



C.S.No.435 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on	28.02.2023
Order pronounced on	31.03.2023

CORAM

**THE HONOURABLE MR.JUSTICE SENTHILKUMAR
RAMAMOORTHY**

C.S.No.435 of 2018
and
A.Nos.1039 and 1040 of 2022

1.Mrs.Swarna Krishnaswamy

2.K.Subramanian
Rep. by his Power Agent,
Mrs.Indira Ramakrishnan

3.Mrs.Lakshmi Natarajan

4.Mrs.Indira Ramakrishnan

5.Hemamalini

... Plaintiffs

Vs.

1.Estate of K.Bhavadharini
Inter-meddlers by Guru Dhananjay



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2.Guru Dhananjay

3.A.Kousalya Merchant

4.Canara Bank,
Rep. by its Manager,
Mandaveli Branch,
R.K.Mutt Road,
Chennai - 600 028.

... Defendants

PRAYER : This Civil Suit is filed praying to pass a judgment and decree as against the Defendant's:-

(a) For a Declaration that the purported settlement dated 20-12-2006 and registered as Document No. 3729 of 2006 Book I in the office of the Sub Registrar, Mylapore, executed by Late S. Krishnaswamy in favour of Swarna Krishnaswamy, Bhavadharini and Master Guru Dhananjay is illegal, unlawful and non-est in the eyes of law and consequently set aside the same as vitiated by fraud, misrepresentation, undue influence, and coercion.

(b) For a Mandatory Injunction directing the 2nd Defendant to hand over possession of the Ground and 2nd Floor of the suit property to the 1st Plaintiff on a date to be fixed by this Hon'ble Court;



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(c) For Partition and separate possession of the suit schedule mentioned property into 6 equal shares and allocate equal share to the Plaintiffs 2 to 5 and Defendant 2 and 3 subject to the life interest in favour of the 1st Plaintiff;

(d) For a Permanent Injunction restraining the 2nd Defendant, his men, agents, servants or anyone claiming under or through him and/or authorised by him from encumbering or alienating or dealing with the suit schedule mentioned property either by way of sale, mortgage, Joint Venture or in any other manner;

(e) For a Permanent Injunction restraining the 2nd Defendant, his men, agents, servants or anyone claiming under or through him from in any manner interfering with the 1st Plaintiff's peaceful possession and enjoyment of the suit schedule mentioned property and the rights of the other Plaintiffs including the right of ingress and egress to the suit property:

(f) For a permanent injunction restraining the 2nd Defendant from operating the Locker No 577 held in the name of the 2nd Defendant with Canara Bank, Mandaveli Branch, R.K.Mutt Road, Chennai 600 028, the 4th



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Defendant herein, more fully described in Schedule "B" hereunder.

(g) For a Mandatory injunction directing the 4th Defendant to open the Locker No 577 in the presence of a Senior Officer and in the presence of the 1st Plaintiff and the 2nd Defendant and take an inventory of the jewellery, documents, securities and other articles kept in the said locker held in Canara Bank, Mandavali Branch, R.K.Mutt Road, Chennai 600 028 in the name of the 2nd Defendant, more fully described in Schedule "B" hereunder, on a date to be fixed by this Hon'ble Court and after such inventory, file a report thereof before this Hon'ble Court.

(h) For such further or other reliefs.

(i) For costs of the suit.

For Plaintiffs : M/s.R.Thiagarajan
Mrs.Vasudha Thiagarajan

For Defendants : M/s. H.Karthik Seshadri
Mrs.Elizabeth Seshadri
for Iyer and Thomas

JUDGMENT

At the heart of this suit is an impugned settlement deed executed



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by the late Mr.S.Krishnaswamy (the Settlor) on 20.12.2006 in respect of the immovable property, more fully described in Schedule A to the plaint, bearing old Door No.19, new Door No.3, reassigned Door No.5, Srinivasa Avenue Road, Raja Annamalaipuram, Chennai- 600 028, comprised in R.S.No.4253/2 as per plan and previous document 4253/3 as per revenue records, and measuring about 4753 square feet (the Property). By such settlement deed, a life estate was created in the Property in favour of his wife and an absolute estate in favour of one of his daughters, the late Ms.K.Bhavadharini (Ms.Bhavadharini), and his grandson, Guru Dhananjay. The said document was registered as Document No.3729/2006 in Book – 1 in the Office of the Sub Registrar, Mylapore. The plaintiffs are the widow, son and daughters of the Settlor. The first defendant is the estate of K.Bhavadharini, the second defendant is the grandson of the Settlor and the son of Ms.Bhavadharini, the third defendant is one of the daughters of the Settlor and the fourth defendant is the Canara Bank, in which a locker stands currently in the name of the second defendant.



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2. The plaintiffs impugn the settlement deed and pray for a declaration that such settlement deed be set aside. They also pray for the following: handing over possession of the ground and second floor of the Property to the first plaintiff; partition of the Property into six equal shares to be allotted to plaintiffs 2 to 5 and defendants 2 and 3 subject to the life interest in favour of the first plaintiff; a permanent injunction to restrain the second defendant from encumbering or alienating the Property; a permanent injunction to restrain the second defendant from interfering with the first plaintiff's peaceful possession and enjoyment of the Property; a permanent injunction to restrain the second defendant from operating locker No.577 in the fourth defendant; and a mandatory injunction to permit the fourth respondent to open locker No.577 in the presence of a senior officer of the bank and the first defendant and the second defendant so as to take an inventory of the contents thereof.

3. In the plaint, the plaintiffs stated that the Property was acquired by the Settlor from and out of his own income under sale deed dated



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22.04.1977, which was registered as Document No.295/1997 in the Office of the Sub Registrar, Mylapore, Madras. Upon purchasing the Property, the Settlor took a loan from Muthialpet Benefit Fund Limited to develop the Property. He applied for and obtained a patta in respect thereof. The Settlor executed a Will on 27.04.1998, which was registered as Document No.107/1998 in Book – 1, in the Office of the Sub Registrar, Mylapore, Chennai South. Under the said Will, the entire ground floor of the Property was bequeathed along with undivided half share in the land in favour of the Settlor/testator's wife, Mrs.Swarna Krishnaswamy, for life, and thereafter in favour of his daughter, Ms.Bhavadharini. The ground and first floor of the Property together with undivided half share of the land was bequeathed in favour of the Settlor/testator's daughter, Ms.Bhavadharini, subject to the right of residence of the testator's wife, Mrs.Swarna Krishnaswamy.

4. The Settlor executed a subsequent Will dated 24.05.2006, which was registered as Document No.51 of 2006 in the Office of the Sub Registrar, Mylapore. By this Will, the earlier Will dated 24.07.1998 was



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revoked and the Property was bequeathed in favour of the Settlor/testator's son and daughters equally. According to the plaintiffs, the Settlor was not keeping good health in the later half of the year 2006. They state that he was diabetic. They also stated that he was admitted at BSS Hospital on account of poor health. The plaintiffs alleged that he suffered from dementia and that his memory faded as the day progressed. They also alleged that his eyesight was poor. He died on 19.11.2009 and his last voluntary disposition was under Will dated 24.05.2006.

5. With regard to Ms.Bhavadharini, the plaintiffs stated that she was the fourth daughter of the Settlor and the first plaintiff. They also stated that she was initially married to one Ravishankar Ramnath but that the marriage was short lived. She subsequently married one Mr.Sivaraman. The second defendant was born to Ms.Bhavadharini and Sivaraman on 18.09.1992. Ms.Bhavadharini and Mr.Sivaraman separated in 2002 and thereafter obtained a decree of divorce. The plaintiffs stated that the second defendant was raised by his grandparents from the time he was about six



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months old. According to the plaintiffs, the second defendant often quarrelled with his mother and even assaulted her on a few occasions. They also stated that Ms.Bhavadharini was afflicted by cancer and eventually died on 31.01.2017.

6. The plaintiffs alleged that they were unaware of the impugned settlement deed. Such settlement deed was discovered by them after the second defendant stated *“once I finish you, my right would become absolute and none can enter the premises”* to his grandmother. This prompted the plaintiffs to apply for an encumbrance certificate in respect of the Property. From such encumbrance certificate, the plaintiffs discovered that Ms.Bhavadharini had exercised undue influence on her father and coerced him to execute the settlement deed dated 20.12.2006. They state that the settlement deed does not provide any valid or tenable reasons for departing from the normal line of succession. They further state that the disposition under the impugned settlement deed is unnatural and improbable. In this connection, they further stated that the document was



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executed in the month of Margazhi and that a traditional Brahmin would not execute such document in the said month.

7. As regards the locker, they state that the locker was in the names of the first plaintiff and Ms.Bhavadharini. The jewellery of the first plaintiff was kept in the said locker. After the death of Ms.Bhavadharini, it is stated that the locker was transferred to the name of the second defendant at his instance. Therefore, the plaintiffs state that the locker should be opened in the presence of the first plaintiff and the second defendant and an inventory should be taken of the contents.

8. The second defendant filed a written statement along with a counter claim. In the written statement of the second defendant, he stated that he performed the last rites of his maternal grandfather/the Settlor. Upon completion of the ceremonies, according to the second defendant, his grandmother/the first plaintiff informed plaintiffs 2 to 5 about the settlement deed executed by his grandfather. According to the second defendant, all the



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title deeds pertaining to the suit schedule property were in the custody of the first plaintiff.

9. The second defendant alleges that the suit was triggered by his marriage to a girl from a different caste. The second defendant denied the allegations that he often shouted at or abused his mother. The second defendant reiterated, in paragraph 21 of the written statement, that immediately after the death of his grandfather in November 2009, his grandmother openly declared to the entire family that a settlement deed dated 20.12.2006 was executed by her husband.

10. The second defendant asserted that his grandmother was brainwashed by plaintiffs 2 to 5 and forced to leave the suit property. The further allegations with regard to the second defendant throwing a dining table chair on the fourth plaintiff and vessels on her and on his grandmother were denied.



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11. As regards the contents of the locker, the second defendant asserted that the locker was transferred to his name because the contents thereof belonged to his late mother. As regards the counter claim, the second defendant asserted that the fourth plaintiff took possession of the documents of title of the Property and the settlement deed dated 17.08.2006 relating to the Mayiladuthurai property. Therefore, a mandatory injunction was prayed for by the second defendant to direct the fourth plaintiff to return the documents of title relating to the suit schedule property and the Mayiladuthurai property.

12. A reply statement was filed by the plaintiffs. In the reply statement, the plaintiffs stated that the Settlor was admitted in the BSS Hospital on 04.06.2006 and subsequently at the St.Isabel's Hospital, Mylapore, Chennai, on 14.10.2006. They denied that the first plaintiff informed the plaintiffs 2 to 5 about the execution and registration of the settlement deed upon the death of her husband. With regard to the locker, they stated that both the first plaintiff and Ms.Bhavadharini kept their



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jewellery in the locker. The plaintiffs denied that they removed the documents relating to either the Property or the Mayiladuthurai property. According to them, the suit schedule properties were not entrusted to the first plaintiff or the fourth plaintiff.

13. Based on the above pleadings, the following issues were framed on 13.11.2019:-

“1. Whether the 4th plaintiff is liable to return all the documents of title pertaining to the Suit property and the property situated at Mayiladuthurai to the 2nd defendant (OPD)?

2. Whether the Settlement Deed dated 20.12.2006 registered as Document No.3729 of 2006 in the office of the SRO Mylapore is illegal, invalid and non-est in the eyes of law as it is vitiated by fraud, misrepresentation, undue influence and coercion?

3. Whether the suit as framed by the plaintiffs is maintainable in law?



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4. *Whether the 2nd defendant is liable to hand over vacant possession of the ground floor and the 2nd floor of the suit property to the 1st plaintiff?*

5. *Whether the plaintiffs are entitled to a preliminary decree for partition and separate possession of the suit property into 5 equal shares and allotment of 1 share each to the plaintiffs 2 to 5 and the 3rd defendant subject to the life interest in favour of the 1st plaintiff?*

6. *Whether the plaintiffs are entitled to permanent injunction restraining the 2nd defendant from encumbering or alienating or dealing with the suit property?*

7. *Whether the plaintiffs are entitled to permanent injunction restraining the 2nd defendant from interfering with the peaceful possession and enjoyment of the 1st plaintiff and the ingress and egress of the other plaintiffs to with the suit property?*

8. *Whether the 2nd and the 4th defendants are liable to hand over the articles, jewelleries, documents etc morefully*



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described in Schedule B to the plaint that are held in the Locker with the 4th defendant to the 1st plaintiff?

9. Whether the plaintiffs are entitled to an injunction restraining the 2nd defendant from operating the bank locker with the 4th defendant?

10. Whether the defendants are liable to pay costs to the plaintiffs?

11. To what relief are the parties entitled to?"

14. The plaintiffs adduced evidence by examining the first plaintiff, Mrs. Swarna Krishnaswamy, as PW1; the third plaintiff, Mrs. Lakshmi Natarajan, as PW2; and the fourth plaintiff, Mrs. Indira Ramakrishnan, as PW3. Exs. P1 to P10 were exhibited through PW1; Exs. P11 to P29 through PW2; and Ex. P30 through DW1. On subpoena, Mr. T. Susindran was examined as CW1. The second defendant was examined as DW1. Exs. D-1 to D-3 were exhibited during the cross examination of PW1; Ex. D4 during the cross-examination of PW2; and Exs. D5 D14 through DW1. Mr. Suresh Kumar, Assistant Executive Engineer,

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Unit 40, Zone-13, Corporation of Chennai, was examined as CW2 and Exs. C1 and C2 were exhibited through him. Mr.Jaga Jeevan Ram, Tahsildar, Mylapore Taluk, was examined as CW3 and Ex. C3 series was exhibited through him. Oral submissions on behalf of the plaintiffs were advanced by Mr.R.Thiagarajan, learned counsel; and on behalf of the second defendant by Mr. H.Karthik Seshadri, learned counsel. Written submissions were also submitted by learned counsel for the plaintiffs and second defendant.

15. Mr.Thiagarajan submitted that the impugned settlement deed was not executed by the Settlor while in a sound and disposing state of mind. He contended that the said settlement deed is vitiated by fraud, misrepresentation, undue influence or coercion. He contended, therefore, that the settlement deed was not executed with the free consent of the Settlor. By drawing reference to Section 31 of the Specific Relief Act 1963 (the Specific Relief Act), he submitted that a suit may be filed by a person challenging a written instrument as being void or voidable.



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16. After referring to the Will dated 24.07.1998, he focussed attention on the subsequent Will dated 24.05.2006. He pointed out that the bequest under this Will was natural and made in favour of all his children equally. The said Will also provided for the right of residence and income from the said property of his wife. He pointed out that the Will was drafted by a reputed advocate and was attested by the husband of the fourth plaintiff and a family friend. By contrast, with reference to the impugned settlement deed, he stated that the disposition was completely unnatural and that the settlement deed did not provide any reasons for not making any provision for the other children of the Settlor. In this regard, he further contended that the settlement deed does not contain any explanation for revoking the Will under which a natural disposition was made in favour of all the children. He further pointed out that the settlement deed was attested by the two colleagues of Ms.Bhavadharini, who was one of the beneficiaries.

17. By drawing my attention to the evidence of CW1, T.Susindran, he pointed out that CW1 admitted that the settlement deed was drafted under instructions provided by Ms.Bhavadharini and that she had purchased



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the non-judicial stamp papers. He also referred to questions 9, 11 and 12 and the answers thereto of CW1, wherein CW1 stated that the Settlor was brought to the Sub Registrar's Office by Ms.Bhavadharini and that the contents were not explained to the Settlor. Mr.Thiagarajan further submitted that Mr.Jerome, who was the other witness to the settlement deed, was not examined by the defendants.

18. Mr.Thiagarajan next contended that the Settlor was in poor health at the time of execution of the settlement deed. In order to substantiate this contention, he referred to the medical records. He pointed out that both an ECG and CT Scan of the brain were performed on the Settlor when he was admitted to the BSS Hospital in June, 2006. He also referred to the discharge summary from the St.Isabel's Hospital, where he was admitted on 14.10.2006.

19. With reference to the evidence of PW2 and, in particular, paragraphs 5, 6, 9, 15, 23 and 26 of the proof affidavit, he submitted that



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the Settlor had severe diabetes. As a consequence, his vision was affected and he developed glaucoma and diabetic retinopathy. He referred to the statement in paragraph 9 of the proof affidavit of PW2 that her father had developed dementia and that his memory faded as the day progressed. With reference to paragraphs 23 and 26 of the proof affidavit, he submitted that PW2 stated that the plaintiffs were unaware of the settlement and discovered the same only upon applying for an encumbrance certificate after the second defendant shouted at the first plaintiff and said *“once I finish you, my right would become absolute and none can enter the premises”*. Mr.Thiagarajan also referred to the cross-examination of PW2 on 02.09.2021 and 21.09.2021. He next turned to the evidence of Indira Ramakrishnan, who was examined as PW3. In particular, he referred to the cross-examination of PW3 on 17.11.2021, wherein PW3 stated that her late uncle Justice Balasubramaniam advised the plaintiffs to apply for probate after the death of the first plaintiff.

20. As regards the evidence of DW1, Mr.Thiagarajan referred to



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questions 44 to 49 and the answers thereto of DW1 and pointed out that DW1 gave the vague answer that he was aware of the commotion relating to the Will of the year 2006.

21. With regard to the locker, Mr.Thiagarajan submitted that the jewellery in the locker was identified but bills were not produced. Since the locker is in the second defendant's name at present, he submitted that he may operate the locker after the first plaintiff removes her jewellery from such locker. He concluded his submissions by summarizing the reasons that justify setting aside the settlement deed, namely, that the settlement deed was executed when the Settlor was in very poor health; the disposition is unnatural; the settlement deed was executed in the month of Margazhi; and no explanation was provided for the unnatural disposition and for revoking the Will under which the estate was bequeathed to all the children. In support of these submissions, he referred to and relied upon the following judgments:-



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1. *Venkatrama Aiyar and others v. Krishnammal and another (Venkatarama Aiyer)*, AIR 1927 Mad. 225;
2. *Suguna and another v. Vinod G.Nehemiah and others(Suguna)* , 2008 (2) CTC 433;
3. *Govindasamy Naicker and others v. K.N.Srinivasa Rao and others*;
4. *Lakshmi Amma and another v. Talengala Narayana Bhatta and another*, AIR 1970 SC 1367;
5. *Shravan Goba Mahajan and others v. Kashiram Devji and others(Shravan Goba Mahajan)*, 1927 AIR Bom. 384;
6. *Pratima Chowdhury v. Kalpana Mukherjee and another(Pratima Chowdhury)*, (2014) 4 SCC 196;
7. *Harcharan Singh Hazooria v. Kulawant Singh Hazooria and others*, (2021) SCC Online DEL 4850;
8. *K.Laxmanan v. Thekkayil Padmini and others*, 2009 1 SCC 354;
9. *Krishna Mohan Kul v. Pratima Maity and another (Krishna Mohan Kul)*(2004) 9 SCC 468
10. *Rosammal Issetheenammal Fernandez v. Joosa Mariyan Fernandez*



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11.S.Ramamurthy v. Jayalakshmi Ammal, 1991 1 L.W 391;

12.M.Kandiah Pillai v. S.Mehalingam and 7 others, 2000 (4) CTC 490;

13.Ladli Prashad Jaiswal v. The Karnal Distillery Co. Ltd., Karnal and others, AIR 1963 SC 1279; and

14.B.Venkatamuni v. C.J.Ayodhya Ram Singh and others, (2006) 13 SCC 449.

22. Mr. Karthik Seshadri responded to the above submissions by first setting out the manner in which the suit was instituted. His first contention was that the plaintiffs have sought multiple remedies such as the setting aside of the settlement deed, partition and injunctive relief. With regard to the original of the settlement deed, he stated that the plaintiffs failed to produce the original although they are in possession thereof. By referring to the certified copy of the settlement deed (Ex.P.5), he submitted that the certified copy was applied for and obtained on 25.06.2018 by one P.Kishore. The encumbrance certificate (Ex.P.10) was also applied for and



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obtained by P.Kishore on 26.06.2018. Similarly, the death certificate of Ms.Bhavadharini (Ex.P.6) was applied for and obtained on 27.06.2018 and the death certificate of the Settlor (Ex.P.9) was applied for and obtained on 24.06.2018. The plaint was signed shortly thereafter on 27.06.2018. After obtaining leave to sue on 28.06.2018, he submitted that permission was obtained for a lunch motion on 02.07.2018. According to Mr.Karthik Seshadri, the second plaintiff was purportedly represented through his agent but the Power of Attorney Deed was not produced in spite of a notice to produce the same.

23. Mr. Karthik Seshadri compared paragraph 20 of the plaint in the present suit with paragraph 6 of the written statement of the first plaintiff herein in O.S.No.18 of 2018 and pointed out that the averments in these two paragraphs are incompatible. By drawing reference to the evidence of PW1 on 10.12.2020, he submitted that PW1 agreed, in response to questions 188 and 189, that both the Mayiladuthurai and Chennai properties were settled in favour of Ms.Bhavadharini because she took care of the



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properties. Since no one was taking care of the properties after her death, he pointed out that PW1 stated that she was objecting to both the settlements. By drawing reference to questions 173 to 176 and the answers thereto of PW1 in cross-examination, he submitted that PW1 admitted that no steps were taken to probate the Will executed in May 2006 because no one was interested in it. With reference to the cross-examination of PW2 on 02.09.2021, he pointed out that PW2 stated that the originals of Exs.P.1 to Ex.P.4 were in the custody of the mother of PW2, the first plaintiff.

24. With regard to the evidence on the health condition of the Settlor, Mr. Karthik Seshadri submitted that no doctor was examined and that the documents on record do not support an inference of dementia or any other form of cognitive impairment. By drawing reference to the evidence of CW1, he pointed out that CW1 admitted that there was nothing suspicious about the execution of the settlement deed in reply to question 44. By referring to questions 54 to 63 and the answers thereto of CW1, he submitted that CW1 admitted that he engaged Mr.Thiagarajan as counsel for



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most of his cases on the Original Side. Therefore, he submitted that the evidence of CW1 should be viewed with skepticism.

25. Mr.Karthik Seshadri next contended that the suit was triggered because of the deep resentment of plaintiffs 3 to 5 to the inter-caste marriage of the second defendant. By referring to the cross-examination of PW1 on 24.11.2020, he pointed out that she admitted that she did not attend the marriage of the third defendant because the third defendant married a Parsi gentleman called Ajit Merchant. He further pointed out that the third defendant visited her mother for the first time after the death of Ms.Bhavadharini in 2017. Similarly, he pointed out that PW1 admitted that she did not attend the marriage of the fourth defendant's daughter, Dr.Taruni, who married a boy from the Telugu Jain community in 2010.

26. With regard to the locker, Mr. Karthik Seshadri contended that the admitted position is that the locker is in the second defendant's name. He



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further submitted that the locker was transferred to the name of the second defendant because the contents of the locker belonged to his mother. With regard to the counter claim, he submitted that Ex.P.1 to Ex.P.4 were filed by the plaintiffs and, therefore, the original of Ex.P5 would also be with the plaintiffs.

27. Mr. Karthik Seshadri referred to and relied on the following judgments:

(i) *Ram Sarup Gupta (dead) v. Bishun Narain Inter College (Ram Sarup Gupta)*(1987) 2 SCC 555

(ii) *Prem Singh v. Birbal and others* (2006) 5 SCC 353

(iii) *Navaneetham Ammal and others v. Baby Ammal and others*, 2013-2-LW446

(iv) *Joseph John Peter Sandy v. Veronica Thomas Rajkumar and another (Joseph John Peter Sandy)*, (2013) 3 SCC 801

(v) *S. Vatsala v. K.S. Mohan*, 2016- 1-LW577

(vi) *Jamila Begum (dead) v. Shami Mohd. (dead) (Jamila Begum)*(2019) 2 SCC 727



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(vii)*Raja Ram v. Jai Prakash and others* (**Raja Ram**)(2019) 8 SCC 701

(viii)*R. Selvam v. R. Mani and others*, A.S.No.357 of 2016 and C.M.P.

No.8020 of 2016, dated 22.07.2021, Madras High Court.

28. By way of rejoinder, Mr.Thiagarajan submitted that the counter claim is required to be drawn up like a plaint as per Order VIII Rule 6(A) CPC read with Order V Rule IV of the O.S. Rules. After advertng to the brief pleading in support of the counter claim, he referred to the proof affidavit and contended that the proof affidavit goes much beyond the scope of the counter claim.

Limitation

29. This Court did not frame an issue on limitation but the mandate of Section 3 of the Limitation Act, nonetheless, calls for consideration as to whether the suit is barred by limitation. The second defendant pleaded that the suit was barred by limitation but the plaintiffs denied the contention by asserting that the suit was filed within three years



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from the date of knowledge of the impugned settlement deed. According to the plaintiffs, they became aware of the settlement only upon obtaining the encumbrance certificate on 26.06.2018(Ex.P10), which contained an entry evidencing the execution of the settlement deed. On the contrary, the second defendant pleaded that the first plaintiff informed the other plaintiffs about the settlement deed in 2009 after the conclusion of the death ceremony of his grandfather. The evidence on record needs to be examined closely to ascertain whether a conclusion can be drawn on that basis with regard to date of knowledge of the settlement deed.

30. The following questions and answers of PW1, in cross-examination and re-examination, on 10.12.2020, are relevant:

“Q.188: In August, 2006 first you have settled your Mayiladurai property to Bhavadharini. A few months later your husband settled the suit property to Bhavadharini. Why do you object now to the settlements?

A: When Mayiladurai property was taken care properly



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by Bhavadharini, we settled the property in her name and after her death, there was no one taking care of the property. Hence, I have objections for the settlement now for both the properties.

Q.189. Does your answer hold good for the suit property at Chennai also?

A: Yes.

Q.190: What were your fears when your husband settled the suit property to Bhavadharini in 2006?

A: She may take care of the property very properly or she may not take care of the property properly and she may misuse the property, I have such kind of the fears.

Q.191. So you have discussed this with your husband. What do you say?

A: Yes. So many times”

Re-examination

“Q: When did you come to know about the purported



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settlement deed dated 20.12.2006 executed by your late husband Krishnaswamy? (with objection)

A: I do not know the exact date. But I am objecting the same from the date of my knowledge of the said settlement deed.”

The documentary evidence on record includes property tax receipts for the Property from 2006-2007 to 2018-2019 (Ex.D6), water and sewerage tax and charges receipts from 2014 to 2019 (Ex.D8), electricity charges receipts for specific periods from 2013 to 2016 (Ex.D10), the extract from the Town Survey Land Register (Ex.D12), name transfer order dated 27.04.2007 of the Corporation of Chennai (Ex.D14) and the patta transfer application to the Tahsildar (Ex.C3). All these documents are in the names of Swarna and 2 others. The above answers of PW1 and these documents indicate that PW1 probably knew about the settlement deed around the time of execution or soon thereafter, but there is no evidence that she informed the other plaintiffs. Whether they became independently aware requires to be examined.



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31. As regards the date of knowledge of the other plaintiffs, the following questions and answers from the cross-examination of PW1 are relevant:

Q174: In 2009 after your husband died, when your daughters raised issue about wanting a share in the property, was it not your son Mr. Subramaniam (P2) who told your daughters that your father has done what he always wanted to do and that daughters should not try to re-open that. What do you say?

A: I do not know all these things. Ask Mr. Subramaniam.

Q.175: I suggest to you that was the reason why nobody even applied for S. Krishnaswamy's legal heirship certificate. What do you say?

A: There was no necessity for such things. That is why we have not applied for it.

Q.176: I suggest you that was the reason why nobody



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took steps to probate Mr. S. Krishnaswamy's Will of May

2006. What do you say?

A: No, it is not like that. No one was interested to do it.

While the answer to question 174 appears to be evasive, it cannot be inferred from this answer that all the plaintiffs were aware about the settlement deed and that the second plaintiff told his sisters in 2009 that they should not re-open what was done through the settlement deed. Such conclusion could be drawn only if the other plaintiffs confirmed the above-mentioned conversation. The answers to questions 175 and 176 are also unconvincing and raise a doubt that the plaintiffs may have known about the settlement deed. These answers are, however, insufficient to arrive at a clear conclusion.

32. In course of cross-examination on 08.09.2021, PW2 was asked about the settlement deed. The question and answer is as under:

“Q. So, you applied for EC and what did you see in the EC?

A: Through the EC, I came to know about the settlement



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deed.”

The following questions and answers of PW3, in cross-examination on 07.10.2021, are also material:

“So you accused your dead younger sister Bhavadharini of fraud and coercive practices and other bad stuff and were ready to put your signature to a plaint saying all these within 24 hours of seeing the settlement deed in Ex.P5?

A: A settlement deed was a shock to us and it seemed to have transpired by fraudulent means without our knowledge and hence we were forced to file a plaint along with my mother.

Q: Is it your case that on 26.06.2018 after seeing the settlement deed in Ex.P5, you discussed with your brother in USA, your mother in Chennai, your sister in Tirupur and other sister in Chennai and all of you decided to ask your lawyer to draft a plaint, which he did



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over night, and which you signed on 27.06.2018?

A: My mother read the settlement deed and was shocked at the contents of the settlement deed. She consulted all of us and collectively, we took a decision to file a suit to help my mother.”

The sequence of events elicited in the above cross-examination casts doubts on the date of knowledge of the plaintiffs about the settlement deed, but is insufficient to conclude that they were aware in 2006 or even 2009. In these circumstances, no definitive conclusion can be drawn on the date of knowledge. Therefore, on limitation, I am inclined to extend the benefit of doubt to the plaintiffs.

Issue Nos.2 , 3 and 5:

33. The second issue relates to the validity of the settlement deed (Ex.P.5). The third issue is whether the suit, as framed, is maintainable. The fifth issue relates to partition of the Property. Since the latter issues are dependent on the decision on the second issue, these issues are decided



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34. On examining Ex.P.5, it is evident that it is a certified copy of a registered settlement deed. The document was executed and registered on 20.12.2006 as Document No.2729 of 2006 in the Office of the Sub Registrar, Mylapore. It was attested by P.Jerome, Advocate, and T.Susindran, Advocate. It is recorded therein that it was drafted by T.Susindran, Advocate. The plaintiffs do not allege that the Settlor did not execute the settlement deed. Put differently, they do not allege that the signatures are not those of the Settlor. The basis on which the settlement deed is impugned is that the document was executed without the free consent of the Settlor.

35. A settlement deed is, in legal terminology, a gift. Section 123 of the Transfer of Property Act, 1882 (the TP Act) deals with a transfer of immovable property by gift and reads, in relevant part, as under:

“123. Transfer how effected- *For the purpose of making*



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a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses....”

Section 126 thereof deals with suspension or revocation of a gift and the said provision is, in relevant part, as under:

“126. When Gift may be suspended or revoked – *The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.*

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked....”



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A gift is a form of conveyance in which, ordinarily, no obligations are imposed on the donee. This is subject, however, to the prescription in the Maintenance and Welfare of Senior Citizens and Parents Act, 2007. Besides, the transfer is made without consideration. Therefore, it does not partake of or satisfy all requirements of a valid contract. Indeed, the expression used in Section 126 “if it were a contract” is itself indicative that it is not a contract.

36. Nonetheless, by virtue of Section 126 of the TP Act, a gift may be revoked in any of the cases in which it could have been rescinded, if it were a contract. The rescission of a contract is dealt with in the Indian Contract Act, 1872 (the Contract Act). Before delving further into the Contract Act, it is significant to notice that the TP Act, although enacted after the Contract Act, does not make express reference thereto in Section 126. Hence, it cannot be concluded that the provisions relating to rescission in the Contract Act are incorporated by reference into the TP Act for purposes of rescinding a gift. The more acceptable approach is to proceed on the basis



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that the principles underlying rescission of contracts are made applicable to rescission of a gift by virtue of Section 126 of the TP Act.

37. A contract may be rescinded, under the Contract Act and under common law, if there is absence of free consent. Such rescission is on the basis that there is a formation defect. Rescission on the ground of a formation defect should be contrasted with a case where a person interested in the relevant property assails a conveyance, including a settlement/gift, on the ground that the person who conveyed such property did not have title and that, therefore, such conveyance is invalid. The expression “free consent” is defined as under in Section 14 of the Contract Act:

“ “Free consent” defined.—Consent is said to be free when it is not caused by—

- (1) coercion, as defined in section 15, or*
- (2) undue influence, as defined in section 16, or*
- (3) fraud, as defined in section 17, or*
- (4) misrepresentation, as defined in section 18, or*



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(5) mistake, subject to the provisions of sections 20, 21 and 22.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.”

38. Sections 15 to 18 deal with coercion, undue influence, fraud and misrepresentation, respectively. Although the plaintiffs alleged that the settlement deed was vitiated by all these factors, there is no evidence of coercion, fraud or misrepresentation. As regards undue influence, the plaintiffs pleaded that the Settlor was unduly influenced, including by alleging that Ms. Bhavadharini abused her fiduciary position, and they placed on record both documentary and oral evidence on the physical and mental state of the Settlor. Therefore, the most important basis of challenge is undue influence. Section 16 deals with undue influence and provides as under:-

“ 16. “Undue influence” defined.—(1) A contract is said to be induced by “undue influence” where the



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relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue



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influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872 (1 of 1872).”

39. From the text of Section 16(1), it follows that a person is said to exercise undue influence over another if such person is: (a) in a position to dominate the will of another; and (b) used that position to obtain an unfair advantage over the other. Thus, in order to establish undue influence, as a rule, the person who seeks to avoid the contract on the ground of undue influence should prove that both the above ingredients of undue influence are satisfied. If a contract were to be entered into without the free consent of one of the parties thereto, including on account of undue influence, the consequence is that the contract is voidable, subject to prescribed conditions, at the option of the person whose consent was not free. This is provided for in Sections 19 and 19A. These two provisions are set out below:-

“19. Voidability of agreements without free



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*consent.—When consent to an agreement is caused by coercion, [***] fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.(emphasis added)*

A party to a contract whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception.—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.



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Illustrations

(a) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B.

(b) A, by a misrepresentation, leads B erroneously to believe that, five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.

(c) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out and the mortgage debt redeemed.

(d) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the



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existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an under-value. The contract is voidable at the option of A.

(e) A is entitled to succeed to an estate at the death of B, B dies: C, having received intelligence of B's death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

*19A. Power to set aside contract induced by undue influence.—When consent to an agreement is caused by undue influence, **the agreement is a contract voidable at the option of the party whose consent was so caused.**(emphasis added).*

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.”



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40. The plaintiffs alleged that the Settlor executed the settlement deed without free consent. Consequently, the person whose consent was allegedly obtained on account of one of the vitiating circumstances was the Settlor. As per the text of Sections 19 and 19A, the right to avoid the contract is conferred only on the Settlor. Therefore, one of the preliminary issues that falls for consideration here is whether the plaintiffs are entitled to rescind the settlement deed on the ground that the Settlor executed the document without free consent. When I put this question to Mr.Thiagarajan, he relied on Section 27 of the Specific Relief Act to contend that any person interested in a contract may sue for rescission of the contract. Section 27(1) is set out below:

“ (1) Any person interested in a contract may sue to have it rescinded, and such rescission may be adjudged by the court in any of the following cases, namely:-

(a) where the contract is voidable or terminable by the plaintiff;

(b) where the contract is unlawful for causes



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not apparent on its face and the defendant is more to blame than the plaintiff....”

Since a gift is not strictly speaking a contract especially on account of the lack of consideration, the applicability of Section 27 of the Specific Relief Act is debatable. Besides, Section 27 prescribes expressly that a person may sue for rescission where the contract is voidable or terminable by the plaintiff, thereby implying that only a person entitled to avoid or terminate may rescind. The second limb of Section 27 deals with unlawful contracts and is irrelevant. Therefore, the reliance on Section 27 does not particularly advance the cause of the plaintiffs.

41. The question whether a person, other than the executant of the document, can endeavour to rescind it on the ground of absence of free consent was examined by a Division Bench of the Bombay High Court in ***Shravan Goba Mahajan***, which was one of the cases cited by Mr.Thiagarajan. After noticing that the executant had issued notice to rescind and that Section 88 of the Indian Trusts Act, 1882 (the Trusts Act)



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was invoked, it was held as follows:

“ 14. Accordingly, in the view we take it is not strictly necessary to give a decision as to whether, if the case did not fall within the above section of the Indian Trusts Act, the suit would be maintainable under the sections of the Indian Contract Act. But as the point has been argued, I have no hesitation in expressing my individual opinion that, having regard to the subsequent sections in the Indian Contract Act which clearly contemplate that in certain cases the benefit and burden of promises shall devolve on legal representatives, that would be the case as regards the right given by Section 19 or 19A. I refer in particular to Sections 37, 42 and 45. In this connection it may be pointed out that the appellant is forced in argument to go to this length that the legal representatives cannot take advantage of either branch of Section 19. The result, therefore, would be that if a



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man was defrauded or induced to enter into a contract by fraud and died the next day, his representatives could not avoid the contract under the first part of Section 19. Nor could they even under the second branch insist that the contract should be performed on the basis that the representations made were true. On what principle of justice or equity that construction should be put on Section 19 or on the corresponding Section 19A I entirely fail to see. No authority going to this length has been cited to us, and speaking for myself, I decline to be the first judge to adopt what seems to me a forced, unnatural, and unjust construction of this Act.”

The other member of the Division Bench, in the above case, concurred by also relying on English judgments, including *Allcard v. Skinner*, [1887] 36 Ch.D.145, and *Twycross v. Grant*, [1878] 4 C.P.D.40, and Section 35 of the Specific Relief Act, 1877, which is in *pari materiae* with Section 27 of the Specific Relief Act. None of the other cases cited before me deal with this



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42. As discussed at the outset of the discussion on the Contract Act, by virtue of Section 126 of the TP Act, a gift/settlement may be rescinded in the cases/grounds on which a contract may be rescinded but this prescription does not import Sections 14 to 19A of the Contract Act into the TP Act and make such provisions apply on their terms to the revoking of a gift. Undoubtedly, however, the underlying principles and common law on rescission of a voidable contract apply. Consequently, even if a contract/settlement were to be executed without free consent, one should not lose sight of the fact that it does not render the contract void. Instead, the law provides for an option, and not an obligation, to avoid on the person whose consent was not free. It follows that such person also has the option not to avoid and instead perform the contract/deed.

43. When all these aspects are looked at holistically, even if one were to only draw on the principles underlying the Contract Act and not the



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text thereof, the only reasonable inference that may be drawn is that such formation defect may be called out, as a rule, only by the party whose consent was caused by one of the vitiating factors. Consequently, the right of action of legal representatives would clearly be an exception. In order to qualify for such exception, such legal representatives would have to discharge the burden of stepping into the shoes of the executant and establishing that the executant intended to but could not rescind for justifiable cause during his life time. This would be relatively easier if the executant died one day or even one week after executing the settlement deed. As a rule, the longer the time lag between execution and death, the heavier the burden on the legal representatives assailing the document. Whether the plaintiffs discharged such burden should be examined next.

44. In this case, the Settlor executed the settlement deed on 20.12.2006. The admitted position, as borne out by his death certificate (Ex.P.9), is that he died on 19.11.2009, which is almost three years after the execution of Ex.P.5. While the plaintiffs assert that they were unaware of the



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“Q209: I suggest that you have not produced the medical records of your husband because he had no other ailments except diabetics and the stroke which he suffered in Pongal festival 2007. What do you say?”



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A: I have produced medical records whatever I had with me. Since I was always with him I know his condition.”

45. On 10.12.2020, PW1 was also questioned about construction work carried out on the first floor of the property. The relevant questions and answers are set out below:

“ Q202: In the suit property there was construction work going for the extension of first floor in the year 2009 when your husband was alive. Am I correct?

A: Yes.

Q203: You and Bhavadharini have signed the applications for approval for construction for extension of first floor in the suit property. What do you say?

A: I have not signed. Bhavadharini might have signed. She has grabbed the property from my husband.”

The above evidence is consistent with Bhavadharini being the person with an absolute estate in the Property pursuant to the settlement. Since this



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activity took place during the life time of the Settlor, it is also indicative, albeit not conclusive, of his intention to follow through and not rescind the settlement. In any case, in the absence of evidence on the physical or mental health of the Settlor during this period, it cannot be concluded that the Settlor intended to but could not rescind the settlement during his lifetime. Hence, I conclude that the plaintiffs failed to establish that the Settlor could not rescind or avoid the settlement in spite of intending to after the execution thereof. The parties relied on precedents on proof of undue influence and made extensive submissions thereon. Therefore, I propose to deal with the same although the challenge to the settlement deed is liable to be rejected on the preliminary ground discussed herein.

46. As briefly discussed earlier, Section 16(1) of the Contract Act (extracted *supra*) imposes on the plaintiffs the obligation to prove that Ms.Bhavadharini was in a position to dominate the will of her father and that she had used that position to obtain unfair advantage. If the case falls within the scope of sub-section (2) of Section 16, by a legal fiction, it will be



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deemed that she was in a position to dominate the will of her father. Clause (a) of sub-section (2) of Section 16 contains two limbs. As per the first limb, it will be deemed that a person is in a position to dominate the will of the other if she holds real or apparent authority over the other. A daughter does not hold real or apparent authority over her father and, therefore, the first limb is not relevant. The second limb of clause (a) deals with a person in a fiduciary relation to the other. A fiduciary relationship is typically said to exist in situations where, in a relationship founded on trust and confidence, one person is in a position of authority or dominance. By way of illustration, in doctor-patient, lawyer-client, master-servant and parent-child relationships, a fiduciary relationship may be presumed.

47. In the relationship between an adult daughter and her father, such a relationship cannot be presumed and would be required to be established by leading evidence that the daughter was in a dominant position and that the father was dependent on her to the extent that she could dominate his will. In the plaint, the plaintiffs state that Ms. Bhavadharini's



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second marriage failed and that she moved into her parents' home with her child. At that juncture, she was in a vulnerable position. The plaintiffs also assert that they provided financial and emotional support to her. They further state that the education of the second defendant was financed by the Settlor. In addition, the first plaintiff asserts that her husband took care of household expenses until his death and that she paid such expenses thereafter. While the plaintiffs state that she was a lawyer and by virtue thereof in a fiduciary position, they do not plead that her father was financially, physically or emotionally dependent on her. The factual context of the first plaintiff and the Settlor having five other children, including three other daughters in Tamil Nadu, also militates against such conclusion.

48. Clause (b) of sub-section (2) of Section 16 prescribes that the legal fiction would also be triggered if the mental capacity of the other party to the contract was permanently or temporarily affected by age, illness, mental or bodily distress. In support of the medical condition of the Settlor, Ex.P.17 to Ex.P.29 were placed on record. Ex.P.17 to Ex.P.22 relate to the



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circumstances under which the Settlor was admitted to the BSS Hospital in June 2006. The communication dated 04.06.2006 from the Duty Medical Officer of BSS Hospital to the Balaji EEG Diagnostic Centre indicates that the Settlor was a known ischaemic heart disease and hypertension patient and that he was brought to the hospital after episodes of loss of consciousness. The Duty Medical Officer has raised a query as to whether the Settlor had a transient ischemic attack (TIA), which is akin to a mini stroke. The CT scan report from Bharat Scans (Ex.P.17) records the impression that the *“Plain CT study of the brain shows no abnormality”*. Thus, it appears that the doubt entertained by the Duty Medical Officer of BSS Hospital as to whether the Settlor had suffered a transient ischemic attack was not corroborated by the CT scan of the brain. The plaintiffs also placed on record the discharge summary from the St.Isabel's Hospital (Ex.P.23) when the Settlor was admitted in the said hospital between 14.10.2006 and 16.10.2006. On 14.10.2006, as per the discharge summary, the patient was admitted with complaint of fever for two days. The Doctor has recorded that he suffered from giddiness and that he was a known case



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of diabetes mellitus, hypertension and ischaemic heart disease. The discharge summary records that his general condition was good at the time of discharge.

49. As regards both the admission at the BSS Hospital in June 2006 and the admission at the St.Isabel's Hospital in October 2006, the attending medical doctors were not examined as witnesses. Therefore, conclusions have to be drawn on the basis of the documentary evidence placed on record. Such documentary evidence certainly does not support the inference that the Settlor suffered from dementia or any form of serious cognitive impairment in June 2006 or October 2006. No material is on record with regard to his medical condition and, in particular, his cognitive state in December 2006 when Ex.P.5 was executed. As regards both the period prior to and after December 2006, the following questions and answers of PW2, in course of cross examination on 21.09.2021, are material:

“Q: I put it to you that till January, 2007 when your



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father had a stroke, apart from normal age related conditions like diabetes and BP and some medications for cardio, your father suffered from no ailments. What do you say?

A: I am not a Doctor. But when I used to visit him I found his health deteriorating even from July/August, 2006. He used to fall down in the bathroom often and some one had to take care of him.

Q: I put it to you that your father was not bedridden or incapacitated till the last couple of months of his life. What do you say?

A: There were variation in his blood sugar and his blood pressure went up and down. Though he was not bedridden enough to get bed sores, he was not well. In the morning, he was active but by afternoon he was seen to be very tired. I found him so from August, 2006.”

The above oral and documentary evidence does not lead to the conclusion



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that clause (b) of sub-section (2) of Section 16 of the Contract Act is attracted.

50. Even if Clauses (a) or (b) were to be attracted, the burden of proving that there was undue influence is not shifted but a rebuttable presumption will be drawn that one person is in a position to dominate the will of another. The burden of proof shifts only if the requirements of sub-section (3) are satisfied, i.e. if the court concludes that one person is in a position to dominate the will of the other and the transaction is, either on the face of it or on the evidence adduced, unconscionable. It is instructive to turn to judgments cited by learned counsel on this aspect. In *Venkatarama Aiyer*, the Court surveyed the precedents on undue influence and concluded that in the absence of specific evidence, a conclusion of undue influence cannot be drawn. In *Suguna*, a Division Bench of this Court concluded that a settlement in favour of the maid was liable to be rescinded at the instance of the children of the settlor. The Court took into account the evidence of a



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doctor who had attended on the settlor for about 20 years. The said doctor had deposed that the settlor had lost orientation of time and space and that his cognitive ability was impaired. The Court also took notice of evidence that the maid operated the bank accounts of the settlor and that she claimed to be his wife. In such circumstances, it was concluded that she was in a fiduciary relationship and that the burden of proof shifted on her.

51. *Pratima Chowdhury* was a case wherein the transferor sought to rescind the transfer on the ground of undue influence and the Supreme Court accepted such contention. On the evidence on record, which included the provision of loans by the transferor and the establishment of a joint account operated exclusively by Partha Mukherjee, the Court concluded that there existed a fiduciary relationship between Partha Mukherjee, the husband of Sova Mukherjee, and Pratima Chowdhury. In *Joseph John Peter Sandy*, the Supreme Court examined the law on both rectification and undue influence. In particular, the Court observed that the presumption that one person is in a position to dominate the will of the other



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would arise in relations between a solicitor and client, trustee and *cestui que trust*, spiritual advisor and devotee, medical doctor and patient and parent and child. In ***Jamila Begum***, the Supreme Court cited with approval the decision in *Raghunath Prasad Sahu v. Sarja Prasad Sahu*, 1923 SCC OnLine PC 62 about the three stages involved in shifting the burden of proof and emphasized the importance of examining unconscionableness only after affirming the existence of the other conditions. In ***Raja Ram***, which is the latest judgment placed by learned counsel, the Supreme Court concluded that there can be no presumption of senility or dementia because of old age. The Court also distinguished ***Krishna Mohan Kul***, which was relied on by learned counsel for the plaintiffs, on the ground that the executant was over 100 years old and paralysed in the said case. The principles laid down in these cases, if applied to the facts of this case, lead to the conclusion that the presumption under sub-section (2) of Section 16 is not applicable and that the burden of proof had to be discharged by the plaintiffs. Whether the burden of proving undue influence was discharged by the plaintiffs warrants consideration next.



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52. Apart from the health of the Settlor, Mr.Thiagarajan placed considerable emphasis on the evidence of CW1 to the effect that the settlement deed was prepared on instructions from Ms.Bhavadharini (question and answer 1). He also placed reliance on the fact that the non-judicial stamp papers were purchased by Ms.Bhavadharini (question and answer 2) and that Ms.Bhavadharini brought the Settlor to the Sub Registrar's Office (question and answer 9). He also relied on the fact that the document was received from the Sub Registrar's Office after registration by Ms.Bhavadharini (question and answer 19). In relation to the evidence of CW1, the following should also be borne in mind. In answer to question 10, CW1 stated that no draft settlement deed was prepared by him before preparing a final settlement deed (Ex.P.5). In contrast, in response to question 27, he stated that he prepared a draft and handed it over to Bhavadharini since she said she would show it to her father. Significantly, in response to question 44, he stated that he did not find anything suspicious in the execution of the settlement deed. Question 44 and the answer thereto



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are set out below:-

“244: Q: So if you have found anything suspicious surrounding the execution of the settlement deed, you would have alerted the Sub Registrar. Is it correct ?

A: Yes, I did not find anything suspicious.”

He was asked about the number of cases in which he had engaged learned counsel for the plaintiffs and the said question and answer are set out below:

“ Q60: In how many other cases you have filed joint vakalat along with the plaintiffs' counsel?

A: I can not answer exactly. For all my original side cases, I have been engaging Mr.R. Thiyagarajan for the past 4 years.”

If nothing else, the above answers justify approaching the evidence of CW1 with caution and circumspection.

53. Since CW1 deposed that he did not find anything suspicious in the execution of Ex.P.5, the question that follows is whether a conclusion



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can be drawn that the document was not executed with free consent because the stamp paper was purchased by Bhavadharini and, as per CW1, instructions for the preparation of the settlement deed were provided by Ms.Bhavadharini to the lawyers who prepared the document. Without doubt, an inference of the absence of free consent cannot be reached on such basis. In this connection, it is also significant to notice the difference between a testamentary and non-testamentary disposition. Since testamentary dispositions come into effect only upon the death of the testator or testatrix, as the case may be, such documents are required to be proved after the death of the executant. Therefore, the law provides for special procedures for proving a Will. The common law further provides that the propounder, who seeks to prove the Will, is required to dispel doubts regarding any suspicious circumstances surrounding the execution thereof. As regards non-testamentary instruments, the document concerned takes effect immediately upon execution and even if there is a lag between execution and registration, upon registration, it takes effect from the date of registration.



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54. Apart from the evidence relating to the health of the Settlor, PW1 deposed in her proof affidavit, at paragraphs 18, 19 and 26, that her daughter exerted undue influence on her husband and abused the trust and confidence reposed in her in spite of being in the position of a fiduciary. PW2 and PW3 made similar statements at paragraphs 14, 15 and 25-27 and paragraphs 12-14 of their respective proof affidavits. As discussed earlier, a fiduciary relationship may be presumed in relationships of trust, where one person is in a position of authority and the balance of power is in favour of such person, such as teacher-student, priest-devotee, master-servant, trustee-*cestui que trust*, doctor-patient, lawyer-client or even parent-child. In the present context, evidence of physical, financial or emotional dependence by the Settlor on Ms. Bhavadharini should have been adduced. In the absence of such evidence, the allegation of undue influence is rejected. Thus, the plaintiffs have failed to prove that the execution of the settlement deed was vitiated by the absence of free consent. Therefore, issue no.2 is decided in favour of the second defendant. For reasons set out above, issue no.3 is decided by concluding that the suit is maintainable but not sustainable in



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respect of the challenge to the settlement deed.

55. As regards the fifth issue, the plaintiffs are not entitled to the relief of partition because the self-acquired property of the Settlor was settled under the settlement deed and the challenge thereto stands rejected.

Issue No.4, 6 and 7:

56. Issue No.4, 6 and 7 are related to the above issues but stand on a slightly different footing. The fourth issue is whether the second defendant is liable to hand over vacant possession of the ground and second floor to the first plaintiff. The sixth issue is whether the plaintiffs are entitled to a permanent injunction to restrain the second defendant from alienating or encumbering the Property and the seventh issue is whether the plaintiffs are entitled to a permanent injunction to restrain the second defendant from interfering with the peaceful possession of the first plaintiff and from preventing the ingress and egress of the other plaintiffs from the Property. All these issues turn on the settlement deed and the rights conferred thereunder.



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57. The material clauses of the settlement deed are as follows:

“The SETTLEES Mrs. Swarna should enjoy the schedule mentioned property for her life time without any power of alienation and on her death her grandson Master Guru Dhananjay s/o Ms. K. Bhavadharini minor represented by her mother and guardian Ms. K. Bhavadharini my fifth child shall take the property with absolute title.

The SETTLOR doth hereby covenant that the SETTLEES shall hereinafter peacefully, quietly possess and enjoy the said property and every part thereof, exploit it for any use, receive the rents and profits therefrom without any interferences or interruptions or claim whatsoever from the SETTLOR or any persons to whom the SETTLOR or to whom the the SETTLOR derive title either immediately or remotely.

The SETTLOR doth hereby agree to save



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harmless and keep indemnify the SETTLEES from and against all losses and damages which the SETTLEES may incur or sustain by reason of any claim being made by anybody whatsoever to the said property or any part thereof or in respect of any arrears, taxes, rates, losses due for the said property until the date of this settlement and the SETTLOR has put the SETTLEES in possession of Schedule mentioned property, title and interest in the said property and authorize them to effect necessary mutation of names in all public records including that of the Corporation, taluk office, Tamilnadu electricity Board, etc. with reference to this settlement. The SETTLEES shall not object to the SETTLOR to reside in the schedule mentioned property till his life time.”
(emphasis added)

58. The settlement deed confers a life interest in favour of the first



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plaintiff without the power of alienation. Both in pleadings and in course of arguments, the second defendant submitted that he has no objection to the first plaintiff residing in the Property as she did previously. The settlement deed also confers an absolute estate on Ms.Bhavadharini and the second defendant. It further provides that all the settlees are put in possession of the property and that they are authorized to mutate relevant public records on the basis of the settlement. Upon considering the above clauses, the fourth and seventh issues are disposed of by recording that the first plaintiff is entitled to a life interest in the Property and, therefore, she is entitled to reside therein. Consequently, the second defendant cannot interfere with her possession of the Property. However, as regards the other plaintiffs, they cannot claim any rights, including ingress and egress rights, over the Property. As regards the second defendant, he is entitled to joint possession but the absolute estate shall vest in him only upon the death of the first plaintiff. Therefore, the sixth issue is disposed of by holding that he cannot alienate or encumber the Property during the life time of the first plaintiff or deal with the Property in such manner as to impair the life estate of the first



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Issue No.1:

Issue No.1 relates to whether the fourth plaintiff is liable to return all the documents of title pertaining to the Property and the property at Mayiladuthurai to the second defendant. This issue forms the subject of the counter claim of the second defendant. Hence, the burden of proof was on the second defendant. As correctly contended by learned counsel for the plaintiffs, the pleadings on this counter claim are sparse. Learned counsel for the second defendant relied on the fact that the plaintiffs produced Ex.P.1 to Ex.P.4 and, therefore, the plaintiffs should have custody of the original of Ex.P.5. PW2's answer to the last question in course of her cross-examination on 02.09.2021 was relied upon in this regard. In response to the said question, PW2 stated that Ex.P.1 to Ex.P.4 were in the custody of the first plaintiff. While this answer indicates that some original documents were in the custody of the first plaintiff, it is not possible merely on this basis to conclude that the first plaintiff is in possession of the original of Ex.P.5. Thus, the second defendant has failed to discharge the burden of proving



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that any of the plaintiffs are in custody of the original of Ex.P.5. Besides, the Mayiladuthurai property and the document relating thereto are outside the scope of this suit. Therefore, issue no.1 is decided in favour of the plaintiffs and against the second defendant.

Issue Nos. 8 and 9:

59. Issue Nos.8 and 9 relate to the locker maintained in Canara Bank. The contesting parties admit that the locker is currently in the name of the second defendant. The plaintiffs asserted that the articles described in Schedule – B to the plaint belong to the first plaintiff. This assertion is denied by the second defendant who states that the articles in the locker belonged to his mother and, therefore, the first plaintiff agreed to transfer the locker and its contents to the second defendant. Pursuant to orders of this Court, it is pertinent to mention that the locker was opened in the presence of parties, their respective counsel and the bank officials on 05.02.2021 and an inventory of the contents was drawn up. The minutes and inventory are on record as Ex.P30. The following questions and answers of PW1, on this issue, in course of her cross examination on 24.11.2020, are



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“Q178: Is it correct that you gave up your joint ownership over the Canara Bank locker in June 2017 making Guru Dhananjay as the sole owner?

A: Yes, I gave it to Guru due to my old age.

Q179: I put it to you that you have made claim on this locker containing jewellery of Bhavadharini and Guru only because you do not want your Mudaliar grand daughter-in-law to get Bhavadharini's jewellery?

A: No, it is not like that. My jewels are in the locker. I have nothing to do with the jewels of Bhavadharini and Guru, I want to take only my jewels.

Q.180: Have you filed the list of your jewelleries before this Court?

A: Yes, I have filed.”

60. Similarly, the following questions and answers of DW1, in



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course of cross examination on 11.08.2022, are relevant:

“Q187: Do you have a list of the articles which were kept in the bank locker by your mother and grandmother?”

A: I did not possess a list of articles that were contained in the bank locker when my grandmother gave it to me after my mother's demise, after her having taken stock of what was contained in the bank locker.

Q188: Who has been remitting the locker charges to the bank, the 4th defendant?

A: Ever since my mother's demise, it has been remitted by me.

Q191: Are you aware of the contents of the locker after the inventory was made and the search was conducted?

A: I was present when the inventory was made and I only know to the extent that the articles were inventorised.

Q192: Have you made any claim after the inventory was taken in respect of the articles that were inventorised?



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A: I have already stated in my written statement that my grandmother had already handed over the locker and all its contents.

Q193: Is there any document in writing to show that your grandmother had handed over the bank locker and the articles inventorised in the presence of the bank officials?

A: She gave some letter to the bank. I am not aware of its contents and I do not know.”

Thus, the locker was admittedly transferred to the name of the second defendant by the first plaintiff. In the absence of evidence that the articles in the locker belong to the first plaintiff, it is not possible to conclude that the first plaintiff is entitled to the articles although the locker stands in the name of the second defendant. Significantly, the plaintiffs did not produce bills or any other form of evidence to establish that the Schedule – B articles belong to the first plaintiff. It should also be noticed that the plaintiffs did not pray for the contents of the locker to be handed over to the first plaintiff. Therefore, issue Nos.8 and 9 are decided in favour of the second defendant



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and against the plaintiffs.

61. All that remains is to consider the ancillary issues with regard to payment of costs and other relief. The dispute is between members of a family. The first plaintiff is entitled to a life estate in the Property and, consequently, to some but not all remedies. The second defendant is entitled to an absolute estate. Upon consideration of these aspects, the parties shall bear their respective costs. Before drawing the curtain, I am constrained to observe that cases like this illustrate the limitations of the adversarial system in arriving at comprehensive and lasting solutions. Notwithstanding earlier unsuccessful efforts, I end in the hope that parties will endeavour to reach an amicable solution and that the second defendant would take the lead in such regard.

62. In the result, C.S.No.435 of 2018 is partly decreed as follows:

- (i) by restraining the second defendant by an order of injunction from alienating or encumbering the suit schedule property during the life



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time of the first plaintiff or dealing with the said property in such manner as to impair the life estate of the first plaintiff;

(ii) by restraining the second defendant by an order of injunction from interfering with the first plaintiff's peaceful possession of the suit schedule property subject to the second defendant's right of joint possession;

(iii) all other suit claims and the counter claim are dismissed; and

(iv) the parties shall bear their own costs.

31.03.2023

NCC :Yes/No
Internet :Yes/No
Index :Yes/No
PKN

Plaintiff's witnesses:

1.Mrs.Swarna Krishnaswamy	: P.W.1
2.Mrs.Lakshmi Natarajan	: P.W.2
3.Mrs.Indira Ramakrishnan	: P.W.3

Documents exhibited by the Plaintiff:



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Sl.No	Exhibits	Date	Particulars of Documents
1.	Ex.P1	22.04.1977	Sale Deed by E.K.Balakrishnan in favour of S.Krishnaswamy – Doc.No.295/1977, SRO, Mylapore.
2.	Ex.P2	20.05.1978	Deed of Mortgage by S. Krishnaswamy in favour of The Muthialpet Benefit Fund Ltd., - Doc. No. 555/1978, SRO, Mylapore.
3.	Ex.P3	24.07.1998	Registered Will executed by S.Krishnaswamy - Doc. No. 107 of 1998 – SRO, Mylapore.
4.	Ex.P4	24.05.2006	Registered Will executed by S.Krishnaswamy - Doc. No. 51 of 2006 – SRO, Mylapore.
5.	Ex.P5	20.12.2006	Registered Deed of Settlement executed by S.Krishnaswamy - Doc. No. 3729 of 2006 – SRO, Mylapore.
6.	Ex.P6	31.03.2017	Death Certificate of Bhavadharini.
7.	Ex.P7		Complaint by 4 th plaintiff to Inspector of Police, Abhiramapuram Police Station, Chennai as against 2 nd Defendant.
8.	Ex.P8	18.06.2018	Case Report issued by Dr.S.Srinivasan, Sai Ortho Care Hospitals Pvt. Ltd., T.Nagar, Chennai to 4 th Plaintiff
9.	Ex.P9	24.06.2018	Death Certificate of S.Krishnaswamy.
10.	Ex.P10	26.06.2018	Encumbrance Certificate.
11.	Ex.P11	09.01.2005	ECG Bill from B.S.S.Hospital.
12.	Ex.P12	09.01.2005	Periyandavar Medical Pharmacy Bill.



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Sl.No	Exhibits	Date	Particulars of Documents
13.	Ex.P13	14.01.2005	Periyandavar Medical Pharmacy Bill.
14.	Ex.P14	03.05.2005	Bill from Dr.Janakiraman Vijaya Hospitals for YAG Laser procedure.
15.	Ex.P15	28.11.2005	Prescription from Dr.Iyappan of B.S.S.Hospitals.
16.	Ex.P16	06.01.2006	Prescription from Dr.Shivakumar.
17.	Ex.P17	03.06.2006	Report of Multislice CT Brain from Bharat Scans.
18.	Ex.P18	03.06.2006	Report of Bedside Echocardiogram from B.S.S.Hospital.
19.	Ex.P19	04.06.2006	Receipt from Balaji EEG Diagnostic Centre
20.	Ex.P20	04.06.2006	Letter from B.S.S.Hospital to Balaji EEC.
21.	Ex.P21	04.06.2006	Blood Report from B.S.S.Hospital.
22.	Ex.P22	14.06.2006	Receipt for CBG test from B.S.S.Hospital.
23.	Ex.P23	14.10.2006	Discharge Summary Report from St.Isabel's Hospital.
24.	Ex.P24	14.10.2006	St.Isabel's Hospital Pharmacy bill Receipt No.092117.
25.	Ex.P25	15.10.2006	St.Isabel's Hospital Pharmacy bill Receipt No.094400.
26.	Ex.P26	15.10.2006	Prescription from St.Isabel's Hospital.
27.	Ex.P27	15.10.2006	Blood Report from St.Isabel's Hospital.



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Sl.No	Exhibits	Date	Particulars of Documents
28.	Ex.P28	16.10.2006	Receipt from St.Isabel's Hospital.
29.	Ex.P29	20.10.2008	Madras ENT Case record from Madras ENT Research Foundation.
30.	Ex.P30	05.02.2021	Inventory of Articles in Locker 577.

Defendant's witness:

1.Guru Dhananjay

: D.W.1

Documents exhibited by the Defendant:

Sl.No	Exhibits	Date	Particulars of Documents
1.	Ex.D1	11.07.2018	Plaint filed in O.S.No.18 of 2018 before the Principal District Judge, Nagapattinam.
2.	Ex.D2	31.07.2019	Written Statement filed by the 1 st Defendant (1 st Plaintiff in CS 435/2018) in O.S. 18/2018 before the Principal District Judge, Nagapattinam
3.	Ex.D3	26.09.2020	Notice to produce Documents issued to Plaintiffs by Counsel for 2 nd Defendant.
4.	Ex.D4	04.10.2021	Notice to produce Documents issued to Plaintiff No.4 by Counsel for 2 nd Defendant.
5.	Ex.D5	07.07.2018	Letter from the 2 nd Defendant to the 1 st



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Sl.No	Exhibits	Date	Particulars of Documents
			Plaintiff.
6.	Ex.D6		Printout of Property Tax Receipts (Series)
7.	Ex.D7	20.04.2022	65B Certificate (Affidavit for property tax receipts downloaded).
8.	Ex.D8		Original & Printout of Water & Sewerage Tax Receipts (Series) (19 Nos) – Printout
9.	Ex.D9	20.04.2022	65B Certificate (Affidavit for CMWSSB receipts downloaded).
10.	Ex.D10		Computer Printout of the Tamil Nadu Electricity Board Receipts (18 Nos.)
11.	Ex.D11	20.04.2022	65B Certificate (Affidavit for TNEB receipts downloaded).
12.	Ex.D12	15.02.2020	Printout of the Certificate Extract from the Town Survey Land Register.
13.	Ex.D13	20.04.2022	65B Certificate (Affidavit for TSLR Extract downloaded).
14.	Ex.D14	03.05.2005	Photocopy of the order for Name Transfer.

Court witnesses:

1.T.Susindran	: C.W.1
2.Suresh Kumar	: C.W.2
3.Jaga Jeevan Ram	: C.W.3

Documents exhibited through Court Witnesses:



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Sl.No	Exhibits	Date	Particulars of Documents
1.	Ex.C1	05.11.2022	Status Report filed on behalf of Greater Chennai Corporation.
2.	Ex.C2	27.10.2022	Copy of notice received by standing counsel for Greater Chennai Corporation.
3.	Ex.C3		Certified copy of PLR for survey Nos.4253/2, 4253/3, 4253/37 along with other papers (Series – 17 papers).

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