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AS No. 333 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.04.2026

Pronounced on : 24.07.2026

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

AS No. 333 of 2013

and

AS No. 244 of 2013

and

M.P.No.1 of 2013

A.S.No.333 of 2013

S.Lakshmi

..Appellant(s)

Vs

1. P.Velusamy
2. P.Ramatthal
3. P.Indirani
4. P.Thangavel (died)
5. P.Balan
6. N.Balamani
7. Sivakami
8. Minor T. Udiyakumar S/o P. Thangavel
Minor Rep By Sivakami
9. R-9 Minor T.Mano Ranith, S/o P. Thangavel
Minor Rep By Sivakami
(R4 Died, RR7 To 9 Are Brought On Record
As Lrs Of Deceased 4th Respondent Viz.,
P.Thangavel, Vide Order Of Court Dated
08/06/2023 Made In Cmp.Nos.12998, 12999



And 13000 Of 2017 In As.No.333 Of 2013

AS No. 244 of 2013

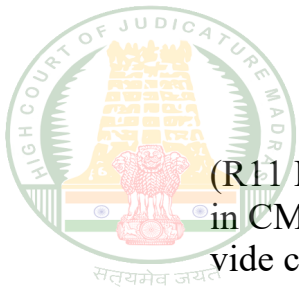
P.Velusamy

..Respondent(s)

..Appellant(s)

Vs

1. Ramathal
2. P.Indirani
3. S.Lakshmi
4. P. Thangavel
5. P. Balan
6. N.Balamani
7. The Branch Manager
Punjab National Bank Tirupur
8. Sivakami
9. T. Udiyakumar (minor)
Rep. By His Mother And Proposed 8th
Respondent
- 10.T. Manoranjith (minor)
REP. BY HIS MOTHER AND PROPOSED
8TH RESPONDENT.
(R7 IMPEADED AS PARTY RESPDT. and
RR 8 TO 10 BROUGHT ON RECORD AS
LRS OF THE DIED R4 VIDE ORDER OF
COURT DT. 21/06/2017)
- 11.Vetha Land Holding Private Limited
Rep by its managing Director at Door No.9/7B,
EB Colony, Samundi Puram, Tiruppur North
Taluk, Tiruppur-641 603.



(R11 Impleaded as Proposed respondent made
in CMP.No.27973/2024 in AS.No.244/2013
vide court order dated 13.08.2025

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..Respondent(s)

Prayer in A.S.No.333 of 2013

Appeal Suit filed under Section 96 of Civil Procedure Code, praying to set aside the Judgment and Decree passed in O.S.No.568 of 2010 on the file of the First Additional District and Sessions Judge, Tiruppur dated 28.03.2013.

Prayer in A.S.No.244 of 2013

Appeal Suit filed under Section 96 of Civil Procedure Code, praying to set aside the Judgment and Decree passed in O.S.No.568 of 2010 on the file of the First Additional District and Sessions Judge, Tiruppur dated 28.03.2013.

AS No. 333 of 2013

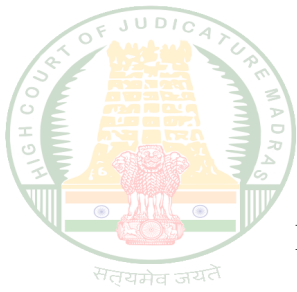
For Appellant(s): Mr.P.Asai Thambi

For Respondent(s): Mr.C.R.Prasanan
(For R1)

Mr. M.Guruprasad
(For RR2 and R5)

R4 - Died (steps Taken)

No appearance - For RR3, R6, R7, R8 and R9
(RR8 and R9 – Minors, Rep.by RR7)

**AS No. 244 of 2013**

For Appellant(s): Mr.C.R.Prasanan

WEB COPY For Respondent(s): Mr. M.Guruprasad
(For RR1, 5 and 11)

Mr. P.Asai Thambi
(For R3)

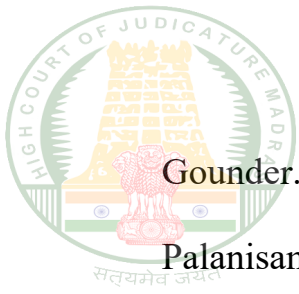
R4 - Died (steps Taken)

No appearance - For RR2, R6 to 10
(RR9 and R10 – Minors, Rep.by RR8)

COMMON JUDGMENT

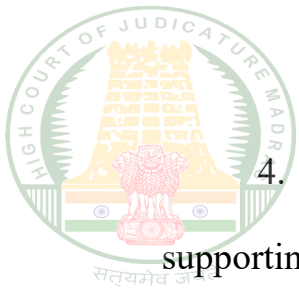
The suit in O.S.No.568 of 2010 was instituted, seeking partition and separate possession of the plaintiff's alleged 1/7th share in the suit properties. According to the plaintiff, the suit properties were the self-acquired properties of his father, late Palanisamy Gounder, who had purchased Item Nos.1 and 2 under registered sale deeds dated 14.02.1985 and 29.06.1964 respectively and enjoyed the same till his death. It was pleaded that late Palanisamy Gounder died intestate on 25.05.2010 leaving behind the plaintiff and defendants 1 to 6 as his legal heirs and that, despite repeated requests made for amicable partition, the defendants failed to co-operate, thereby necessitating the filing of the suit.

2. The 1st defendant filed a written statement, which was adopted by defendants 4 and 5, admitting the relationship between the parties as well as the fact that the suit properties were the self-acquired properties of late Palanisamy



Gounder. However, the defendants specifically denied the allegation that late Palanisamy Gounder died intestate. It was contended that during his lifetime, while in a sound and disposing state of mind, late Palanisamy Gounder had executed three registered settlement deeds dated 27.11.2009 in favour of defendants 1, 4 and 5 respectively, under Document Nos.5281/2009, 5279/2009 and 5280/2009, and had also delivered possession of the settled properties to them. It was further pleaded that the settlement deeds had been acted upon, pattas mutated in their names and revenue records accordingly changed.

3. The contesting defendants further contended that defendants 2, 3 and 6 had already been adequately provided for during their marriages by late Palanisamy Gounder with jewels, seers and other gifts and, therefore, there was no necessity for him to allot any separate share to them in the suit properties. It was also pleaded that late Palanisamy Gounder and his legal heirs had sold certain ancestral properties on 14.06.2006 and that the plaintiff alone had appropriated the sale proceeds without distributing the shares due to late Palanisamy Gounder and the other sharers. According to the defendants, the plaintiff had also threatened late Palanisamy Gounder demanding share in the suit properties, compelling him to lodge a police complaint in Avinashi Police Station on 04.10.2007. It was further contended that Item No.2 of the suit properties was jointly owned with third parties and, therefore, the suit was bad for non-joinder of necessary parties.



4. Defendants 2 and 6 filed a separate written statement substantially supporting the defence taken by defendants 1, 4 and 5. They admitted the relationship between the parties and the acquisition of the suit properties by late Palanisamy Gounder. However, they specifically pleaded that neither the plaintiff nor defendants 2, 3 and 6 were entitled to any share in Item No.1 of the suit property in view of the registered settlement deeds executed by late Palanisamy Gounder in favour of defendants 1, 4 and 5 on 27.11.2009. It was further pleaded that possession of the settled properties had also been handed over to the respective settlees and that the settlement deeds had come into force on the very date of execution.

5. Defendants 2 and 6 further contended that they, along with the 3rd defendant, had already been suitably provided for during their marriages and that substantial jewels and gifts had been given to them. According to them, the plaintiff had appropriated the entire sale consideration received from the sale of ancestral properties without sharing the same with other legal heirs and, therefore, late Palanisamy Gounder had intentionally excluded the plaintiff from the benefits under the settlement deeds. They also questioned the valuation of the suit and the sufficiency of the court fee paid.

6. The 3rd defendant filed a separate written statement supporting the case of the plaintiff. While admitting that the suit properties were the self-

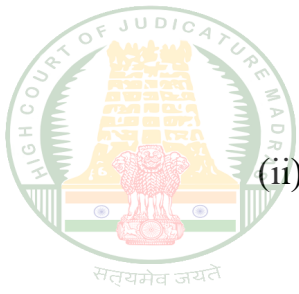


acquired properties of late Palanisamy Gounder and that the parties were in joint possession and enjoyment of the same, the 3rd defendant specifically denied the genuineness of the alleged settlement deeds. According to her, the settlement deeds alleged to have been executed in favour of defendants 1, 4 and 5 were fabricated documents and had not been acted upon. She further pleaded that she was also entitled to 1/7th share in the suit properties and had independently filed a suit for partition in O.S.No.320 of 2010 before the Sub Court, Tiruppur.

7. The plaintiff filed a reply statement denying the allegations contained in the written statements of defendants 1, 2, 4 and 5. The plaintiff specifically pleaded that late Palanisamy Gounder had equal affection towards all his children and there was no reason for him to prefer defendants 1, 4 and 5 alone and they were fabricated one. According to the plaintiff, during the last several months of his life, late Palanisamy Gounder was seriously ill, and was not in a sound and disposing state of mind to execute any document out of his own free will. It was alleged that defendants 1, 4 and 5 had taken undue advantage of his ill-health and fabricated the settlement deeds in question.

8. On basis of the rival pleadings, the Trial Court framed the principal issues

(i) Whether the plaintiff is entitled preliminary decree for 1/7 share as prayed for ?



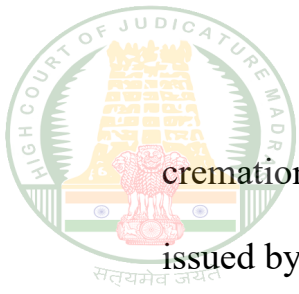
(ii) To what other reliefs to plaintiff ?

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9. On the basis of the pleadings, the Trial Court framed the principal issues regarding the entitlement of the plaintiff to a preliminary decree for partition and separate possession of 1/7th share and the reliefs to which he would be entitled. Subsequently, additional issues were framed as to whether the settlement deeds executed by late Palanisamy Gounder in favour of defendants 1, 4 and 5 were valid and binding on the plaintiff and the 3rd defendant and whether the suit was bad for non-joinder of necessary parties.

10. In order to substantiate his case, the plaintiff examined himself as PW1 and examined two additional witnesses as PWs 2 and 3. On the side of the plaintiff, Exs.A1 to A10 were marked, including the sale deeds standing in the name of late Palanisamy Gounder, death certificate, medical bills, hospital records and other documents intended to establish the ill-health and incapacity of late Palanisamy Gounder during the relevant period.

11. PW2, namely Dr. Jegadhesan, deposed that late Palanisamy Gounder had taken treatment in Revathi Hospital, Tiruppur, during April 2010 for diabetic complications. However, the witness admitted that there were no treatment records available in the hospital evidencing prolonged illness or incapacity. PW3, an employee of the cremation centre, deposed regarding the



cremation of the body of late Palanisamy Gounder and produced the form issued by the hospital relating to the nature of death.

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12. On the side of the defendants, the 1st defendant examined herself as DW1 and reiterated the averments contained in the written statement. Exs.B1 to B7 were marked on the side of the defendants, including the original and certified copies of the settlement deeds, pattas, kist receipts and the police complaint allegedly lodged by late Palanisamy Gounder against the plaintiff.

13. DW4, namely Manickam, one of the attesting witnesses to the settlement deeds, was examined to prove the due execution and attestation of Exs.B1 to B3. The said witness deposed that on 27.11.2009 late Palanisamy Gounder had instructed the document writer to prepare settlement deeds in favour of defendants 1, 4 and 5 and that after the contents were read over and explained to him, late Palanisamy Gounder admitted the same to be correct. The witness further deposed that since the executant was unable to affix his signature due to trembling of hands, he affixed his left thumb impression in the documents in the presence of the attesting witnesses and that the witnesses had attested the documents in his presence.

14. The Trial Court, upon appreciation of the oral and documentary evidence, proceeded to examine the genuineness and validity of the settlement



deeds marked as Exs.B1 to B3. The Trial Court observed that the evidence of DW4 satisfactorily established the execution and attestation of the settlement deeds in the manner known to law. The Court further held that the requirements contemplated under Section 68 of the Indian Evidence Act had been duly complied with through the examination of one of the attesting witnesses.

15. The Trial Court further observed that the plaintiff had failed to adduce satisfactory medical evidence to establish that late Palanisamy Gounder was incapable of understanding or executing the settlement deeds on account of illness or unsoundness of mind. The Court noted that PW2 doctor had admitted the absence of medical records evidencing prolonged incapacity or unconsciousness and that the mere existence of diabetic illness or old age would not by itself establish lack of testamentary capacity.

16. While dealing with the contention raised by the plaintiff regarding affixture of thumb impression instead of signature in the settlement deeds, the Trial Court held that the same would not create any suspicious circumstance affecting the genuineness of the documents. The Court accepted the explanation offered by DW4 that due to trembling of hands late Palanisamy Gounder had affixed his thumb impression instead of signing the documents.



17. The Trial Court further held that the non-examination of the 4th defendant and the non-production of the original settlement deed relating to the 5th defendant would not invalidate the settlement deeds, particularly in view of the acceptable explanation offered regarding loss of the original document and the availability of certified copies. The Court also observed that the plaintiff had not specifically denied the execution of the settlement deeds but had only attempted to create suspicion regarding the circumstances under which they came into existence.

18. The Trial Court further took note of the defence plea that the plaintiff had appropriated substantial sale proceeds arising out of ancestral properties and that there had been strained relationship between the plaintiff and late Palanisamy Gounder, as evidenced by the police complaint marked as Ex.B7. The Court held that such circumstances furnished a plausible explanation for exclusion of the plaintiff from the benefits under the settlement deeds.

19. Upon consideration of the entire materials available on record and the precedents relied upon by both parties, the Trial Court ultimately held that Exs.B1 to B3 settlement deeds were genuine, validly executed, duly attested and acted upon and that the same were binding on the plaintiff and the 3rd defendant. Consequently, the additional issue relating to the validity of the settlement deeds was answered in favour of defendants 1, 4 and 5.

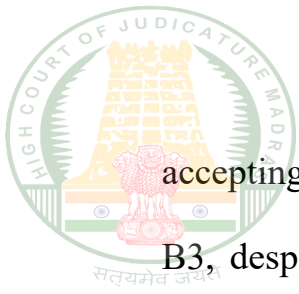


20. In view of the findings rendered regarding the validity and binding nature of the settlement deeds, the Trial Court held that the plaintiff was not entitled to any share in the suit properties and answered the principal issue against the plaintiff.

21. Insofar as the issue regarding non-joinder of necessary parties was concerned, the Trial Court observed that though Item No.2 of the suit property was jointly owned with third parties, the suit could not be dismissed solely on that ground and that the rights of co-sharers could be appropriately worked out during final decree proceedings. However, in view of the findings already rendered on the settlement deeds, the said issue was held not to materially affect the ultimate result of the suit.

22. In fine, the Trial Court, by judgment and decree dated 28.03.2013, dismissed the suit in entirety holding that the plaintiff was not entitled to partition or any other relief and directed the parties to bear their respective costs.

23. Aggrieved by the judgment and decree dated 28.03.2013 passed in O.S.No.568 of 2010 by the I Additional District and Sessions Judge, Tiruppur, the plaintiff has preferred the present First Appeal in A.S.No.244 of 2013. The appellant mainly contended that the Trial Court committed a serious error in



accepting and relying upon the alleged settlement deeds marked as Exs.B1 to B3, despite specific objections raised regarding their admissibility and proof.

According to the appellant, the documents relied upon by the defendants were only certified copies and not the original settlement deeds and, therefore, the same could not have been received in evidence without laying proper foundation for reception of secondary evidence as contemplated under the Indian Evidence Act.

24. It was further contended by the appellant that the non-production of the original settlement deeds was fatal to the defence case and that the Trial Court failed to appreciate that mere marking of certified copies would not amount to proof of execution or genuineness of the documents. The appellant would submit that the defendants failed to satisfactorily explain the alleged loss or non-availability of the originals and, therefore, the certified copies could not legally be relied upon.

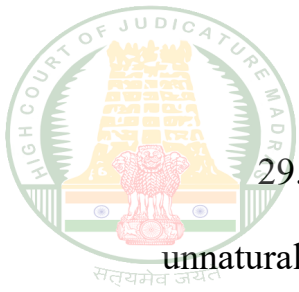
25. The appellant further contended that the Trial Court failed to appreciate the settled principles governing admissibility of secondary evidence and overlooked the legal position that even if secondary evidence is admitted subject to objection, the burden still lies heavily upon the propounder to establish due execution and genuineness of the document in the manner known to law.



26. The appellant specifically contended that late Palanisamy Gounder was seriously ill during the relevant period and was suffering from diabetic complications, kidney ailments and neurological problems and was not in a sound and disposing state of mind to understand or execute any settlement deed. According to the appellant, the Trial Court failed to properly appreciate the medical documents and oral evidence adduced on the side of the plaintiff establishing the deteriorated physical and mental condition of the deceased.

27. The appellant further contended that the deceased Palanisamy Gounder was admittedly in the habit of signing documents and that the alleged settlement deeds contained only thumb impressions said to have been affixed by him. According to the appellant, such circumstance itself created grave suspicion regarding the genuineness of the documents, particularly when no acceptable explanation had been furnished by the defendants as to why the deceased was unable to sign.

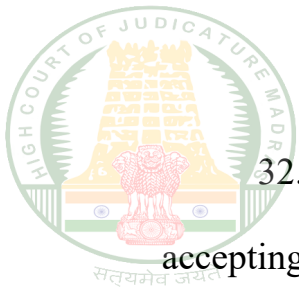
28. The appellant would further contend that the Trial Court failed to examine the validity of the settlement deeds from the standpoint of the settlor and failed to place itself in the armchair of the executant so as to ascertain whether the deceased was in a position to understand the nature and consequences of the disposition, the extent of the properties sought to be settled and the effect of excluding some of his natural heirs from inheritance.



29. It was further contended that the alleged settlement deeds were unnatural and improbable inasmuch as no reason whatsoever had been assigned therein for excluding the plaintiff and the 3rd defendant, who are also legal heirs of late Palanisamy Gounder. According to the appellant, the Trial Court failed to appreciate that exclusion of natural heirs without any convincing reason constitutes a suspicious circumstance surrounding the execution of the document.

30. The appellant further contended that the burden squarely lay upon the defendants, being the propounders and beneficiaries under the settlement deeds, to establish the due execution, voluntariness and genuineness of the alleged documents and also to prove that the executant was mentally and physically capable of executing the same. According to the appellant, the defendants failed to discharge the said burden in the manner required by law.

31. The appellant also assailed the finding of the Trial Court on the ground that the original settlement deed relating to the 4th defendant had not been produced at all and that the 4th defendant himself had not entered the witness box to substantiate the alleged settlement in his favour. According to the appellant, the evidence of DW3 was wholly insufficient and incompetent to prove the alleged settlement deed said to have been executed in favour of the 4th defendant.



32. The appellant further contended that the Trial Court erred in accepting the evidence of the attesting witness without proper scrutiny.

According to the appellant, the evidence on record did not establish that both attesting witnesses had attested the document in the presence of each other and in the presence of the executant as required under law. It was contended that mere examination of one attesting witness, without proving all mandatory requirements relating to attestation, was insufficient to prove execution of the settlement deeds.

33. The appellant also contended that the Trial Court failed to properly appreciate the contradictions and admissions elicited in the evidence of DW3 and DW4. It was pointed out that DW3 admitted that his father used to sign documents and that he had not personally witnessed the affixture of thumb impression in the alleged settlement deeds. The appellant would further contend that DW3 admitted that there was cordial relationship between the deceased and all his children and that there was no reason for excluding the plaintiff and the 3rd defendant from inheritance.

34. The appellant also assailed the evidence of DW4, the alleged attesting witness, contending that his explanation that the deceased affixed thumb impression due to trembling of hands was an afterthought, unsupported by pleadings and unsupported by any contemporaneous record. According to



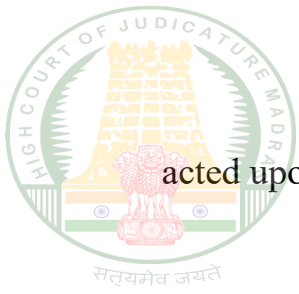
the appellant, there was no recital in the settlement deeds explaining the reason for affixture of thumb impression instead of signature.

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35. The appellant would further contend that DW4 admitted during cross-examination that the Sub Registrar had not made any endorsement identifying or certifying the thumb impression of the executant and that no material was available to show that the reason for affixture of thumb impression had been disclosed before the registering authority. According to the appellant, these circumstances created serious doubt regarding the genuineness of the documents.

36. The appellant also challenged the reliance placed by the Trial Court upon Ex.B4 and other certified copies contending that the same were admitted without proper proof and in the absence of acceptable explanation regarding loss of originals. According to the appellant, secondary evidence could not have been relied upon for granting relief in favour of the defendants.

37. The appellant further contended that the Trial Court failed to appreciate that the evidence of DW5 was wholly unreliable and insufficient, as the witness himself admitted ignorance regarding the details of the case and the contents of the alleged settlement deeds. According to the appellant, the evidence of DW5 itself probalised that the settlement deeds had never been



acted upon.

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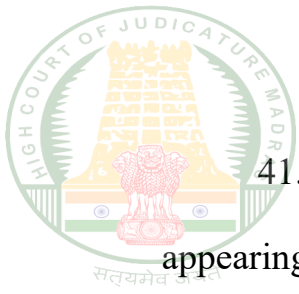


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38. The appellant would also contend that the Trial Court failed to appreciate the suspicious circumstances surrounding the alleged settlement deeds, namely, the debilitated condition of the deceased, exclusion of natural heirs without reasons, active participation of beneficiaries in execution of the documents, non-production of originals, affixture of thumb impression instead of signature and lack of satisfactory explanation regarding the same.

39. The appellant further contended that the Trial Court erred in overlooking the admissions made by the defendants regarding alleged monetary payments made to the plaintiff, though no such plea had been raised in the written statement. According to the appellant, such inconsistent explanations furnished by the defendants themselves probalised fabrication of the settlement deeds.

40. It was further contended that though the settlement deeds were registered documents, registration by itself would not dispense with proof of due execution and genuineness, particularly when the surrounding circumstances gave rise to grave suspicion. According to the appellant, the defendants had failed to remove the suspicious circumstances by leading cogent and convincing evidence.



41. I have considered the submissions made by the learned counsel appearing on either side and have perused the materials available on record.

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42. The suit for partition, which had been filed with regard to the properties of the father of the parties, had been contested by the defendants, except the third defendant, on the ground that their father had executed settlement deeds in favour of defendants 1, 4 and 5, and therefore, the properties were not available for partition. In this regard, the trial Court has found that the settlement deeds had been validly executed by their late father on the strength of the evidence of DW.4, who was the attesting witness in the said documents, and had rejected the claim for partition, while upholding the said settlement deeds. The plaintiff and the third defendant are before this Court challenging the same.

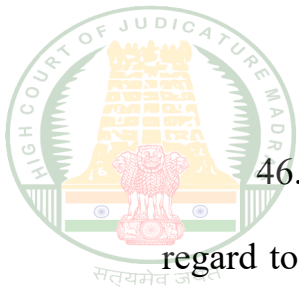
43. In such view of the matter, if the appellants are able to assail the findings with regard to the settlement deeds, they would be entitled to the relief of partition. In that regard, the issue that arises for consideration before this Court is as to whether the Court below was right in upholding the settlement deeds and rejecting the claim for partition.

44. It is the contention of the appellants that the settlement deeds had been executed under suspicious circumstances, as the settlor had been chronically ill and was incapable of understanding the execution of the



documents. In this regard, they had examined the Doctor, who they had claimed to have treated the settlor, as PW.2. A perusal of the evidence of PW.2, as recorded by the trial Court, would also indicate that PW.2 had not spoken about any serious ill health of the settlor and had spoken only about treating the settlor for diabetic illness, that too for a brief period. Apart from that, no evidence had been placed by the appellants to substantiate that the settlor had been suffering from a chronic illness and was incapable of understanding his actions.

45. A further ground to assail the settlement deeds was that the settlor, who had been affixing his signature in the documents, had only affixed his thumb impression in the settlement deeds, to substantiate their claim that the settlor was incapable of understanding the documents that had been executed. In that regard, DW.4, who was the attesting witness, had been examined on the side of the respondents and had categorically spoken about the instructions given by the settlor to the document writer for the execution of the documents and their registration, and the execution and registration of the same by the settlor. He had also contributed reasons as to why the settlor had not affixed his signature but had affixed his thumb impression in the said documents. It is an admitted fact that the settlor was also in his old age, and the reasons given by DW.4, which did not stand discredited during his cross-examination, substantiates execution of settlement deeds, as rightly held by the trial Court.



46. The appellants, having failed to lead in any substantial evidence with regard to the medical condition of the settlor and having failed to discredit the evidence of D.W.4, who had spoken about the execution of the settlement deeds, in the considered view of this Court, have failed to assail the judgment and decree of the Court below, which had been challenged in this appeal suit.

47. Accordingly, both the appeal suit fail and stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

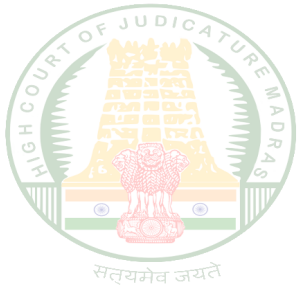
24-07-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

The learned I Additional District and Sessions Judge,
Tiruppur.



WEB COPY

AS No. 333 of 2



K.KUMARESH BABU J.

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**Pre-Delivery Judgment made in
AS No. 333 of 2013
AND
AS NO. 244 OF 2013**

24-07-2026