sessions Court,  
Erode District,  
Bhavani.



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**R.SUBRAMANIAN, J**  
**and**  
**C.KUMARAPPAN, J**

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