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A.No.2469 of 2022

A.No.2469 of 2022
in
C.S.No.207 of 2021

<i>Reserved on</i>	<i>25.08.2022</i>
<i>Pronounced on</i>	<i>01.11.2022</i>

KRISHNAN RAMASAMY, J.

This present application is filed by the applicant, praying to reject the plaint under Order XIV Rule 8 of Madras High Court Original Side Rules read with Order VII Rule 11(a) and 11(d) of Civil Procedure Code.

2. The applicant herein is the 4th defendant in the suit in C.S.No.207 of 2021. The said suit has been filed by the 1st respondent/plaintiff, namely, Ms. P.S.Usha, daughter of one Thiru Ambigainathan, for partition of the suit schedule properties into 4 equal shares and to allot 1/4th share to the 1st respondent/plaintiff and for permanent injunction restraining all the respondents/defendant-brothers and brothers' son from dispossessing her from the suit schedule property. Further the 1st respondent/plaintiff, also prays to declare the settlement deed dated 27/02/2020 executed by his brother/1st defendant in favour of her brother's son i.e. Applicant/4th defendant herein as null and void.

3. According to the applicant, the suit schedule properties were



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originally purchased by Mrs. Dhanammal i.e. foster grandmother of his father Late Mr.P.S.Surendra, 1st defendant in the suit, vide two registered sale deeds dated 19/10/1941 and 21/10/1943 registered as document no. 2122 of 1941 and 105 of 1943 in the office of the Sub-Registrar, T-Nagar. During her life time, the said Dhanammal had executed a settlement deed dated 9/12/1957 registered as doc No. 1323 of 1957 creating a life interest in favour of the applicant's grandfather, Late Mr.Ambigaithan as 1st beneficiary, who is none other than the foster son of the said Dhanammal and Late. P. Subramanya Udayar and conveyed the entire property in favour of his father, Mr. P.S.Surendra, the grandson of the said Dhanammal, as the 2nd and ultimate beneficiary which shall take effect after the lifetime of his grandfather Mr. Ambigainathan. Subsequent to the death of the applicant's grandfather on 7/11/1996, his father became the absolute owner of the suit schedule properties and later, he had mutated the revenue records in his name.

4. According to the applicant/4th defendant, the 1st respondent/plaintiff and other respondents were well aware of the existence of the Settlement deed in favour of his grandfather and his father. During the lifetime of his grandfather, the respondents herein had never raised any dispute regarding the validity of the settlement deed.



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While so, it is stated that the applicant's grandmother Ms.P.S.Sushila, wife of Ambigainathan (1st beneficiary) who is the mother of his father and other 3 respondents herein, vide letter dated 22.11.2001 had given their free consent to sell the suit schedule property while acknowledging his father as the absolute owner of the said suit properties. The said letter, dated 22.11.2001, is extracted herein below:

“We have no objection for Mr. P.S.Surendra, son of the first of us and brother of the rest of us to sell the vacant land in extent 3.2 grounds, appurtenant to the building on the Eastern side, situate at Old No.41, New No.94, Bazullah Road, T.Nagar, Chennai- 600 017 to M/s. Malles Constructions, represented by Mrs. U.Nagamaleshwari, Proprietrix, having its office at No.1, Periyar Road, T.Nagar, Chennai-600 017, since the said property belongs to Mr. P.S.Surendra absolutely.

5. According to the applicant, the 1st respondent/plaintiff herein has filed the present suit suppressing the above letter duly signed by all the respondents herein. Further the letter finds place nowhere in the plaint or in the amended plaint filed by the 1st respondent/plaintiff subsequent to the death of his father, 1st defendant. Thus, it is evident that the plaintiff herein did not approach this Court with clean hands and attempting to mislead the Court by suppressing the material facts.



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6. It is further stated by the applicant that during the lifetime of his father, he had executed various deeds which were well within the knowledge of all the respondents herein and no dispute arose in respect of execution of any of the deeds executed by his father. One of such settlement deeds executed by his father is dated 27.02.2020 registered as doc No. 690 of 2020, SRO, T.Nagar settling the suit schedule property in his favour and it is well-known to the 1st respondent/plaintiff. Since the 1st respondent/plaintiff had not initially included the applicant/4th defendant as a party in the original suit, the applicant impleaded himself in the original suit as necessary party/defendant No.4 by virtue of the order of this Court passed in A.No.4548 of 2021. The 1st respondent/plaintiff has been residing in the suit schedule property only in the capacity of 'Permissive Occupant' under the provisions of the Indian Easement Act, 1882 as let out by his father. The applicant/4th defendant sent a letter dated 12.10.2021 to the 1st respondent/plaintiff as a settlee and the absolute owner of the suit schedule properties, requesting the 1st respondent/plaintiff to vacate and hand over item No.1 of schedule B property.

7. According to the applicant, Section 10 of the Transfer of

<https://www.mhc.tn.gov.in/judis> Property Act, 1882 deals with a condition restraining alienation. It is not



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the case that Ambigainathan is the sole beneficiary of the settlement deed dated 09.12.1957 so as to take shelter under Section 10 of the Act on the ground that the right of alienation is restricted. The 1st respondent/plaintiff has admitted the execution of the settlement deed dated 09.12.1957 by the original title holder of the suit property which clearly described her grandson P.S.Surendra as the ultimate beneficiary, settling all the rights of the suit properties in his favour.. The 1st beneficiary Ambigainathan was given the life interest and he had accepted the settlement deed dated 09.12.1957 and upon his death, the suit properties were settled to the ultimate beneficiary, P.S.Surendra and thus, the suit being devoid of any valid legal grounds and hence the same is liable to be dismissed *in limine*. Further, the 1st respondent/plaintiff did not challenge the settlement deed executed by applicant's great grandmother Mrs. Dhanammal conveying the suit properties in favour of his grandfather and subsequently to his father who derived his title through settlement deed executed by Mrs.Dhanammal. Hence, it is *sine qua non* to challenge the settlement deed, without which the suit cannot stand.

8. It is stated that only in 2020, the 1st respondent/plaintiff herein, issued a legal notice to his father in order to defeat the limitation. Having slept over the issue for a period of nearly 20 years, the respondents



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herein cannot claim a share in the suit properties alleging that the settlement deed executed by his foster grandmother Dhanammal is invalid in the eyes of law. Hence, this suit filed by the plaintiff is apparently and absolutely barred by limitation.

9. It is stated that in paragraph 9 of the amended plaint, describing the cause of the action, wherein the 1st respondent/plaintiff herself has clearly conceded to the existence and validity of the registered settlement deed dated 09.12.1957 and as such the present suit does not disclose any valid cause of action. The said third cause of action is extracted as follows:

"...on 09.12.1957, when late Dhanammal executed a settlement deed giving the suit property in favour of the Plaintiff's father and in..."

Therefore, according to the applicant, the plaint is liable to be rejected in toto as it suffers from suppression of material facts, such as, the consent letter which is stated above, has been duly signed by all the respondents along with their mother P.S.Sushila dated 22.11.2001 which is nowhere found in the plaint or in the cause of action and even after the death of his father, in the amended plaint filed subsequently by the 1st respondent/plaintiff herein. There is no single document produced on



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behalf of the 1st respondent/plaintiff to validate the suit claim. The Electricity tax and water tax receipts filled by 1st respondent/plaintiff also stood in his father's name. The allegation of the 1st respondent/plaintiff against deceased Mr.P.S.Surendra who is his father and 1st defendant that he had failed to pay the share of the sale consideration does not merit any consideration at all in the absence of any such averment in the letter dated 22.11.2001 and in the absence of any demand for the alleged consideration amount for nearly two decades.

10. According to the applicant, the settlement deed dated 09.12.1957 cannot be construed to be a “transfer” or “conveyance” as per Section 5 of the Transfer of Property Act, 1882 and also does not fall under the term “exchange” or a “gift” as per Section 118 of the Transfer of Property Act, 1882. The Settlement deed is only a mere family arrangement by which entire suit schedule property is allotted to him by virtue of the antecedent title. By virtue of the settlement deed dated 27.02.2020 registered as doc. No. 69 of 2020, the applicant has become the absolute owner of the suit properties and thus the respondents herein do not even have a semblance of right over the said properties. Hence, the suit instituted by the 1st respondent/plaintiff is vexatious, malafide and



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bad in law and is liable to rejected.

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11. The brief facts of the case of the 1st respondent/plaintiff are as follows:

According to the 1st respondent/plaintiff, she is the daughter of the Late P.S.Ambigainathan and the respondents/defendants 1 to 3 are her brother and sisters and the 4th defendant is her brother's son. The 1st defendant is the eldest one in the family. Her grandmother late Dhanammal had self acquired house property at Bazulla road, T.Nagar, Chennai-600 017, bearing Old No.41, New NO. 94, which comprised of both the vacant land and house measuring about 15,440 sq. ft. She acquired this property under two registered sale deeds dated 19.10.1941 and 21.01.1943, which are described as A-schedule property. She and the respondents/defendants are residing in the suit property.

12. The 1st respondent/plaintiff's grandmother Dhanammal executed a Registered Will on 6.10.1947 regarding her immovable properties. Later, she cancelled the same and executed another registered Will on 24.12.1953 bequeathing the suit property in favour of her son Ambigainathan. In the said Will, there is a reference to her three



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immovable properties, viz.,

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(i) No. 38, Jones Street, R.S. No. 5418/1, 1 ground and 499 sq.ft. in which her husband was running Madras Type Foundry. The same was sold by her son Ambigainathan;

(ii) Akbarabad 1st Street, Kodambakkam, Chennai - 2 grounds 1640 sq.ft.; and

(iii) Property at Bazulla Road, T. Nagar, Chennai.

13. Thereafter, on 09.12.1957, again she cancelled the Will dated 24.12.1953 and executed another document styled as settlement deed in favour of Ambigainathan, who is the father of the 1st respondent/plaintiff herein. It is recited in the said document that Ambigainathan had no right of alienation and could enjoy the properties during his life time and thereafter, the same shall devolve upon the 1st defendant, Mr. P.S.Surendranth absolutely. Taking advantage of the same, the 1st defendant appears to have entered into an agreement with one builder namely Jain builders with reference to a portion of land measuring about 7,700sq.ft. The 1st defendant had sold the same for Rs. 135 Lakhs after taking No Objection Certificate from all the legal heirs of late Ambigainathan. He promised to pay the share of the 1st respondent/plaintiff and defendants 2 and 3 out of the sale consideration



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but he has failed to do so. The 1st respondent/plaintiff and respondents/defendants 2 and 3 were not parties to the transaction and the said transaction was not binding on them. They are entitled to their share in the property or the value thereof i.e. 3/4th share of the sale consideration received by the 1st defendant. Now, after the sale of property to the third parties, an extent of 7,755 sq.ft. in which a house measuring about 2250 sq.ft., in the ground floor and 2250 sq ft in the first floor alone are available. The 1st respondent/plaintiff is residing in the ground floor of the premises and the 1st defendant was residing in the first floor. According to the 1st respondent/plaintiff, she and other respondents are entitled to equal share in the property of their father Late Ambigainathan.

14. It is stated that the document dated 09.12.1957 though bears the nomenclature as 'Settlement deed', it is virtually not a settlement deed in law. As per the document, the 1st respondent/plaintiff's father was given a restricted right which is impermissible as per Sec. 10 of Transfer of Property Act, which denotes that any condition imposing restriction on the absolute enjoyment of property in a settlement deed, is void. Therefore, the settlement deed dated 9.12.1957 is invalid and as such, the

<https://www.mhc.tn.gov.in/judic> 1st defendant had no right to alienate the property. According to the 1st



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respondent/plaintiff, alternately if it is construed as a Will, the right of ownership in favour of the 1st defendant has been postponed till the death of Ambigainathan. If it is a Will, then unless it is probated as required in Sec. 57 of Indian Succession Act, 1956, it is invalid and it is only a piece of paper. Therefore, in any event, the 1st defendant does not get any right under the said document, dated 9.12.1957 and the 1st respondent/plaintiff and other respondents/defendants being the legal heirs of late Ambigainathan, become entitled to equal share in the property i.e. each is entitled to 1/4th share. The 1st defendant had no right to enter into an agreement and alienate the property belonging to the 1st respondent/plaintiff and other respondents/defendants.

15. According to the 1st respondent/plaintiff, she has been in possession and enjoyment of item No. 1 of B Schedule Property as a co-owner. The 1st defendant is attempting to disturb her possession. Therefore, the plaintiff is also seeking injunction to protect her possession. She had sent a letter to the 1st defendant on 29.05.2017 stating that he had sold 7,700 sq.ft. for 135 lakhs, after taking letter of NOC from all the legal heirs of Late Ambigainathan and that inspite of 1st defendant promising to pay the 3/4th share of the 1st



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consideration, he has not paid any amount.

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16. It is further stated that the applicant/4th defendant got himself impleaded in the suit, stating that the 1st defendant, his father executed a settlement deed on 27.02.2020 in his favour in respect of 7700sq.ft in B schedule, viz., items 1 & 2 under a registered doc. No. 690/2020, SRO, T.Nagar and has become the absolute owner of B schedule property. The alleged settlement deed is void and not binding on the 1st respondent/plaintiff since the 1st defendant has no right to execute any settlement deed in respect of family property. The 1st respondent/plaintiff denies the execution of the document and the applicant/4th defendant is put to strict proof of the same. The applicant/4th defendant himself admits in the legal notice that his father is bedridden. Therefore, taking advantage of the 1st defendant's health condition, the applicant/4th defendant appears to have fraudulently created the settlement deed. It is pointed by the 1st respondent/plaintiff that in the reply notice dt. 18.11.2020 issued by the 1st defendant, there was no reference to the settlement deed alleged to have been executed by him in favour of the applicant/4th defendant. Even though the 1st defendant claims absolute right, in any event, it will not affect the 1st respondent/plaintiff's share



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manner. With these averments, the 1st respondent/plaintiff prays for dismissal of the application.

17. Heard the learned respective counsel appearing for the applicant and the respondents and perused the entire materials placed on record.

18. Admittedly, the suit properties were originally owned by one Late P.S. Dhanammal by virtue of registered sale deeds, dated 19.10.1941 and 21.01.1943. The said Dhanammal and her husband P.Subramanya Udayar did not have any issues and hence they adopted one Thiru Ambigainathan as their son. He is the father of the 1st respondent/plaintiff and respondents/defendants 2 and 3 and the grandfather of the applicant/4th defendant herein.

19. It is also not in dispute that during her life time, Late Dhanammal executed a Settlement deed dated 09.12.1957 in favour of her adopted son Thiru Ambigainathan as well as her grand son Thiru P.S.Surendranath, describing them as First and Second Beneficiaries respectively in respect of suit schedule properties. The relevant portion creating the life interest in favour of 1st beneficiary and thereafter absolute



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right in favour of 2nd beneficiary as mentioned in the Settlement deed

dated 09.12.1957 is extracted as under:

"...that the 1st Beneficiary shall have only a life interest in the said property and shall during his lifetime receive and enjoy all the rents income and profits of the said property - hereby settled after defraying from the said income the necessary expenses for repairs and for the maintenance and upkeep of the property in good condition and for payment of the Municipal taxes, quit rents and other public out-goings payable in respect of the said property with liberty however to reside - in the said property during his lifetime if he so chooses and that the 1st Beneficiary shall not have any power to sell - mortgage gift or otherwise transfer and alienate the said - property hereby settled or any part thereof during the lifetime of the 2nd Beneficiary herein and that after the lifetime of - the 1st Beneficiary, the 2nd Beneficiary herein shall possess - -and enjoy the said property hereby settled absolutely with - full powers of alienation by way of sale, gift, mortgage or -otherwise transfer and alienate the same as the full owner thereof, PROVIDED however that in case the 2nd Beneficiary - herein shall predecease the 1st Beneficiary herein then and in that case the lat Beneficiary herein shall become - entitled to the



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property absolutely and will have power to alienate the property by way of sale mortgage, gift, or other wise as the full owner thereof in addition to the life interest given to the 1st Beneficiary under this deed. And the Settlor hereby grants, conveys, and settles unto the - Beneficiaries in the manner and subject to the conditions aforesaid the right, title and interest, claim and demand, whatsoever of the Settlor in and to the said property -- and every part thereof free from all encumbrances together with all the right, easements, privileges, liberties, advantages and appurtenances whatsoever in and to the said property or in anywise appurtenant there to or usually held or enjoyed therewith or reputed to belong or appurtenant thereto TO -HAVE and TO HOLD the said property hereby settled to the use of the Beneficiaries in the manner aforesaid."

20. A reading of the above, it is clear that the 1st beneficiary, namely, Ambigainathan (father of the plaintiff and grand father of the applicant) was given life interest alone to enjoy all the rental income and profits derived from the said property with absolute restraint to sell, mortgage, gift or otherwise transfer and alienate the property, while after the lifetime of the 1st beneficiary, the 2nd beneficiary, namely, P.S.Surendra (1st defendant, who is none other than the brother of the plaintiff and father of the applicant) was given absolute right with full



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powers of alienation by way of sale, gift, mortgage or otherwise transfer and alinate the property. Further, only in the event of 2nd beneficiary predecease the 1st beneficiary, then only the 1st beneficiary will become entitled to the property absolutely and will have power to alienation as full owner thereof in addition to the life interet already given to him.

21. The learned counsel for the 1st respondent/plaintiff, while referring to Section 10 of the Transfer of Property Act, 1882 would contend that having granted and conveyed the interest by way of settlement deed in favour of the father of the 1st respondent/plaintiff, any condition or limitation absolutely restraining the transferee from parting with or disposing of his interest in the property, such condition or limitation is void. He pointed out that the condition laid down in the settlement deed dated 09.12.1957 which probihits alienation altogether is void and the 1st beneficiary Ambigainathan has absolute right to the property and thereby, the 1st respondent/plaintiff and other respondents, being the legal heirs of the said Ambigainathan, are entitled to the suit property. He relied on a decision reported in 2020 (11) SCC 221 (*Sridhar and another versus N.Revanna and others*), wherein, it has been held as under:



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hereby grant, convey, makeover and transfer by way of gift to the donee above named the immovable property described in the schedule hereunder”. The gift deed in favour of the donor was absolute and who was to exercise rights of ownership subject to the conditions detailed in the gift deed. One of the conditions which was enumerated in the gift deed was that “the donee or his younger brothers who may be born hereafter have no right to alienate the schedule property in any manner whatsoever by way of sale, gift mortgage or otherwise”.

15. The gift deed further stated that “donee or his younger brothers who may be born hereafter shall enjoy the property during his or their life time as the case may be and on his or their demise it shall devolve on his or their male children then surviving who shall be at liberty to deal with the property mentioned in the schedule hereunder in any manner”.

16. The question to be answered is as to whether defendant No.1 who was gifted the schedule property had no right to alienate the schedule property in any manner whatsoever. The reliance has been placed by the counsel of the respondents on Section 10 of the Transfer of Property Act which is to following effect:

“10. Condition restraining alienation.—
Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him:

Provided that property may be transferred to or for the benefit of a women (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer



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or charge the same or her beneficial interest therein.”

17. Section 10 expressly provides that where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void. According to Section 10 any condition restraining the transferee the right of alienation is void. A plain reading of Section 10 of Transfer of Property Act makes it clear that the condition in the gift deed dated 05.06.1957 that defendant No. 1 shall not alienate the property is a void condition."

22. Therefore, the learned counsel for the 1st respondent/plaintiff would contend that when the transferee Ambigainathan got absolute right, as per Section 10 of the Act, the condition restraining him from parting with or disposing of his interest in the property is void and consequently, the subsequent settlement deed dated 27.02.2020 executed by P.S.Surendra, the 2nd beneficiary in favour of his son, the applicant herein is liable to be declared as null and void.

23. At this juncture, it is worthwhile to extract Section 10 of the Transfer of Property Act, 1882, which reads as under:

“10. Condition restraining alienation.— Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the



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benefit of the lessor or those claiming under him:

Provided that property may be transferred to or for the benefit of a women (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.”

24. Section 10 expressly provides that where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void. No doubt, according to Section 10 any condition restraining the transferee the right of alienation is void.

25. But it is pertinent to note that in the matter of settlement, virtually, no transfer of property would take place, the admitted title to which rests in one of the parties, being vested in one of the other parties only. Section 10 of the Act will have no application to settlement/ arrangement into which two or more persons may choose to enter under which an absolute estate is created in favour of some persons and a limited estate is created in favour of others.

26. In fact, 'transfer of property' is defined under Section 5 of the Transfer of Property Act, 1882, which reads as under:



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"5. Transfer of property means an act by which a living person conveys a property, in present or in future to one or more living persons, or to himself and one or more living persons and "to transfer property" is to perform such act.

[In this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.]"

27. The Act contemplates the following modes by which, the property can be transferred by an act, through which a living person conveys the property to one or more living persons:-

1. **Sale - Chapter-III** -It's an out-and-out transfer of property and also the consideration is money.
2. **Mortgage – Chapter-IV** -It's a transfer of a limited interest during a property.
3. **Lease -Chapter-V** - A lease may be a transfer of a right to enjoy the immovable property for a particular time.
4. **Exchange – Chapter-VI** -It's the same as sale, but differ in consideration. Here the consideration is another thing not money.
5. **Gift-Chapter-VII** -Here, there's no consideration.
6. **Transfers of Actionable Claims – Chapter-VIII** – A claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, etc. and it can be effected (with or without consideration) only by way the execution of an instrument in writing signed by the transferor.

The following modes are the exceptions which would not come under the purview of 'transfer of property' as contemplated in the Act.



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1. Family settlement/Family arrangement
2. Settlement among co-parceners
3. Compromise (of doubtful claims)
4. Partition
5. Surrender
6. Release
7. Relinquishment
8. Charge

28. Therefore, a reading of the above, it is clear that the exceptions, viz., settlement/arrangement, compromise, etc., referred to above, would not come under the purview of the Transfer of Property Act, 1882 and thereby, the provisions of the Act would not attract in respect of settlements/arrangements.

29. The settlement is a peaceful resolution to the problems. When people live in a society, disagreements are a common occurrence that cannot be stopped. It is a non-litigation option with legally binding provisions that the parties have agreed to. Because the settlement is declared final, these contracts frequently restrict the parties from pursuing a future lawsuit. For those who are unsure what litigation entails. It's just the process or act of bringing a case to a Court of law for resolution. Litigation can be perplexing, consuming a significant amount of time and money. As a result, a Deed of Settlement can be a time and cost-effective way to resolve a legal dispute. A settlement deed format has to be precise



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for this to take place. The settlers are free to impose their conditions.

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30. Therefore, it becomes explicit that per se the provisions of the Transfer of Property Act would not apply to the settlement since there is no transfer of title contemplated in a settlement.

31. Interestingly, in the case of "***K.Muniswamy since deceased by L.Rs. Versus K.Venkaswamy***" reported in ILR 2000 KAR 3450, the High Court of Karnataka, though observed that the provisions of Section 10 of the Act would not apply to partition and settlement since there is no transfer of title contemplated in a partition/settlement, but held that on the ground of sound public policy any total restraint on the right of alienation in respect of immovable property which prevents free circulation, on general principles of law, is to be held void, but any partial restraints or limitation would be valid and binding. In the said *K.Muniswamy's case*, as per the terms of the partition deed, the parents of Muniswamy and Venkataswamy were given A schedule property with a covenant that they should enjoy during their life time and thereafter, the property should be partitioned equally between their children, K.Muniswamy and K.Venkataswamy. However, during their life time, the parents had sold the said A schedule property in favour of one of their son,



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K.Venkataswamy. When this was challenged, while interpreting the words and phrases contained in the deed of partition, the Karnataka High Court has come to the conclusion that since the parents were granted the estate to enjoy the properties in the manner they like, means, creating an absolute estate in their favour and not a limited estate and therefore, there was no illegality in alienating their property in favour of their son and the condition so imposed restraining the parents not to alienate, but only to enjoy the estate during their life time, is hit by Section 10 of the Act and accordingly, held that it is void.

32. Therefore, when an absolute estate is created and after such creation, any condition in the settlement which prohibits alienation altogether is surely not hit by Section 10 of the Act, but creating as it does, an absolute restraint on alienation is repugnant to public policy and would be invalid and unenforceable on general principles of law.

33. In the present case, there was a settlement taken place as early in the year 1957 between the settlor and two beneficiaries, wherein, the settlor who was the original owner of the suit properties had settled her property in favour of her foster son, 1st beneficiary creating a life interest with a condition and later, in favour of her grandson, 2nd beneficiary, creating absolute interest. Therefore, the settlor virtually relinquished her



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right of title over the property and settled the same in favour of her foster son with limited right and later in favour of her grandson with absolute right.

34. When the restraint in a particular case is absolute or partial has to be gathered from the intention of the settlor or from the contents of the documents. A perusal of the Settlement deed dated 09.12.1957 executed by the Settlor Dhanammal, in favour of her adopted son Thiru Ambigainathan as well as her grand son Thiru P.S.Surendranath, describing them as First and Second Beneficiaries, reveals that the 1st beneficiary, namely, Ambigainathan (father of the plaintiff and grand father of the applicant) was given life interest alone to enjoy all the rental income and profits derived from the said property with absolute restraint to sell, mortgage, gift or otherwise transfer and alienate the property, while after the lifetime of the 1st beneficiary, the 2nd beneficiary, namely, P.S.Surendra (1st defendant, who is none other than the brother of the plaintiff and father of the applicant) was given absolute right with full powers of alienation by way of sale, gift, mortgage or otherwise transfer and alinate the property. Further, only in the event of 2nd beneficiary predecease the 1st beneficiary, then only the 1st beneficiary will become entitled to the property absolutely and will have power to alienation as



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full owner thereof in addition to the life interest already given to him.

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certainly defeat the very intention of the settlor who actually intended to create absolute estate in favour of the 2nd beneficiary, P.S.Surendranath without any condition thereof.

36. In fact, the settlor, Tmt.P.S.Dhanammal executed the Settlement deed as early as in the year 1957 in favour of the beneficiaries, Ambigainathan and his son P.S.Surendranath. During his life time, the first beneficiary, Ambigainathan had accepted the settlement and he had never raised any objection nor questioned the condition imposed in the settlement deed, restraining him from parting with or disposing of his interest in the property. Therrefore, once the settlee accepted the settlement, it has become final. The terms between the settlor and settlee, viz., Dhanammal and Ambigainathan at the time of execution of the settlement were exclusively their personal and the settlee Ambigainathan had accepted 'life interest' and acted upon with a view that the ultimate beneficiary is none other than his own son, P.S.Surendranath, who was six years old and the 1st respondent/plaintiff was four years at the time of execution of the settlement deed and the intention of the settlor was to give absolute rights in favour of male children born to Ambigainathan. In fact, in her earlier registered Will dated 24.12.1953, the settlor's intention was to give life interest to Ambigainathan and thereafter,



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absolute rights to his male children and in case no male children, then to female children of Ambigainathan begotten on his wife. At the time of execution of the Will in the year 1953, P.S.Surendranath was already born, perhaps, the 1st respondent/plaintiff was not born. Later, the said Ambigainathan was blessed with a female child, who is none other than the 1st respondent/plaintiff, which prompted the settlor to revoke the Will and executed the Settlement deed 09.12.1957 in favour of her son and grandson, expressing her clear intention to give absolute rights only in favour of male child, P.S.Surendranath. It is not in dispute that the suit properties were self-acquired properties of the settlor Dhanammal and she has every right to deal and dispose of the same as per her wish. Therefore, as early as in the year 1957 itself, the execution of settlement by the settlor and acceptance of the same by the settlees, had completed and thereafter, even the term of life interest created in favour of the first beneficiary, Ambigainathan, the father of the 1st respondent/plaintiff came to an end in the year 1996 and thereafter, the second beneficiary, P.S.Surendranath became absolute owner and he executed various deeds including the settlement deed dated 27.02.2020 in favour of the applicant herein and he also passed away. While so, the 1st respondent/plaintiff came forward with the suit, seeking partition of the suit properties,



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claiming right through the very settlement deed dated 09.12.1957 contending that as per Section 10 of the Act, the condition laid down in the settlement deed dated 09.12.1957 which prohibits alienation altogether is void and thereby 1st beneficiary Ambigainathan, though was given life interest, has got absolute right to the property and thereby, the 1st respondent/plaintiff and other respondents, being the legal heirs of the said Ambigainathan, are entitled to the suit property. This contention, as already discussed supra, is not tenable.

37. Further, even the 1st respondent/plaintiff nor the other respondents/defendants, who are none other than the sisters and brothers of the 2nd beneficiary, have not raised any objection to the settlement deed dated 09.12.1957. In fact, they have given consent letter dated 22.11.2001 to the second beneficiary, P.S.Surendranath to sell the suit schedule property acknowledging that he is the absolute owner of the suit properties with absolute right. Even, they had knowledge about the execution of the settlement deed dated 27.2.2020 in respect of suit property executed by their father P.S.Surendranath in favour of his son, the applicant herein, but they had not objected to it also. As rightly submitted by the learned counsel for the applicant, neither the 1st respondent/plaintiff nor other respondents have taken steps to challenge



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the Settlement Deed dated 9.12.1957 and declare the same as invalid since it contained the condition, restraining the first beneficiary, Ambigainathan from parting with or disposing of his interest in the property. In this regard, it is worthwhile to refer a decision reported in **"Raj Narain Sarin (dead) through Lrd. and others versus Laxmi Devi and others"** reported in (2002) 10 SCC 501, wherein, it has been held as under:

"...7. As noticed above, the learned Single Judge of the Allahabad High Court though elaborately laid down the requirement of Order 7 Rule 11 and the true effect thereof, but in our view, totally misread and misapplied the provision in the contextual facts. No explanation whatsoever is available on the plaint as to the situation under which the suit was filed after about a long period of 40 years. The knowledge of the deed of sale stands accepted by the reason of the averment in the plaint itself (vide para 9 of the plaint).

8. On an analysis of the plaint, apart from there being a mere bald statement that the sale deed has nothing to do with the rest of the area, ie, 6 bighas 13 biswas and the bungalows built thereon which stand to be owned and possessed by the plaintiff and prior to him by Munni Lal, there is no other averment tracing the title for



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6 bighas and 13 biswas. Admittedly, several portions of the plot stood demarcated as being 3 bighas 13 biswas and the other being 6 bighas 13 biswas! whereas there is not dispute regards 3 bighas 13 biswas but the conferment of title on the plaintiff as regards 6 bighas 13 biswas is not available in the plaint itself. The plaint is totally silent on that score, though, however, the existence of the deed of sale noticed above stands accepted by the plaintiff. **The litigation, in our view, cannot but be termed to be utterly vexatious and abuse of the process of court more so by reason of the fact that the deed of sale being executed as early as 1941 stands unassailed for a period of over 50 years.."**

38. In the present case also, the 1st respondent/plaintiff or other respondents have not assailed the settlement deed which has been executed nearly 64 years ago, i.e. in the year 1957, but claiming the right through the said deed only. Therefore, the litigation can be termed as vexatious and cannot be entertained and clearly barred by limitation. If the suit is entertained, it would certainly unsettle the settled issues vis-a-vis rights between the parties. Therefore, the plaint is liable to be rejected.

39. In the light of the above discussion, the Application is allowed.

The plaint filed in C.S.No.207 of 2021 is hereby rejected. No costs.



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KRISHNAN RAMASAMY, J.

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Pre delivery order in
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C.S.No.207 of 2021

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