

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON: 27.08.2020
PRONOUNCED ON: 08.09.2020
CORAM:
THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.101 of 2011
and
M.P.No.1 of 2011

Panneerselvam
S/o, Balasubramanian
Kuyilam Village,
Perunkulathur Madura
Chengam Taluk,
Tiruvannamalai District.

...Appellant/Appellant/
Plaintiff

-Vs-

1. Shanmugasundaram
S/o, Sambasivam
2. Nedunchezhiyan
S/o, Sambasivam
3. Sambasivam
S/o, Kuzhandaivel

All are residing at
Jambai Village
Thirukovilur Taluk.

... Respondents/Respondents/
Defendants

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 17.03.2010 passed in A.S.No.80 of 2009 on the file of the Principal District Court, Villupuram in confirming the judgment and decree dated 10.04.2006 passed in O.S.No.74 of 2005 on the file of the Principal District Munsif Court, Tirukovilur.

For Appellant : Mr.P.Mani
For Respondents : Mr.R.Venkattasubban
for M/s.Sarvabhauman Associates

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J U D G M E N T

Challenge in this Second Appeal is made to the judgment and decree dated 17.03.2010 passed in A.S.No.80 of 2009 on the file of the Principal District Court, Villupuram, confirming the judgment and decree dated 10.04.2006 passed in O.S.No.74 of 2005 on the file of the Principal District Munsif Court, Tirukovilur.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. Suit for declaration and permanent injunction.

4. Briefly stated according to the plaintiff's case, the suit properties and other properties had been purchased by the third defendant, the father in law of the plaintiff from Duraisamy Gounder and others on 07.07.1997 and enjoying the same and the plaintiff had married Gomathi, the daughter of the third defendant on 07.09.1986 and no Seer had been provided to Gomathi by the third defendant at the time of their marriage and the third defendant was working as a teacher and accordingly the third defendant with a view to settle the suit properties in favour of his daughter namely Gomathi, executed a settlement deed in her favour by way a registered deed in respect of the suit properties on 16.02.2004 and the same had been accepted by Gomathi and following the same, enjoying the suit properties and Gomathi thereafter settled the suit properties in favour of the plaintiff by way of a registered settlement deed dated 23.02.2004 and the same had been accepted by the plaintiff and the plaintiff has been in the possession and enjoyment of the suit properties by obtaining patta, paying Kists etc., and in the settlement deed dated 16.02.2004, the survey number has been wrongly mentioned as R.S.No.28/18 instead of R.S.No.28/15 and the defendants have no right, title or interest in respect of the suit properties. The defendants 1 and 2 are the sons of the third defendant and the first defendant appears to have obtained the settlement deed in respect of the suit properties and other properties from the third defendant on 01.11.2004, however the abovesaid settlement deed is invalid and no right would accrue to the first defendant by virtue of the abovesaid settlement deed and the defendants are unlawfully attempting to interfere with the possession and enjoyment of the plaintiff in respect of the suit properties by challenging his title and thus the plaintiff has been necessitated to lay the suit for appropriate reliefs.

5. The first defendant has filed the written statement and the same had been adopted by the defendants 2 and 3 and the defendants in their written statement after denying the plaint averments contended that the third defendant had not executed the settlement deed in favour of the plaintiff's wife Gomathi on 16.02.2004 knowing the contents of the document and therefore the settlement deed dated 16.02.2004 is invalid and the same had not been accepted by Gomathi and therefore Gomathi has no entitlement to settle the suit properties in favour of her husband namely the plaintiff on 23.02.2004 and the settlement deed dated 23.02.2004 is invalid and not come into force and the plaintiff has not been in the possession and enjoyment of the suit properties following the abovesaid settlement deed and the third defendant out of his own volition and consent had executed a settlement deed in respect of the suit properties and other properties in favour of the first defendant on 01.11.2004 and the same had been accepted by the first defendant and following the same, the patta had been mutated in favour of the first defendant in respect of the settled properties and it is only the first defendant who has been in the possession and enjoyment of the settled properties including the suit properties and the suit properties are located in Pallichandal village which falls within the jurisdiction of Manalurpet Sub Registrar's office. However, the plaintiff, his mother and his wife colluded together with a view to avoid the registration of the settlement deed at Manalurpet Sub Registrar's office, had created the sale deed as if the plaintiff's mother had alienated an extent of 0.25 cents in Survey No.425/1B at Kuyilam village, on 16.02.2004 and following the same, on the same date, they had created the settlement deed dated 16.02.2004 in favour of Gomathi, the plaintiff's wife and got it registered at Thaandipadi Sub Registrar's office. The third defendant had no intention to settle the suit properties in favour of Gomathi and the settlement deed dated 16.02.2004 had been obtained from the third defendant by practising fraud, mistake, misrepresentation, undue influence and coercion and the same has not come into force and the third defendant had not executed the abovesaid settlement deed knowing the contents thereof. The third defendant had the intention only to execute a Will in respect of the suit properties in favour of Gomathi, however the plaintiff, his mother and Gomathi had colluded together and took the third defendant to their village and in the guise of the execution of a Will had obtained the settlement deed from him on 16.02.2004 and believing the document to be a Will, the third defendant had executed the deed and thereafter on coming to know that the said document is not a Will and a settlement deed, the third defendant on 18.02.2004 had cancelled the settlement deed dated 16.02.2004 and knowing the factum of cancellation deed executed

by the third defendant, the plaintiff had created the settlement deed dated 23.02.2004 in collusion with his wife Gomathi, therefore the settlement deed executed by Gomathi in favour of the plaintiff is not true and valid and the same has not come into force and by virtue of the settlement deed dated 01.11.2004, it is only the first defendant who has acquired title to the suit properties and enjoying the same by obtaining patta, paying Kists etc., and the plaintiff has no entitlement, possession and enjoyment of the suit properties and therefore the suit laid by the plaintiff is liable to be dismissed.

6. In support of the plaintiff's case, P.Ws.1 to 3 were examined. Exs.A1 to A7 were marked. On the side of the defendants, D.Ws.1 to 3 were examined. Exs.B1 to B7 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the materials placed on record and the submissions made and on an appreciation of the same, the trial court was pleased to dismiss the suit laid by the plaintiff. The challenge made by the plaintiff in A.S.No.80 of 2009 has ended in dismissal. Impugning the judgment and decree of the Courts below dismissing the suit laid by him, the plaintiff has preferred the second appeal.

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

A. Whether in law the cancellation of Ex.A2 settlement deed in favour of the plaintiff's wife under Ex.B2 cancellation deed is valid when Ex.A2 settlement deed is irrevocable one and no reservation for its cancellation was made therein particularly when the defendants failed to prove their case of fraud and misrepresentation?

B. Whether in law Ex.B3 settlement deed in favour of the 1st defendant is valid and confer title when Ex.A2 settlement deed with respect to the very same property was already executed in favour of the plaintiff's wife and A2 settlement deed was already acted upon?

C. Whether the Courts below erred in law and misdirected themselves in accepting the oral evidence of DW1 and DW2 that Ex.A2 settlement deed was obtained by fraud and misrepresentation contrary to the recitals in Ex.B2 cancellation deed wherein the 3rd defendant

admitted the due execution of Ex.A2 settlement deed in favour of his daughter?

9. The relationship between the parties is not in dispute. It is found that the plaintiff is the son-in-law of the third defendant. The plaintiff's wife Gomathi is one of the daughters of the third defendant. The defendants 1 and 2 are the sons of the third defendant. The parties are not in dispute that the suit properties and other properties had been purchased by the third defendant from Duraisamy Gounder and others by way of a sale deed dated 07.07.1979. The certified copy of the abovesaid sale deed has been marked as Ex.A1. Thus it is found that it is only the third defendant who was the lawful owner of the suit properties. Now according to the plaintiff, the third defendant had settled the suit properties in favour of his wife Gomathi by way of a settlement deed dated 16.02.2004 and the same had been accepted by his wife and enjoying the suit properties and thereafter Gomathi had settled the suit properties in his favour by way of a registered settlement deed dated 23.02.2004 and the same had been accepted by the plaintiff and following the same, it is only the plaintiff who has been in the possession and enjoyment of the suit properties by obtaining patta, paying Kists etc., and inasmuch as the defendants had been interfering with the possession and enjoyment of the plaintiff in respect of the suit properties on the strength of the settlement deed dated 01.11.2004 said to have been executed by the third defendant in favour of the first defendant which settlement deed is invalid, according to the plaintiff, he has been necessitated to lay the suit against the defendants for appropriate reliefs.

10. Per contra, according to the defendants, the third defendant had only intended to execute the Will in respect of the suit properties in favour of Gomathi, the plaintiff's wife and on the other hand, the plaintiff, his mother and Gomathi had colluded together and took the third defendant to their village and created a sale deed in favour of the third defendant as if the plaintiff's mother had alienated an extent of 0.25 cents in Survey No.425/1B of Kuyilam village on 16.02.2004 and on the same date had obtained a settlement deed dated 16.02.2004 from the third defendant in respect of the suit properties and got it registered at Thaaniyadi Sub Registrar's office and according to the defendants, the sale deed dated 16.02.2004 said to have been executed by the plaintiff's mother in favour of the third defendant is not true and in fact the third defendant has not purchased any property from the plaintiff's mother on 16.02.2004 and not paid any consideration to the plaintiff's mother for the sale deed dated 16.02.2004 and according to the defendants, in

the guise of executing a Will, the third defendant had been misled by the plaintiff, his mother and Gomathi by practising fraud, mistake, misrepresentation, undue influence and coercion and obtained a settlement deed from him on 16.02.2004 in respect of the suit properties and the third defendant without knowing the contents of the document had executed the deed and therefore it is put forth that the third defendant had not truly executed the settlement deed dated 16.02.2004 in favour of Gomathi, the plaintiff's wife knowing the contents thereof and therefore it is put forth that the settlement deed dated 16.02.2004 is not true and valid and on coming to know of the fraud and misrepresentation committed by the plaintiff's mother, plaintiff and Gomathi, according to the defendants, the third defendant had cancelled the settlement deed dated 16.02.2004 by way of a cancellation deed on 18.02.2004 and following the same, according to the defendants, the third defendant had executed the settlement deed on 01.11.2004 in respect of the suit properties and other properties in favour of the first defendant and following the same, it is only the first defendant who has been in the possession and enjoyment of the settled properties including the suit properties and therefore according to the defendants, the plaintiff cannot claim any title, possession and enjoyment of the suit properties by virtue of the settlement deed dated 23.02.2004 and therefore the plaintiff has to be non-suited.

11. As above pointed out, the parties are closely related to each other. Both the plaintiff and the first defendant are claiming title to the suit properties by virtue of the settlement deed said to have been executed in their favour by the third defendant. Admittedly, the suit properties originally belonged to the third defendant. Even in the written statement in para 6, it has been clearly averred that the third defendant had intended to execute a Will in favour of Gomathi, the plaintiff's wife in respect of the suit properties. Therefore, as admitted in the written statement, it is evident that the third defendant had the intention to give the suit properties to his daughter namely Gomathi who is the wife of the plaintiff. Now according to the plaintiff, inasmuch as the third defendant had intended to give the suit properties in favour of his wife namely Gomathi, resultantly he had settled the suit properties in favour of this wife on 16.02.2004 which document has been marked as Ex.A2. From the materials placed on record, it is found that the plaintiff's mother had alienated an extent of 0.25 cents in Survey No.425/1B of Kuyilam village in favour of the third defendant on 16.02.2004. The copy of the abovesaid sale deed has been marked as Ex.B1. The property comprised in Ex.B1 lying in Kuyilam village admittedly falls within the

jurisdiction of Thaanipadi Sub Registrar's office. Admittedly the suit properties are lying in Pallichandal village, which falls within the jurisdiction of Manalurpet Sub Registrar's office. According to the defendants, with a view to create jurisdiction at Thaanipadi Sub Registrar's office, the sale deed Ex.B1 has been created by the plaintiff, his mother and Gomathi. By virtue of the settlement deed Ex.A2 dated 16.02.2004, it is found that the third defendant had not only settled the suit properties but also settled the property acquired by him by virtue of the sale deed dated 16.02.2004, the copy of which has been marked as Ex.B1.

12. Now according to the defendants, in the guise of the execution of a Will, in respect of the suit properties in favour of Gomathi, the third defendant was taken by the plaintiff, his mother and Gomathi to their village and got executed a settlement deed from him by practising fraud, mistake, misrepresentation, undue influence and coercion and the third defendant without knowing the contents of the document, had executed the same and thereafter on coming to know the nature of the document, according to the defendants, the third defendant had cancelled the settlement deed by way of a cancellation deed dated 18.02.2004 and the abovesaid cancellation deed has been marked as Ex.B2. Further, according to the defendants, thereafter the third defendant had executed a settlement deed in favour of the first defendant in respect of the suit properties and other properties on 01.11.2004 which document has been marked as Ex.B3. However, according to the plaintiff, following the settlement deed dated 16.02.2004 marked as Ex.A2, Gomathi had settled the suit properties in favour of the plaintiff by way of a settlement deed dated 23.02.2004. Thus the plaintiff had acquired the title to the suit properties based on the same and the settlement deed dated 23.02.2004 has been marked as Ex.A3.

13. Considering rival contentions put forth by both the parties, it has to be verified as to whether the third defendant had intended to give the suit properties in favour of the plaintiff's wife Gomathi. As above noted, even in the written statement, the defendants have admitted that the third defendant had intended to execute a Will in favour of Gomathi in respect of the suit properties. Therefore, as rightly contended by the plaintiff's counsel, the third defendant always had the intention to settle the suit properties in favour of the plaintiff's wife Gomathi. In this connection, the evidence of the third defendant examined as D.W.2 assumes importance. It is not in dispute that the third defendant is a retired teacher. Therefore, it is evident that the third defendant is not an

illiterate person and knows to read and write. The third defendant examined as D.W.2, during the course of cross examination has admitted that he is a retired teacher and that he could read with glasses and further admitted that his signature is available in Ex.A2 settlement deed and also admitted that at the time of marriage of the plaintiff with his daughter Gomathi, it is only the plaintiff who had borne the marriage expenses and also admitted that he knew that the plaintiff's mother owns properties at Kuyilam village and further also admitted that he has no issue or dispute with his daughter Gomathi, and he would claim that he has no knowledge about Ex.B1 sale deed and further admitted that only with a view to provide support to his daughter Gomathi, he had proceeded to the Thaanipadi Sub Registrar's office. Therefore considering the evidence of the third defendant as deposed by him during the course of cross examination, it is found that he has no issue with his daughter Gomathi and he had the intention to provide support to his daughter and only for that purpose, proceeded to Thaanipadi Sub Registrar's office and as above pointed out, in the written statement, the defendants themselves have clearly admitted that the third defendant had intended to execute a Will in respect of the suit properties in favour of his daughter Gomathi. When it is found that the third defendant is a retired teacher, to say that the third defendant had been misled by the plaintiff, his mother and Gomathi in the obtainment of the settlement deed dated 16.02.2004 by misrepresentation that it is only a Will, as such cannot be readily accepted. When it is found that the third defendant is a retired teacher, he would definitely know the consequences of the execution of the document. In such view of the matter, to say that the third defendant had executed the deed on 16.02.2004 at the instance of the plaintiff, his mother and his wife Gomathi, without reading the contents of the document as such cannot be accepted in any manner. When it is found that the third defendant had the intention to give the suit properties in favour of his daughter Gomathi and also further admitted clearly that only with a view to prove support to his daughter Gomathi, he had proceeded to Thaanipadi Sub Registrar's office, in such view of the matter, the case of the defendants that the third defendant had executed the document without knowing the contents of the same at Thaanipadi Sub Registrar's office on 16.02.2004 cannot at all be believed and accepted in any manner.

14. In this connection, the evidence of the first defendant examined as D.W.1 assumes importance. D.W.1 during the course of cross examination has admitted that he came to know from his father about the sale deed executed by the plaintiff's mother in favour of his father namely the third defendant and further admitted that he came to know from his father that he had

settled the properties purchased by him from plaintiff's mother as well as the suit properties and further admitted that Ex.A2 settlement deed had been executed by his father and he has put his signature in the said settlement deed and further admitted that Ex.A2 recites that the suit properties had been settled by his father in favour of Gomathi out of love and affection and further admitted that the settlement deed recites that his father not reserved any right of revocation to cancel the settlement deed and also admitted that following Ex.A2 settlement deed, he came to know that his sister had executed the settlement deed in favour of the plaintiff and following the same, the plaintiff had obtained the patta in respect of the suit properties and also admitted that his father is a retired teacher. Therefore, from the above evidence of D.W.1, it is found that the first defendant had come to know about the execution of the sale deed by the plaintiff's mother in favour of the third defendant only through the third defendant and therefore to say that the third defendant has not purchased any property from the plaintiff's mother on 16.02.2004 vide Ex.B1 sale deed as such cannot be countenanced in any manner. When it is found that the third defendant is one of the parties to Ex.B1 sale deed and Ex.B1 sale deed has not been impugned in the manner known to law till this point of time and when it is found that the third defendant had admitted the execution of the settlement deed Ex.A2 in favour of Gomathi inclusive of the properties comprised in Ex.B1 and when it is seen that Ex.B1 sale deed has not been cancelled in the manner known to law till date and when the defendants have failed to establish the defence version that Ex.B1 sale deed is a sham and nominal document and in such view of the matter, when the third defendant, in particular is not entitled to adduce evidence contrary to the recitals found in Ex.B1 qua passing of the consideration in view of section 91 of the Indian Evidence Act and furthermore, in the cancellation deed Ex.B2, the third defendant had also included the properties comprised in Ex.B1, all put together would only go to disclose that as rightly contended by the plaintiff, the third defendant had indeed purchased the properties from the plaintiff's mother located at Kuyilam village by virtue of the sale deed dated 16.02.2004. Admittedly, when the properties comprised in Ex.B1 falls within the jurisdiction of Thaaniyadi Sub Registrar's office, even though the suit properties are located in Pallichandal village falling within the jurisdiction of Manalurpet Sub Registrar's office, as rightly contended by the plaintiff's counsel, when a portion of the properties conveyed is located within the jurisdiction of a particular registering authority, by virtue of the provisions contained in the Registration Act, it is found that the concerned registering authority would be competent to

register the deed in respect of the said property as well as the other properties lying elsewhere and the extent of property so included however small, it would confer the jurisdiction to the concerned registering authority to register the document. In such view of the matter, when the Registration Act permits the registration of the document by the registering authority within whose jurisdiction a portion of the properties is situated however small the extent of the property, in such view of the matter, it is found that when by way of the settlement deed Ex.A2, the third defendant had conveyed not only the suit properties, but also the property comprised in Ex.B1 sale deed, it is evident that Thaanipadi Sub Registrar's office would have the jurisdiction to register the settlement deed Ex.A2. In such view of the matter, merely because, Ex.A2 settlement deed had been registered at Thaanipadi Sub Registrar's office, no motive could be attributed to the plaintiff, his mother and Gomathi as if they had obtained the said settlement deed from the third defendant by practising fraud, mistake, misrepresentation, undue influence and coercion. As to the defence version that the settlement deed dated 16.02.2004 had been obtained from the third defendant by practising fraud, mistake, misrepresentation, undue influence and coercion, when the defendants have not placed any acceptable and reliable materials and merely because the parties are closely related to each other, merely because the executant namely the third defendant is old, no presumption of undue influence could be raised and particularly when it is seen that third defendant always had the intention to execute a Will in respect of the suit properties in favour of his daughter Gomathi and further also admitted that only to provide support to his daughter Gomathi, he had proceeded to Thaanipadi Sub Registrar's office and accordingly when had chosen to settle the suit properties along with properties acquired by him under Ex.B1 sale deed and when the element of fraud, mistake, misrepresentation, undue influence and coercion etc, said to have been committed by the plaintiff, his mother and Gomathi remains only on paper and not established by the defendants by adducing acceptable and reliable evidence, in such view of the matter, merely because, the settlement deed dated 16.02.2004 (Ex.A2) has been executed at Thaanipadi Sub Registrar's office, on that score alone, it cannot be considered that the said deed had been obtained by the plaintiff, his mother and Gomathi from the third defendant by committing fraud, mistake, misrepresentation, undue influence and coercion. When it is noted that the third defendant is a literate person and more so, a retired teacher, to say that he had executed the document without reading the contents of the same as such cannot be believed and accepted.

15. In the light of the abovesaid factors when the defendants have failed to establish that Ex.A2 settlement deed had been obtained by practising fraud, mistake, misrepresentation, undue influence and coercion etc., and when the third defendant had always intended to give the suit properties in favour of the plaintiff's wife Gomathi, resultantly it has to be held that Ex.A2 settlement deed had been indeed executed by the third defendant in favour of Gomathi, knowing the contents thereof and in such view of the matter, the contention putforth by the defendants that Ex.A2 settlement deed had been obtained by the plaintiff, his mother and Gomathi by practising deception on the third defendant cannot at all be accepted in any manner. If really, as alleged by the defendants, Ex.A2 settlement had been obtained from the third defendant by practising fraud, mistake, misrepresentation, undue influence and coercion etc., in the guise of execution of a Will from him, when according to the defendants, on coming to know the nature of the document executed by him on 16.02.2004, the third defendant had cancelled the same by way of the cancellation deed dated 18.02.2004, as rightly contended by the plaintiff's counsel, necessary recitals pointing to the fraud, mistake, misrepresentation, undue influence and coercion etc., committed by the plaintiff, his mother and Gomathi in the obtainment of the document from the third defendant would have been incorporated by the third defendant in the cancellation deed dated 18.02.2004. On the other hand, on a perusal of the cancellation deed dated 18.02.2004 marked as Ex.B2, it is found that nothing has been whispered by the third defendant in the said deed that the plaintiff, his mother and Gomathi had obtained the settlement deed from him on 16.02.2004 by practising fraud, mistake, misrepresentation, undue influence and coercion etc., On the other hand, on a reading of Ex.B2 cancellation deed, the same would go to disclose that the third defendant has admitted the execution of the settlement deed dated 16.02.2004 in favour of his daughter Gomathi, and all that he would state that in Ex.B2 cancellation deed is that inasmuch as Gomathi, his daughter had failed to perform the conditions set out in the settlement deed, he had chosen to cancel the same. However, on a perusal of the settlement deed dated 16.02.2004, no condition had been stipulated by the third defendant while settling the suit properties in favour of Gomathi and furthermore, the settlement deed only recites that the third defendant had settled the suit properties in favour of Gomathi out of love and affection and also recites that he entrusted the possession of the suit properties in favour of the settlee namely Gomathi and also not reserved any right of revocation of the settlement deed and in such view of the matter, When Ex.A2 settlement deed is found to be an irrevocable

deed and no reservation has been kept by the third defendant to revoke the same, in all, it is found that after the execution of Ex.A2 settlement deed, the third defendant is not entitled to cancel the same in any manner, particularly when the reasons set out by the third defendant in the cancellation deed Ex.B2 do not derive support from Ex.A2 settlement deed in any manner and on the other hand when Ex.B2 cancellation deed clearly recites that the settlement deed Ex.A2 had been voluntarily executed by the third defendant in favour of Gomathi and coupled with the fact, when as above pointed out, the third defendant had the intention to give the suit properties only to Gomathi and only on that premise, he has also further admitted that he had proceeded to Thaanipadi Sub Registrar's office, in such view of the matter, as rightly contented by the plaintiff's counsel, the third defendant is not legally competent to cancel the settlement deed executed by him in favour of Gomathi and therefore Ex.B2 cancellation deed would have no legal force and entity and the Courts below have failed to consider the abovesaid facts in the right perspective both on factual matrix as well as legally and proceed to dismiss the plaintiff's suit mainly on premise that the plaintiff and his wife Gomathi had deceived the third defendant by obtaining the settlement deed executed and registered at Thaanipadi Sub Registrar's office in the guise of the execution of a Will, however as above pointed out when the defence version that the settlement deed Ex.A2 had been obtained by practising fraud, mistake, misrepresentation, undue influence and coercion etc., has not been established by the defendants in any manner, particularly, the third defendant being the literate person and a retired teacher, in such view of the matter, the Courts below have totally erred in upholding the cancellation deed said to have been executed by the third defendant.

16. The Courts below had also commented that the possession of the suit properties had not been handed over to Gomathi following Ex.A2 settlement deed, however as rightly contented by the plaintiff's counsel, when there is no necessity for handing over the actual physical possession of the properties settled by virtue of the settlement deed and the actual physical transfer of the settled properties is not the sine qua non for constituting the valid settlement transaction and on the other hand, considering the relationship between the parties and the terms of the settlement deed involved in the matter, it is evident that the settlor had indeed transferred all the rights in respect of the suit properties settled in praesenti in favour of Gomathi and when Ex.A2 settlement deed had not been shown to be brought about by the exercise of any fraud, mistake, misrepresentation, undue influence and coercion etc., on the

part of the plaintiff and on the other hand, the mere factum of the settlor admitting the execution of the settlement deed could be gathered from the cancellation deed Ex.B2, all put together, it is found that the Courts below without properly appreciating the abovesaid factors in the right perspective, has miserably erred in non-suiting the plaintiff.

17. Considering the abovesaid factors in toto, when it has been established by the plaintiff that the third defendant had settled the suit properties in favour of Gomathi, vide Ex.A2 settlement deed out of his own will and volition and the defendants have failed to establish that Ex.A2 settlement deed had been obtained by practising fraud, mistake, misrepresentation, undue influence and coercion etc., and when the execution of Ex.A2 settlement deed had been admitted by the third defendant and the third defendant had the intention to give the suit properties only in favour of Gomathi, particularly, the defendants having failed to establish the element of fraud, mistake, misrepresentation, undue influence and coercion etc., in the obtainment of Ex.A2 settlement deed by placing acceptable and reliable evidence, particularly the third defendant being a retired teacher, in such view of the matter, merely because, the parties are closely related to each other and on that score alone, ipso facto, it cannot be held that Ex.A2 settlement deed had been brought out by the exercise of fraud, mistake, misrepresentation, undue influence and coercion etc., The principles of law pointing to the abovesaid position could be gathered from the decisions relied upon by the plaintiff's counsel reported in

i. AIR 1967 Supreme Court 878 [Subhas Chandra Das Mushib Vs. Ganga Prosad Das Mushib and Others]

ii. 1996(2) MLJ 358 [Chinnappa Alias Gopal Raja Vs. Ayyanar Raja and another]

iii. 2007 (3) MLJ 845 [Arukkani and others Vs Subramaniam]

iv. 2019(1) Law weekly 927 [Jeyalakshmi Vs. Selvaraju] and the decision of the Supreme Court rendered in Civil Appeal No.1007 of 2013 dated 14.12.2018 [Jamila Begum (D) Thr. Lrs. Vs. Shami Mohd (D) Thr. Lrs and another]

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand. Following the same, it is found that the defendants have failed to establish that Ex.A2 settlement deed had been obtained by committing fraud, mistake, misrepresentation, undue influence and coercion etc., On the other hand, it is found that Ex.A2 settlement deed had been voluntarily executed by the third defendant with the intention of settling the suit properties in favour of Gomathi, the

plaintiff's wife and particularly when the same is evident from the cancellation deed Ex.B3 itself, in such view of the matter, the defendants cannot lay any claim of title to the suit properties by virtue of the settlement deed dated 01.11.2004 marked as Ex.B3. Gomathi having the lawful title to the suit properties by virtue of Ex.A2 settlement deed and accordingly she is found to have lawfully settled the suit properties in favour of the plaintiff vide Ex.A3 settlement deed and following the same, it is found that the plaintiff had obtained the possession of the suit properties and enjoying the same by obtaining patta, paying Kists etc, which has also been admitted by the defendants during the course of their evidence.

18. The defendants' counsel would only contend that the Courts below had appreciated the materials placed on record both oral and documentary in the right perspective and therefore no substantial question of law is involved in the second appeal and therefore according to him, the questions of fact cannot be agitated by way of second appeal and in this connection, he placed reliance upon the decisions reported in

1. 1999(3) Supreme Court Cases 722 [Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and others
2. 2002 (1) Supreme Court Cases 134 [Veerayee Ammal Vs. Seeni Ammal]
3. 2006 (5) Supreme Court Cases 545[Hero vinoth (minor) Vs. Seshammal]
4. 2011 (1) M.P.L.J [Devi singh Vs. State of M.P]

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

19. In the light of the abovesaid discussions, when the Courts below had failed to consider the oral and documentary evidence adduced in the matter in the right perspective and on the other hand when it is seen that the approach of the Courts below to the issues involved in the matter had been assessed in the wrong perspective and consequently the reasonings and conclusions of the Courts below by way of the same are found to be perverse, irrational and illogical and thereby they have misdirected themselves in non-suiting the plaintiff. In this connection, a useful reference may be made to the decisions of the Apex Court rendered in Civil Appeal No.2837 of 2011 dated 04.10.2019 [Ravi Setia Vs. Madan Lal and others] and Civil Appeal No.8103 of 2011 dated 09.05.2019 [[Rengan Ambalam and Another Vs. Sheik Dawood and others] In such view of the

matter, as rightly contented by the plaintiff's counsel, the second appeal involves the substantial questions of law mooted by the plaintiff and in the light of the abovesaid discussions, it has to be held that the third defendant is not entitled to cancel the settlement deed Ex.A2 by virtue of the cancellation deed Ex.B2 particularly, when Ex.A2 settlement deed is irrevocable and no reservation had been made for the cancellation of the same, particularly when the defendants have failed to establish their case of fraud, mistake, misrepresentation, undue influence and coercion in the obtainment of Ex.A2 settlement deed. In such view of the matter, it has to be held that the third defendant would not be entitled to cancel the Ex.A2 settlement deed and thereafter settled the suit properties in favour of the first defendant vide Ex.B3 settlement deed and therefore by virtue of Ex.B3 settlement deed, the first defendant would not derive any valid title to the suit properties. In such view of the matter, as rightly contented by the plaintiff's counsel, the Courts below had erred in law and misdirected themselves in non-suiting the plaintiff by erroneously assessing the oral and documentary evidence adduced in the matter both factually and legally and accordingly when the reasonings and conclusions of the Courts below based on the same are found to be perverse, irrational and illogical, in such view of the matter, the judgment and decree of the Courts below are liable to be set aside. The substantial questions of law formulated in the second appeal are accordingly answered in favour of the plaintiff and against the defendants.

20. In the light of the abovesaid discussions, the judgment and decree dated 17.03.2010 passed in A.S.No.80 of 2009 on the file of the Principal District Court, Villupuram, confirming the judgment and decree dated 10.04.2006 passed in O.S.No.74 of 2005 on the file of the Principal District Munsif Court, Tirukovilur are set aside and resultantly the suit laid by the plaintiff in O.S.No.74 of 2005 is decreed in favour of the plaintiff as prayed for with costs. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

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Asst.Registrar (CS II)

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Sub Asst. Registrar

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To

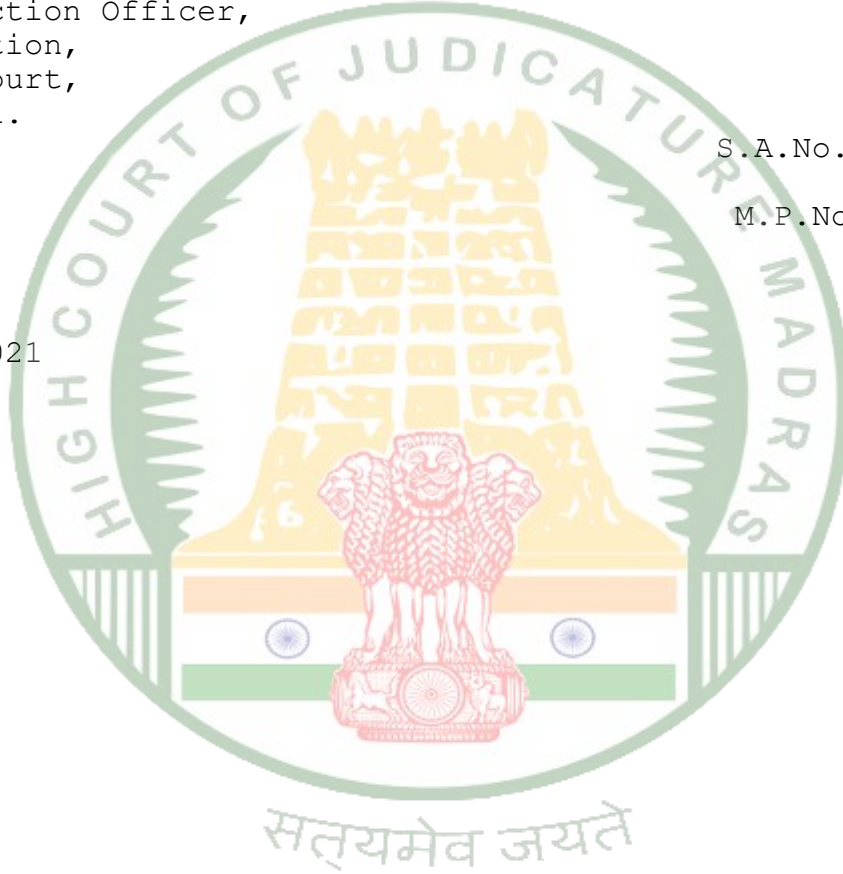
1. The Principal District Judge,
Principal District Court,
Villupuram.
2. The Principal District Munsif,
Principal District Munsif Court,
Tirukovilur.

Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

S.A.No.101 of 2011
and
M.P.No.1 of 2011

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