IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 11.11.2022	Pronounced on 03.01.2023

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

T.O.S.No.24 of 2003
&
Tr. C.S.No.91 of 2004

In T.O.S.No.24 of 2003:-

1.S.Pushpavathi (deceased)

2.S.Karunakaran

3.D.Malathi

4.S.Sakthivel

(Plaintiffs 2 to 4 brought on record as LRs
of deceased first plaintiff as per order
dated 11.12.2007 in Appln.No.7605 of 2007
and extended dated 08.01.2008) ...Plaintiffs

Vs.

1.K.Jamuna

2.D.Gunalan

3.D.Dhayalan (deceased)

4.D.Ravindran

5.D.Anandan

6.D.Shanthi

7.D.Balaji

8.D.Sivaraj

(Defendants 6 to 8 brought on record as
LRs of deceased third defendant as per
order dated 08.10.2021 in A.No.3358 of 2021) ...Defendants

PRAYER in T.O.S.No.24 of 2003:- The deceased first plaintiff, as the petitioner, has filed a Original Petition in O.P.No.326 of 2000 under Order XXV Rule 5 of Original Side Rules read with Sections 232 and 276 of the Indian Succession Act 1925, for the grant of Letters of Administration with the last Will and Testament of the deceased Sakunthala Ammal, having effect throughout the State of Tamil Nadu. In this O.P., Letters of Administration was also granted on 10.08.2000. Later, as per the order of this Court dated 20.02.2003 made in Application No.670 of 2003, Letters of

Administration granted on 10.08.2000 in O.P.No.326 of 2000 was revoked and the Original Petition was ordered to be converted into Testamentary Original Suit and numbered as T.O.S.No.24 of 2003.

Tr.C.S.No.91 of 2004:-

1.K.Jamuna

2.D.Gunalan

3.D.Dhayalan (Deceased)

4.D.Raveendran

5.D.Anandan

6.D.Shanthi

7.D.Balaji

8.D.Sivaraj

(Plaintiffs 6 to 8 brought on record as the legal
heirs of the deceased third plaintiff as per order
dated 12.11.2021 in Appln.No.3221 of 2021) …Plaintiffs

Vs.

1.S.Pushpavathi (Deceased)

2.S.Karunakaran

3.D.Malathi

4.S.Sakthivel
(Defendants 2 to 4 impleaded as LRs of deceased first defendant per order dated 05.10.2010 made in A.No.4200 of 2009) ...Defendants

PRAYER in Tr.C.S.No.91 of 2004:- This is a suit filed under Order VII Rule 1 of C.P.C.,

a)for partition and separate possession of 2/3rd share of plaintiffs, i.e, 1/3rd share of the 1st plaintiff and 1/3rd share of the second to fifth plaintiffs together, in the schedule mentioned property and for future mesne profits, the plaintiffs value the suit;

b)for 2/3rd share of yearly mesne profits of Rs.60,000/- from the date of the decree till date of delivery of 2/3rd share of the properties to the plaintiffs herein i.e.1/3rd share to the first plaintiff herein and 1/3rd share of the second to fifth plaintiffs together;

c)for costs of the suit;

In T.O.S.No.24 of 2003:-

For Plaintiffs	:	M/s.V.J.Latha
For Defendants	:	Mr.C.Ramesh

In C.S.No.91 of 2004:-

For Plaintiffs	:	Mr.C.Ramesh
For Defendants	:	M/s.V.J.Latha

COMMON JUDGMENT

In T.O.S.No.24 of 2003:-

This suit is filed for grant of Letters of Administration in respect of the last Will and testament dated 14.03.1995 executed by the testatrix Sakunthala Ammal.

2. The case of the plaintiffs is that Sakunthala Ammal had executed her last Will and testament dated 14.03.1995 at No.7 Hajee Sheik Hussein 1st lane, Royapettah, Chennai – 600 014, in the presence of witnesses i)K.Thanigavelu, ii)K.S.Rajendran. She died on 15.10.1999. The amount of the assets which are likely to come to the hands of the plaintiffs does not exceed Rs.1,50,000/-. Sakunthala Ammal did not have any issues

and her husband Arumugha Mudaliar pre-deceased her. Plaintiffs are the only beneficiaries under the Will. Plaintiffs undertake to duly administer the property and credits of the deceased Sakunthala Ammal. Therefore, this suit.

3. The case of the first defendant is that Sakunthala Ammal died leaving the following persons as legal heirs:-

i)Pushpavathi

ii)K.Jamuna

iii)V.Raja

iv)V.Parthasarathi

v)D.Gunalan

vi)D.Dhayalan

vii)D.Ravindran

viii)D.Anandan

4. Smt.Nagabushanammal, one of the sisters of Sakunthala Ammal and the mother of the defendants 2 to 5 died on 24.07.1993. The

suit property originally belonged to Arumugha Mudaliar. Through a Will dated 29.07.1969, Sakunthala Ammal acquired the property and was in possession and enjoyment of the property. She settled the agricultural lands in favour of her brothers and settled the suit property in favour of her three sisters by way of a registered gift deeds dated 31.05.1990 bequeathing 1/3rd share each in favour of Nagabushanammal, Pushpavathy and Jamuna. There is no reason for Sakunthala Ammal for revoking the settlement in favour of her sisters and execute the Will in favour of the deceased plaintiff alone. Her sisters had taken care of Sakunthala Ammal. Petitioner/plaintiff resided in the petition property and taking advantage of that, she coerced Sakunthala Ammal to execute the Will in her favour. The Will had come into existence due to coercion and undue influence. Sakunthala Ammal was not in a sound and disposing state of mind at the time of the execution of the Will. She did not inform the defendants about her intention to execute the Will in favour of the plaintiff. The Will is surrounded by suspicious circumstances. Defendants sent notice dated 09.04.2001 for amicable partition. In a reply dated 23.04.2001 plaintiff had not mentioned about the Letters of

Administration granted on 10.08.2000. Defendants filed a suit for partition in O.S.No.5974 of 2001 on the file of the II Additional City Civil Court, Chennai. Only on 08.01.2003, defendants came to know about the Will. The suit is bad for non joinder of proper parties. It is liable to be dismissed for the reason that the Will is not true and genuine.

5. On the basis of these pleadings, the following issues are framed for trial.

1)Whether the Will dated 14.03.1995 executed by the deceased Sakuntala Ammal in favour of the plaintiff S.Pushpavathi is true, genuine and valid?

2)Whether the revocation under revocation deed dated 14.03.1995, revoking the settlement deeds dated 31.05.1990 under document No.1186, 1187 and 1188 is valid, true and genuine?

3)Whether the plaintiff is entitled for letters of administration with the Will annexed?

4)Whether the defendants are entitled for partition of the suit property?

5)To what relief the parties are entitled to?

Tr.C.S.No.91 of 2004:-

6. The case of the plaintiffs is that Smt.Sakunthala Ammal, wife of Sri.Arumugha Mudaliar is the sister of the first plaintiff Jamuna, Smt.Nagabushanammal, the mother of the plaintiffs 2 to 5 and the defendant Pushpavathi. Arumuga Mudaliar pre-deceased Sakunthala Ammal in the year 1970. They had no children. Sakunthala Ammal was owning a house property described in the plaint schedule and also gold jewels weighing 15 sovereigns. She had executed a registered gift deeds dated 31.05.1990 in favour of her sisters Nagabushanammal, Pushpavathy and Jamuna bequeathing 1/3rd undivided share each in the suit property. She died on 15.10.1999 intestate. Sakunthala Ammal was living with the defendant before her death. After her death, defendant was collecting all the rents from the plaint schedule property, besides taking possession of gold

jewellery. Plaintiff is entitled to 1/3 share in the properties of Sakunthala Ammal. When plaintiffs asked the defendant to partition the properties, she refused under one pretext or other. Then plaintiffs issued a legal notice dated 09.04.2001 seeking partition. In the reply sent by the defendant she stated that Sakuthala Ammal executed a registered Will bequeathing the suit property in her favour. The Will is a forged one and surrounded by suspicious circumstances. Therefore, this suit.

7. The case of the first defendant is that the suit property was purchased by Arumugha Mudaliar and he executed a Will dated 29.07.1969 in favour of his wife Sakunthala Ammal. Arumuga Mudaliar died on 05.11.1970. Sakunthala Ammal lived with the defendant after the death of Arumugha Mudaliar. Defendant was taking care of all the needs of Sakuthala Ammal and performed her last rites. Sakunthala Ammal executed three settlement deeds dated 31.05.1990 in favour of three sisters giving $1/3^{rd}$ share each to them in the suit property. Though these documents is styled as settlement deed, they are only Will for the reason that these

documents will come into effect only after the death of Sakunthala Ammal. Since defendant was taking care of Sakunthala Ammal attending to all her needs including medical needs, Sakuthala Ammal revoked the settlement deeds and executed the Will in favour of the defendant in respect of the suit property. Even during the lifetime of Sakunthala Ammal defendant was collecting the rents and was maintaining the property from 1990. She was also conducting the cases for vacating the tenants. Defendant alone is enjoying the property and hence, on the ground of ouster the defendant has become the owner of the property. Defendants 2, 3 and 4 adopted the written statement of the first defendant.

8. On the basis of these pleadings, the following issues are framed for trial.

1.Whether the plaintiffs have no right to claim partition in view of Will executed by the Sakunthala Ammal in favour of defendant?

2.Whether the plaintiffs have been ousted from the property?

3.Whether the defendants have perfected title by adverse possession?

4.Whether the first plaintiff and plaintiffs 2 to 5 are entitled for partition of 1/3 share each of the suit property?

5.To what other relief they are entitled to?

9. In the joint trial of these cases, PWs 1, 2 & 3 were examined on the side of the plaintiffs in TOS No.24 of 2003 and Exs.P1 to P11 were marked. DWs 1 & 2 were examined on the side of the defendants in TOS No.24 of 2003 and Exs.D1 to D8 were marked.

10. For the easy understanding, the word 'plaintiffs' used in this judgment would refer to the plaintiffs in T.O.S.No.24 of 2003 and defendants in Tr.C.S.No.91 of 2004. The word 'defendants' would refer to the defendants in T.O.S.No.24 of 2003 and plaintiffs in Tr.C.S.No.91 of

2004.

Issue Nos.1 and 2 in T.O.S. No.24 of 2003:

11. The learned counsel for the plaintiffs submitted that the suit property originally belong to Arumugha Mudaliar and he executed a Will in favour of his wife Sakunthala Ammal on 29.07.1969. After the death of Arumugha Mudaliar on 05.11.1970, Sakunthala Ammal became the absolute owner of the suit property. Sakunthala Ammal executed three documents, styled as settlement deeds, namely, Exs.D2, D7 and D8 in favour of her three sisters bequeathing 1/3rd share each to her sisters. Though these documents are styled as settlement deeds, they are not really settlement deeds, but only Wills. The reason is that the settlor had reserved the right of enjoyment of the property till her life time. The settlement deeds had not been acted upon and therefore, there was no immediate transfer of property i.e., transfer of possession in favour of the settlees. The settlees, namely, the other two sisters of the deceased plaintiff Pushpavathy, had not taken care of the Sakunthala Ammal as per the terms of the settlement

deeds. Sakunthala Ammal was taken care of only by the deceased plaintiff Pushpavathy. Therefore, Sakunthala Ammal cancelled all the aforesaid three settlement deeds through Ex.P1 = Ex.D3 cancellation deed. On the same date, she had executed Ex.P11 = Ex.D4 Will in favour of the deceased Pushpavathy. Pushpavathy was in possession and enjoyment of the property and after her death, her legal heirs are in possession and enjoyment of the suit property. Therefore, plaintiffs are the absolute owners of the suit property in terms of Ex.P11 Will and by the long and continuous possession and enjoyment of the suit property. It is further submitted that in the partition suit filed by the defendants, Will was not challenged and brothers of Sakunthala Ammal are not impleaded. In Ex.D6 reply, the execution of settlement deeds by Sakunthala Ammal and their cancellation were admitted. The plaintiffs have examined the attestor of the Will to prove the valid execution and attestation of Ex.P11 Will in favour of Pushpavathy. Thus, he submitted that the plaintiffs are entitled for the grant of letters of administration in respect of the suit property and the suit for partition filed by the defendants has to be dismissed.

12. Per contra, the learned counsel for the defendants submitted that the settlement deeds Ex.D2, D7 & D8 are irrevocable settlement deeds executed in a stamp paper and registered. There was mutation in revenue records on the basis of the settlement deeds. Taking advantage of the old age and proximity with the deceased Sakunthala Ammal, Pushpavathy unduly influenced Sakunthala Ammal to cancel Exs.D2, D7 & D8 settlement deeds and execute Ex.P11 Will. The scribe, attesting witnesses, colluded with the beneficiary in executing Ex.P11 Will. The Will was prepared by Ms.V.J.Latha, Advocate and typed at Chamber No.10, Madras High Court. There are material contradictions in the execution and attestation of the Will. First of all, the settlement deeds had been acted upon and it is irrevocable settlement deeds. Therefore, the cancellation of Exs.D2, D7 and D8 settlement deeds through Ex.D3 cancellation of settlement deed is not valid. Consequentially, the execution of Ex.P11 Will is also not valid. Considering the close relationship between the parties, Pushpavathy was permitted to reside in the suit property. That

doesn't mean that she can set up the plea of ouster against the defendants. The defendants filed the partition suit on the basis of the settlement deeds in favour of them and therefore, the other legal heirs of Sakunthala Ammal are not proper and necessary parties to the suit. Therefore, the learned counsel for the defendants prayed for dismissal of T.O.S. No.24 of 2003 and for decreeing the suit for partition in C.S.No.91 of 2004.

13. From the submissions made, it is clear that there is no dispute with regard to the fact that the deceased Sakuntha Ammal was the owner of the property and that she had executed Exs.D2, D7 & D8 settlement deeds in favour of her sisters, namely, Nagabushanammal, Pushpavathy and Jamuna. The issue now is whether the cancellation of Exs.D2, D7 & D8 settlement deeds through Ex.D3 cancellation of settlement deeds and then execution of Ex.P11 Will in favour of Pushpavathy are valid? If the cancellation of Exs.D2, D7 & D8 settlement deeds is held as invalid, then it is not necessary to consider the execution of Ex.P11 Will by the deceased Sakunthala Ammal. On the other hand, if the cancellation of

Exs.D2, D7 & D8 settlement deeds through Ex.D3 cancellation of settlement deed is held as valid, then we have to consider whether Ex.P11 Will was executed by the deceased Sakunthala Ammal in a sound and disposing state of mind.

14. Learned counsel for the plaintiffs produced the following judgements as to the interpretation of document, whether a document to be construed as settlement deed or Will and for the proposition that if there is no delivery of possession in pursuance of settlement deed, it cannot be considered as settlement deed:-

(i) (2010) 2 MWN (Civil) 405 (Maruthayairmal (deceased) and her LRs ..vs.. Pushpam and others)

(ii) AIR 2001 Mad 392 : (2001) 2 MLJ 355 (R.Jamuna Bai ..vs.. M.A.Anusuya and others)

(iii) This Court's judgment in S.A.(MD) No.437 of 2007 (Lakshminarayanan ..vs.. Raju @ Kuppu Reddy (died) and LRs.) (reported in Indian Kanoon).

15. The following judgments are relied by the learned counsel for the defendants for the preposition that delivery of possession to the donee is not an essential condition for the valid gift/settlement:-

(i) 2012 (1) LW 432 {(Shanta Raju and another ..vs.. Chinnamma) and (Pushpanath ..vs.. Elizabeth Ammal and another)};

(ii) 2014 (9) SCC 445 (Renikuntla Rajamma (dead) by LRs. ..vs.. K.Sarwanamma); and

(iii) 1996 (9) SCC 388 (Namburi Basava Subrahmanyam ..vs.. Alapati Hymavathi and others).

16. Learned counsel for the defendants also relied on the following judgments reported in,

(i) 2015 SCC OnLine Mad 4169 (S.Lingeswaran ..vs.. The Sub-Registrar, Purasawalkam, Chennai and others); and

(ii) 2014 SCC OnLine Mad 7682 {(L.Siddarthan ..vs.. The Sub Registrar, Theagarayanagar, Chennai and others) and (L.Indirajith

..vs.. The Sub Registrar, Theagarayanagar, Chennai and others)} for the preposition that the registration and cancellation of settlement is against the public policy. It is not open to the Sub-Registrar to register the cancellation of patta, when the settlement is unconditional and irrevocable.

17. In ***AIR 2001 Mad 392 : (2001) 2 MLJ 355 (R.Jamuna Bai ..vs.. M.A.Anusuya and others),*** it is observed as follows:-

> *(1) The question regarding whether a document is a will or a settlement depends on the particular set of facts and the court has to consider the recitals in the particular document before arriving at the decision;*
>
> *(2) Nomenclature of the document or the fact that it had been registered will not be of any assistance;*
>
> *(3) The question is whether the dispossession is to take effect on the death of the*

executant;

(4) The use of the words revocable or irrevocable are not determining factors.

18. In ***(2010) 2 MWN (Civil) 405 (Maruthayairmal (deceased) and her LRs ..vs.. Pushpam and others),*** it is observed as follows:-

> *When there is absolute and instantaneous transfer of interest in praesenti to the beneficiaries and where there is absolute or complete divestment of right, title, interest of executant on the date of execution, then the document can be construed as settlement.*

It is further observed that, "*when the conferment of right is postponed till the lifetime of the executant and if the beneficiaries get interest only after the lifetime of executant, the document has to be construed only as a Will.*"

19. In ***S.A.(MD) No.437 of 2007 (Lakshminarayanan ..vs.. Raju @ Kuppu Reddy (died) and LRs.),*** this Court referred to the Judgment in P.K.Mohan Ram ..vs. B.N.Ananthachary and others, reported in ***2010 (4) SCC*** wherein, our Honourable Apex Court has held that *although, no strait jacket formula has been evolved for construction of settlement deeds and Wills, the consistent view of the Supreme Court and various High Courts is that while interpreting an instrument to find out whether it is of a testamentary character, which will take effect after the lifetime of the executant or it is an instrument creating a vested interest in praesenti in favour of a person, the court has to very carefully examine the document as a whole, look into the substance thereof, the treatment of the subject by the settlor/executant, the intention appearing both by the express language employed in the instrument and by necessary implication and the prohibition, if any, contained against revocation thereof. The form or nomenclature of the instrument is not conclusive and the court is required to look into the substance thereof.*

20. In ***2012 (1) LW 432 {(Shanta Raju and another ..vs.. Chinnamma) and (Pushpanath ..vs.. Elizabeth Ammal and another)}***, it is observed that, *"As no right is available to the father to undo what is already legally done, the validity of the settlement and the legal right accrued to the daughter is in no manner affected by the subsequent revocation deed if any. The father, who conveyed his right in the property, is not entitled to execute any Will bequeathing the same property in favour of others."*

21. It is a case where Exs.A1 and A4 settlement deeds contain recitals to the effect that the donors believe that the daughter will take care of her parents. But the recitals in the documents did not disclose that it is made as a precondition, subject to which, the settlement is executed and it is accepted by the settlee.

22. In ***(2014) 9 SCC 445*** **(Renikuntla Rajamma (dead) by LRs. ..vs.. K.Sarwanamma),** when a question arose as to whether retention

of the gifted property for enjoyment by the donor during her lifetime and the right to receive the rents of the property is in anyway affected the validity of the gift, it is observed that, "*a conjoint reading of sections 122 and 123 of Transfer of Property Act makes it abundantly clear that transfer of possession of property covered by the registered instrument of the gift duly signed by the donor and attested as required is not a sine qua non for the making of a valid gift under the provisions of Transfer of Property Act, 1882*".

23. A full Bench comprising five Honorable Judges of Allahabad High Court in ***Lallu Singh ..vs.. Gur Narain (AIR 1922 All.467)*** referred to several decisions which interpreted Section 123 to be overruling the Hindu law requirement of delivery of possession as a condition for making of a valid gift, was of view that *Section 123 of Transfer of Property Act do away with the necessity for the delivery of possession, even if it is required by the strict Hindu law.*

24. While interpreting Section 123 of Transfer of Property Act, it is observed that *insofar as transfer of movable property by way of a gift is concerned, the same can be effected by a registered instrument or by delivery. Such transfer in the case of immovable property, no doubt, requires a registered instrument but the provision does not make delivery of possession of the immovable property gifted as an additional requirement for the gift to be valid and effective. If the intention of the registration was to make delivery of possession of the property gifted also as a condition precedent for a valid gift, the provision could and indeed would have specifically said so. Absence of any such requirement can only lead to the conclusion that the delivery of possession is not an essential condition for making of a valid gift in the case of immovable property.*

25. In **2015 SSC OnLine Mad 4169 (S.Lingeswaran ..vs.. The Sub-Registrar, Purasawalkam, Chennai and others),** the issue considered was that after execution of settlement deed, the settlor losses all rights over the property and she cannot unilaterally execute a cancellation

deed without notice to the beneficiaries.

26. In ***W.P.(MD). No.121 of 2003 (C.R.Bandhi ..vs.. The Inspector General of Registration, Santhome, Chennai),*** this court held that *the Registrar is not a competent person to register the unilateral cancellation deed by deciding the question whether it falls within the exception under Section 126 of the Transfer of Property Act, since he is not the competent authority to decide the disputed question of facts. This issue has to be adjudicated only before the civil court.*

27. In **2014 SCC OnLine Mad 7682 { (L.Siddarthan ..vs.. The Sub Registrar, Theagarayanagar, Chennai and others) and (L.Indirajith ..vs.. The Sub Registrar, Theagarayanagar, Chennai and others)}** referring to the judgment reported in ***2014 (3) CTC 113 in D.V.Loganathan ..vs.. The Sub-Registrar,*** it was held that t*he registration and cancellation of settlement deed is against the public policy as it is not open to the Sub- Registrar to register the cancellation of the deed, when*

the settlement deed is unconditional and irrevocable. If at all, the party who has executed the document, is aggrieved by the settlement deed, he has to approach the Civil Court to set it aside, but, certainly, cannot unilaterally cancel it by getting the deed of cancellation registered with the Sub-Registrar. The Honorable Supreme Court in the judgment reported in ***2014 (4) CTC 572 (Renikuntla Rajamma (died) by legal heirs ..vs.. K.Sarwanamma)*** held that *when a gift deed is executed, duly signed by the donor, making it a valid gift, it cannot be cancelled and mere retention of right to use the property during the lifetime of the donor, does not in any way affect the transfer of ownership in favour of the donee.*

28. In ***1996 (9) SCC 388 (Namburi Basava Subrahmanyam ..vs.. Alapati Hymavathi and others)***, it is observed that *it is settled law that the executant while divesting herself of the title to the property could create a life estate for her enjoyment and the property would devolve on the settlee with absolute rights on the settlor's demise. Reading of the documents together with the schedule would give an*

indication that she had created right and interest in praesenti in favour of her daughter in respect of the properties mentioned in the schedule with the life estate for her enjoyment during her lifetime. It could be considered rightly as a settlement deed, but not as a Will.

29. From the consideration of the judgments produced by either side, though in the judgments relied by the learned counsel for the plaintiffs, it was observed that if the conferment of right is postponed till the lifetime of the executant and if the beneficiary gets interest only after the lifetime of the executant, the document has to be construed only as a Will. However, we have seen from the judgments relied by the learned counsel for the defendants, especially the judgment reported in ***2014 (9) SCC 445 (cited supra)*** that transfer of possession of the property covered by the registered instrument of the gift, duly signed by the donor and attested, is not a sine qua non for making a valid gift. The valid gift cannot be cancelled for the retention of the right to use the property during the lifetime of the donor. The judgment of the Honorable Supreme Court reported in ***2014 (9) SCC***

445 (cited supra) makes it clear that merely because a life interest is created in the property and delivery of possession is not handed over to the donee and it is postponed to a future date after the death of the donor, it cannot be construed as a will, but it can be construed only as settlement deed.

30. Coming to the facts of the case. We have seen that the execution of Exs.D2, D7 & D8 settlement deeds are accepted by both the parties. All these settlement deeds have similar recitals. Ex.D2 settlement deed was executed by Shakuntala ammal in favour of Pushpavathi on 31.5.1990. Exs.D7 & D8 settlement deeds were executed by Shakuntala Ammal in favour of her other sisters Nagabhushanam Ammal and Jamuna respectively on the same date. All the three documents are registered documents. Reading of these documents shows that the suit property was purchased by her husband on 03.10.1962 and he had executed a Will dated 29.07.1969 in her favour giving right of enjoyment till her life and for alienating the property after her lifetime. It is claimed that she is aged and she is taking care of by her 3 sisters and in order to avoid future litigation

and with a view to settle 1/3 share in the schedule property to her sisters, she executed these three settlement deeds bequeathing 1/3 share to all her aforesaid three sisters in the property. It is further recited that Shakuntala ammal is entitled to enjoy the property till her lifetime and the settlement deeds would come into effect after her lifetime; the settlees are entitled to sell, mortgage, alienate and encumber their share after her lifetime; all the three sisters are to maintain her, do the last right to her. These are the recitals of these settlement deeds.

31. From these recitals, we can understand that Shakuntala ammal though reserved the right of enjoyment of the property settled till her lifetime, had given absolute right to the settlees to deal with the property, the manner in which they choose, after her lifetime. It is also to be noted here that only undivided share in the property was conveyed to each sisters. There was no recitals as to reservation of any right for cancelling the settlement deeds. There is also no precondition that the settlement becomes

effective only if the settlees maintain her and in the event of not maintaining her, the settlement will not come into effect or that she has right to cancel the settlement deeds.

32. All the three settlement deeds said to have been cancelled on 14.03.1995 by Shakuntala ammal and on the same date, she said to have executed Ex.P11-Will in favour of her sister Pushpavathi. Ex.P1-cancellation of settlement deeds shows that the only reason stated for the cancellation of Exs.D2, D7 & D8 settlement deeds is that the settlement deeds have not come into effect for the reason that she has not delivered possession of the property and the possession continued with her and therefore, she cancelled the aforesaid settlement deeds. No other reason was stated for cancellation of Exs.D2, D7 & D8 settlement deeds. We have already seen from the judgement of the Honorable Supreme Court reported in ***2014 (9) SCC 445 (cited supra)*** that delivery of possession is not required for a valid settlement deed and the reservation of right by the donor for enjoyment of the property till her lifetime can also be made in a

settlement deed. Merely because Shakuntala Ammal reserved the right to enjoy the property till her lifetime and continued to be in possession of the property till her death in Exs.D2, D7 & D8 settlement deeds, it cannot be construed that Exs.D2, D7 & D8 are not settlement deeds and they had not come into force. Therefore, the revocation of Exs.D2, D7 & D8 settlement deeds through Ex.P1-cancellation of settlement deeds, in the considered view of this Court, is not valid in law. When the revocation of Exs.D2, D7 & D8 settlement deeds through Ex.P1-cancellation of settlement deeds is held as not valid, the execution of Ex.P11-Will by the deceased Shakuntala ammal in favour of Pushpavathi is also not valid under law. This Court, on going through the evidence, finds that taking advantage of the position that Pushpavathi was living with the deceased in the suit property, she had coerced and unduly influenced the deceased Shakuntala ammal to cancel Exs.D2, D7 & D8 settlement deeds through Ex.P1-cancellation of settlement deeds and made her to execute Ex.P11-Will in her favour. Ex.P11-Will is surrounded by suspicious circumstances.

33. It is to be noted that the plaintiff in TOS No.24 of 2003 (previously O.P.No.326 of 2000) obtained Letters of Administration on 10.08.2000 without impleading other sisters. The grant of Letters of Administration was not even mentioned in the reply notice dated 23.04.2001. This fact was not mentioned in the written statement filed in the partition suit. Only on 08.01.2003, this aspect came to the notice of the defendants when the counsel for the plaintiff served a copy of the petition to receive the documents. Thereafter, the defendants were impleaded in TOS No.24 of 2003. It confirms the case of the defendants that Exs.D2, D7 & D8 settlement deeds had been cancelled through Ex.P11 cancellation deed and on the same date, Ex.P1-Will was executed in favour of Pushpavathi under suspicious circumstances by exercising undue influence on deceased Shakuntala ammal. Therefore, it is unnecessary to discuss and give a finding with regard to the execution of Ex.P1-Will in this case.

34. For the reasons stated above, this court finds that the revocation of settlement deeds, namely, Exs.D2, D7 & D8 through Ex.P11-

cancellation deed is not valid and therefore, it will not affect the rights of the defendants under Exs.D7 & D8 settlement deeds. In view of the finding that Ex.P11- revocation/cancellation of settlement deeds is not valid, Ex.P1-Will executed by the deceased Shakuntala ammal in favour of Pushpavathi is also not valid. Accordingly, Issue Nos. 1 and 2 in TOS No.24 of 2003 are answered.

Issue Nos.2 and 3 in Tr.C.S.No.91 of 2004:

35. It is submitted by the learned counsel for the plaintiffs that the plaintiffs are in possession and enjoyment of the suit property continuously and therefore, the defendants are ousted from claiming any right for the reason that the plaintiffs get title through adverse possession. However, this Court does not agree with the submission of the learned counsel for the plaintiffs for the reason that the defendants have filed the suit for partition even in the year 2001 well within the period of 12 years from the date of death of Shakuntala Ammal on 15.10.1999. We have found that only undivided 1/3 share was bequeathed to all her sisters. Merely because

only one co-owner/co-sharer is in possession of the property, she cannot claim to have ousted other co-owners from the property and therefore, acquired title by adverse possession. Thus, this Court finds that the plaintiffs claim that they have ousted the defendants and perfected title by adverse possession in respect of the suit property is not correct and legal. Accordingly, the Issue Nos.2 and 3 in Tr.C.S.No.91 of 2004 are answered.

Issue Nos.3 and 4 in TOS No.24 of 2003 and Issue Nos.1 and 4 in Tr.C.S.No.91 of 2004:

36. In view of the findings arrived at in Issue Nos.1 and 2 in TOS No.24 of 2003 and Issue Nos.2 and 3 in Tr.C.S.No.91 of 2004, this Court finds that the defendants, namely, plaintiffs in Tr.C.S.No.91 of 2004 are entitled to claim their respective 1/3 share in the suit property and the plaintiffs in T.O.S.No.24 of 2003, namely, defendants in Tr.C.S.No.91 of 2004 are not entitled for the grant of Letters of Administration and for any other relief.

Issue No.5 in T.O.S.No.24 of 2003 and Issue No.5 in Tr.C.S.No.91 of 2004:

37. In the result,

(i) The suit in Tr.C.S.No.91 of 2004 is decreed as prayed for and a preliminary decree for partition of division of suit property by metes and bounds in respect of 1/3 share of respective plaintiffs and defendants and mesne profits in favour of plaintiffs is passed as per Exs.D2, D7 and D8 - settlement deeds.

(ii) The suit in T.O.S.No.24 of 2003 is dismissed and the plaintiffs in T.O.S.No.24 of 2003 are not entitled for the grant of Letters of Administration.

(iii) The claim of mesne profits is relegated to an enquiry under Order XX Rule 12 CPC.

(iv) Considering the relationship between the parties, the parties are directed to bear their own costs.

.01.2023

ep/sli/mra

List of witnesses examined on the side of the plaintiff(s) in TOS No.24 of 2003

PW.1 - Mr.S.Sakthivel

PW.2 - Mr.K.Thanigaivelu

PW.3 - Mr.K.Moorthy

List of exhibits marked on the side of the plaintiffs in TOS No.24 of 2003

Exhibits	***Date***	***Particulars***
Ex.P1	14.03.1995	Original Cancellation of Settlement Deeds executed by Sakunthala Ammal
Ex.P2	01.02.2000	Original Death Certificate of Sakunthala
Ex.P3	16.11.2000	Original Property Tax Collection Receipt in the name of S.Pushpavathy
Ex.P4	13.11.2000	Original Water Supply and Sewage Tax Payment Receipt (2 Nos.) in the name of S.Pushpavathy
Ex.P5	04.12.2020	Original Electricity Bill in the name of S.Pushpavathy
Ex.P6	31.01.1995	Certified copy of the judgment in RCOP No.3163 of 1991 on the file of Small Causes Court, Chennai
Ex.P7	22.04.1998	Photocopy of the order in E.P.No.208 of 1996 in RCOP No.3163 of 1991 along with list of articles
Ex.P8	-	Photocopy of the property tax demand card book in the name of Sakunthala
Ex.P9	-	Original water charges card book in the name of A.Sakunthala
Ex.P10	05.07.1989	Original death certificate of Arumugam
Ex.P11	14.03.1995	Original Will executed by Sakunthala Ammal in favour of S.Pushpavathy

List of witnesses examined on the side of the defendants in TOS No.24

of 2003

DW.1 - Mrs.K.Jamuna

DW.2 - Mr.D.Gunalan

List of exhibits marked on the side of the defendants in TOS No.24 of 2003

Exhibits	***Date***	***Particulars***
Ex.D1	29.07.1969	Photocopy of the Will executed by Arumuga Mudaliar
Ex.D2	31.05.1990	Certified copy of the settlement deed (Doc. No.1187/1990) executed by Sakunthala Ammal in favour of Pushpavathi
Ex.D3	14.03.1995	Certified copy of the cancellation of settlement deeds executed by Sakunthala Ammal
Ex.D4	14.03.1995	Certified copy of the Will executed by Sakunthala Ammal in favour of Pushpavathi (Doc No.31/1995)
Ex.D5	09.04.2001	Copy of Legal notice sent by plaintiffs to defendant (S.Pushpavathi) in Tr.C.S.No.91 of 2004
Ex.D6	23.04.2001	Original reply notice sent by the defendant's counsel to the plaintiffs' counsel in Tr.C.S.No.91 of 2004
Ex.D7	31.05.1990	Certified copy of the settlement deed (Doc. No.1186/1990) executed by Sakunthala Ammal in favour of Nagabhushanammal.
Ex.D8	31.05.1990	Certified copy of the settlement deed (Document No.1188/1990) executed by Sakunthala Ammal in

Exhibits	*Date*	*Particulars*
		favour of Jamuna.

ep/sli/mra 03.01.2023
Index:Yes
Internet: Yes
Speaking Order: Yes/No
Neutral citation : Yes/No

G.CHANDRASEKHARAN.J.,

ep/sli/mra

Common Judgment in
T.O.S.No.24 of 2003
and
C.S.No.91 of 2004

03.01.2023