

IN THE HIGH COURT OF JUDICATURE OF MADRAS

Reserved on	Delivered on
21.01.2020	28.01.2020

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

S.A.Nos.817 & 818 of 2009

1. B.Malakondiah
2. B.Narasimhulu

....Appellants in both S.As
/Plaintiffs in O.S.No.2406/98
/Defendants in O.S.NO.2822 of 99

versus

- 1.B.Adhinarayanan

... Respondent in S.A.No.817 of 2009/
Defendant in O.S.No.2406 of 98

2. Thiruppamma

... Respondent in S.A.No.818 of 2009/
Plaintiff in O.S.No.2822 of 99

Prayer: Appeals filed against the judgement and decree dated 06.12.2006 in A.S.No.534 & 537 of 2005 respectively on the file of the Additional District & Sessions Judge, Fast Track Court-V, Chennai confirming the decree and judgment dated 31.1.2005 in O.S.Nos.2406 of 1998 & 2822 of 1999 on the file of XV Asst.City Civil Court, Chennai.

For Appellants in both SA :: Mr.N.Manokaran

For respondents in both SA :: Mr.K.N.Pandian

COMMON JUDGMENT

These Appeals arise out of the common judgement and decree of both the trial Court and the lower appellate Court in respect of two Original Suits and respective appeals and hence, both these appeals are taken up together for common disposal as under:

2. The plaintiffs in O.S.No.2406 of 1998 who were defendants in O.S.No.2822 of 1999 before the trial Court, are the appellants herein. The plaintiffs in O.S.No.2406 of 1998 are the brothers

and the said suit was filed for eviction of the defendant, namely, one B.Adhinarayanan, the first respondent herein, who is none other than the brother of the plaintiffs. According to the plaintiffs, 1st and 2nd floors of the suit schedule property were constructed by them and their brother was illegally occupying the first floor and therefore, his eviction was sought by laying the suit.

3. According to the averments in the plaint, the property belonged to their parents and in the ground floor of the property, their sister Thiruppamma was living. The said Thiruppamma was the plaintiff in O.S.No.2822 of 1999 and the plaintiff in O.S.No.2406 of 1998 were the defendants in the suit. The said suit was laid by sister Thiruppamma claiming title over the entire property in question on the basis of the Settlement Deed executed by their parents on 04.08.1997, which was marked in the suit proceedings as Ex.A2.

4. The trial Court tried both the suits since they are interlinked as the claim was among the siblings of the family, had treated the plaintiff, namely, the sister of the present appellants as the plaintiff in both the proceedings. Since O.S.No.2822 of 1999 filed by the sister Thiruppamma was a substantive suit claiming title over the entire property, the trial Court which tried both the suits together, ultimately dismissed the suit filed by the appellants/plaintiffs herein in O.S.No.2406 of 1999 and decreed the suit filed by Thiruppamma/plaintiff in O.S.No.2822 of 1999 by common judgment.

5. As against the common judgment and decree, two appeals were preferred by the aggrieved plaintiffs in O.S.No.2406 of 2006 and the defendants in O.S.No.2822 of 1999, who are the appellants herein. By common judgment, the lower appellate Court, by common judgment, disposed of the appeals by setting aside the common judgment of the trial Court by remanding the matter back to the trial Court for recording further evidence and dispose of the case afresh. This was necessitated in view of the serious doubt raised as to the validity of the execution of the Settlement Deed dated 04.08.1997 by the parents of the appellants herein in favour of their sister, who is the plaintiff in O.S.No.2822 of 1999. After remand, the father of the plaintiffs, namely, one of the executors of the Settlement Deed was examined as PW.2 and on consideration of further evidence let in on behalf of the plaintiff in the suit, ultimately, once again the trial Court dismissed the suit filed by the appellants herein in O.S.No.2406 of 1999 for eviction of their brother Adhinarayanan, the defendant therein and allowed the suit in O.S.No.2822 of 1999 filed by their sister Thiruppamma. As against that, once again the appellants herein

preferred appeals in A.S.Nos.534 and 537 of 2005 before the lower appellate Court.

6. The lower appellate Court which tried both the appeals together, vide common judgment dated 6.12.2006 dismissed both the appeals. The effect of dismissal of the appeals was that the decree granted in favour of the appellant's sister Thiruppamma who is the respondent herein in S.A.No.818 of 2009, was confirmed and the suit filed by the appellants/plaintiffs in O.S.No.2406 of 1998 for eviction of their brother Adhinarayanan who is the respondent herein in S.A.No.817 of 2009, was discountenanced. The present Second Appeals have been preferred as against the common judgment passed by the lower appellate Court dismissing both the appeals filed by the appellants herein.

7. Shri N.Manokaran, learned counsel appearing for the appellants would strenuously contend that both the Courts below have failed to appreciate that the appellants herein had established the fact of putting up construction in the first and second floors of the suit schedule property and their brother Adhinarayanan was occupying unlawfully and therefore, the trial Court ought to have granted the decree of eviction. But unfortunately, the suit was dismissed and was also confirmed in the first appeal.

8. Shri N.Manokaran, learned counsel for the appellants in fact, is seriously contesting the other Second Appeal which arise out of the judgment and decree in O.S.No.2822 of 1999 regarding the acceptance of the Settlement Deed dated 04.08.1997 said to have been executed by the parents in favour of appellants' sister, which was also confirmed in the first appeal. He would submit that in the Written statement filed before the trial Court, the appellants who were defendants in that suit, had seriously disputed the execution of the Settlement Deed. It was averred in the Written Statement that there was undue influence, misrepresentation and coercion exercised by their sister in view of fiduciary relationship shared between their parents and their sister. According to the learned counsel, that once the execution of the document is seriously disputed, the burden shifts on the person who claims benefit under the document to prove that the same was executed without any fraud being played nor any undue influence exercised, particularly in relationship of the parents and daughter.

9. The learned counsel would submit that both the Courts below have failed to appreciate the legal position that the

plaintiff has to prove the title by establishing the factum of the document being executed free from fraud or misrepresentation and she cannot be allowed to take the advantage of weakness of the defendants in the suit. In this case, from the judgments of both the Courts below, it appears that the plaintiff in O.S.No.2822 of 1998 succeeded in the suit on the basis of the case set up by the defendants in that suit, namely, the appellants herein.

10. Moreover, the learned counsel would submit that as per Section 111 of the Evidence Act, the appellant's sister has to unburden herself that Ex.A2 document was free from fraud and misrepresentation or under influence because of fiduciary relationship between the parties. He would also rely on Section 68 of the Evidence Act which provides that in order to prove valid execution of the document, one of the attesting witnesses has to be examined and in this case, no such witness was examined, particularly, in the teeth of dispute by the appellants herein about the valid execution of the document. The learned counsel would traverse to various findings of the trial Court as well as lower appellate Court and found particularly the lower appellate Court's approach to the entire issue was faulty and incorrect. The learned counsel would particularly rely upon certain findings of the lower appellate Court. The lower Appellate Court in one of its findings in para 23 of its judgment, would observe that the onus is on the person who contests the validity of the execution of the document, namely, the defendants in that suit, the appellants herein. Further, the lower appellate Court has held that as regards the appellants herein, their case is that they constructed the first and second floors of the suit schedule property and since that fact was not established, the case of the plaintiffs in O.S.No.2822 of 1999 stood established. According to the learned counsel, such approach by the lower appellate Court was totally fallacious and against the established legal principles. Moreover, the learned counsel would also point out that the execution of Ex.A2 was admitted by the author, namely, the father who was examined as PW.2 after remand, despite its further observation that the evidence of PW.2 was full of contradictions. In fact, the lower appellate Court has also observed that if the evidence is fully contradictory, the settled law is that it has to be discarded, but ironically, his evidence was accepted by the lower appellate Court and confirmed the execution of the document Ex.A2.

11. The learned counsel would further submit that lower appellate Court has also held that Ex.A2 was not put to challenge by the appellants herein and in the absence of challenge, the execution of the document stood established as being uncontested. The learned counsel would submit that though

the trial Court has not dealt with those issues, but still the lower appellate Court has improved upon the plea of the rival parties and ultimately concluded against the appellants herein. He would submit that the entire approach of the Courts below was completely faulty and against the settled legal principles. The learned counsel would in support of his contentions, relied upon two decisions of this Court, viz.,

i) (2004) 9 SCC 468 (Krishna Mohan Kul @ Nani Charankul and another versus Pratima Maity and others), wherein, the learned counsel would particularly draw the attention of this Court to paragraph 12, which is extracted as under:

"12. As has been pointed out by the High Court, the first Appellate Court totally ignored the relevant materials and recorded a completely erroneous finding that there was no material regarding age of the executant when the document in question itself indicated the age. The Court was dealing with a case where an old, ailing illiterate person was stated to be the executant and no witness was examined to prove the execution of the deed or putting of the thumb impression. It has been rightly noticed by the High Court that the courts below have wrongly placed onus to prove execution of the deed by Dasu Charan Kul on the plaintiffs. There was challenge by the plaintiffs to validity of the deed. The onus to prove the validity of the deed of settlement was on defendant No. 1. When fraud, mis-representation or undue influence is alleged by a party in a suit, normally, the burden is on him to prove such fraud, undue influence or misrepresentation. But, when a person is in a fiduciary relationship with another and the latter is in a position of active confidence the burden of proving the absence of fraud, misrepresentation or undue influence is upon the person in the dominating position, he has to prove that there was fair play in the transaction and that the apparent is the real, in other words, that the transaction is genuine and bona fide. In such a case the burden of proving the good faith of the transaction is thrown upon the dominant party, that is to say, the party who is in a position of active confidence. A person standing in a fiduciary relation to another has a duty to protect the interest given to his care and the Court watches with zealously all transactions between such persons so that the protector may not use his influence or the confidence to his advantage. When the party complaining shows such relation, the law

presumes everything against the transaction and the onus is cast upon the person holding the position of confidence or trust to show that the transaction is perfectly fair and reasonable, that no advantage has been taken of his position. This principle has been engrained in Section 111 of the Indian Evidence Act, 1872 (in short the 'Evidence Act'). The rule here laid down is in accordance with a principle long acknowledged and administered in Courts of Equity in England and America. This principle is that he who bargains in a matter of advantage with a person who places a confidence in him is bound to show that a proper and reasonable use has been made of that confidence. The transaction is not necessarily void ipso facto, nor is it necessary for those who impeach it to establish that there has been fraud or imposition, but the burden of establishing its perfect fairness, adequacy and equity is cast upon the person in whom the confidence has been reposed. The rule applies equally to all persons standing in confidential relations with each other. Agents, trustees, executors, administrators, auctioneers, and others have been held to fall within the rule. The Section requires that the party on whom the burden of proof is laid should have been in a position of active confidence. Where fraud is alleged, the rule has been clearly established in England that in the case of a stranger equity will not set aside a voluntary deed or donation, however, improvident it may be, if it be free from the imputation of fraud, surprise, undue influence and spontaneously executed or made by the donor with his eyes open. Where an active, confidential, or fiduciary relation exists between the parties, there the burden of proof is on the donee or those claiming through him. It has further been laid down that where a person gains a great advantage over another by a voluntary instrument, the burden of proof is thrown upon the person receiving the benefit and he is under the necessity of showing that the transaction is fair and honest."

In the above judgment, the Hon'ble Supreme Court has clearly held that in a fiduciary relationship like the present one, the burden is always on the person who claims title under the document to prove that the same was free from fraud and undue influence, etc.,

ii) AIR 2014 SCC 937 "(Union of India and others versus Vasavi Co-Op.Housing Society Ltd. And others)", wherein, the learned counsel would draw the attention of this Court regarding the burden of proof for declaratory suit and such burden lies on the plaintiff. He would particularly refer to paragraphs 12 to 15, which are extracted hereunder:

"12. It is trite law that, in a suit for declaration of title, burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff.

"13. The High Court, we notice, has taken the view that once the evidence is let in by both the parties, the question of burden of proof pales into insignificance and the evidence let in by both the parties is required to be appreciated by the court in order to record its findings in respect of each of the issues that may ultimately determine the fate of the suit. The High Court has also proceeded on the basis that initial burden would always be upon the plaintiff to establish its case but if the evidence let in by defendants in support of their case probabalises the case set up by the plaintiff, such evidence cannot be ignored and kept out of consideration.

"14. At the outset, let us examine the legal position with regard to whom the burden of proof lies in a suit for declaration of title and possession. This Court in *Maran Mar Basselios Catholicos v. Thukalan Paulo Avira* reported in AIR1959 SC 31 observed that "in a suit for declaration if the plaintiffs are to succeed, they must do so on the strength of their own title." In *Nagar Palika, Jind v. Jagat Singh, Advocate* (1995) 3 SCC 426, this Court held as under:

"the onus to prove title to the property in question was on the plaintiff. In a suit for ejectment based on title it was incumbent on the part of the court of appeal first to record a finding on the claim of title to the suit land made on behalf of the plaintiff. The court is bound to enquire or investigate that question first before going into any other question that may arise in a suit."

15. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against, in the absence of establishment of plaintiff's own title, plaintiff must be non-suited."

In the above case, the Hon'ble Supreme Court has clearly held that in a suit for declaration, the plaintiff has to succeed on the strength of his or her own case and not on the weakness of the case set up by the defendants.

12. The learned counsel would therefore submit that as far as the suit is for title, the fundamental error has been committed by both the Courts below while accepting the validity of the execution of the document Ex.A2 and when the defendants were seriously disputing the valid execution of the document, the onus was not placed on the plaintiff in O.S.No.2822 of 1999 to discharge the burden. In fact, the evidence of PW.2 namely, the father of the appellants before the trial Court was that he did not know the contents of the document Ex.A2 and he merely affixed his thumb impression alone though he was literate. Therefore, when there is a serious doubt in regard to the validity of the document, the Courts below ought to have placed the burden on the plaintiff in O.S.No.2822 of 1999, but unfortunately, both the Courts below have committed grave error in finding the holes in the case of the defendants, the appellants and granted the relief by allowing O.S.No.2822 of 1999. Therefore, the learned counsel would implore this Court to allow both the appeals in favour of the appellants.

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13. Per contra, the learned counsel appearing for the respondents, namely, the respondent in S.A.No.817 of 2009, who was the defendant in the suit in O.S.No.2406 of 1998 and respondent in S.A.No.818 of 2009, who was the plaintiff in the suit in O.S.No.2822 of 1999, would submit that there were too many holes in the case filed by these appellants for eviction of the first respondent in the suit in O.S.No.2406 of 1998. In fact, three witnesses were examined on their side and no document was filed in support of their claim that the first and second floors were built by them. There was absolutely no piece of evidence at all to establish the averments in their plaint. In fact, two witnesses were examined on their side in

O.S.No.2406 of 1998, viz., DW.2 and DW.3 who deposed that at the time when the construction was said to have been put up, they were 8 or 9 years of age. Even the second plaintiff who is one of the appellants herein, when he was examined as DW.1, in common suit proceedings, his evidence was hardly convincing to establish their case. In fact, he deposed that they got oral permission from their parents to put up the construction, but they did not choose to examine their parents at all. Moreover, it is admitted that no documents were marked in the suit proceedings on their side. Both the Courts below also found that DW.3's evidence was hearsay and therefore, did not support the case of the brothers and DW.2's evidence cannot be relied upon, because he happened to be a close relative of the appellants. Therefore, the suit filed by the appellants herein was rightly dismissed.

14. As regards the other suit is concerned, i.e. O.S.No.2822 of 1999, the learned counsel would submit that as rightly held by the lower appellate Court, the validity of the settlement deed Ex.A2 was not put to challenge by the appellants' side. Though it was averred in the Writ Statement about its validity, yet, both the Courts below did not accept the plea against the validity of the document Ex.A2 since the father who was one of the authors of the document. But accepted the execution of the document. In fact, his evidence was to show that he was in a sound state of mind at the time of execution of the document. Therefore, the burden to prove the valid execution of the document was effectively discharged by the plaintiff in O.S.No.2822 of 1999 and thereafter, burden shifted on the defendants therein to establish their stand in support the averments as contained in the Written Statement filed in the suit and rightly so both the Courts below have held that the defendant therein did not discharge the said burden by proving the document was excuted by misrepresentation or exercise of undue influence by the plaintiff. The learned counsel would submit that these appellants have not made their parents as parties in their suit (O.S.No.2406 of 1998) and in fact, in the averments contained in the plaint, it was established that their relationship with their mother was not cordial. The learned counsel would also submit that both the Courts below have correctly approached the issues by holding that the validity of the document was not questioned before the competent Court. In fact, the learned counsel would also submit that PW.2's evidence was appreciated correctly by the trial Court wherein, the father who was examined as PW.2 has clearly deposed about the execution of the document and also admitted his signature and also denied the suggestion that signature was not 'his'. In fact, PW.2 the father also denied the suggestion that the document was obtained by fraud. In such circumstances, the burden of the plaintiff to prove the valid execution of the document was clearly discharged

on the basis of the evidence of one of the authors of the document, namely, the father and therefore, no further evidence was required on the part of the plaintiff to prove the valid execution of Ex.A2. In the said circumstances, the learned counsel would submit that both the Courts below were right in decreeing the suit in O.S.No.2822 of 1999 in favour of the plaintiff.

15. Considered the rival submissions of the learned counsels and perused the pleadings and materials placed on record.

16. As far as the Second Appeal in S.A.No.817 of 2009 is concerned, the appellants herein have approached the trial Court, seeking to evict their brother Adhinarayanan who was the defendant in the suit in O.S.No.2406 of 1998 on the plea that they put up the construction in respect of first and second floor of the suit schedule property and therefore, they had the title over the same and their bother was unlawfully occupying the first floor of the property. In support of their averments, no document was filed in order to establish the factum of the construction put up by them from their own income. In fact, the evidence of the witnesses who were examined on the side of the appellants in O.S.No.2406 of 1998 was against them as the age of the plaintiffs was not established. In fact, one of the witnesses examined on their side, had deposed that the plaintiffs' age was probably 9 or 10 years at that time. In fact, the second plaintiff who is one of the appellants herein, who was examined as DW.1 himself had said that they got oral permission from their parents. However, to support that they did not choose to examine their parents. Moreover, the parents were not made as parties in the suit.

17. Further, as rightly contended by the learned counsel for the respondent that the averments in the plaint in O.S.No.2406 of 1998 would establish the fact that the relationship between the appellants and their mother was not cordial during the relevant time. In any case, the appellants could have made their parents as parties so that the factum of the permission being granted to them for putting up the construction and the factum of construction put up by them would have been established in clear terms. In the absence of any evidence on their side, both the Courts below have rightly dismissed the suit for eviction. On going through the materials and pleadings placed on record, this Court found that the approach of both the Courts below as far as suit in O.S.No.2406 of 1998 was in order and the ultimate decrees and judgments of both the Courts below, cannot be faulted with. Therefore, this Court is of the considered view that Second Appeal in S.A.No.817 of 2009 has to necessarily fail. Therefore, the substantial questions of

law framed are answered against the appellants and the Second Appeal (S.A.No.817 of 2009) stands dismissed.

18. As regards, the Second Appeal in S.A.No.818 of 2009 is concerned, the entire dispute is relating to one document, i.e. Ex.A2, dated 4.8.1997. Although the appellants' sister claimed title to the entire suit schedule property on the basis of the settlement deed Ex.A2 dated 4.8.1997, yet in the Written Statement which was filed on behalf of the appellants herein, who were arrayed as defendants in O.S.No.2822 of 1999, it was seriously disputed that Ex.A2 was not validly executed as the same was obtained by misrepresentation and exercise of undue influence. When the document on which a right is claimed by one party and the said document was seriously disputed by the other party, the burden naturally shifts on the party who claims title on the basis of the said document. In fact, the learned counsel appearing for the appellants has rightly relied upon a decision of the Hon'ble Supreme Court reported in AIR 2014 SCC 937 (cited supra), wherein, in paragraphs 12 to 15 extracted above, the Hon'ble Supreme Court has clearly held that the plaintiff who claims a declaratory relief, has to succeed on the strength of his own title by discharging the onus irrespective of the question whether the defendants have proved their case or not. Therefore, this Court is called upon to see whether such burden has been discharged by the respondent herein who was the plaintiff in O.S.No.2822 of 1999 or not?.

19. To the above question, the answer could be easily found on the simple premise that both the Courts below had approached the dispute on a fallacious understanding that the burden was on the person who disputes the validity of the execution of the document. Both the Courts below have failed to appreciate the nuanced difference between the execution of the document as between unrelated persons and execution of document among the family members who shared fiduciary relationship. But in the case on hand, it is common knowledge that children or the parents are in a position to exercise undue influence by virtue of their proximity in terms of mutual love and affection shared among themselves. Therefore, when one of the siblings is questioning the valid execution of the document, it is imperative on the part of the other sibling who was the beneficiary of the document, to come out clear by discharging the burden of establishing that the document was free from fraud, misrepresentation and undue influence, etc. Looking at it with that perspective, this Court is unable to see any evidence emerging in favour of the plaintiff in O.S.No.2822 of 1999 who was the second respondent herein in regard to such discharge of the burden. As stated above, the entire approach of both the Courts below was skewed and incorrect by placing the onus on the defendants to prove the validity of the settlement

deed Ex.A2. Further, the learned counsel relied upon a decision reported in (2004) 9 SCC 468 (cited supra), wherein para 12 as extracted above, the Hon'ble Supreme Court has clearly held that normally when a fraud or misrepresentation is alleged by a party to the suit, the burden is on him to prove the same, but the position is different when such fraud is alleged in a fiduciary relationship, in which case, the burden shifts on the person who claims benefit under the document to prove that the document was free from fraud. In this case, exactly the circumstances point towards casting the burden on the plaintiffs to discharge the same by proving the execution of the document, namely, Ex.A2 was free from any trace of doubt. In fact, by misdirecting itself contrary to the established legal principles, both the Courts below have not ventured to cast the burden on the plaintiff and the result of that was there was no scope left open for the plaintiff to establish her case of proving the document as being untainted to dispell the contention of the defendants questioning the validity of Ex.A2.

20. In fact, the lower appellate Court has made elaborate observations on a faulty understanding of legal principles that the defendants failed to prove the undue influence or misrepresentation and also that the defendants have not chosen to assail Ex.A2 document before a competent civil Court. Such observations clearly reflect a complete non-application and mis-application of mind on the part of the lower appellate Court. Further, when earlier the lower appellate Court has remanded the matter in order to prove the credibility of Ex.A2 document by setting aside the earlier judgment and decree of the trial Court, the plaintiff ought to have taken more effective efforts to let in fool proof evidence to establish her case for title, but unfortunately it appears that though one of the authors of the document was examined as PW.2 on remand, his evidence was hardly inspiring to give a clinching effect to the claim of the plaintiff. It is rather strange and surprising to find that although the lower appellate Court found that the evidence of PW.2, the father of the plaintiffs was fully contradictory and to be discarded, but yet it accepted his evidence as proof of valid execution of Ex.A2. Therefore, this Court cannot but conclude that the approach of the lower appellate Court particularly, was fundamentally wrong and faulty and hence the judgment and decree of the lower appellate Court for confirming of judgment and decree of the trial Court as far as suit in O.S.No.2822 of 1999 is concerned, is to be discountenanced both on facts and in law. Looked at from any angle, this Court finds that both the Courts below have comitted a grave error in allowing the suit in favour of the plaintiff in O.S.No.2822 of 1999.

21. In fact, Mr.N.Manokaran, learned counsel appearing for the appellants would place reliance on Sections 68 and 111 of Indian Evidence Act, which read as under:

"68. Proof of execution of document required by law to be attested.—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence: 1[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]

"111. Proof of good faith in transactions where one party is in relation of active confidence.—Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

22. The contention of the learned counsel is that the document cannot be used as document as if it is attested, as the attesting witness has not been called for proving the execution, must receive acceptance from this Court. In this case, admittedly, no attesting witness has been examined to prove Ex.A2. Therefore, the requirement of Section 68 is not satisfied at all. Besides, the learned counsel has also relied upon Section 111 of the Indian Evidence Act, 1872 which is extracted above and submit that this provision placed the burden on the person who is in a position of active confidence, which means that the plaintiff in the suit in O.S.No.2822 of 1999 who enjoys active confidence of the parents is under a legal obligation to discharge her burden in proving good faith. As concluded above, this Court does not find even remotely that such exercise has been undertaken by the plaintiff to prove her credentials of good faith of the transaction, namely, Ex.A2 to the satisfaction of the legal requirement.

23. In the above circumstances, the substantial questions of law framed in Second Appeal No.817 of 2009 are answered against the appellants and the substantial questions of law framed in

Second Appeal No.818 of 2009 are answered in favour of the appellants.

24. In the result,

i) Second Appeal in S.A.No.817 of 2009 is dismissed and the judgment and decree dated 06.12.2006 in A.S.No.534 of 2005 on the file of Addl.District & Sessions Judge/Fast Track Court-V, Chennai as well as the judgment and decree dated 31.01.2005 in O.S.No.2406 of 1998 on the file of XV Assistant Judge, City Civil Court, Chennai are hereby confirmed.

ii) Second Appeal in S.A.No.818 of 2009 is allowed and the judgment and decree dated 06.12.2006 in A.S.No.535 of 2005 on the file of Addl.District & Sessions Judge/Fast Track Court-V, Chennai as well as the judgment and decree dated 31.01.2005 in O.S.No.2822 of 1999 on the file of XV Assistant Judge, City Civil Court, Chennai are hereby set aside.

iii) The parties shall bear their own costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Additional District and Sessions Judge,
Fast Track Court No.V, Chennai.

2.The XV Assistant Judge,
City Civil Court, Chennai.

+2cc to Mr.N.Manokaran, Advocate Sr.6373 and 6374

S.A.Nos.817 & 818 of 2009

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