



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2022

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.717 of 2021
and
C.M.P(MD)No.9439 of 2021

1.T.Vijayalekshmi
2.S.Thangaraja ... Appellants/Appellants/Defendants
Vs.
Iyyappan ... Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 27.09.2021 passed in A.S.No.53 of 2014, on the file of the Fast Track Mahila Court, Kanyakumari at Nagercoil, confirming the judgment and decree, dated 28.04.2014 passed in O.S.No.285 of 2010, on the file of the Second Additional Sub Court, Nagercoil.

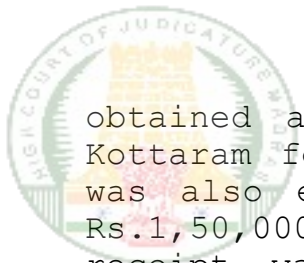
For Appellants : Mr.T.Lajapathi Roy
For Respondent : Mr.S.Subbiah
Senior Counsel

JUDGMENT

The concurrent Judgments and decrees passed in O.S.No.285 of 2010, by the Second Additional Sub Court, Nagercoil and in A.S.No.53 of 2014, on the file of the Fast Track Mahila Court, Kanyakumari at Nagercoil, are being challenged in the present Second Appeal.

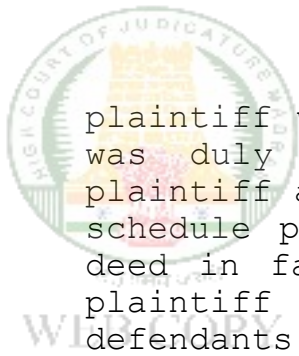
2. The respondent/plaintiff has instituted a suit in O.S.No.285 of 2010, on the file of the trial Court for for the relief of declaration of title of the schedule property and recovery of possession and permanent injunction against the defendants from committing any waste or altering the structure of the plaint schedule building, wherein, the present appellants have been shown as defendants.

3. The case of the plaintiff is that the first defendant is the sister of the plaintiff and the second defendant is the husband of the first defendant. During the year 1999, the plaintiff and his mother worked in abroad and through the earnings, they have purchased the plaint schedule property and a sale deed was obtained in favour of the mother of the plaintiff, namely, Sivapackiam on 27.12.1992. In the year 2003, both the plaintiff and his mother



obtained a loan for a sum of Rs.1,50,000/- from Ramalakshmi of Kottaram for completing the construction work and a mortgage deed was also executed in respect of the suit property. The loan of Rs.1,50,000/- with interest was discharged by the plaintiff and a receipt was obtained in the name of Sivapackiam, as per the registered document, dated 01.03.2007 and his mother had executed a settlement deed in favour of the plaintiff on 01.03.2007 itself. The settlement deed was accepted and acted upon and mutation of name has been effected in favour of the plaintiff. On 30.06.2008, when the plaintiff was in abroad, the plaintiff's mother executed a unilateral cancellation of settlement deed, dated 01.03.2007, at the instigation of the defendants. The unilateral cancellation of settlement deed is invalid in law and Sivapackiam is not entitled to revoke the settlement deed, dated 01.03.2007 in favour of the plaintiff. On 09.9.2008, at the instigation of the defendants, the plaintiff's mother had executed a sale deed in favour of the first defendant. The sale deed is invalid and not supported by consideration. Both the unilateral cancellation of sale deed and the execution of sale deed are invalid, unenforceable and not binding on the plaintiff. While the plaintiff was in abroad, his wife, who was residing in the schedule property, was forcibly evicted by the defendants and a criminal complaint, dated 29.07.2008 was lodged by the wife of the plaintiff. The plaintiff's mother died on 30.06.2009. A notice was sent on 27.07.2010 to the defendants. Under the said circumstances, the plaintiff has filed the suit for the above stated relief.

4. The defendants filed a written statement denying all the averments made in the plaint and submitted that the suit schedule property was purchased from one Paul Thangam by Sivapackiam out of her own earnings. In order to help the plaintiff for purchasing a lorry, the said Sivapackiam mortgaged the suit property and obtained a loan for a sum of Rs.1,50,000/-. The house was constructed by the mother Sivapackiam on her own funds and the loan obtained was settled by Sivapackiam, for which, a receipt was obtained in her name on 01.03.2007. The plaintiff made Sivapackiam to execute a gift deed under undue influence and settlement was not effected and no mutation was effected as alleged. The revenue tax receipts and panchayat house tax receipts are in the name of Sivapackiam till 2008 and after the sale deed in favour of the first defendant, mutation has been effected in the name of the first defendant. The plaintiff, after getting the settlement deed effected, has completely neglected Sivapackiam. It is the first defendant, who had given asylum and gave treatment during Sivapackiam's last days. The first defendant settled the loan amount of Rs.1,50,000/- on behalf of Sivapackiam to various persons. The plaint schedule property was sold for a valid consideration of Rs.2,04,500/- by way of a sale deed, dated 09.09.2008 and possession and enjoyment was also given to the first defendant. The said Sivapackiam lived along with the first defendant until her death on 30.06.2009 and the last rites were performed by the first defendant. The settlement deed in favour of the



plaintiff was not effected, since no possession was transferred. It was duly revoked by the said Sivapackiam on 30.06.2008. The plaintiff along with his wife and child lived together in the plaint schedule property. After the unilateral cancellation of settlement deed in favour of the plaintiff, out of enmity, the wife of the plaintiff had preferred a false complaint against Sivapackiam. The defendants are in actual possession of the suit property as per the valid sale deed executed in favour of the first defendant. The plaintiff is not entitled to any decree as prayed for and prayed for dismissal of the suit.

5. Before the trial Court, on the side of the plaintiff, P.W.1 to P.W.3 were examined and Exs.A1 to A17 were marked. On the side of the defendants, D.W.1 and D.W.2 were examined and Exs.B.1 to B.15 were marked and Ex.C.1 was also marked and one Krishnarajan was examined as C.W.1.

6. On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has decreed the suit.

7. Aggrieved by the Judgment and decree passed by the trial Court, the defendants, as appellants, had filed an Appeal Suit in A.S.No.53 of 2014. The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, has dismissed the appeal and confirmed the Judgment and decree passed by the trial Court.

8. Challenging the said concurrent Judgments and decrees passed by the Courts below, the present Second Appeal has been preferred at the instance of the defendants, as appellants.

9. The learned counsel appearing for the appellants/defendants would submit that both the Courts below ought to have considered the fact that the alleged settlement deed marked as Ex.A.1 executed by the mother in favour of the plaintiff was not accepted and not acted upon and vitally, the possession also not transferred in the name of the plaintiff and no mutation of revenue records made in the name of the plaintiff based on Ex.A.1. The Courts below have completely failed to appreciate the fact that the plaintiff and the first defendant's mother can cancel Ex.A.1-settlement deed, since the mother had purchased the suit property and constructed the house from her own earned money, hence, the unilateral cancellation of sale deed is a valid one. The Courts below have failed to consider and make note of the fact that the mother is the rightful owner of the property, hence, she had executed a sale deed in favour of the first defendant on 09.09.2008, after receiving valuable sale consideration, which is marked as Ex.A.3. The Courts below ought to have considered the fact that the plaintiff stated in his plaint that he paid the amount for purchase of the property in the name of 'Sivapackiam' and evidences were adduced to that



effect and the plaintiff becomes a part owner of the property, therefore, the mother of the plaintiff is incompetent to execute the settlement and the settlement deed itself is a void one, hence the relief sought by the plaintiff based on the settlement deed is absolutely unsustainable under law. The Courts below have failed to consider the fact that the mother of the plaintiff is a senior citizen during the unilateral cancellation of settlement deed and the plaintiff not taking care of his mother, hence, she cancelled the deed and executed the sale deed in favour of the first defendant after receiving the valid sale consideration. The Courts below ought to have dismissed the suit on the sole ground that the plaintiff has not discharged the burden of proof with respect to the plea that Ex.A.3-sale deed is fraudulently executed. The Courts below miserably failed to consider the fact that after executing Ex.A.3-sale deed in favour of the first defendant, she is in possession and enjoyment of the suit schedule property without any hindrance and prayed for allowing the Second Appeal.

10. Heard the learned counsel for the appellants and the learned Senior Counsel for the respondent and also perused the records carefully.

11. It is the case of the plaintiff that the suit property belonged to him by virtue of the settlement deed, dated 01.03.2007 executed by his mother Sivapackiam. After execution of settlement deed, it was accepted by the plaintiff and acted upon and the revenue record was transferred in his name and thereby, Sivapackiam had divested all her rights in favour of the plaintiff. When the plaintiff was in abroad, his mother Sivapackiam executed a unilateral cancellation deed on 30.06.2008, at the instigation of the defendants and she has executed a sale deed in favour of the first defendant on 09.09.2008. His mother has no right at all to deal with the property after execution of the settlement deed. Hence the unilateral cancellation of settlement deed and execution of sale deed in favour of the first defendant is invalid and not binding on the plaintiff. When the plaintiff was in abroad, his wife was forcibly evicted by the defendants.

12. It is the case of the defendants that the suit property was purchased by Sivapackiam from her own earnings and the settlement deed executed in favour of the plaintiff was under undue influence and false promise. The settlement deed was not acted upon and no mutation of revenue records was effected. Till the death of Sivapackiam ie., till 2008, the tax receipts stand in the name of Sivapackiam and after sale deed in favour of the first defendant, the taxes were paid by the first defendant. After execution of settlement deed, the plaintiff neglected his mother. Hence, Sivapackiam suffered a lot and obtained loan for her treatment. During her last days, the first defendant alone supported her mother and she settled the loan amount and she purchased the suit property for a valuable sale consideration of Rs.2,04,500/-.



The settlement deed was duly revoked by Sivapackiam by a cancellation deed, dated 30.06.2008. Out of enmity, the wife of the plaintiff has preferred a false complaint against Sivapackiam and she subsequently dropped.

13. Ex.A.4 is the sale deed, dated 27.12.1999 executed by Paulthankam in favour of Sivapackiam for a valuable consideration and the same is admitted by both the plaintiff and the defendants. Ex.A.1 is the settlement deed, dated 01.03.2007 executed by Sivapackiam in favour of the plaintiff. The execution of settlement deed is also accepted by the defendants, but the defendants have taken a plea that the settlement deed was executed by Sivapackiam undue influence and on the false promise made by the plaintiff. It is alleged by the defendants that after the execution of settlement deed, the plaintiff did not maintain his mother properly and therefore she has cancelled the settlement deed.

14. P.W.1 in his examination has deposed that there is no undue influence in executing the settlement deed and it is false to state that the settlement deed was not acted upon and he also denied that he has not at all maintained his mother after execution of settlement deed and he has also denied that due to his torture, the settlement deed was cancelled. The defendants have taken a plea in the written statement that the settlement deed was not executed by the deceased Sivapackiam voluntarily and it was executed under undue influence and false promise. Since such a plea has been taken by the defendants, the defendants alone have got the burden of proving that the settlement deed dated 01.03.2007 was executed on the basis of the false promise and undue influence. It is pertinent to note that the plaintiff has examined one Krishna Raj as C.W.1 and through him Ex.C.1 has been marked. C.W.1 has deposed that on 17.12.2008 Sivapackiam preferred a complaint at South Thamaraiikulam Police Station and the petition was numbered as 322 of 2008. On the basis of the complaint, the defendants, viz., Vijayalakshmi and Thankaraj, were examined and statements were obtained from them. After obtaining statement from them, Sivapackiam withdrew her complaint and the file has been marked as Ex.C.1. With regard to Ex.C.1, the defendants have disputed about the allegations levelled against them. During the cross-examination of C.W.1, it has been alleged that the signature of the defendants were obtained under threat and coercion. With regard to the execution of Ex.C.1, the defendants have not whispered anything in the written statement.

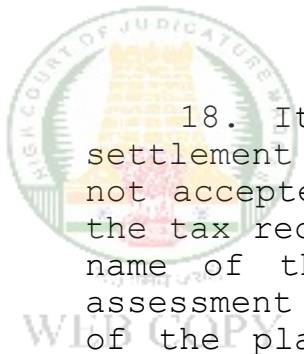
15. The first defendant-Vijayalakshmi in her cross-examination has admitted that the loan obtained from Ramalakshmi was paid by the plaintiff on 01.03.2007 and the settlement deed, dated 01.03.2007 was executed in favour of the plaintiff by her mother and the photo found in Ex.A.1 and the signature belonged to her mother. After execution of Ex.A.1, her mother did not have any right over the suit property and her mother has no right to execute Ex.A.2, dated 30.06.2008. In the admission of D.W.1, it is seen that the first



defendant herself has admitted that her mother has no right at all over the suit property after the execution of settlement deed in favour of the plaintiff. The plea of undue influence and false promise made by the plaintiff has not been proved by the defendants, since except D.W.1 and D.W.2, no other independent witnesses were examined on the side of the defendants to prove these facts. Likewise, in Ex.A.2, the deceased Sivapackiam has not at all stated that the settlement deed was made on the false promise of the plaintiff and upon the undue influence made by him. In Ex.C.1 also, the deceased Sivapackiam has not stated anything about the undue influence of the plaintiff. Moreover, in Ex.A.1 and Ex.A.5, the counsel who has appeared for the deceased Sivapackiam in O.S.No.42 of 2004 has attested. Hence, the plea of undue influence as stated by the defendants is not at all acceptable and the settlement deed seems to be executed by the deceased Sivapackiam in favour of the plaintiff with her full consent.

16. It is also stated by the defendants that Sivapackiam mortgaged the suit property in order to purchase a tempo lorry for the plaintiff, but it has been denied by the plaintiff. P.W.3-Ramalakshmi has deposed in her cross-examination that the mortgage amount was not utilised for the purchase of tempo for the plaintiff. At that time itself, the plaintiff was in possession of the Tempo. Hence, it is seen that the loan amount was not utilised for the purchase of tempo lorry for the plaintiff.

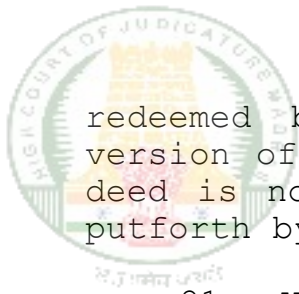
17. It is the contention of the defendants that the suit property is not the absolute property of Sivapackiam, since it is alleged that the part of the consideration has been paid by the plaintiff. Hence, on this score, the execution of settlement deed in favour of the plaintiff is not valid, since the deceased Sivapackiam has got only a portion of share in the suit property. Likewise, the mortgage has been redeemed by the plaintiff. Hence, settlement deed is supported by consideration and Ex.A.1 cannot be considered as a settlement. Hence, the settlement deed is void abinitio and it has been rightly cancelled by the deceased Sivapackiam in order to make some arrangements and sale deed has been executed in favour of the first defendant, as per Ex.A.3. The contention of defendants is not acceptable, since after execution of settlement deed, the deceased Sivapackiam has no right at all to deal with the property. Hence, the deed of unilateral cancellation of settlement deed and sale deed executed in favour of the first defendant is non-est in the eye of law and the prayer to nullify those documents, is not accepted and rejected. The defendants themselves have alleged in the written statement that the sale consideration has been paid by Sivapackiam herself and the mortgaged amount has also been paid by Sivapackiam herself. From the allegations stated in the written statement, it cannot be construed that the settlement deed is supported by consideration.



18. It is the further contention of the defendants that the settlement deed did not come into effect, since settlement deed was not accepted by the plaintiff and it was not acted upon. Ex.A.7 is the tax receipt dated 06.09.2007 for the fasli 1417 and it is in the name of the plaintiff. Ex.A.8 is also the tax receipt for the assessment year 01.04.2008 to 31.03.2009 and it is also in the name of the plaintiff. Ex.A.9 is the copy of the family card of the plaintiff for the year 2008-2009 and in the family card, the name of the plaintiff, his wife, his daughter as well as his mother Sivapackiam names are found. From Ex.A9, it can be seen that the plaintiff was residing in the suit property along with his mother and the tax receipt has been transferred in the name of the plaintiff. Hence, it is evident from Ex.A.7 to Ex.A.9 that the settlement deed has been accepted by the plaintiff and has been acted upon.

19. With regard to the sale deed in favour of the first defendant is concerned, it has to be seen whether the sale deed has been executed by Sivapackiam without any undue influence. But Ex.A.3 and Ex.B.3 which relates to the same document is executed by undue influence, since Sivapackiam during her life time has preferred a complaint before South Thamaraikulam Police Station alleging about the undue influence made by her daughter and the complaint given by her mother is admitted by the first defendant and she has also admitted about the execution of statement before the Police. In this regard, D.W.1 has admitted in her cross-examination that she put her signature in the Police Station for the complaint given by her mother, but she is not aware of the facts stated in it. But, in her subsequent portion of evidence, she has admitted that she has accepted to pay the amount before 01.04.2009 and she has further admitted that based upon her admission and acknowledgement, the complaint given by her mother was closed. Hence, from the evidence of D.W.1 and from Ex.C.1, it can be inferred that the sale deed in favour of the first defendant is executed on the false promise made by the first defendant and also under undue influence. Moreover, at the time of sale deed in favour of the first defendant as well as at the time of unilateral cancellation of settlement deed, dated 01.03.2007, the deceased Sivapackiam had no right at all to execute these documents. It is also noteworthy to make a mention that in Ex.A.2, the deceased Sivapackiam has not alleged about the undue influence and in Ex.A.1-settlement deed, the deceased Sivapackiam has not reserved any right to cancel the settlement deed.

20. It is the contention of the defendants that out of love and affection only, settlement deed was not effected is proved and the settlement deed is supported by sale consideration is not proved. The settlement deed also did not come into effect and it is invalid as per law is also not accepted. In Ex.A.1, the deceased Sivapackiam has only executed the document out of love and affection and the first defendant in her evidence has admitted that the sale

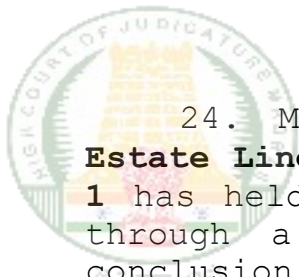


redeemed by the deceased Sivapackiam herself. Hence, from the version of the first defendant, it can be seen that the settlement deed is not supported by any consideration. Hence, the contention putforth by the defendants is not acceptable.

21. When the plaintiff was in abroad, his wife, who was residing in the suit property, was forcibly ousted and on this aspect, she has given a complaint, which was marked as Ex.A.10. But it is argued on the side of the defendants that in Ex.A.10 nothing is stated about the dispossession of the suit property, only family dispute is alleged. From Ex.A.9 it is seen that the plaintiff along with his family members were residing in the suit property. But the defendants have stated that they are in possession of the property and the property tax are transferred in the name of the first defendant. Even though in Ex.A.10, the factum of dispossession is not stated, at present, the plaintiff is not in possession of the property. Ex.A.12 is the notice issued by the plaintiff to the defendants on 27.07.2010 calling upon the defendants to vacate the suit property and to surrender the suit property. In the notice, it is stated that his wife was forcibly sent out by the defendants taking advantage of his absence. The notice was received by the defendants, which was marked as Ex.A.13 and Ex.A.14. The defendants have received the notice on 29.07.2010, but no reply has been issued by the defendants. Hence, the plea of dispossession is not disputed by the defendants by sending any reply.

22. Ex.A.15 is the tax receipt standing in the name of the second defendant for the assessment year from 01.04.2010 to 31.03.2011. With regard to Ex.A.15, D.W.2 in his cross-examination has admitted that the tax receipt marked as Ex.A.15 pertains to his house property. Hence, Ex.A.15 is not related to the suit property. Hence, the settlement deed in Ex.A.1 is not supported by consideration is proved and is made voluntarily by Sivapackiam in favour of the plaintiff and the settlement deed has been accepted by the plaintiff which has been acted upon and the tax receipt has been transferred in the name of the plaintiff from his mother's name and the deceased Sivapackiam has no right to unilaterally cancel the settlement deed and to execute the sale deed in favour of the first defendant subsequently and the sale deed executed in favour of the first defendant is not supported by any valid consideration.

23. It is to be noted that this Court in the case of **D.V.Loganathan Vs. the Sub-Registrar, Office of the Sub-Registrar, Pallavaram, Chennai and another reported in 2014(3) CTC 113** it is observed that the Unilateral cancellation of settlement deed is without jurisdiction and liable to be set aside. Further, in the case of **Samiappan and Others Vs. Rajamani reported in CDJ 2014 MHC 5730**, the Hon'ble Division Bench of this Court held that the 'settlement deed cannot be set at naught unilaterally by one party'.



24. Moreover, the Hon'ble Full Bench of this Court [**Latif Estate Line India Ltd., Vs. Hadeeja Ammal**] reported in 2011 (2) CTC 1 has held that unilateral cancellation of a registered sale deed through a deed of cancellation is of no effect in law. The conclusion drawn by the Full Bench as recorded in paragraph Nos.58 and 59 are extracted hereunder:

"58. It can also not be overlooked or ignored that a unilateral cancellation of a sale deed by registered instrument at the instance of the vendor only encourages fraud and is against public policy. But there are circumstances where a deed of cancellation presented by both the vendor and the purchaser for registration has to be accepted by the Registrar if other mandatory requirements are complied with. Hence, the vendor by the unilateral execution of the cancellation deed cannot annul a registered document duly executed by him as such an act of the vendor is opposed to public policy.

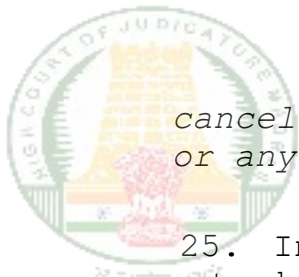
59. After giving our anxious consideration on the questions raised in the instant case, we come to the following conclusion:-

(i) A deed of cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect. Such a document does not create any encumbrance in the property already transferred. Hence such a deed of cancellation cannot be accepted for registration.

(ii) Once title to the property is vested in the transferee by the sale of the property, it cannot be divested unto the transferor by execution and registration of a deed of cancellation even with the consent of the parties. The proper course would be to re-convey the property by deed of conveyance by the transferee in favour of the transferor.

(iii) Where a transfer is effected by way of sale with the condition that title will pass on payment of consideration, and such intention is clear from the recital in the deed, then such instrument or sale can be cancelled by a deed of cancellation with the consent of both the parties on the ground of non-payment of consideration. The reason is that in such a sale deed, admittedly, the title remained with the transferor.

(iv) In other cases, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of



cancellation of sale deed on the ground inter alia of fraud or any other valid reasons."

25. In the light of the above, it is decided that the suit property belongs to the plaintiff by virtue of the settlement deed and the unilateral cancellation of settlement deed, dated 30.06.2008 and the execution of sale deed in favour of the first defendant, dated 09.09.2008, is not valid as per the Judgments referred to above. Hence, the plaintiff is entitled to get the relief of declaration of title, recovery of possession of the suit property and also the relief of injunction.

26. For the reasons aforesaid, this Court is of the considered view that no questions of law much less substantial questions of law has been made out by the appellants/defendants to interfere with the well considered judgments and decrees rendered by the Courts below and accordingly, the Second Appeal fails and the same stands dismissed. Time for delivery of possession of property is on or before 31st March, 2022. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ps

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Fast Track Mahila Court,
Kanyakumari at Nagercoil.
- 2.The Second Additional Sub Court,
Nagercoil.
- 3.The Record Keeper, (2C)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



+1 CC to M/s.T.LAJAPATHI ROY,
Advocate (SR-3420[F] dated
01/02/2022)

+2 CC to M/s.G.ARAVINTHAN, Advocate
(SR-3185[F] dated 31/01/2022)

WEB COPY

S.A (MD) No.717 of 2021
31.01.2022

PS (CO)
KB(08.02.2022) 11P 7C