

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 21.12.2016

DELIVERED ON : 09 .01.2017

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

Tr.C.S.No.465 of 2014

S.Packialakshmi .. Plaintiff

vs.

1.K.Baskaran
2.R.Bhavani ... Defendants

Transfer Civil Suit filed under Order XIV Rule 8 of O.S. Rules read with Order XVIII Rule 17 of CPC r/w Sec. 151 of CPC praying for the following judgment and decree against the defendants:-

a) Declaring that the Deed of Revocation of the settlement dated 10.02.2009 registered as Document No.391 of 2009 in Konnur Sub-Registrar's Office, Chennai with respect ot the suit property viz., land and building at New Door No.19, Old Door NO.6B, Plot No.6B, Balambigai Nagar, Villivakkam, Chennai - 00 049 comprised in Survey No.237/B2, Konnur Village, Purasaiwalkam-Perambur Taluk, Chennai District is invalid, ab initio void and not binding

on the suit property and on the plaintiff;

b) granting permanent injunction against the first defendant restraining the first defendant, his men, women, servants, agents and anyone claiming under the first defendant from dealing with the suit property in any manner whatsoever by effecting mutation of owner's/assessee's name in favour of the first defendant in all the public records pertaining to the suit property of the viz., land and building at New Door No.19, Old Door No.6B, Plot No.6B, Balambigai Nagar, Villivakkam, Chennai - 00 049 comprised in Survey No.237/B2, Konnur Village, Purasaiwalkam-Perambur Taluk, Chennai District or by demanding rents from the tenants of the suit property or by alienating the same; and

c) directing the defendants to pay the plaintiff the costs of the suit.

For Plaintiff : Mr.T.M.Hariharan
for Mr.K.Mariappan

For D1 : Mr. C.B.Murali Krishnan
For D2 : Mr. G.M. Ananthakumar

J U D G M E N T

The above suit for declaration and permanent

injunction of the suit property was filed before the IV Assistant City Civil Court, Chennai and the same was transferred to this Court, as per the order of this Court dated 19.6.2014, for trial along with the TOS.No.8 of 2011

2.The brief facts of the case of the plaintiff are as follows:

(i) According to the plaintiff, she is the absolute owner of suit property, which was purchased by her by way of sale deed dated 17.10.2010. The plaintiff submits that originally one V.M.Balasubramanian was in possession and enjoyment of the suit property along with his wife B.Rajalakshmi and they had no issues. The defendants are the brother's son and daughter of the said V.M.Balasubramanian. According to the plaintiff, the said V.M.Balasubramanian, had executed a Will dated 01.6.2001 bequeathing the suit property to the second defendant. Thereafter the said V.M.Balasubramanian, also executed a Settlement Deed dated 10.09.2007 in favour of the second defendant and the same was acted upon by her. Subsequently, on 16.11.2007, V.M.Balasubramanian cancelled the Will dated 01.6.2001 executed by him in favour of second defendant by way of a Deed of cancellation of Will dated 16.11.2007.

(ii) According to the plaintiff, on the date of purchase two tenants, viz., Kanthammal and P.Ravikumar were occupying the suit property. Since the tenants failed to pay the rent to the plaintiff in spite of repeated demands, she filed two eviction petitions viz., RCOP No.393 of 2011 and RCOP No.394 of 2011 against them. In both the RCOPs ex parte eviction orders were passed against the defendants. When, the plaintiff is taking steps to execute the said eviction orders, she came to know about the settlement-revocation dated 10.2.2009 through them. According to the plaintiff, the deed of revocation of settlement dated 10.02.2009 and the Will dated 10.2.2009 are not legally valid and binding on the plaintiff because, as on 10.02.2009, the said V.M.Balasubramanian was not the owner of the suit property. Hence, the present suit.

3. The case of the first defendant, in nutshell, is as follows:

(i) Denying the allegations made in the plaint, it is the contention of the first defendant that the suit property belonged to late V.M.Balasubramanian and he had no issues. It is stated that the father of the first defendant is his younger brother. It is further stated that even after the alleged Settlement deed said to have

been executed by V.M.Balasubramanian, he was managing the property and the property tax , Tamil Nadu Water Supply and Sewerage Tax and charges and Electricity Connection stood in his name. The first defendant submits that the plaintiff purchased the property by way of sale deed dated 17.10.2010 is not known to him. In fact, after the death of late V.M.Balasubramanian possession of the property was with the first defendant and his younger brother late Sivaraman @ Babu till his death and now it is in the possession of the first defendant. It is stated that V.M.Balasubramanian had executed a Will and the same is pending for probate in O.P.No.601 of 2010 and the second defendant had filed caveat and the said proceedings has been converted into a suit in T.O.S.No.8/2011. The first defendant also submits that the plaintiff and the second defendant is aware about the revocation of the settlement deed and even after knowing the same, the sham and nominal sale deed had been created in the name of the plaintiff. According to the first defendant, the plaintiff is not bona fide purchaser. Thus, the defendant prayed for dismissal of the suit.

4. On the above pleadings, the trial Court, framed the following issues:

1. Whether the Will dated 10.2.2009 in favour of the second defendant is valid?

2. Whether the deed of Revocation of the Settlement Deed dated 10.02.2009 declared to be invalid?

3. Whether the plaintiff is entitled for permanent injunction as prayed for?

4. To what relief the plaintiff is entitled to?

5. On the side of the plaintiff, P.W.1 was examined and Exs.A1 to A24 were marked. On the side of the defendants, D.W.1 was examined and Exs.D1 to D9 were marked. The details of the documents are hereunder:

Exhibits produced on the side of the plaintiff:

S.No .	Exhib its	Date	Description of documents
1.	A-1	06.2012	General Power of Attorney
2.	A-2	01.06.2001	Will executed by Balasubramanian
3.	A-3	10.09.2007	Settlement deed executed by Balasubramaniyan in favour of Bhavani

S.No	Exhibits	Date	Description of documents
4.	A-4	23.10.2007	Name transfer order - Balasubramaniyan to Bhavani
5	A-5	02.11.2007	EB receipt in the name of Bhavani
6	A-6	15.11.2007	Land extract in the name of Bhavani
7	A-7	02.03.2009	Property tax in the name of Bhavani
8	A-8	16.11.2007	Cancellation of Will
9	A-9	17.01.2009	Death Certificate of B.Rajalakshmi
10	A-10	01.03.2009	Death Certificate of Balasubramaniyan
11	A-11	07.10.2010	Sale deed in favour of Packiyalakshmi
12	A-12	29.11.2010	Name transfer order - Bhavani to Packiyalakshmi
13	A-13	16.01.2012	Property tax receipt in the name of Packiyalakshmi
14	A-14	31.12.2010	EB receipt in the name of Packiyalakshmi
15	A-15	20.12.2010	Plaintiff sent letter to tenant
16	A-16	21.01.2011	Plaintiff sent letter to tenant
17	A-17	14.02.2011	Plaintiff filed RCOP No.393/11 against tenants
18	A-18	23.11.2011	Counter filed in RCOP No.393/11
19	A-19	24.01.2012	Encumbrance Certificate in the name of Packiyalakshmi
20	A-20	10.02.2009	Cancellation of settlement deed

S.No .	Exhib its	Date	Description of documents
21	P-21	21.08.2013	Memo filed by the 1st defendant in O.S.No.3479 of 2012
22	P-22	03.02.2014	Affidavit of 1st defendant in I.A.No.9856 of 2014 in O.S.No.3479 of 2012
23	P-23	31.05.2010	Transfer order
24	P-24	29.01.2014	Deposition of K.Baskaran in TOS No.8 of 2011

Exhibits produced on the side of the defendant:

S.No.	Exhib its	Date	Description of documents
1.	D-1	25.03.2009	Name transfer order - Bhavani to Balasubramaniyan
2.	D-2	19.10.1972	Sale deed in the name of Balasubramaniyan
3.	D-3	10.02.2009	Cancellation of settlement deed
4.	D-4	17.01.2009	Death Certificate of Rajalakshmi
5.	D-5	17.10.2010	Sale deed executed by the Bhavani in favour of Packiyalakshmi
6.	D-6		Plaintiff filed RCOP No.393/2011 against tenants
7.	D-7	10.02.2009	Letter written by one Balasubramaniyam to the 1st defendant
8.	D-8	13.02.2009	Reply issued by Bhavani
9.	D-9		Name transfer order - Bhavani to Balasubramaniyan

Witnesses examined on the side of the plaintiff :

P.W.1. A.Kunjammal

Witnesses examined on the side of the defendant

D.W.1 - K.Baskaran

6. Heard, the learned counsel appearing for the plaintiff and the learned counsel appearing for the defendants and perused the records.

7. Though the above issues have been framed by the trial Court, issue No.1, i.e., Whether the Will dated 10.2.2009 in favour of the second defendant is valid?, is unnecessary for deciding this suit since the said Will in question was the subject matter in TOS No.8 of 2011 and the same was discussed entirety in the above suit. Hence, the same is struck out as unnecessary.

8. In the light of the above submissions, this Court recast the issues as follows:

1. Whether the deed of Revocation of the Settlement Deed dated 10.02.2009 declared to be invalid?

2. Whether the plaintiff is entitled for permanent injunction as prayed for?

3. To what relief the plaintiff is entitled to?

9. The learned counsel for the plaintiff submitted that the deceased V.M.Balasubramanian had no issues and he was looking after by his brother's daughter, namely, the second defendant herein. Out of love and affection, the deceased V.M. Balasubramanian has executed Settlement Deed in respect of the suit property in favour of the second defendant and the same was acted upon by her and even mutation has also been taken place in her name. When the matter stood thus, the first defendant herein, who is the brother of the second defendant, hurriedly took the deceased V.M.Balasubramanian to the Registrar Office and got Revocation Deed registered with the help of strangers, on the same day and also got the Will registered in his favour.

10. It is the contention of the learned counsel for the plaintiff that Settlement, which was executed in the year 2007, was attested by the wife of V.M. Balasubramanian and also the brother of the second defendant. It is the contention of the plaintiff's counsel that the settlor has not reserved power of Revocation in the Settlement Deed. Therefore, the alleged Revocation is not binding on the plaintiff. The plaintiff is the bonafide purchaser of the property from the original setlee in the year 2010. It is

submitted by the learned counsel for the plaintiff that the plaintiff came to know about the Cancellation of Settlement only on the basis of the counter filed by one of the tenant, when she filed a Rent Control Proceedings against the tenants for eviction. Thereafter, immediately, she filed a suit and hence, the suit is well within the period of limitation.

11. It is submitted by the learned counsel for the plaintiff that the contention raised by the first defendant that Cancellation of Settlement has been accepted by the second defendant is absolutely false and the alleged letter said to have been written by the second defendant as well as the Acknowledgment Card are fabricated only for the purpose of the case. It is submitted that Ex.D8, so called reply by the second defendant has also been created and fabricated only for the purpose of the suit. Similarly, Ex.D7 is also fabricated only for the purpose of this case. In fact, settlement was already complete and acted upon and, therefore, such unilateral Revocation is not valid in the eye of law. The plaintiff, being the *bona fide* purchaser, is entitled to seek for declaration declaring that the said Deed of Revocation is invalid. The manner in which, the Revocation Deed and the Will were

registered on the same day with the help of stranger witness, clearly shows that all the documents have been created only to defeat the legally executed Settlement by the said Balasubramanian. Hence, submitted that the plaintiff is entitled for decree and judgment as prayed for.

12. In support of his contention, the learned counsel relied on the judgment reported in 2011 (2) CTC page 1 (**LATIF ESTATE V. HADEEJA AMMAL**).

13. The learned counsel for the first defendant submitted that the Settlement, though executed in the year 2007, has not been acted upon and possession also not been handed over to the second defendant. In fact, the deceased Balasubramanian was managing the property till his death. After his death, the first defendant was in possession and enjoyment of the property and mutation has also taken place in his favour. Besides, the Revocation of Settlement on 10.2.2009, the said Balasubramanian has executed the Registered Will bequeathing the property in favour of the first defendant and also given life interest to his brother, K.Babu. Since the said Babu also died, the entire property would devolve upon the first respondent as

per the registered Will. The Settlement was registered as if the second defendant is the only daughter of the said V.M.Balasubramanian.

14. It is the submission of the learned counsel for the first defendant that by playing fraud, the settlement has been registered by the second defendant and hence, the same is not valid. The settlor, while revoking the settlement on 10..2..2009 has given reason for such Revocation. Once the settlement itself is obtained by playing fraud in order to avoid a stamp duty, it is not valid in the eye of law. It is also the contention of the learned counsel for the first defendant that the alleged setlee is aware of the Cancellation of the Settlement and in fact, she has accepted the settlement in writing under Ex.D8, letter. The second defendant has also deposed evidence to that effect. All these facts would clearly prove that the settlement has not been acted upon and the same was cancelled and the last Will has been executed by the testator Balasubramanian, which came into effect after his death.

15. It is the further contention of the learned

counsel for the first defendant that the plaintiff herein has purchased the property during the pendency of the suit in TOS NO.8 of 2011. It is submitted by the learned counsel for the first defendant that after issuance of notice in the said testamentary suit, the property has been purchased by the plaintiff and, therefore, she is not a *bona fide* purchaser. Hence, it is submitted by the learned counsel for the first defendant that the plaintiff has no right over the suit property, since the settlement itself was cancelled by the settlor. Further it is submitted by the learned counsel for the first defendant that as the purchase itself has been made in the month of October 2010, i.e., during the pendency of the testamentary suit, such transfer is not valid in the eye of law. The settlee, namely, the second defendant, is not a family member of Balasubramanian, whereas to defeat the revenue, the settlement was effected. Hence, it is submitted by the learned counsel for the first defendant that the Cancellation of Settlement is valid in the eye of law. Therefore, the learned counsel for the first defendant prayed for dismissal of the suit.

16. The learned counsel for the first defendant placed reliance on the judgments reported in 1999 SC 1441

(1) (*VIDHYADHAR V. MANKIKRAO AND ANOTHER*); AIR 2002 SCC 2004 (*RAKESH WADHAWAN V. M/s. JAGADAMBA INDUSTRIAL CORPORATION AND OTHERS*) and 2013 (5) CTC 884 (*VATHSALA MANICKAVASAGAM & OTHERS*). 2016 1 CTC 257; 1993 2 SCC 507; AIR 2002 SC ; 2004

Issue Nos 1 to 3:

17. The suit has been filed for declaration declaring the Deed of Revocation of the Settlement dated 10.2.2009 is invalid and void and not binding on the plaintiff and also for permanent injunction restraining the first defendant, in any manner, effecting mutation of the name of the first defendant in the revenue records or by demanding rents from the tenants in the suit property or by alienating the same.

18. It is admitted fact that the suit property originally belonged to one V.M.Balasubramanian, the uncle of the defendants herein. The said V.M.Balasubramanian is the brother of the defendants' father. It is also not in dispute that the said V.M.Balasubramanian had no issues and his wife, namely, Rajalakshmi, died on 17.01.2009, which is evident from Ex.A9. Subsequently, the said Balasubramanian also died on 01.3.2009, which is evident from Ex.A10. Similarly, the defendants brother, one Babu, also died

during the pendency of the suit. These facts are not disputed. It is also not in dispute that the property is the self acquired property of the said V.M.Balasubramanian. Similarly, the present plaintiff is the subsequent purchaser of the property from the second defendant and she purchased the same in the month of October 2010. These facts are admitted by both sides. It is also admitted by both sides that the said Balasubramanian, during his life time, settled the suit property in favour of the second defendant by registered Settlement Deed dated 10.09.2007, under Ex.P26.

19. It is the main contention of the first defendant that the settlement Deed has not been acted upon and the same was obtained by playing fraud and undue influence upon the said Balasubramanian, and that no possession, whatsoever, was taken. On a careful perusal of entire pleadings in the plaint filed by the first defendant in TOS.No.8 of 2011 as well as the written statement filed by the first defendant in this suit, it is seen that except alleging that settlement has not been acted upon and possession has not been handed over and the settlement has been obtained by playing fraud and undue influence, no particulars whatsoever, were pleaded to establish the so

called fraud or undue influence over the said Balasubramanian by the second defendant herein. When the person asserts fraud and undue influence against any one, the burden lies on him/her to prove the same by pleading specific instances and material particulars with regard to such fraud and undue influence. In the absence of necessary pleadings as to the material particulars with regard to the nature of fraud or undue influence, no one can succeed only based on the general allegations. Admittedly, the entire written statement of the first defendant does not show any material particulars with regard to the fraud and undue influence.

20. It is to be noted that execution of the Settlement Deed in the year 2007 in favour of the second defendant by the said said Balasubramanian is the admitted fact. Ex.P26 original Settlement Deed has been filed to substantiate the same. On a careful perusal of the same, it is seen that the settlor has executed the said Settlement by treating the second defendant as his own daughter. The said Settlement was attested by one Rajalakshmi, the wife of the settlor and one K.Babu, the another brother of the defendants herein. It is to be noted that the Settlement was executed on 10.9.2007. One

of the attesting witness, who is none other than the wife of the settlor, died on 17.01.2009. Till such time, there was no complaint, whatsoever, either by settlor or his wife with regard to the undue influence or fraud played by the second defendant herein. As already stated above, the wife of the settlor, namely, Rajalakshmi, died on 17.01.2009, which could be seen from Ex.P9. Only after her death, when the settlor was in bereavement, the alleged Deed of Revocation came to be executed by settlor, i.e. on 10.02.2009, which is evident from Ex.D3.

21. It is curious to note that on the same day, i.e. on 10.02.2009 itself, the Will was also registered in favour of the first defendant herein and his brother, namely, Babu. However, the said Will has not been exhibited in this Suit, whereas, the same has been marked in TOS.No.8 of 2011. In the said Will also, the witnesses are one and the same and they are strangers to the family. This fact has already been discussed by this Court in the said TOS.No 8 of 2011. When Ex.D3, Cancellation of Deed, is carefully perused, the settlor himself has made a statement to the effect that since he has settled the property in favour of the said Bhavani in the year 2007, in the above settlement Deed, instead of referring the said Bhavani, the

second defendant herein, as the brother's daughter, he has mistakenly treated her as his own daughter and settled the property against the Law. Therefore, he intended to cancel the above settlement.

22. Except stating the above reason that by mistake, the second defendant was referred in the settlement as his own daughter and settlement was effected, the settlor has not made any mention about the fraudulent activities on the part of the second defendant at the time of registering the settlement in the year 2007 in her favour. When the executant himself admitted the execution of the document which required to be attested, such admission is best evidence against the executant as per Section 70 of the Indian Evidence Act.

23. Therefore, the subsequent admission by the settlor about the previous settlement executed by him in favour of the second defendant, is the best piece of evidence, particularly, in the absence of any circumstance attributing against the second defendant, it can be easily inferred that the settlement executed in the year 2007 in favour of the second defendant is voluntarily done by his own volition by the settlor. Therefore, the allegation of fraud and undue influence alleged as against the second

defendant cannot be countenanced, particularly, in the absence of material particulars about the nature of fraud or undue influence in his pleadings.

24. The main contention of the learned counsel for the defendant that to evade stamp duty, the second defendant was shown as a daughter of the settlor and the documents was registered. Of course, the settlor himself, in the subsequent cancellation Deed, has mentioned that he has mistakenly referred the second defendant as his own daughter instead of his brother's daughters and registered the document. The recitals in Ex.D3, Revocation Deed clearly indicate that the above mistake was done only by the settlor and not by the settlee. Therefore, merely because the settlement was registered within the family members, the same cannot be construed as a fraud played by the settlee when the settlor himself accepted such mistake in the subsequent document. The second defendant cannot be blamed for such mistake crept in the document. Of course, the document has been registered as if executed within the family members, i.e. from father to daughter without any demur by the registering Department. Even assuming that the same has been done only to avoid a stamp duty, it is for the concerned registering Department to

recover the deficit stamp duty from the concerned parties. For that, the entire transaction cannot be invalidated. It is to be noted that the settlement was effected in the year 2007 and original title deed is also with the second defendant, which is now marked on the side of the plaintiff herein. The original sale deed is exhibited as Ex.P.25 and immediately after settlement, in the month of October itself, the second defendant's name has been mutated on 22.10.2007 which could be seen in Ex.P4. Similarly, Ex.P5 electricity receipt, clearly shows that the second defendant has paid electricity in her name. Ex.P6 Extract from Town Survey Land Register clearly shows that the second defendant's name was mutated in the revenue records. Ex.P7 property tax has been paid by the second defendant on 02.03.2009. All these facts clearly indicate that the settlement has been acted upon and transfer was complete. Though it was the contention of the learned counsel for the first defendant that possession has not been handed over to the second defendant, it is to be noted that transfer of possession is not a *sine quo non* for valid settlement.

25. Admittedly, the settlement deed of the year 2007, which is marked as Ex.P.26, does not show any power of Revocation. The settlor has not reserved for any power of

Revocation. In the absence of any power of Revocation of Settlement Deed, the settlement cannot be cancelled unilaterally.

26. Unless and until the power of Revocation is reserved in the documents, such unilateral revocation cannot be sustained in law. It is well settled that settlement can be revoked only if it falls within the exception under Section 126 of the Transfer of Property Act. Without bringing the case under exception provided in the Transfer of Property Act, the unilateral cancellation of the document is not permissible in law. Once the settlement is executed, title passes to the settlee and transfer is completed, the same cannot be cancelled unilaterally by the settlor.

27. In this regard, it is useful to refer the the judgment of this Court reported in 2014 (3) CTC 113 (**V. LOGANATHAN V. THE SUB REGISTRAR**), wherein this Court has held as follows:

"...6. In fact the registration of cancellation of the Settlement Deed is against the Public Policy as it was not open to the Sub - Registrar to register the cancellation of the Deed, when the

Settlement Deed is unconditional and irrevocable. If at all the party who has executed the document is aggrieved by the Settlement Deed, he could have very well approached the Civil Court to set it aside, but certainly could not unilaterally cancel it, by getting the Deed of Cancellation registered with the Sub Registrar. The Cancellation Deed and its registration, therefore, being without jurisdiction, is liable to be set aside."

28. Similarly, in the judgment of the Full Bench of this Court reported in 2011 (2) CTC 1, (*LATIF ESTTE LINE INDIA LTD., V. HADEEJA AMMAL*), this Court has held that the unilateral execution of the Cancellation Deed cannot annul a registered document duly executed by him as such an act of the vendor is opposed to public policy. It is further held that a Deed of Cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect. Such a document does not create any encumbrance in the property already transferred.

Hence such a Deed of Cancellation cannot be accepted for registration.

29. In the judgment reported in (2007) 13 SCC 210, **(ASOKAN V. LAKSHMIKUTTY AND OTEHRS)**, the Hon`ble Apex Court has held that once a gift is complete, the same cannot be rescinded. For any reason whatsoever, the subsequent conduct of a donee cannot be a ground for rescission of a valid gift. Similarly, in the latest judgment reported in 2014 9 SCC 445 **(RENIKUNTLA RAJAMMA (D) BY LRS V. K. SARWANAMMA)** the Hon`ble Apex Court has held that "transfer of possession" of the property covered by the registered instrument of the gift duly signed by the donor and attested as required is not a sine qua non for the making of a valid gift under the provisions of the Transfer of Property Act. It is further held that delivery of possession of gifted property is not essential conditions for completing the valid gift.

30. Therefore, this Court of the view that unilateral cancellation of Settlement is not valid in law.

31. It is further to be noted that it is the main contention of the plaintiffs that the factum of

Cancellation of Settlement was known to the defendant and the defendant also accepted the same in writing. Admittedly, the alleged Cancellation of the Settlement was done on 10.02.2009 i.e., on the same day, when Ex.P1 was executed. The first defendant, by relying upon Ex.D7, acknowledgment card, said to have been signed by the husband of the second defendant, contended that the letter informing the Cancellation of the Settlement has been addressed to one Ramani, the husband of the defendant for which, the defendant herself sent a letter, EX.D8, admitting and accepting the Cancellation.

32. On a careful perusal of Ex.D6, letter, it is seen that the same has been typed in computer. If really the second defendant has written such a letter, there was no need for somebody putting "x" mark to obtain her signature. Further, there is no evidence to show that how the said Ex.D8, letter, reached the hands of the plaintiffs. If really the defendant has sent this letter, the same should have either handed over to them through hand delivery or by post. But no evidence whatsoever, available to that effect. Copy of this so called letter addressed through Ex.D7, acknowledgment card has been filed.

33. It is curious to note that it is the contention of the plaintiffs that the cancellation of the Settlement Deed was informed to the defendant through registered post addressed to the husband of the second defendant. To prove the same, acknowledgment said to have been signed by one Ramani, husband of the second defendant was marked. When Acknowledgment Card is carefully perused, it is seen that the same was signed by one Ramani and below the signature of the said Ramani, the date has been written subsequently in a different manner, as if it was delivered on 12.02.2009. Further, on a careful perusal of the said Ex.P5, it is seen that this letter was originally addressed by one K.Babu to Ramani, who is said to be the husband of the second defendant and the said letter was despatched on 06.2.2009, which could be seen from the seal of the Postal Department, and delivered at Pudukkottai on the same date.

34. It is to be noted that the alleged Cancellation of the Settlement Deed was done only on 10.02.2009, whereas this Acknowledgement Card showing the said letter was despatched to the defendant, is dated 06.2.2009. Therefore, the contention of the plaintiff that the

factum of Cancellation of the Settlement Deed was informed to the second defendant by Registered letter to her husband is highly concocted one and the said story cannot be believed and this document has been created and utilised as an evidence to gain undue advantage. This piece of evidence, i.e., Ex.P7, Acknowledgment card, clinchingly show that the same was prepared by the plaintiffs to show as if the Settlement Deed was cancelled and the same was accepted by the second defendant. The above conduct of the first plaintiff clearly shows that he is capable of going to any extent to get the documents in his favour.

35. In view of the foregoing reasons, it can easily be inferred that the above documents are created only for the purpose of the case. Further, the so called letter annexed with D7 shows that the copy has been sent to the first defendant whereas in the said letter, his name is not at all found place. That also create much doubt about the letter.

36. As discussed in TOS.No.8 of 2011, settlor was in bereavement in view of the death of his wife besides he was also admitted in the hospital for more than 10 days. Thereafter, immediately, he is said to have been executed

two documents, namely, for Revocation of Settlement and Will. These facts clearly creates serious doubt about the voluntary nature of the document itself.

37. Admittedly, the present plaintiff has purchased the property from the second defendant under Ex.D5, sale deed dated 17.10.2010, during the pendency of TOS No.8 of 2011. It is to be noted that mere purchase of the property during the pendency of the proceedings will not invalidate the documents itself. The validity of the documents, would always subject to the result of the main suit. Therefore, this Court is of the view that merely because the plaintiff has purchased the property, during the pendency of the suit in TOS No.8 of 2011, itself cannot invalidate the sale and its validity would be subject to the result of the suit. Yet another contention of the learned counsel for the first defendant is that the suit is barred by limitation, as the plaintiff was aware of the Cancellation of Deed in February 2009.

38. In this regard, it is the contention of the learned counsel of the plaintiff that on the basis of the sale, the plaintiff has taken steps to evict the tenants and the legal notice was also issued and only when proceedings have been initiated under the Rent Control

Proceedings, the tenant has filed a counter taking defence that she was not a tenant and that the property is now in the name of the first defendant in view of the cancellation of the settlement. Therefore, immediately, she filed a suit, within the period of limitation. In this regard, Ex.P15 and P16, letter addressed to the tenants, clearly, show that the plaintiff has taken steps to vacate the tenants. Thereafter, she has also filed Rent Control Proceedings against one Kandammal for wilful default, as it could be seen under Ex.P17.

39. In the above Rent Control Proceedings, Counter was filed by the said tenant on 23.09.2011, wherein she has pleaded about the cancellation of settlement and execution of the Will in favour of the first defendant. The above counter was filed only on 23.09.2011. The suit has been filed within the period of three years from the above date. Therefore, the contention of the learned counsel for the first defendant in that regard cannot be appreciated. P.W1. Power of Attorney of the plaintiff, has also stated in his evidence that he was personally aware of the transaction and that she was also present at the time of registration. In her evidence, he has also clearly stated that only from the counter filed by one of the tenant, they

came to know about the cancellation of the settlement deed and filed a suit. Therefore, this Court does not find anything in favour of the first defendant to hold that the suit is barred by limitation. Therefore, merely because the second defendant not tendered oral evidence same cannot be a ground to draw adverse inference against her, when plaintiffs case itself established on record. In so far as the judgments cited by the learned counsel for the plaintiffs are concerned, there is no dispute with regard to the proposition laid down there but the facts of the above judgments are not applicable to the present facts of the case for appreciating evidence in the given case.

40. In view of the above discussion that the unilateral cancellation of the settlement is not valid in the eye of law, the plaintiff is certainly entitled for declaration.

41. As far as the granting of permanent injunction is concerned, since the plaintiff is found to be the owner of the property and interim injunction sought is also limited restraining the first defendant from effecting mutation of name in the public records and demanding rents from the tenants suit property or of alienating the same, this Court

is of the view that the same is unnecessary. Accordingly, these issues are answered.

In the result, the suit is decreed declaring the Deed of Revocation of the Settlement dated 10.2.2009 in invalid and not binding on the suit property and on the plaintiff
No costs.

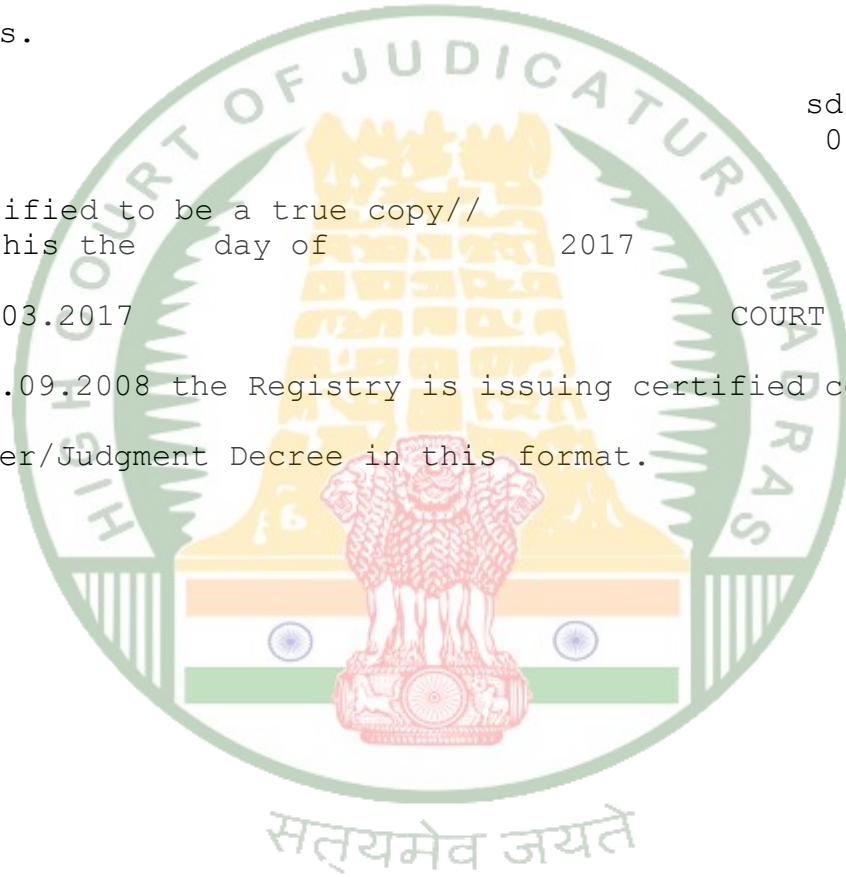
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09.01.2017

//Certified to be a true copy//
Dated this the day of 2017

R.s/06.03.2017

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



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