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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.03.2021

PRONOUNCED ON : 22.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1721 of 2004

and

CMP.No.13582 of 2004 & 21947 of 2019

1.Chellammal(died)

2.Malliga ... Appellants / LR's of the Plaintiff

[Second appellant is brought on record as Legal representatives of the deceased sole appellant vide order of Court dated 01.09.2006, made in CMP.No. 9326 of 2006]

.. Vs ..

1.S.Krishnan (died)

2.Yugaparameswari

3.S.Mohanraj (since Died)

4.S.K.Gangadharan

5.Bhavani

6.Kavitha

7.S.K.Kannan

8.Valarmathi

9.M.Sathish Kumar

10.Minor M.Varun Kumar

11.Minor M.Barath Kumar

(Minors 10 and 11 represented by elder brother and guardian M.Sathish Kumar)

12.M.Gayathiri

13.Minor M.Nivedha

14.Minor M.Shanthini

(Minors 13 & 14 represented by Mother and guardian Mrs.M.Gyathri)

15.M/s. Goal Closures.

Partnership Firm, represented by its partner,
M.Vichitra, S/o.Maruthanchettiar,
Functioning at No.190, Perur Road,
Selvapuram Post, Coimbatore - 641026.

... Respondents
/LR's of the 1st Defendant



[*RR2 to 14 brought on record as LR's of the deceased sole respondent viz., S.Krishnan vide Court Order dated 02.02.2021 made in CMP.Nos. 398/2014, 948/2011 & 21945/2019 in SA.No.1721/2004.

**R15 impleaded as party respondent vide Court order dated 02.02.2021 made in CMP.Nos.398/2014, 948/2011 & 21945/2019 in SA.No.1721 of 2004.]

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 23.01.2004 in A.S.No.9 of 2003, on the file of the learned Principal Subordinate Judge, Chinglepet, confirming the judgment and decree dated 18.12.2002, passed in O.S.No. 157 of 1994, on the file of the District Munsif Court, Tambaram.

For Appellants	: Mr.M.S.Subramanian
For R1, R3	: Died
For R2, R4 to R8	: Mr.Tranquebar Dorai Babu
For R9 to R14	: Mr.C.T.Mohan
For R15	: Mr.V.R.Appaswamee

JUDGMENT

(The case has been heard through video conference)

The unsuccessful plaintiff is the appellant herein.

2.For the sake of convenience, the parties are called as per the ranking in the suit.

3.The plaintiff viz., Challammal has filed a suit in O.S.No.157 of 1994, on the file of the District Munsif Court, Tambaram, seeking the relief of declaration of title and for permanent injunction. As per the pleadings, during the pendency of the suit, the defendants have tress passed into the suit property and hence, the prayer in the suit was amended and whereby, relief for the recovery of possession has also been



included.

4(a).The plaint proceeds on the basis that the suit property was originally belongs to one Rathanasabathy Mudhaliar and his mother Seethabai. After the death of Seethabai, the suit properties were purchased by one Narayanasamy Pillai from Rathanasabapathy Mudhaliar. Narayanasamy Pillai is the maternal uncle of the original plaintiff viz., Challammal and the plaintiff's mother is the sister of the Narayanasamy Pillai. Since, both the parents of the plaintiff died Narayanasamy Pillai said to have brought up the plaintiff.

4(b).As per the pleadings, the said Narayanasamy Pillai out of love and affection, had executed four settlement deeds viz., Exs.A2, A3, A4 & A5, dated 02.06.1971, 12.06.1971, 26.06.1972 and 03.10.1972, respectively, whereby suit properties 1 to 4 respectively were executed in favour of the plaintiff and placed her in the possession and she is in possession and enjoyment of the suit property.

5.It is the further pleading that there were two subsisting mortgagees at the time of executing the settlement deed and as per the understanding between the plaintiff and the settlee, the plaintiff had to discharge the said mortgages through Narayanasamy Pillai and letter was given by him on 19.02.1976. The said Narayanasamy Pillai, who had no authority to cancel the settlement deeds has executed a registered Will dated 17.07.1974 in favour of his wife Navaneetham and his grandsons viz., Narayanasamy, Elumalai, Krishnan and Jayaraman. The said settlor viz., Narayanasamy Pillai died during the year 1978. The legatees under the above mentioned invalid Will have sold the suit properties in favour of the defendants and they are attempting to trespass into the suit properties and hence laid the suit.

6(a).The relationship between the parties as could be seen from the pleadings and evidence are: one Narayanasamy Pillai has married to one Navaneetham, had two sons by name Krishnan and Radhakrishnan and the plaintiff viz., Chellammal, is his sister's daughter.

6(b).As per the plaint, in the settlement deed executed in favour of the plaintiff by Narayanasamy Pillai, his two sons



viz., Krishnan and Radhakrishnan have attested the document and further after cancellation of the said settlement deeds under Exs.B7, B9 to B11, wherein the very same attesters viz., the sons of the settlor have attested the documents. Thereafter, the said Narayanasamy Pillai (settlor) had executed a Will in favour of his grand-son and grand-daughter born to his sons. After the death of the said Narayanasamy Pillai (testator) beneficiary under admitted Will dated 17.07.1974 have sold the property to the defendants.

6(c).In other words, the case of the plaintiff is that she being the sister's daughter of the said Narayanasamy Pillai, since her both parents have died, she was brought up by the settlor viz., Narayanasami Pilli, he being the maternal uncle, has settled the property deviating line of succession from his son and grand son out of love and affection only, so is the plaint.

7.The defendants, who are purchasers from the grandson and grand daughter of the Narayanasamy Pillai have resisted the claim, inter alia contended that the settlement deeds Exs.A2 to A5 were duly cancelled under Exs.B7, B9, B10 & B11. Thereafter, the grand-father Narayanasamy Pillai had executed a Will infavour of his grand son and grand daughter and on his death (19.02.1978), they became absolute owner of the property, have sold the property to the purchaser-defendants and hence, they were in possession from the date of purchase and subsequently, the subsequent purchaser was also in possession of the property. So is the written statement.

8.Before the Trial Court, necessary issues have been framed and the trial Court has held that the plaintiff was never in possession of the property and the cancellation of the settlement deeds under Exs.B7, B9 to B11 in favour of the plaintiff is proved and thus non-suited the plaintiff.

9.Aggrieved against the said judgment and decree, the plaintiff had preferred an appeal in A.S.No.9 of 2003 before the learned Principle Subordinate Judge, Chengalpattu, wherein, the learned Sub Judge has held that in view of the specific pleadings in the plaint that the settlement deeds under Exs.A2 to A5 are coupled and associated with the conditional understanding that the settlee has to clear the debts due under Exs.A6 & A7/mortgage



deeds and having failed so, for non compliance of conditions coupled in the settlement deeds, the settlor has got every right to revoke the settlement deeds. Accordingly, the Lower Appellate Court held that revocation of settlement deeds under Exs.B7, B9 to B11 are valid in law and by virtue of specific pleading of the settlee herself and consequently held that the defendants are the owners of the property and dismissed the appeal. The Lower Appellate Court has also rendered a specific finding that the plaintiff has not proved her possession, on her failure to produce earlier revenue records to substantiate the plea of alleged possession.

10.The above Second Appeal is admitted on the following substantial questions of law:

"1.When there is no clause reserving the right of revocation, can settlement deed/gift deed once accepted and acted upon, be validly cancelled and revoked?

2.When the documents do not recite any monetary consideration for the settlement deeds Exs.A2 to A5 merely because there was a subsisting mortgage. Can it be held to be for consideration and on that score the documents held to be not valid?"

11.Mr.M.S.Subramanian, learned counsel for the appellant would contend that the suit was originally instituted for declaration of title and for permanent injunction. During the pendency of the suit, as per the plaint, the defendants have trespassed into the suit property and hence, amendment of prayer for inclusion of recovery of possession was also added. Further, he would contend that Exs.A2 to A5 are the settlement deeds executed in favour of the plaintiff by her maternal uncle viz., settlor and it was attested by his two sons viz., Krishnan and Radhakrishnan and she was paying the kist, which is marked as Ex.A1.

12.The case of the defendants as could be seen from the written statement is that there was a cancellation of the settlement deed, thereafter, the settlor had executed registered WILL in favour of his wife for life estate and vest reminders to his grand children. On death of testator, the beneficiary under the WILL had alienated to the third parties viz., the defendants.



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13. According to the learned counsel for the appellant, unilateral cancellation of settlement deed is invalid and impermissible in law. Since, the settlement is acted upon, title vest with settlee and her possession has been proved in the manner known to law and she has paid the kist under Ex.A1 and besides, he was also challenged Exs.B7, B9 to B11/cancellation of the settlement deeds under Exs.A2 to A5 dated 10.08.1973, by the settlor. The alleged WILL is not having any bearing on the settlement deeds, since the mortgage loan was discharged and the discharged mortgage deeds have been produced and marked before the Trial Court by the plaintiff only, who is having its in a proper custody. Furthermore, the absence of any recital in Ex.A6 as to who had discharged of mortgage deeds, the plaintiff claims to have discharged the mortgage subsisting on the property and hence, even assuming, there was a condition, it was so fulfilled and thus, further contended that even on that score, cancellation of settlement deeds are bad-in-law.

14. The learned counsel for the appellant relied upon following judgments reported in :

- (i) (2009) 5 CTC 558 - (S.Ganesan Vs.Bharathirajan)
- (ii) (2015) 7 MLJ 10 - (Nambikkal Mary Vs. The Sub-Registrar - II, Sub-registrar Office, Pattukottai, Thanjavur District and another)
- (iii) (2019) 2 MWN Civil 600 - (N.Saraswathi (Deceased) and 2 others Vs. K.Padmavathi and 11 others)

15. The sum and substance of the contention of the learned counsel for the appellant are that the settlement deed under Ex.A2 to A5 are absolute in nature, title under those deeds are subsisting with the settlee and on mere execution of cancellation of settlement deeds under Exs.B7, B9 to B11, the title will not divest from the settlee as the same cannot be divested title of settlee since in the absence of any right is reserved for revocation, unilateral cancellation of settlement, which is impermissible in law. Besides, the possession is with the plaintiff relied upon Ex.A1/Kist receipt wherein, the Patta No.102 is clearly mentioned with regard to the suit property.

16. Per contra, Mr. Tranquebar Dorai Vasu, learned counsel for the respondents 2, 4 to 8, would contend that as per the averment in the plaint, the plaintiff admitted that there is a pre-condition viz., to discharge the existing mortgage and the



said condition has to be considered as "consideration for the settlement and its non compliance of the consideration" the settlor has power to revoke the settlement and draw my attention to the recitals in the cancellation of settlement deeds Exs.B9 to B11 to the effect that failure on the part of the settlee to maintain the settlee and his wife and non payment of debts over the suit property and non discharging of mortgage existing over the property and hence the settlor having not satisfied with the factum of conditions that are not being complied with by the settlee, the settlor has revoked the settlement deed and the same is permissible in law.

17.Furthermore, he also draw my attention to the recitals in the alleged letter sought to be marked at the stage of the second appeal filed in CMP.No.13582/2004 under Order 41 Rule 27 of CPC and further he has also stated that the counter was not filed for inception of additional documents. He would contend that as per the recitals in the said letter, it is a fraudulent document as there is no reference to the subsequent cancellation of the settlement deeds under Exs.B7, B9 to B11 and even the admitted averment of registered Will dated 17.07.1974 was also not reflected therein and signature, according to him, is forged one.

18.Mr.C.T.Mohan learned counsel for the respondents 9 to 14 would contend on similar lines of Mr.Tranquebar Dorai Vasu. Mr.Appasamee, learned counsel for R15/subsequent purchaser from purchaser under the legatee under the Will would contend that by virtue of the said Will dated 17.07.1974, the widow and grandsons of the testator, after the death of the testator (namely Narayanaswamy Pillai), have sold the property for valuable consideration and he is a bonafide purchaser for valuable consideration having good and marketable title over the property and the plaintiff has not demonstrated that she was put in possession pursuant to the alleged settlement and made submission in support of the judgment of the Courts below.

19.The learned counsel for the appellant would draw my attention to para 10 of the judgment reported in (2009) 5 CTC 558 – (S.Ganesan Vs.Bharathirajan) to the preposition that delivery of possession and non mutation of names in revenue records does not effect the title of the settlee.



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20. After hearing the respective learned counsels and perusing the oral evidence of PW1 and DW1 and also the documentary evidence viz., Exs.A1 to A9 and Exs. B1 to B11, it is seen that the suit-schedule properties as mentioned in the plaint are as follows:

1. Nanja land in S.No.154 measuring 0.50 cents.
 2. Nanja land in S.No.154 measuring 0.24 cents with motor pump set and terraced shed.
 3. Nanja land in S.No.154 measuring 0.30 cents.
 4. Nanja land in S.No.154 measuring 0.07 cents.
- The boundaries of the above suit items are stated in the plaint.

21. The plaintiff viz., Chellammal claims absolute title to the suit properties by virtue of settlement deeds executed under Exs.A2 to A5, dated 02.06.1971, 12.06.1971, 26.06.1972 and 03.10.1972, respectively, by Narayanasamy Pillai in her favour. The defendants, who have purchased the suit properties from the legatees of the Will executed by the said Narayanasamy Pillai subsequent to the execution of the settlement deeds Exs.A2 to A5, attempted to trespass into the suit properties. According to the plaintiff, the alleged Will dated 17.07.1974 is not valid.

22. The case of the defendants in nutshell is that the said Narayanasamy Pillai had cancelled the settlement deeds executed in favour of the plaintiff through the registered cancellation of settlement deeds dated 10.08.1973, which are marked as Exs.B9 to B11 and that the patta stands in their names as is evidence by copies of patta Ex.B4 and Ex.B5.

23. The core point that has to be decided in this case is that whether Exs.A2 to A5/settlement deeds can be unilaterally cancelled under Ex.B9, B11 and B7. In other words, whether there can be a unilateral revocation of the settlement deed. The above legal possession is no longer res-integra.

24. The decision reported in 2010 (4) SCC 161 - (P.K.Mohan Rao Vs. B.N.Ananthachary), the Hon'ble Supreme Court has held that the unilateral revocation of settlement deed is impermissible in law.

25. The decision reported in (2009) 5 CTC 558 - (S.Ganesan Vs.Bharathirajan) at paragraph No.10, the learned Judge of this Court has held as follows:



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"non delivery of possession and non exercising of any rights over the ownership of the property the fact that the donee has failed to make mutation in the records would not make the gift deed invalid. non effecting the mutation of name in the revenue records, will not have any bearing on the effect of the settlement deed".

26.In the decision reported in (2015) 7 MLJ 10 - (Nambikkal Mary Vs. The Sub-Registrar - II, Sub-registrar Office, Pattukottai, Thanjavur District and another), this Court has held that sub-registrar has no power to register the cancellation of settlement deed so also in the decision reported in 2019 (2) MWN Civil (600).

27.The learned counsel for the appellant/plaintiff would contend that Exs.A2 to A5/settlement deeds are title deeds in respect of the plaintiff, the title under those deeds are subsisting and as title is with the settlee, it will not be divested by Exs.B9 to B11 and title continues to be with the settlee, de-horse, Exs.B9 to B11[cancellation of settlement deeds], since unilateral cancellation of settlement deed is impermissible in law.

28.Per contra, Mr.Tranquebar Dorai Vasu, learned counsel appearing for the respondents 2, 4 to 8 would contend that Exs.A2 to A5 are not settlement deeds simpliciter it is a conditional settlement and non performance of the pre-condition contemplated for the execution of the settlement deed had empowered the settlor to cancel the settlement deed(revocation of settlement deed) as done in the instant case. In this connection, "Pleading in the plaint", assume significance, as extra infra:

29(a).It is a specific admission of the plaintiff in the plaint that "there were two subsisting mortgages at the time when the aforesaid settlement deeds were executed by Narayanasamy Pillai and as per the understanding between the Plaintiff and the Settlor the plaintiff discharged the said mortgages through the said Narayanasamy Pillai and the said Narayanasami Pilli also given a letter to that effect on 19.02.1976".

29(b).The other relevant portion in the plaint pleadings are: "appears to have executed a registered will dated 17.07.1974



in favour of his wife Navaneetham and his grand sons Narayanasamy, Elumalai, Krishnan and Jayaraman, who are the sons of Radhakrishnan. The said Radhakrishnan himself attested the said settlement deeds executed by his father, Narayanasami Pillai in favour of the Plaintiff and also the letter dated 19.02.1976. The said Narayanasamy Pillai died in the year 1978. The legatees under the aforesaid invalid Will conveyed the suit properties in favour of the defendant above named".

30(a).I had an occasion to consider the very same issue in S.A.No.1303 of 1996, dated 21.08.2019, following the decision rendered by the Hon'ble Supreme Court in 2017 (1) CTC 414 (SC) - [Satya Pal Anand Vs. State of Madhya Pradesh] and on the facts and circumstances of that case, I have held that unilateral revocation of settlement deed is impermissible in law and in respect of senior citizen, they can only invoke Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

30(b).on the facts and circumstances of the instance case and in view of the specific stand taken by the defendants that the plaintiff had admitted about the pre-condition for executing the settlement deed, the scope of enquiry is narrow down, as to the nature and the character of Exs.A2 to A5/settlement deeds viz., whether it is an exfacie settlement deed simpliciter or conditional settlement deed.

30(c).Before proceeding further, the law of pleadings reads as under:

"the whole meaning of the system is to narrow the parties to definite issues, and thereby to diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing. To attain this end, the plaintiff should state in his plaint all the facts which constitute his cause of action. No amount of proof can substitute pleadings which are the foundation of claim of a litigating party. The defendant should also state in his written statement the material facts on which he relies for his defence. When the result of the pleading on both sides is that a material fact, is affirmed on the one side and denied on the other, the question thus raised between the parties is called an issue of fact. When one party answers his opponent's



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pleadings by stating an objection in point of law, the legal question thus raised between the parties is called an issue of law.

A plaintiff's pleadings is his plaint (Order 7 CPC). A defendant's pleadings is his written statement (Order 8 CPC).

Pleadings include statement of parties or counsel recorded before the framing of issues, for clarification of the points in dispute and also averment but not a document referred to in the plaint. However, the averments made in the pleadings having the effect of admission, cannot be allowed to be abandoned without the same being explained away by cogent and proper evidence.

The pleadings in a suit cannot be compartmentalised, dissected, segregated and then read. The correct method of reading the pleadings is that they must be read as a whole, to ascertain their true import. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole.

The main object, or one of the main objects of this rule is that the one party may know what are the facts on which the other party relies in order that he may be prepared to meet the case."

31. The above narration will show that when the pleadings made by the plaintiff amounts to admission come under Section 18 of the Indian Evidence Act, 1872, relevant paragraphs are read as under:

The admission of one of the parties having the same interest with that of another party who are fighting jointly for the same interest squarely binds the other. This proposition of law will be apparent from the provisions of Section 18 of the Evidence Act, 1872, which is reproduced below.

"Statements made by a party to the proceedings, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorised by him to make them, are admissions.

Statements made by-

(1) persons who have any proprietary, or pecuniary



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interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or

(2) persons, from whom the parties to the suit have derived their interest in the subject-matter of the suit,

are admissions, if they are made during the continuance of the interest of the persons making the statements.

32.Thus, this Court finds that when the averment made in the pleadings having the effect of admission, it may not be allowed to be abandoned by the plaintiff when the same being explained away by cogent and proper evidence.

33.After perusing the pleadings in the plaint, as extracted supra, this Court finds that the said pleadings amounts to admission is to the nature and character of the settlement deed under Exs.A2 to A5, which is discussed infra.

34.As stated supra, according to the plaintiff Exs.A2 to A5 are settlement deeds are absolute in nature. The plaintiff has also filed Exs.A6 & A7/equitable mortgage deeds executed by the settlor viz., Narayanasamy Pillai in favour of the one Palayam and another one is in favour of Lakshmipathi Reddiar. On a perusal of Exs.A6 & A7, there is an endorsement of discharge and the said endorsement of discharge is dated 05.04.1974. But there is nothing on record to show who has paid the amount to discharge the mortgage, assumes significance.

35.At this juncture, it remains to be stated that happening of events in the life of said Narayanasamy Pilli, in chronological form that will enlighten the factual situation in the past.

(a).As per Exs.A6 & A7 of the year 1969 and 1971, the original owner Narayanasamy Pillai (settlor), he had executed mortgage deed in favour of said Palayam and Lakshmipathi Reddiar.

(b).The said Narayanasamy Pillai appears to have executed a settlement deed in favour of Chellammal, the plaintiff (settlee) under Ex.A2 & Ex.A3 (in the year 1971) and Ex.A4 & Ex.A5 (in the year 1972).

(c).Under Exs.B7, B9, B10 & B11, the original settlement deeds under Exs.A2 to A5 were cancelled on 10.08.1973. At this



junction, it is remains to be stated that though there is no recital in Exs.A2 to A5 regarding a condition viz., to look after and maintain the donor and settlor viz., Narayanasamy Pillai and his wife and to discharge the mortgage deed under Exs.A6 & A7., but same is specifically mentioned in Exs.B7, B9 to B11.

(d).As per the endorsement in Exs.A6 & A7/mortgage deeds, which were discharged in the year April, 1974, there is no recital as to who had paid the money (at this juncture, the plaintiff claims that she paid the money on behalf of the said Narayanasamy Pillai).

(e).The said Narayanasamy Pillai had executed a registered WILL, on 17.07.1974, in favour of his wife Navaneetham and his grandsons viz., Narayanasamy, Elumalai, Krishnan and Jayaraman and the said Narayanasamy Pillai died during the year 1978.

(f).Original defendant viz., S.Krishnan had purchased the suit property from legatee of the will under Exs.B1, B2 & B3, which are the sale deeds executed by the legatee of the WILL in favour of the original defendant. The legatees under the WILL have sold the property in favour of the original defendants in the year 1989 and subsequently changed the hands.

36.On the other hand there is a specific reason by way of recital as a reason for revocation of the settlement deed, he has found in Exs.B9 to B11. In short, under Exs.B9 to B11, whereby, the earlier settlement deeds have been cancelled by the doner, there is a specific recital cited as a reason namely on the failure of the settlee to maintain settlor and his aged wife as promised by the settlee and as the settlee failed to discharge mortgage deed, he was forced to settle the mortgage debt and thereafter for the non compliance of the above two conditions he had cancelled the settlement deed.

37.Both the Courts below have held that though there is no right of revocation under the settlement deeds in favour of the plaintiff, however, in view of the reason assigned therein in the cancellation of settlement deeds under Exs.B7, B9 to B11, the Courts below have accepted the case of the defendants.

38.Now coming to the nature and character of Exs.A2 to A5/settlement deeds, the same has to be culled out from the recital stated therein. The caption or title of the document is not criteria for determining nature and character of the said



document. No doubt it is true that the settlement deeds are in favour of the plaintiff are captioned as settlement deed and there is no recital in the said document regarding any condition to casting any duty on the settlee. However, in view of the specific averment made in the plaint and on satisfying conditions of Section 18 of the Indian Evidence Act, the Lower Appellate Court has rightly come to the conclusion that such a pleadings amounts to admission and the plaintiff has to dis-spell the admission made in plaint by cogent and clear evidence.

39. At this juncture, the sequence of events happening in the life of the Narayanasamy Pillai, as narrated above, also supported the case of the defendants as pleaded by the defendants in their written statement assumes significance. It remains to be stated that when the plaint itself unilaterally and unequivocable terms makes a statement of the fact that there was understanding between the settlor and settlee for the execution of settlement deed in favour of plaintiff under Exs.A2 to A5, then the consideration for the execution of the settlement deeds can no longer be, considered as for love and affection and it is for consideration as spoken to by the plaintiff on his own accord. When the plaintiff has made a statement without any hesitation or instigation from the defendants as in the instant case as found in the pleadings, the same amounts to admission. In fact, the sequence of events happening in the life of the Narayanasamy Pillai would also suggest that Exs.A6 & A7 was discharged by the settlor viz., Narayanasamy Pillai himself and thereafter, he has cancelled settlement deeds in favour of the plaintiff by executing cancellation of settlement deeds under Exs.B9 to B11.

40. The chronological events as summarized supra will enlightened above said facts. Hence, in view of the discussion in the preceding paragraphs, this Court has no hesitation to come to the conclusion that the settlement deeds under Exs.A2 to A5 executed in favour of the plaintiff are not the absolute settlement deeds and they are the settlement deeds with a condition as admitted by the plaintiff in her pleadings and in the absence of any positive evidence to show that the conditions have been complied with by the settlee as could be seen from Exs.A6 & A7/discharged mortgage deed, the settlor has every right to revoke the settlement for non-compliance of the conditions under settlement deeds Exs. A2 to A5.



41. In the instant case, the settlement executed in favour of the plaintiff have been cancelled under Exs.B9 to B11 and hence, in view of the facts and circumstances as discussed supra, the finding that Exs.A2 to A5 are not settlement deeds absolute. However, on a perusal of the documents coupled with the admission of the plaintiff, this Court has held that Exs.A2 to A5 are conditional settlement deeds and hence, being a conditional settlement, the same can be revoked for non compliance of the condition.

42. In the decision reported in (2019) 11 SCC 391 - S.Sarojini Amma Vs. Velayudhan Pillai Sreekumar, the Hon'ble Supreme Court has held as follows:

"admittedly the deed of transfer was executed for consideration and was in any case conditional subject to the condition that the donee would look after the petitioner and her husband and subject to the condition that the gift would take effect after the death of the donor. We are thus constrained to hold that there was no completed gift of the property in question by the appellant to the respondent and the appellant was within her right in cancelling the deed."

43. Accordingly, I have no hesitation to come to the conclusion that Exs.A2 to A5/settlement deeds are conditional settlement deeds executed in favour of the plaintiff and the plaintiff has failed to maintain the settlor and his wife and has also failed to discharge the mortgage debt and to clear the subsisting mortgage on the suit property. The plaintiff is trying to take advantage of non mentioning of name in Exs.A6 & A7, as to who has paid the mortgage amount and as per the endorsement in Exs.A6 & A7(the discharged mortgage deeds), the amount was paid in the year 1974 and Exs.B9 to B11, are of the year 1973, wherein, settlor had cancelled the settlement deeds in favour of the plaintiff for non compliance of the conditions of the settlement. Since, Exs.A2 to A5 are held to be conditional settlement deeds, the donor(settlor) has every right to revoke or cancel settlement and hence, I hold that Ex.B9 to B11 are valid in law, in view of the discussion in the preceding paragraphs and consequently, Exs.A2 to A5/settlement deeds are stands revoke and the plaintiff has not title or right over the suit property.



44. Consequently, this Court holds that Exs.A2 to A5/settlement deeds are duly revoked under Exs.B7, B9 to B11 and in view of the facts and circumstances of the case and findings rendered regarding the nature and character of the sale deed, the substantial questions of law No.1, which is general in nature, does not arise on the facts and circumstances of the case.

45. In view of the findings rendered in the preceding paragraphs so also the substantial questions of law No.2 does not arise on the factual situation as discussed and analyzed in the preceding paragraphs. Accordingly, I find no merits in the Second Appeal.

46. On the point of possession, the learned counsel for the appellant would draw my attention to Ex.A1/Kist receipts and submit that the plaintiff had paid the Kist and in the Kist, the Patta number has been mentioned clearly as Patta No.102 and hence, she is in possession of the property. The plaintiff has come forward with specific case that she is in possession of the property pursuant to the settlement deeds under Exs.A2 to A5.

47. Further, the learned counsel for the appellant would submit that the suit properties are cultivable lands and the plaintiff had been cultivating the crops in the suit property and in the Adangal, name of the persons so cultivated would have been reflected. For the reasons best known, the plaintiff has not chosen to file any Adangal or chitta namely revenue records to show her possession under cultivation. Even according to the pleadings, the plaintiff is said to be in possession and cultivating the land by raising paddy. However, if a cultivation was carried on by the plaintiff, she could have very well filed Adangal receipt. In the absence of any Adangal receipt, mere payment of kist, shall not be construed as the plaintiff is in possession of the suit property and hence Ex.A1/Kist receipt does not advanced the case of the plaintiff. While observing so, both the Courts below have rightly come to the conclusion that in the absence of any positive revenue records, evidencing to show her alleged possession, plea of plaintiff possession cannot be upheld, such finding by the both the Courts below does not suffer from any illegality or irregularity warranting interference. Further more, though the settlement deeds in favour of the plaintiff is of the years 1971 & 1972 under Ex.A1 series Adangal for the years 1983, 1986, 1987 and 1991 were alone filed also assumes significance.



48. Further the suit is filed for recovery of possession and the plea is that during the pendency of the suit the defendants have trespassed into suit property. Thereafter, an Interlocutory Application appears to have been filed before the Lower Appellate Court for receipt of an Advocate Commissioners Report in this case. Since, it is Advocate Commissioners Report in other suit Lower Appellate Court has rightly rejected the said reception of the documents, the same cannot be termed as erroneous in law.

49.CMP.No.13582 of 2004:

(a).In the present second appeal, the plaintiff have filed a petition in CMP.No.13582 of 2004 under Order 41 Rule 27 of CPC for receipt of additional document, this Court has perused the document and the document is titled as letter. On a perusal of the document, this Court finds that it is unregistered document, dated 10.02.1976 for the reasons best known, the plaintiff has not chosen to produce the document before the Trial Court during the trial in the year 1994.

(b).Be that as it may, though no reasons have been assigned for non production of the documents before the Trial Court or the Appellate Court, the learned Counsel for the appellant would contend that the plaintiff has discharged the mortgaged deeds.

(c).Per contra, Mr.Tranquebar Dorai Vasu, learned counsel for the respondent would draw my attention by rightly stating that on the date of the execution of the alleged letter, the settlement deeds have been cancelled as early as in the year 1973 and the said letter is of the year 1976, there is no recital with regard to the cancellation of the settlement deeds and hence, genuineness of the documents is doubtful. At the out set, on a perusal of the documents, this Court finds that the stamp paper was purchased in the name of Krishna Pilli, who is the husband of Chellammal and on a perusal of the signature found therein, viz., Narayanasamy Pillai, this Court had developed curiosity to compare the signature of the Narayanasamy Pillai with the admitted document, viz., the settlement deeds executed in favour of the plaintiff under Exs.A2 to A5 and subsequent cancellation of the settlement deeds executed under Exs.B7, B9 to B11. At the out set, this Court finds that the signature found on the disputed document does not tally with the admitted signature of Narayanasami Pillai under the Exs.A2 to A5. Since I am not inclined to receive the said document, I am imposing self



restriction from commenting further on the signature of the said person.

(d).The recital in the document, on literal translation are to the effect that "I paid and discharge the mortgage for a sum of Rs.600 + 300 = 900 in the presence of these witnesses and handed over the discharged mortgage deeds". In other words as per the recital in the said documents donor viz., Narayanasamy Pillai had discharged the mortgage deed, which is diametrically opposite version to the case of the plaintiff also assumes significance. Hence, this Court comes to the conclusion that all is not well with the documents now sought to be adduced as an additional document at the appellate stage. Yet another issue is that for the reasons best known, the document which has captioned as a letter, the sons of the settlor are also said to have been attested as witnesses. In the absence of any valid reason for non production of the documents before the Trial Court and the document being found to have such a misgiving and suffering from the above Vagaries of the factual situation, this Court is not inclined to admit the document except to say all is not well and hence, the petition in CMP.No.13582 of 2004 stands dismissed.

51.The two substantial questions of law framed in the year 1994 have been duly answered and covered by the decision of the Hon'ble Supreme Court as stated supra. However, on the facts and circumstances of the case, in view of the specific finding in the preceding paragraphs that Exs.A2 to A5 are only an conditional settlement deeds and consequently it is held that the same can be revoked and settlor has every right to revoke the settlement deed in exercising such power under law, as such he has cancelled so under Exs.B7 B9 to B11 and hence, both the substantial questions of law does not arise on the factual circumstances.

52.In the result, the Second Appeal is devoid of merits and accordingly stands dismissed. No costs. Consequently connected miscellaneous petitions viz.,CMP.No.13582 of 2004 stands dismissed and CMP.No.21947 of 2019 stands closed.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar



WEB COPY

1.The Principal Subordinate Judge, Chinglepet.

2.The District Munsif Court, Tambaram.

Copy To:

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.C.T.Mohan, Advocate, S.R.No.18658

+1cc to Mr.Tranquebar Dorai Babu, Advocate, S.R.No.18257

+2cc to Mr.M.S.Subramanian, Advocate, S.R.No.18252

+2cc to Mr.V.R.Appaswamee, Advocate, S.R.No.18256

S.A.No.1721 of 2004

PA(CO)
SB(30/09/2021)