



S.A.No.809 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 07.11.2023

CORAM

**THE HONOURABLE Ms. JUSTICE P.T. ASHA**

S.A.No.809 of 2023

Chengalvarayan (died)

1. Revathi
2. Varalakshmi
3. Saravanan
4. Senthilkumar

... Appellants / Defendants

Vs

Lakshmi

. . . Respondent / Plaintiff

**Prayer:** Second Appeal is filed under Section 100 of C.P.C against the Decree and Judgment dated 21.02.2020 made in A.S.No.56 of 2012 on the file of the Additional Subordinate Judge, Tindivanam, confirming the order dated 21.07.2012 in O.S.No.413 of 2008 on the file of the Additional District Munsif, Tindivanam.



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For Appellants : Mr.P. Kannan Kumar

For Respondent : Mr.S.Kaithamalai Kumaran  
Caveator counsel

### **JUDGMENT**

The defendants who have concurrently suffered a decree for declaration and permanent injunction have filed this second appeal.

2. The facts are briefly set out herein below.

The first defendant had passed away pending the first appeal and his legal representatives have been brought on record as appellants 2 to 5 in the appeal suit. The respondent herein had filed the suit O.S.No.413 of 2008 on the file of the Additional District Munsif, Tindivanam against the deceased first defendant for a declaration and injunction. It was her case that the suit property belonged to her



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mother, Meenatchi Ammal, and the deceased first defendant was her maternal uncle. Her mother was given in marriage to one Kuppusamy. The respondent's father had asked the deceased first defendant to purchase the property at Ozhundiapet Village for which he had entrusted him with a considerable amount of money which he had got from the sale of his property. The deceased first defendant had sold his property to the plaintiff's mother, Meenatchi Ammal. However, a settlement deed dated 08.03.1976 was executed, taking into account the fact that the registration charges for sale was high. From the date of the settlement deed, Meenatchi Ammal was in possession and enjoyment of the property.

3. On 05.06.2007, Meenatchi Ammal had sold the property to the respondent herein for a valuable consideration. The respondent has got the revenue records mutated in her name. After the said sale, she is enjoying the same. It appears that the first defendant, taking advantage



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of his name in the revenue records, had created a sham and nominal of the document in favour of the first appellant herein. Therefore, the respondent had come forward with the suit in question.

4.The first defendant had filed a written statement *inter-alia* contending that he had actually obtained a loan from his sister Meenatchi Ammal towards this loan Meenatchi Ammal's husband Kuppusamy had insisted upon a settlement deed being executed to secure the loan. The first defendant has never delivered possession of the property to the said Meenatchi Ammal and she continued to be in possession of the property and has been cultivating it. It is also the contention of the first defendant that the original settlement deed remained in the hands of the deceased first defendant. The first defendant thereafter discharged the loan and revoked the settlement deed under a Deed of Revocation dated 22.07.2005. Therefore, it is crystal clear that the settlement executed by the deceased first



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defendant in favour of the respondent's mother was never intended to be acted upon and Meenatchi Ammal had not accepted the same.

5. It was also the defense of the first defendant that, apart from him, he has two sons and a daughter, who are entitled to the share in the suit property. Therefore, the execution of the settlement deed is void abinitio. It is the contention of the deceased first defendant that he and his children had sold the suit property to the first appellant herein, who was arrayed as the second defendant in the suit, under a registered Sale Deed dated 19.04.2000 and she has taken possession of the same and has also mutated the revenue records. The first appellant would submit that the suit appears to be a collusive one made with the intent of extracting money from the appellants. Therefore, they sought for dismissal of the suit.

6. The learned Additional District Munsif, Tindivanam had



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framed the following issues:

- 1. Whether the mother of the plaintiff namely Meenakshi has been in possession and enjoyment of the property as per the settlement deed dated 08.03.1976?*
- 2. Whether the sale deed dated 05.06.2007 is true and valid?*
- 3. Whether the Settlement Deed dated 08.03.1976 was cancelled vide cancellation deed dated 22.07.2005?*
- 4. Whether the Sale Deed 19.04.2007 is valid?*
- 5. Whether the plaintiff is entitled for declaration and permanent injunction as prayed?*
- 6. To what other relief the plaintiff is entitled?*

7. On the side of the respondent, two witnesses were examined and Exs.A1 to A4 were marked. The appellants had examined three witnesses and marked Exs.B1 and B2. The deceased first defendant had examined himself as D.W1 and the first appellant herein has



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examined herself as D.W2 and her husband was examined as D.W3.

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The learned Additional District Munsif, on going through the evidence on record, held that the settlement deed was intended to be acted upon as the original settlement deed had been produced on the side of the respondent and that apart, the respondent had also produced the kist receipts standing in the name of her mother. The appellants have produced the kist receipt, which has been issued pending the suit and no documents prior to that has been produced by them to substantiate their case that possession was never handed over to the respondent's mother and that it continued to remain with the deceased first defendant. Therefore, the learned Judge held that the ingredients of the valid gift had been proved by the respondent and therefore, the contention of the appellants that the settlement deed was not acted upon has to be rejected. The other defense raised by the appellants, that the deceased first defendant had no right to execute the settlement deed in respect of the entire property since it is a coparcenary property, has



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been rejected by the learned Judge since it has been proved that the deceased first defendant had got the property in question under a partition between himself and the brothers of his father on 16.08.1965. Since it is the ancestral property and the father of the deceased first defendant and Meenatchi Ammal were not alive on that day, therefore his share had devolved equally on the deceased first defendant as well as Meenatchi Ammal as per Section 6 (proviso) of the Hindu Succession Act. Thereafter, no partition had taken place between the deceased first defendant and his sister Meenatchi Ammal. There is no proof that as on the date when the partition had taken place children were born to the deceased first defendant. Therefore, the contention that they are entitled to the share has also been rejected. The learned Judge has accepted the contention of the respondent that though the document had been styled as a settlement deed, in reality, it was a Sale Deed as Meenatchi Ammal had purchased the property by paying the necessary sale consideration. Ultimately, the suit was decreed.



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Challenging the said judgment and decree, the appellants had filed A.S.No.56 of 2012 on the file of the Additional Subordinate Court, Tindivanam. The learned Additional Subordinate Judge dismissed the appeal by her judgment and decree dated 21.02.2020. Aggrieved by this concurrent judgment and decree, the plaintiffs are before this Court.

8. Heard the learned counsels on either side and perused the materials available on record.

9. The respondent has based her claim on the settlement deed executed by the deceased first defendant on 08.03.1976. The respondent has filed the original settlement deed and the sale deed executed by Meenatchi Ammal in her favour. She has also filed kist receipts standing in the name of Meenatchi Ammal dated 09.06.1993. It is her contention that after the settlement deed was executed in



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favour of her mother, the deceased first defendant, who had no right over the property, had executed a sale deed along with her children in favour of the first appellant on 19.04.2007, based on which they were attempting to disturb the possession of the respondent. The appellants' contention is that the document (settlement deed) was never intended to be acted upon as it was executed only as a security for the loan and that possession continued with the appellants even after the execution of the sale deed. However, the original settlement deed has been produced by the respondent and the possession of the property has also been proved by examining P.W2 who is her mother Meenatchi Ammal. P.W2 has spoken about the settlement in her favour and the subsequent sale executed by her in favour of the respondent herein. The appellants who have stated that the settlement deed was never intended to be acted upon have not taken any steps to set aside the same all these years and it was only on 19.04.2007 that they have sold the same to the first appellant when the property had already been settled on Meentchi



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Ammal. Though in the written statement, the appellants had stated that they had revoked the settlement deed executed by the deceased first defendant in favour of Meenatchi Ammal, there is no document to prove the same. The property in question is a vacant site. Therefore, the title follows possession. The Courts below have considered the evidence and have rightly decreed the suit. I see no reason to interfere with the same. Further, the appellants have not made out any case that the second appeal involves a substantial question of law. Consequently, the second appeal is dismissed. No costs.

**07.11.2023**

Index: Yes/No  
Speaking order/non-speaking order  
srn

To

1. The Additional Subordinate Judge, Tindivanam,
2. The Additional District Munsif, Tindivanam.
3. The Section Officer, V.R.Section, High Court, Madras.

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**P.T.ASHA, J.,**

srn

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