

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 17.11.2017
PRONOUNCED ON: 27.11.2017

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN
S.A. No.782 of 2001

and

C.M.P.Nos.8029 of 2001 &1655 of 2008

1.G.Loganathan

2.G.Dhanapal

...Appellants/Defendants 2 & 3

Vs.

1.G.Selvaraj

2.T.Kowsalya

...Respondents/Plaintiff & Nil

Prayer:- Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree in A.S.No.18 of 1998 dated 29.09.2000 on the file of Principal District Court, Vellore confirming the judgment and decree in O.S.No.95 of 1985 dated 24.12.1992 on the file of Principal Sub Court, North Arcot District, Tirupattur.

For Appellants : Mr.P.Jagadeesan
For Respondent No.1 : Mr. J.Saravanavel
For Respondent No.2 : No appearance

J U D G M E N T

This second appeal is directed against the judgment and decree dated 29.09.2000 passed in A.S.No.18 of 1998, on the file of the Principal District Court, Vellore and the judgment and decree dated 24.12.1992, made in O.S.No. 95 of 1985, on the file of the Principal Sub Court, North Arcot at Tirupattur.

2. Parties are referred to as per the rankings in the trial Court.

3. Suit for declaration and permanent injunction.

4. The case of the plaintiff, in brief, is that the first defendant is the father of the plaintiff and the defendants 2 and 3 are his brothers. Items 1 and 2 of the suit property belonged to the first defendant and the same is presently in the possession and enjoyment of the plaintiff. The plaintiff was

assisting the first defendant in his business and also looking after him by taking care of all his needs and as the defendants 2 and 3 are well placed and on account of love and affection, the first defendant settled the first item of suit property in favour of the plaintiff by way of a settlement deed dated 23.09.1981 and thereby, handed over the possession of the same, in favour of the plaintiff and accordingly, the plaintiff and the first defendant had been in possession and enjoyment of the first item as well as the second item of the suit property and only through the second item of the suit property, the first item could be enjoyed and while so, taking advantage of the misunderstanding between the plaintiff and the first defendant, subsequent to the settlement deed above stated, it is stated that the defendants attempted to interfere with the plaintiff's possession and enjoyment of suit property and hence, the plaintiff lodged a complaint against the defendants and also issued a notice dated 26.10.1985 and to the same, a reply has been sent by the first defendant containing false allegations, as if he had cancelled the settlement deed by way of a deed dated 02.09.1985 and that the suit property are in his possession and enjoyment and the defendants are not entitled to deny the right of the plaintiff in respect of the first item of the suit property and also deny the right of the suit property wholly enjoyed by the plaintiff and hence, the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that the suit is not maintainable either in law or on facts. It is denied that the plaintiff had been assisting the first defendant in his business and looking after his needs and therefore, the first defendant, on account of love and affection had executed a settlement deed dated 23.09.1981, in favour of the plaintiff in respect of the first item of the suit property and it is false to state that pursuant thereof, the plaintiff and the first defendant had been in possession and enjoyment of the items 1 and 2 of the suit property and false to state that the defendants attempted to interfere with the plaintiff's right to the suit property on account of misunderstanding. The suit property absolutely belong to the first defendant and the plaintiff had represented to the first defendant that he would look after him and maintain him throughout his life and at his instigation, the first defendant executed a Will on 23.09.1981, styling it as a settlement deed. But, it is only a Will and the first defendant has reserved all the rights of the title, possession and enjoyment in the suit property and he had no intention to effect any settlement of the same, in favour of the plaintiff and the same had not been accepted or acted upon and by way of the said document, the plaintiff cannot claim any right over the first item of the suit property and after the execution of the above said document, the plaintiff behaved indifferently and stopped maintaining the first defendant and

did not provide food or shelter, and the first defendant had no reasons to exclude his other sons and settle the property only in favour of the plaintiff and the settlement deed relied upon by the plaintiff is not true and a valid document and the plaintiff is not entitled to any relief claimed in the plaint and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PWs 1 to 3 were examined and Exs.A1 to A26 were marked. On the side of the defendants DWs 1 to 4 were examined. No document has been marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court though finding that the settlement deed dated 23.09.1981, marked as Ex. A1 is a valid document and also only a settlement deed and not a Will, however, holding that the plaintiff would be entitled to claim right in the property covered under the settlement deed, only after the death of the first defendant, and also consequently holding that the plaintiff is also not entitled to obtain the reliefs sought for, dismissed the suit laid by the plaintiff. Against the findings rendered by the trial Court, holding that Ex. A1 is not a Will and a valid settlement deed and that the same had not been cancelled by the first defendant, the defendants preferred the first appeal before the first appellate Court. It is found further that pending first appeal, the first defendant died and accordingly, the first appellate Court, on an appreciation of the materials placed, concurred with the findings of the trial Court as regards Ex.A1 Will and also noting that the first defendant had died and the plaintiff would be entitled to acquire the right under the settlement deed as such, accordingly, dismissed the appeal preferred by the defendants and at the same time, granted the reliefs of declaration and injunction sought for by the plaintiff, by invoking the power conferred under Order 41 Rule 22 of the Code of Civil Procedure. Aggrieved over the same, the present second appeal has come to be preferred.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

- (1) Have not the Courts below committed error in law in holding that the document under Ex.A-1 is an irrevocable settlement deed on the facts and circumstances of the case?
- (2) Are the Courts below justified in law in holding that the plaintiff is entitled to the suit property and for injunction when he failed to maintain his father which is one of the condition of the settlement deed and in view of

- the violation of the conditions of the settlement deed, can he be given right and title over the property?
- (3) Have not the Court below committed wrong in law in construing the recitals under Ex.A-1 as a settlement deed without any reservation and without any condition?
- (4) Whether the Courts below are right in holding that the document under Ex.A-1 is only a settlement deed and not a Will?
- (5) Whether the Courts below are right in holding that the settlement deed under Ex.A-1 was proved in accordance with the provisions of the Evidence Act when the evidence of P.Ws.1 to 3 are not in conformity with the pleadings?

C.M.P.No.1655 of 2008:

9. The petition is filed under Order 41 Rule 27 of Code of Civil Procedure. The averments contained in the affidavit appended to the petition are briefly stated as follows:

The petitioners are the appellants and the Courts below have given findings that the settlement deed relied upon by the plaintiff is true, valid and thereby, the plaintiff is entitled to get the reliefs sought for. However, the first defendant had executed a registered Will dated 02.04.1990, bequeathing the suit property in favour of the appellants and the appellants came to know about the existence of the Will only on 30.07.2008, when their counsel intimated about the listing of the matter and till that point of time, they had no knowledge about the Will above stated and they came to know about the Will from one R.Nedumaran, their relative, a well wisher, who had mediated between the parties and he is having the custody of the Will. The appellants having no knowledge about the Will and only after he handed over the same to the appellants, the appellants had been necessitated to file the above said Will as an additional document, in support of their case and hence, the original registered Will dated 02.04.1990 should be taken as an additional evidence in the second appeal, in support of the case of the appellants and hence the petition.

10. The averments contained in the counter filed by the plaintiff is that the petition is not maintainable either in law or on facts. The Petitioners/Appellants have not given any valid reason for the reception of the additional document as evidence in the matter during the stage of the second appeal. None of the conditions of Order 41 Rule 27 of the Code of Civil Procedure are satisfied. It is false to state that the

petitioner had no knowledge about the Will alleged to have been executed by the first defendant. If really, the Will had come into existence and executed by the first defendant, the same would have been averred in the written statement and also filed in the Courts below and on the other hand, the present petition has come to be laid on the false footing that the first defendant executed the Will on 02.04.1990, bequeathing the suit property in favour of the appellants and the allegation that they have come to know about the Will only after the listing of the case through his relative R. Nedumaran is false and with reference to the police complaint alleged in this matter, the petitioners have accepted that they admitted to sell the suit property on the basis of the Will dated 02.04.1990 contrary to the judgment of the Courts below and also given an undertaking that they will not indulge in illegal activities against the plaintiff, and the said undertaking dated 15.05.2001 had been signed by the petitioners/appellants, the purported purchaser K.Raman and the same would go to show that the petitioners are very well aware of the so called Will dated 02.04.1990 much earlier and hence, they are liable to be proceeded against for perjury as per law and it is false to state that the Will had been in the custody of Nedumaran and none of the petitioners had knowledge about the same till date and the said Nedumaran was instrumental in creating trouble between the parties and it is false to state that the first defendant had executed the Will dated 02.04.1990 and if it had been so, the first defendant would have disclosed the same in the written statement and the witnesses, who are stated to have attested the Will are the close associations of the petitioners and the Will has been created by the petitioner for the purpose of the case and the same cannot be received as evidence during the stage of the second appeal and hence, the petition is liable to be dismissed.

11. The relationship between the parties is not in dispute. It is thus found that the plaintiff is one of the sons of the first defendant. It is seen that the plaintiff claims title to the first item of the suit property, by virtue of the settlement deed dated 23.09.1981, which has been marked as Ex. A1. A perusal of Ex. A1, as rightly determined by the Courts below would go to show that the first item of the suit property had been absolutely settled by the first defendant in favour of the plaintiff, however, imposing conditions that he is entitled to enjoy the property till his life time and after his death, the plaintiff is entitled to take absolute right over the same. It is thus found that, accordingly conditions have been laid in the settlement deed that only after the death of first defendant, the plaintiff is entitled to claim absolute right to the property compromised therein and in case of any necessity of alienating the property, the same could be done only at the instance of both the plaintiff and the first defendant and not

independently by the plaintiff and accordingly, it is seen that the document Ex. A1 had come to be executed. To establish the genuineness of the said document, it is seen that the plaintiff has examined the scribe of the document as PW.2 and one of the attestors of the document as PW.3. Both Pws 2 & 3 have deposed about the execution of the settlement deed in favour of the plaintiff by the first defendant on his own volition and in a sound state of mind and with an intention to settle the first item of the suit property in favour of the first plaintiff. It is thus found that the Courts below, inasmuch as the plaintiff had been assisting the first defendant in his business and also looking after him by taking care of his needs by providing food and shelter, found that the first defendant, out of love and affection towards the plaintiff, has chosen to execute Ex. A1, settlement deed in his favour, however, reserving life enjoyment to him also in the property and also imposing the condition on the plaintiff to maintain him through out his life. It is further seen that the plaintiff had accepted the settlement deed and thereby acted upon it. In this connection, the plaintiff has also tendered evidence. As regards the above said case of the plaintiff, it is seen that the evidence of PWs 1 to 3 remained unshattered and nothing has been culled out from them by the defendants in respect of the defence version. It has been rightly held by the Courts below that once the first defendant had settled the first item of the suit property in favour of the plaintiff under Ex. A1, when he has not reserved any right of revocation under the document to him and when under the said document, he had given absolute right of the property comprised therein after his lifetime to the plaintiff and his legal heirs, the above said conditions and also the condition of providing support to him during his life time etc., and the other condition restricting the plaintiff's sole power of alienation of the property before his life time, would not render the said document as not being a settlement deed and only a Will.

12. The defendants have raised the plea that the Ex. A1 is not a settlement deed and it is only a Will executed by the first defendant and the first defendant is thus entitled to revoke or cancel the document and the plaintiff cannot claim any absolute right under the said document. However, the above said plea raised by the defendant cannot be accepted by in any manner, particularly, considering the evidence of first defendant who has been examined through Advocate Commissioner as DW.3. DW.3, during the course of his evidence has clearly admitted that the plaintiff was providing him food and accordingly, at that point of time he had executed the document in respect of the first item of the suit properties, in favour of the plaintiff and further also admitted that the plaintiff has been residing in the said property and further also stated that he had not cancelled the said document during 1985. During

the course of chief examination itself, he has also admitted that the plaintiff was assisting him in the business and accordingly PW.2, at his instance measured the property and also it is only PW.2, who had written the document and the document was executed at the residence of PW.2 and the document had been registered taking the assistance of the attestors of the document along with him for the purpose of registration and accepting the execution of Ex.A1, he had presented the document to the Registrar for registration and thus, it is seen that DW.3, with full knowledge and of his own volition, taking into consideration, the support give to him by the plaintiff, at the relevant point of time, chosen to settle the first item of the suit property in favour of the plaintiff under Ex. A1 and therefore, when it is found that Ex. A1 had come to be registered and the same had also been duly established by the plaintiff by examining PWs.2 and 3, it is seen that the conditions mentioned in Ex.A1, as above stated, by itself would not render the document as a Will and not a settlement deed. When once it is seen that the first defendant had absolutely settled the property in favour of the plaintiff, no doubt, imposing certain conditions and only postponing the right of the plaintiff to acquire absolute title to the property comprised therein and directing that the plaintiff is entitled to take the property absolutely after his life time, that by itself would go to disclose clearly that the document was intended to be executed only as a settlement deed and not a Will as gathered from the materials placed in the case and in the light of the discussions made supra.

13. In this connection, as rightly argued by the plaintiff's counsel it is found that, the conditions imposed in the settlement deed that the plaintiff should take the property absolutely only after the life time of the settlor by itself would not render the document as not a settlement deed and only a Will, can be understood, particularly, in the light of the principles of law enunciated in the decisions reported in 1997 (1) CTC 256 (J.Kuppuswami Mudali and others Vs.Mahalingam), 2016 SCC online Madras 9800 (G.Venkadesan Vs. Rajathiammal), 2010 (4) SCC Page No.161 (P.K.Mohan Ram Vs. B.N.Ananthachary and others) and 2017 SCC Online Mad 8491 (1. B.M.Kotteswaran 2. B.M.Thulasidass Vs. R.Devasena and 10 others). The principles of law enunciated in the above said decisions coupled with the conditions imposed under Ex. A1 would go to show that the reservation of the life enjoyment of the property concerned by the settlor, during his life time by itself would not make the document as a Will and on the other hand, the recitals read together would go to show that the settlor had only intended to settle the property comprised therein in favour of the plaintiff, only imposing the condition that the plaintiff takes the property after his lifetime. Therefore, it is found that the Ex. A1 is only a settlement deed confirming absolute right

in favour of the plaintiff in respect of the first item of the suit properties, after the death of the settlor and the settlor is not entitled to cancel the settlement deed as per law and that the plaintiff had accepted and acted upon the document. In the light of the above position, it is found that, there is no warrant to interfere with the above said findings of the courts below as regards Ex. A1.

14. Still, the counsel for the defendant contended that inasmuch as the interest in the first item of the suit properties had not been transferred to the plaintiff in praesenti under Ex.A1 and it had been intended to be to be transferred to the plaintiff only on the death of the first defendant, it is stated that the plaintiff cannot claim any right to the first item of the suit properties based on Ex.A1 as the said document thereby would only constitute a Will and not a settlement deed and inasmuch as the said document had been subsequently revoked by the first defendant, the plaint suit should fail and in this connection, the decision reported in AIR 1982 Madras 281 (Ponnuchami Servai Vs. Balasubramanian and others) is relied upon by him. However, the above argument does not merit acceptance. In the light of the above discussions, when it is found that the intention of the first defendant is to only confer absolute right on the plaintiff in respect of the first item of the suit properties and accordingly, he had chosen to execute the settlement deed in favour of the plaintiff, no doubt, imposing certain conditions as adverted above, in such view of the matter, the mere postponement of the interest in the property comprised under the document in favour of the plaintiff till the death of the first defendant by itself would not render the document as a revokable one and thereby the said document cannot be construed as a Will. Considering the decisions above referred to and relied upon by the plaintiff's counsel, when the first defendant has not reserved any right of revocation under Ex.A1 and further, when the execution of and validity of Ex.A1 has been amply established as per law by the plaintiff through the evidence of PWs 1 to 3 and that apart, the execution of the above said document on his own volition has been admitted by the first defendant himself examined as DW3 and that apart, when the first defendant has also testified that he has not executed any document revoking the settlement deed as such and when the intention of the first defendant could be gathered from the contents of Ex.A1 and his evidence that he intended to convey only absolute right in favour of the plaintiff in the first item of the suit properties under the said document excepting postponing the transfer of interest in the same till his death, it is seen that the restrictive conditions contained therein would not operate against the import of the document viz., the settlement deed and in such view of the matter, it is seen that the decision relied upon by the defendant's counsel as such, in my considered opinion, would not be applicable to the

case at hand. That apart, as rightly put forth by the plaintiff's counsel, it is seen that the decision relied upon by the defendant's counsel as adverted above was found and held to be determined only on the facts and circumstance of the case pertaining to the said case and accordingly, on that basis, Ex.A1 settlement involved in the present case cannot be declared or determined to be a Will and not a settlement deed. The above aspect of the matter can be seen from the decision of the Apex Court reported in 2010 4 SCC 161 (P.K.Mohanram Vs. B.N.Ananthachary and others) adverted above and in such circumstances, it is seen that it cannot be held, based on the decision relied upon by the plaintiff's counsel, that Ex.A1 settlement deed involved in the present case does not transfer any interest in praesenti in favour of the plaintiff. Thus it can be seen that by way of Ex.A1, the plaintiff would be entitled to acquire absolute interest in respect of the first item of the suit properties, no doubt on the demise of his father viz., the first defendant.

15. It is however, further contended by the defendants' counsel that the plaintiff has failed to maintain his father and provide support to him after Ex. A1 and this would dis-entitle the plaintiff to claim right to the property comprised under the said document. However, the mere fact that the plaintiff has failed to maintain the settlor, by itself would not be the basis for revoking the settlement deed and the above position, has been rightly determined by the Courts below, taking into consideration the authorities cited with reference to the same. Therefore, the Courts below have rightly held that the document Ex.A1 is only a settlement deed and not a Will and that Ex.A1 document is an irrevocable settlement deed and the plaintiff cannot be deprived of the entitlement of the property comprised therein, merely on his failure to maintain his father, being one of the conditions imposed in settlement deed and accordingly, the Courts below had rightly held that Ex.A1 does not confer any right upon the first defendant to revoke the same and it is further found that the Courts below have rightly held that the settlement deed Ex.A1 has been proved by the plaintiff as per the provisions of the Indian Evidence Act and in this connection, the evidence of PWs.1 to 3 are found to in conformity of and supportive to the case of the plaintiff as set out in the pleadings and thus the evidence of PWs 1 to 3 are found to be acceptable, reliable and convincing.

16. As regards the case of the defendants that the first defendant had cancelled Ex.A1 by another document, it is found that the first defendant himself in his evidence, has deposed that he has not cancelled the settlement deed. Be that as it may, even if he had chosen to execute any document to revoke the settlement deed Ex.A1, it is seen that as per the above said discussions, the first defendant would not be entitled to revoke

the settlement deed Ex. A1 and hence, any revocation deed as such, even if in existence, could not be termed as a valid and acceptable document. Therefore, it is found that the Courts below have rightly held that the first defendant is not entitled to revoke or cancel the settlement deed Ex. A1 and no exception could be take to the same.

17. In this matter, an application has been preferred by the defendants seeking permission for marking an additional document in support of their case. According to the defendants their father had, during his life time executed the Will in respect of the suit property in their favour on 02.04.1990 and by virtue of the said Will, they are entitled to claim the suit property and as the Will had not come to their knowledge earlier, they were unable to produce the said Will during the proceedings of the Courts below and only subsequent thereof, they came to know about the Will in question through their relative Nedumaran and hence, they have been necessitated to file the petition for the reception of the said Will as additional evidence. Countering the above petition of the defendants, it is contended by the plaintiff that no such Will had been executed by the first defendant as claimed in the petition and if really such a Will had been executed by the first defendant, the same would have been disclosed in the written statement of the parties and also produced before the Courts below and as the said Will had been subsequently created by the defendants with the help of their henchmen, the same had not seen the light of the day, till the date of the filing of this application and only to defeat the case of the plaintiff, the said Will had been concocted by the defendants with their men and the same should not be received as evidence. Further, it is the case of the plaintiff that the defendants have not satisfied the conditions adumbrated under Order 41 Rule 27 of the Code of Civil Procedure, for the reception of the additional evidence, hence, on that ground the petition is liable to be dismissed. It is further pleaded that in the police complaint preferred, during the mediation effected by the police, undertaking was given by the defendants and their purported vendee that they would not claim under the projected Will and act against the interest of the plaintiff and therefore, it is stated that the defendants had knowledge about the Will much in advance and despite the same, they had not chosen to place the Will at the earliest and only had come forward with the petition belatedly to stifle the case of the plaintiff.

18. If really the first defendant had bequeathed the suit property in favour of the defendants 2 and 3 by way of a Will dated 02.04.1990, as rightly argued, the same would have been disclosed in the written statement of the defendants. But no such plea has been raised in the written statement. Further, the first defendant examined as DW.3, during the course of the his

evidence has not spoken anything about the alleged Will now put forth by the defendants. If really such a Will had come to be executed by first defendant, definitely he would have adverted to the same, either in written pleas or during the course of evidence. Therefore, it is seen that the Will now projected by the defendants cannot be a true document and that apart, when the Will is stated to be dated 02.04.1990, if really such a Will had come into existence, definitely the defendants would have had knowledge about the same and would have endeavoured to produce the same Courts below. However, it is contented that the defendants are not aware of the Will at the earliest and only came to know about the same through their relative Nedumaran. However, it is seen from the typed set that the defendants had averred about the Will and also agreed not to interfere with the right of the plaintiff based upon the said Will during police mediation. Therefore, it is seen that the defendants have knowledge about the Will, much in advance and despite the same, they have not cared to place the same before the Courts below at the relevant point of time.

19. In the light of the above position, when the defendants have not Prima facie established that the first defendant had executed the Will dated 02.04.1990 in their favour and when they have not adduced any acceptable reason for not placing before the Courts below and when their plea that they have knowledge about the Will only recently and not earlier is found to be false and unacceptable, it is found that as rightly argued by the plaintiff's counsel, none of the conditions stipulated under Order 41 Rule 27 of the Code of Civil Procedure being not adhered to by the defendant, it is found that the defendants' application for the reception of the additional evidence cannot be accepted in any manner. In this connection, the plaintiff's counsel relied upon the decisions reported in 2008(4)CTC(507) (T.Paramasivam Vs. N.Babu and another), 2014 (15) SCC 686 (Lekhraj Bansal Vs. State of Rajasthan and another) and 2014 (13) SCC 468 (State of Karnataka and another Vs. K.C.Subramanya and others) and a perusal of the above said decisions would go to show that the defendants having knowledge about the existence of the purported Will cannot be allowed to place the same at the belated stage, when no plausible explanation has been averred on their part for not placing the same before the Courts below at the earliest opportunity. That apart, when the veracity of the Will is in doubt and if really such a Will had been executed by the first defendant, the same would have been reflected in the written statement and the very fact that the said Will had not been disclosed in the written statement would go to show that the said Will is not a genuine document. That apart the first defendant examined as DW3 has not whispered anything about the said Will during the course of his evidence. It is thus seen that it is highly doubtful whether the Will now projected by the defendants would have been really executed by the first

defendant as now claimed by them.

20. In the light of the above position, the application preferred by the defendants for the reception of the additional evidence does not merit acceptance and is accordingly dismissed.

21. It is found that though the suit had been dismissed by the trial Court, the plaintiff has not chosen to prefer the first appeal. Against the findings rendered by the trial Court countering the defence version of the defendants, aggrieved over the same, it is only the defendants who had preferred the first appeal. The trial Court has not granted the relief of declaration to the plaintiff, on the footing that the plaintiff cannot claim right to the property comprised under the settlement deed till the lifetime of his father. However, during the course of the first appeal, the father namely the first defendant had died. The first appellate Court, considering the subsequent developments, invoked the powers conferred under Order 41 Rule 22 of the Code of Civil Procedure, accordingly while dismissing the appeal preferred by the defendants, chosen to grant the reliefs sought for by the plaintiff, even though the plaintiff has not preferred the appeal against the judgement and decree of the trial Court. When it is found that the first appellate Court is conferred with such powers and even though, the plaintiff has not preferred the appeal against the judgment and decree of the trial court, considering the subsequent developments during course of the first appeal, it is found that the first appellate Court has rightly granted the reliefs to the plaintiff accordingly as prayed for.

22. Assailing the same, it is further contended by the defendants' counsel that as regards the second item of the suit properties, the plaintiff being only a co-owner, the plaintiff is not entitled to obtain against the relief of permanent injunction the other co-owners, namely the defendants 2 and 3, therefore, the above relief granted by the first appellate Court is not sustainable in the eyes of Law. However, it is the admitted case that the first item of the suit property can be enjoyed only by having access through the second item. Accordingly, it is found that on the execution of Ex. A1 settlement deed, the plaintiff had been enjoying the suit properties by having access only through the second item of the suit property and therefore, it is found that he is entitled to use the second item of suit properties for enjoyment of the property settled in his favour. However, it is the specific case of the plaintiff that the defendants with a view to defeat his right to enjoy the settled property are making attempts to interfere with his possession. In such view of the matter, considering the case of the plaintiff and the evidence adduced in the matter, the first appellate Court, has accordingly

granted the relief of injunction in favour of the plaintiff. It is seen that even though normally the relief of injunction cannot be granted against the co-owners, however, when it is found that when a co-owner is being prevented by the other co-owners so as to cause interference in the enjoyment of his absolute property and thereby putting him to material and substantial injury, it is seen that in such circumstances, in order to prevent such material and substantial injury, the affected co-owner is entitled to seek and obtain the relief of injunction against the other co-owners and the same cannot be stated to be erroneous in law. In this connection, the plaintiff's counsel relied upon the decisions reported in 1984 (4) SCC 376 (Ayyaswami Gounder and others Vs. Munnuswamy Gounder and others), 2012 (2) MWN Civil 295 (C.Durairaj Vs. K.C.Vellai) and 1991 (1) L.W. 339 (Saraswathy and another Vs. Ramaiya Nadar and another) and 1998 (1) CTC 22 (V.Devarajan Vs. R.Purushothaman and three others). A perusal of the principles of law enunciated in the above said decision would go to show that when material and substantial injury is likely to be caused to a co-owner in the enjoyment of his property, injunction can be granted against the other co-owners and in this case, when it is seen that the first item of the suit properties can be enjoyed only by having access through the second item and when the defendants are shown and established to be interfering with the possession and enjoyment of the first item of the suit properties by the plaintiff by obstructing his enjoyment as regards the second item, it is seen that the first appellate Court has rightly taken into consideration, the total aspects of the case in the right perspective and accordingly, granted the relief of injunction also against the defendants from interfering with the plaintiff's right in using the second item of suit properties as an access to reach the first item of the suit properties for enjoying the same. By way of the grant of the above said relief, the right to enjoyment of the second item of the suit properties by the defendants is not put to an end, on the other hand, only the right of the plaintiff is safeguarded from the unlawful acts of the defendants in preventing his enjoyment of the first item of the suit properties through the second item of the suit properties. Accordingly, it is found that the grant of relief of injunction in favour of the plaintiff by the first appellate Court also does not call for any interference.

23. In the light of the above discussions the substantial questions of law formulated in this second appeal are answered accordingly in favour of the plaintiff and against the defendants.

24. In conclusion, the second appeal fails and is accordingly dismissed with costs. The C.M.P.No.1655 of 2008 is dismissed. Consequently, connected miscellaneous petition, if any is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mfa/sli

To

1. The Principal District Judge Vellore.

2. The Principal Subordinate Judge,
North Arcot District, Tirupattur.

3.The Section Officer
VR Section,
High Court, Madras

+1 cc to Mr.J.Saravanavel Advocate sr 84142

+1 cc to Mr.P.Jagadeesan Advocate sr 84133

S.A.No.782/2001

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