

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.02.2018

PRONOUNCED ON:23.03.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1261 of 2003

1.Mahalingam Padayachi (Deceased)

2.Nayagam

3.Sivakadatcham

4.Packiavathy

5.Parvathy

6.Punithavathy

7.Pushpavathy

8.Thangam

[Appellants 2 to 8 brought on record as L.R's of the deceased sole appellant vide order of the Court dated 09.12.2014 made in C.M.P.Nos.532 to 534 of 2008]

Appellants/Plaintiff

Vs.

1.Ranganatha Padayachi

2.Settu Padayachi

3.Kala

... Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 18.12.2002 in A.S.No.12 of 1999 on the file of the Sub Court, Panruti, reversing the judgment and decree dated 28.01.1999 in O.S.No.719 of 1994 on the file of the District Munsif's Court, Panruti.

For Appellants : Mrs.Hema Sampath, SC
for M/s.R.Subramanian

For Respondents : Mr.V.Neethi Durai

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 18.12.2002 passed in A.S.No.12 of 1999 on the file of the Subordinate Court, Panruti reversing the judgment and decree dated 28.01.1999 passed in O.S.No.719 of 1994 on the file of the District Munsif Court, Panruti.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for specific performance and possession.

4. The case of the plaintiff in brief is that the plaintiff is represented by his son, the power agent and in this connection, the plaintiff has executed the power deed in favour of his son on 25.06.1992 and the property described in the plaint schedule originally belong to one Vanamayil, and on 24.02.1965, Vanamayil had executed a settlement deed in favour of Kuppusamy Padayachi, the father of the defendants 1 and 2 and the abovesaid settlement deed was duly executed and accepted and acted upon and in pursuance of the same, Kuppusamy padayachi had been in possession and enjoyment of the suit property and by way of the settlement deed abovestated, Vanamayil has stipulated that Kuppusamy padayachi should not alienate the suit property till her life time and should take the property absolutely after her life time. Kuppusamy padayachi had executed an unregistered agreement of sale on 14.08.1978 in favour of the plaintiff agreeing to sell the property to the plaintiff for a sum of Rs.13,750/- and on the date of the agreement, he had received an advance of Rs.2,750/- and in the agreement it is stipulated that the plaintiff could have the sale deed executed from Kuppusamy padayachi on the payment of the balance sale price within two months, after the death of Vanamayil and it has also been stipulated that, if Kuppusamy Padayachi died before Vanamayil, the plaintiff would be entitled to get the sale deed executed from his sons namely the defendants 1 and 2, on payment of the balance sale consideration and Kuppusamy Padayachi died on 28.10.1983 and the plaintiff issued a notice to the defendants 1 and 2 on 18.11.1993 intimating them about the sale agreement executed by Kuppusamy Padayachi and directed them to execute the sale deed after the death of Vanamayil. To the same, the defendants 1 and 2 gave a reply containing false allegations and while so, the defendants 1 and 2 attempted to sell the property to one Jaishankar, the husband of the third defendant and hence the plaintiff issued another notice on 31.01.1994 to the defendants as well as to Jaishankar and to the same, the defendants 1 and 2 gave a reply containing false

allegations and the telegram was also sent to the third defendant's husband on 31.01.1994 not to purchase the suit property intimating the sale agreement and ignoring the sale agreement in favour of the plaintiff, Jaishankar had purchased the suit property in the name of his wife, the third defendant, by way of a sale deed and the same is not supported by consideration and the third defendant is not a bonafide purchaser for value and Vanamayil died on 10.11.1994 and on her death, the defendants 1 and 2 had sold the suit property in collusion with the third defendant and her husband and the case of the defendants that Kuppusamy Padayachi did not execute the sale agreement is false and hence the suit for appropriate reliefs.

5.The case of the defendant in brief is that the suit laid by the plaintiff is not maintainable either in law or on facts. The power deed dated 25.06.1992 is not true and valid and the defendants do not admit that Vanamayil executed any settlement deed dated 24.02.1965 and the same is not true and valid and never accepted and acted upon. Vanamayil seems to have canceled the settlement deed and it is false to state that Kuppusamy Padayach had executed the suit sale agreement in favour of the plaintiff on 14.08.1978, the said sale agreement is not true and valid and created for the purpose of this case and the plaintiff Mahalingam is the son-in-law of Chinnappavu Padayachi and the deceased Kuppusamy Padayachi and Chinnabavu Padayachi were close friends and fell out for about 7 and 8 years before the death of Kuppusamy Padayachi and became enemies and thereby Chinnabavu Padayachi could have fabricated the sale agreement to knock away the suit property. The suit property is worth Rs.25,000/- during the year 1978 and now worth more than one lakh and there is no possibility for Kuppusamy Padayachi to sell the property for a low price and there cannot be a agreement to sell the suit property after the death of the settlor and the alleged payment of advance is not true and the notices issued by the plaintiff had been suitably replied and the defendants have sold the suit property for a valid consideration to the third defendant on 31.01.1994 for a sum of Rs.92,000/- and both the defendants and Vanamayil had sold the property to the third defendant and hence the plaintiff is not entitled to get the reliefs claimed in the suit, hence the suit is liable to be dismissed.

6.In support of the plaintiff's case, P.Ws.1 and 2 were examined. Exs.A1 to A19 were marked. On the side of the defendants, D.Ws.1 and 2 were examined. No document has been marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to decree the suit as prayed for. On appeal, the first appellate court, on an appreciation of the

materials placed, was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the defendants, dismissed the suit laid by the plaintiff. Aggrieved over the same, the present second appeal has been laid.

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

"(i) Whether in law has not the lower appellate court failed to see that under settlement deed "rights in presenti" are transferred and the settlor has not right to revoke the settlement deed as she is diverted of title on execution?

(ii) Whether in law is not the lower appellate Court wrong in overlooking that the burden is on the subsequent purchaser to prove that she is a bonafide purchaser for value without notice and Exs.A7 and A9 clearly show that D3's husband has been put on notice?

(iii) Whether in law, has not the lower appellate court omitted to see that the agreement Ex.A2 is true and valid?

9. It is not in dispute that the suit property originally belonged to Vanamayil. The plaintiff has projected the case that Vanamayil had settled the suit property in favour of Kuppusamy Padayachi, the father of the defendants 1 and 2 on 24.02.1965 and the said settlement deed has come to be marked as Ex.A18. On a perusal of Ex.A18, it is found that under the same, the suit property had been entrusted with the possession of Kuppusamy Padayachi and the recitals are also contained in the said settlement deed that the suit property should not be alienated by the settee, till the lifetime of the settlor and thereafter to take the suit property absolutely. According to the plaintiff, the above said settlement deed has been accepted and acted upon and thereby it is his case that by virtue of Ex.A18 settlement deed, Kuppusamy Padayachi became the owner of the suit property. The defendants 1 and 2 are the sons of Kuppusamy Padayachi. A plea has been taken by the defendants in the written statement that Ex.A18 settlement deed is not true, valid and not accepted and acted upon and hence by virtue of the same, Kuppusamy Padayachi would not be entitled to sell the suit property and therefore the plaintiff's case based upon Ex.A18 settlement deed cannot succeed.

10. As above seen, under Ex.A18 settlement deed, it has been specifically mentioned by the settlor Vanamayil that she had entrusted the possession of the property settled in favour of Kuppusamy Padayachi. The other recitals contained therein is

that Kuppusamy Padayachi should not alienate the suit property till the life time of the settlor and thereafter to take the suit property absolutely. On the basis of the above said recitals, it is contended that the said document would not be a settlement deed as such and could only be considered as a Will.

11.As regards the acceptance and the acting upon the settlement deed, it is found that prior to the institution of the suit, the plaintiff has issued a notice to the defendants marked as Ex.A4 and to the same, a reply has been sent by the defendants, which has come to be marked as Ex.A8. In Ex.A8, it has been clearly accepted by the defendants that Vanamayil had executed the gift deed in favour of Kuppusamy Padayachi, however, it has been mentioned that subsequently, Vanamayil had revoked the same. However, it has not been mentioned as to when and under what circumstances, Vanamayil had chosen to revoke the settlement deed. It is stated by the defendants 1 and 2 that along with Vanamayil they had executed a sale deed in respect of the suit property, in favour of the third defendant, Kala. The copy of the said sale deed has come to be marked as Ex.A3. The recitals of Ex.A3 would go to show that a clear reference has been made about the settlement deed executed by Vanamayil in favour of Kuppusamy Padayachi in respect of the suit property marked as Ex.A18. That apart, it has also been recited in the said deed that pursuant to the above said settlement deed, Kuppusamy Padayachi had obtained the possession of the suit property and enjoying the same and further recitals are found about the cancellation of the above said settlement deed by Vanamayil, by way of cancellation deed on 22.07.1974 and despite the same, it has also been recited that the suit property continued to remain in the possession and enjoyment of Kuppusamy padayachi and after his demise, the same continued to be in the possession and enjoyment of his sons, namely the defendants 1 and 2. Though, it has been averred in the above said settlement deed that Vanamayil had canceled the settlement deed Ex.A18, by way of deed dated 22.07.1974, later, it has been averred that the cancellation deed would not be valid as per law, accordingly, it is recited that both Vanamayil as well as defendants 1 and 2 had chosen to alienate the suit property in favour of the third defendant. It is thus found that even as per the case of the defendants, the alleged cancellation deed executed by Vanamayil on 22.07.1974 is not a valid document. That apart, the said cancellation deed has not seen the light of the day, neither the said deed nor the copy of the same has been placed by the defendants. Be that as it may, when it has been clearly admitted in black and white that Vanamayil had settled the suit property in favour of Kuppusamy Padayachi and when it is further seen that the said settlement deed had been accepted by Kuppusamy Padayachi and pursuant to the same, enjoying the suit property and it is further found that despite the alleged cancellation of the settlement deed, it is only

Kuppusamy Padayachi, who had continued to remain in the possession and enjoyment of the suit property and after his death, his two sons namely the defendants 1 and 2 continued to possess and enjoy the suit property, such being the position, the case of the defendants that the settlement deed Ex.A18 has not been accepted and acted upon as such falls to the ground and on the other hand, the materials placed on record clearly would go to establish that Kuppusamy Padayachi had been put in possession and enjoyment of the suit property by Vanamayil on the date of the settlement and accordingly following the settlement deed, it is only Kuppusamy Padayachi, who has been in possession and enjoyment of the suit property through out and after his death, his sons namely the defendants 1 and 2 continued to be in possession and enjoyment of the suit property. Such being the position, the argument projected that Ex.A18 settlement deed has not been accepted and acted upon does not merit any acceptance. Equally, the argument projected that inasmuch as no right had been created in favour of Kuppusamy Padayachi in praesenti and on the other hand, he has been allowed to take the suit property absolutely only after the demise of the settlor Vanamayil, it is argued that the settlement deed would not be a valid one in accordance with law. However, the above said argument does not merit acceptance in the light of the principles of law enunciated by the authority relied upon by the plaintiff's counsel in the decision reported in 2010 (4) SCC P.161 [P.K.Mohan Ram Vs. B.N.Ananthachary and others] that the recitals in the settlement deed that the setlee should become the absolute owner of the said property after the death of the settlor does not in any way mitigate the validity of the settlement deed and on the other hand, the recitals contained in the settlement deed read as a whole would only go to show that there is an unequivocal creation of right in favour of the setlee in praesenti and the position of law as regards the above aspects has been detailed by the Supreme Court as follows:

29. A careful reading of Ext.A-2 shows that in the title itself the document has been described as settlement deed. By executing that document, Shri K.Perumal Iyer expressed his intention, in no uncertain terms, to settle the property in favour of 16 persons who were none else than his own relatives and declared that "from this day onwards I and you shall enjoy the land and house without creating any encumbrance or making any alienation whatsoever". This was an unequivocal creation of right in favour of sixteen persons in prasenti. Though, the beneficiaries were to become absolute owners of their respective shares after the death of the settlor, the language of the document

clearly shows that all of them were to enjoy the property along with the settlor during his lifetime and after his death, each of the beneficiaries was to get a specified share. In the concluding portion, the settlor made it clear that he will have no right to cancel the settlement deed for any reason whatsoever or to alter the terms thereof.

12. In so far as this case is concerned, the settlor Vanamayil has not retained any right to revoke the settlement deed and even the alleged revocation deed said to have executed by Vanamayil has not been accepted to be as a valid document even by Vanamayil as well as the defendants, as per the recital contained in Ex.A3. That apart, the said revocation deed has not seen the light of the day.

13. For the proposition that though the disposition by way of the settlement may be postponed till the life time of the settlor and though prima facie it may appear that the disposition consummates only after the death of the settlor yet, such postponement not being illegal, if by way of the said instrument, there is a present disposition and vesting of right in praesenti and if such a conclusion could be arrived, on a reading of the instrument, the document concerned should only be treated as settlement deed not as a testamentary disposition. This position of law has been elucidated in the decision reported in 1979 (2) MLJ P.88 [Ramaswami Naidu Vs. M.S.Velappan and others] as follows:

While interpreting an instrument, particularly to find out whether it is of a testamentary character, which will take effect after the lifetime of the executant or whether it is an instrument creating a vested right in praesenti in favour of a person, the question has to be examined with care, after looking into the substance of the document, the treatment of the subject by the settlor, the intention appearing both expressly in the instrument or by necessary implication, and avowed intention of the settlor not to revoke the settlement at any time, making it also public by registering the document, under the appropriate law of the country. Some of the important test laid down in the decided cases appear to be;

(i) the nomenclature used by the settlor in styling the document.

(ii) the express dispositive words used which touch upon the time when the vested interest is created.

(iii) the reservation of the power of revocation in the instrument;

(iv) the effect of the reservation of a life estate in favour of the executant under the instrument;

(v) registration of the document under the appropriate law.

In the instant case, the document itself is styled as a settlement deed. It has been registered. The right to enjoy the properties and secure the benefits and the temple honours as trustees under it had become a fait accompli even during the lifetime of the executant of the document 'M'. One other factor which has a great impact upon the facts and circumstances of this case is that the instrument is expressly made not revocable.

The accepted definition of a will is that it is an instrument whereunder a person makes a disposition of his properties to take effect after his death and which is in its own nature ambulatory and revocable during his lifetime. So far as the other condition which is also thought of while interpreting an instrument for the purpose of deciding whether it is a will or a settlement, namely, whether it is intended not to take effect until after the death of the donor, reference may be made to section 19 of the Transfer of Property Act. Though the disposition may be postponed till the lifetime of the settlor and though prima facie it may appear that the disposition consummates only after his death yet, such postponement not being illegal, if in a given instrument there is a present disposition and vesting of right in praesenti and if such a conclusion can be arrived at reasonably by reading the instrument as a whole then, a mere ambulation of interest during the lifetime of the settlor would not make it a testamentary one. (Para.21)

The above position of law has also been outlined in the decision reported in 2017 SCC Online Delhi 11319 [Late Sh. Harendra Pal Singh the Lrs & Ors Vs. Rishi Pal Singh] as well as in the decisions reported in 2014 (9) SCC 445 [Renikuntla Rajamma (dead) by legal representatives Vs. K. Sarawanamma] and 1997 (1) CTC 256 [J. Kuppaswami Mudali and others Vs. Mahalingam].

14.It is thus found that when as per Ex.A18 the settlement deed the suit property had been entrusted with the possession and enjoyment of the setlee Kuppusamy Padayachi and further it has also found that it is only Kuppusamy Padayachi, who had continued to remain in the possession and enjoyment of the suit property and the mere fact that the setlee had been directed to take the suit property absolutely after the death of the settlor and thereby, there is only postponement of the disposition till the life time of the settlor whereas

on a reading of the recitals contained in the settlement deed wholly, it is found that the vesting of right has been done in praesenti, it is clear that a thorough scrutiny of the recitals found in Ex.A.18, it is found that by virtue of the same, Vanamayil had declared her intention that the suit property should be taken absolutely by the setlee, namely Kuppusamy Padayachi and when the vesting of right as such had been thereby vested in praesenti in favour of Kuppusamy Padayachi, it is found that as per decisions abovesited, Vanamayil would not be the competent to cancel the settlement deed and for this proposition, the decision reported in 2015 (2) CTC 465 [B.K.Rangachari and others Vs. L.V.Mohan] is also relied upon by the plaintiff's counsel. After the execution of Ex.A18 settlement deed Vanamayil ceases to have any title, interest or right in the suit property and therefore, the alleged cancellation deed said to have been executed by her cannot have the sanction of law and hence, it is found that as far as this case is concerned, there is a clear proof placed on the part of the plaintiff that Ex.A18 settlement deed had been accepted and acted upon and thereby, it is only Kuppusamy Padayachi, who has absolute title to the suit property and therefore the first appellate court had failed to determine that by way of Ex.A18, the right in praesenti had been transferred to the setlee and the settlor has thereafter no right to revoke the same, as she has been divested of all the title in respect of the property comprised therein.

15.In the light of the above discussions, when it is found that it is only Kuppusamy Padayachi ,who has absolute title, right and interest in respect of the suit property, it is seen that, as per the case of the plaintiff, he has entered into the sale agreement in respect of the suit property on 14.08.1978, which document has come to be marked as Ex.A2. As per the case of the plaintiff, by way of Ex.A2, Kuppusamy Padayachi had agreed to convey the suit property in his favour for a sum of Rs.13,750/- as per the recitals and conditions stipulated therein. It is further stated that on the date of the sale agreement, the plaintiff has tendered a sum of Rs.2750/- as advance and the balance has to be paid within two months after the death of Vanamayil and in case, Kuppusamy Padayachi pre-deceases Vanamayil, the plaintiff is directed to take the sale

deed from his sons namely the defendants 1 and 2 on the payment of sale consideration as above stated.

16.The defendants have thrown a challenge to the abovesaid sale agreement. It is found that Kuppusamy Padayachi died on 28.10.1983 and thereupon, the plaintiff issued a legal notice marked as Ex.A4 on 18.11.1983 calling upon the sons namely the defendants 1 and 2 to execute the sale deed in his favour, in respect of the suit property, on the demise of Vanamayil and to the same, the defendants sent a reply on 05.02.1994, which has come to be marked Ex.A8. To establish the authenticity of Ex.A2 sale agreement, the plaintiff has examined scribe of the document as P.W.2 and P.W.2 has also tendered evidence as regards the execution of the sale agreement by Kuppusamy Padayachi in favour of the plaintiff. The plaintiff has chosen to examine the scribe, as the sole witness to the sale agreement had died.

17.The first appellate court has doubted the genuineness of Ex.A2 sale agreement , on holding that the document per se, appears to be doubtful, by considering the recitals found in Page No.3 of the document, written very closely without leaving any space as such. Though the first appellate court also found concurrence with the determination of the trial court that the signatures of Kuppusamy Padayachi available in Ex.A2 tally with the signatures available in Ex.A16 and A17, still proceeded to hold that Ex.A2 would have been created on the papers in which, the signatures of Kuppusamy Padayachi had been already obtained. However, as rightly argued, the abovesaid determination of the first appellate court seems fallacious and unacceptable.

18.Materials placed on record would go to show that Kuppusamy Padayachi had various money transactions with the plaintiff and obtained various loans from the plaintiff, by way of the execution of promissory notes and hand letters and detailing the same, it is found that, the plaintiff has issued the legal notice marked as Ex.A4. The said money transactions detailed in Ex.A4 notice had not been controverted by the defendants in the reply notice marked as Ex.A8. It is thus found that, even prior to the sale agreement dated 14.08.1978 marked as Ex.A2, Kuppusamy Padayachi had been having various money transactions with the plaintiff and in respect of such money transactions as Kuppusamy Padayachi failed to repay the same, it is noted that the suit in O.S.No.794 of 1985 has come to be levied by the plaintiff against Kuppusamy Padayachi and his legal heirs and it is found that the said suit entered in a decree in favour of the plaintiff which document has come to be marked as Exs.A13 and A14. In the abovesaid suit in O.S.No.794 of 1985, claim has been made for recovery of money from the legal heirs of Kuppusamy Padayachi based upon the hand letter written by Kuppusamya Padayachi dated 13.02.1980 accepting the

borrowal. In the said suit, the said hand letter dated 13.02.1980 has been determined to be written only by Kuppusamy Padayachi and accordingly, it is found that the suit has come to be decreed in favour of the plaintiff and the certified copy of the said letter dated 13.02.1980 has come to be marked as Ex.A15. Ex.A15 has been already considered to be a genuine document by the Civil Court as above narrated and a perusal of Ex.A15 would go to show that inter alia Kuppusamy Padayachi had accepted the execution of the sale agreement dated 14.08.1978 in favour of the plaintiff and had recited therein that he would discharge the debt due to the plaintiff while adjusting the same with the sale consideration as recited under the above said sale agreement and in the light of the above position, when it is noted that Kuppusamy Padayachi himself has admitted the execution of the sale agreement Ex.A2 in favour of the plaintiff under Ex.A15 and when Ex.A15 has been declared to be a genuine document executed only by Kuppusamy Padayahi in favour of the plaintiff and when by way of Ex.A15 document, the legal heirs of Kuppusamy Padayachi including the defendants 1 and 2 had suffered a decree in O.S.No.794 of 1985, it is too late in the day on the part of the defendants 1 and 2 to contend that the sale agreement dated 14.08.1978 has not been executed by their father Kuppusamy Padayachi in favour of the plaintiff and on the other hand, as rightly determined by the trial court, when it is found that the sale agreement has been duly established by the plaintiff by examining his power agent as well as the scribe of the document and when further materials are also placed to hold that Kuppusamy Padayachi himself has admitted the execution thereof as above discussed and when it is noted that the defendants 1 and 2 had suffered a decree on the basis of the hand letter written by Kuppusamy Padayachi marked as Ex.A15 in O.S.No.794 of 1985 and in the said letter, there is a clear admission on the part of Kuppusamy Padayachi that he had written the sale agreement Ex.A2 in favour of the plaintiff, despite the above said factual position, the first appellate court seems to have been carried away by the close writing of the recitals found in page No.3 of the sale agreement and thereby erred in holding that Ex.A2 sale agreement would not have been written by Kuppusamy Padayachi and on the other hand, when the facts placed on record disclose otherwise, as rightly determined by the trial court, there is abundant materials placed by the plaintiff to show that Kuppusamy Padayachi had the legal competency to execute the sale agreement in favour of the plaintiff in respect of the suit property and that the said agreement marked as Ex.A2 has been written only by Kuppusamy Padayachi in favour of the plaintiff and therefore, it is found that Ex.A2 has been established to be a true, valid document by the plaintiff and therefore, it is found that Ex.A2 is binding upon the defendants 1 and 2, the legal heirs of the deceased Kuppusamy Padayachi.

19.The argument put forth that if really Kuppusamy Padayachi had intended to execute the sale agreement in favour of the plaintiff by way of Ex.A2, Vanamayil given right to enjoy the suit property till her life time, as Vanamayil was alive at the time of the execution of Ex.A2, she should also have been made a party to Ex.A2. However, as rightly argued by the plaintiff's counsel, after the execution of Ex.A18 settlement deed, Vanamayil ceases to have any right that had been conferred on Kuppusamy Padayachi in praesenti, it is thus found that there is no necessity on the part of Kuppusamy Padayachi to join Vanamayil also as executor of the sale agreement and therefore, the above point projected is found to be untenable. Similarly, when the absolute right had been conferred only on Kuppusamy Padayachi by way of Ex.A18 settlement deed and when on the date of Ex.A2 sale agreement, he is the absolute owner of the suit property, in such circumstances, there is no need for joining the sons of Kuppusamy Padayachi in the sale agreement and therefore, the argument that the sale agreement Ex.A2 should fail for not adding the sons of Kuppusamy Padayachi as co - executants does not merit acceptance.

20.On the death of Kuppusamy Padayachi, immediately the plaintiff issued the legal notice Ex.A4 reminding the defendants 1 and 2 that they should execute the sale deed in his favour in respect of the suit property on the death of Vanamayil. Even as per the recitals contained in Ex.A2, it has been mentioned that in case, Kuppusamy Padayachi dies, the plaintiff is entitled to obtain the sale deed from his sons on the payment of the balance consideration. Accordingly, Ex.A4 notice has come to be issued by the plaintiff to the defendants 1 and 2. Meanwhile, on noting that the defendants 1 and 2 are attempting to sell the suit property to the third defendant or her husband, the plaintiff also issued notices to them warning them from effecting the sale transaction in their favour by intimating about the existence of Ex.A2 sale agreement. The plaintiff has also issued a telegram which has been exhibited. Despite the above position, the third defendant's husband, though being put on notice about the sale agreement in favour of the plaintiff well in advance, without making any further enquiry, it is found that the sale deed has come to be taken in respect of the suit property, in favour of the third defendant and when it is found that the third defendant and her husband are living under the same roof, it is seen that the third defendant cannot plead ignorance about the sale agreement and thereby contend that she is a bonafide purchaser without notice. It is found that despite having knowledge about the existence of the sale agreement in favour of the plaintiff, the third defendant or her husband as the case may be, having ventured to purchase the suit property, it is found that they can not at all considered as the bonafide purchaser without notice and the trial court therefore

rightly disbelieved their abovesaid version. That apart, neither the third defendant nor her husband had entered into the witness box to establish their claim that they are the bonafide purchasers without notice of the sale agreement Ex.A2. It is thus found that on an over all analysis of the materials placed on record, the third defendant cannot at all to be determined to be the bonafide purchaser without notice and in such view of the matter, the first appellate court has erred in holding that she is a bonafide purchaser for value without notice ignoring the documents marked as Ex.A7 and A9 and also the other allied facts and circumstances pertaining to the case as above discussed.

21.The sale agreement is dated 14.08.1978 and sale price was fixed at R.13,750/- considering the value of the suit property at that point of time. It is found that the value of the sale price has been rightly fixed. Further, the plaintiff is enjoined to pay the balance sale consideration and get the sale deed only on the death of Vanamayil and within two months thereafter, it is found that there is no delay in the enforcement of the sale agreement by the plaintiff, when it is found that the plaintiff has taken the necessary follow up action immediately, on the death of Kuppusamy Padayachi and accordingly expressed his readiness and willingness to pay the balance sale consideration and complete his sale transaction as contained in the recitals found in the sale agreement. It is thus found that there is no laches or absence of readiness and willingness on the part of the plaintiff in completing the sale transaction as per the recitals contained in Ex.A2. Despite the above said initiatives projected by the plaintiff, still in a hasty manner, it is found that the defendants joined together along with Vanamayil, who ceases to have any title in the suit property and brought about the sale deed marked as Ex.A3 and when from the above said discussions, it is seen that the third defendant is not a bonafide purchaser for value without notice and on the other hand, had full knowledge and notice about the existence of sale agreement Ex.A2, in all aspects, it is found that the defence projected in the matter are found to be untenable and hence rejected.

22.The principles of law enunciated in the decisions relied upon by the defendants' counsel reported in AIR 2004 Madras 57 [Arthus Mary Ammal Vs. Aruldoss Pillai(Deceased)], 1997 (3) SCC 1 [K.S.Vidyanadam and others Vs. Vairavan], AIR 1990 Supreme Court 529[Ramzan Vs. Zmt. Hussaini] are taken into consideration and followed as applicable to the case at hand.

23.For the reasons afore stated, it has to be held that the first appellate court has failed to see that settlement deed Ex.A18 conferred rights in praesenti in favour of Kuppusamy Padayachi and thereafter the settlor had been divested of the

title in respect of the suit property and the first appellate court has failed to note that the third defendant is not a bonafide purchaser without notice when ample materials were placed to show that she had full knowledge and notice of the sale agreement in favour of the plaintiff and the first appellate court has erroneously come to the conclusion that Ex.A2 is not a true and valid document completely failing to consider the other relevant materials placed on record to show that the sale agreement had been admitted by the executant himself namely Kuppusamy Padayachi in the earlier proceedings as discussed above. The substantial questions of law formulated in the second appeal are accordingly answered against the defendants and in favour of the plaintiff.

24. In conclusion, judgment and decree dated 18.12.2002 passed in A.S.No.12 of 1999 on the file of the Subordinate Court, Panruti are set aside and the judgment and decree dated 28.01.1999 passed in O.S.No.719 of 1994 on the file of the District Munsif Court, Panruti are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

mfa

To

1. The Sub Judge,
Sub Court,
Panruti.
2. The District Munsif,
District Munsif Court,
Panruti.
3. The Section Officer,
VR Section,
High Court.

+1 CC to M/s.R. Subramanian, Advocate sr 22556.
+2 Ccs to Mr.V. Neethidurai, Advocate sr 22281.

S.A.No.1261 of 2003

CNR (CO)
SP (19/04/2018)