



A.S.No.1077 of 2003

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

WEB COPY

**RESERVED ON : 13.03.2023**

**DELIVERED ON : 23.03.2023**

**CORAM:**

**THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

**A.S.No.1077 of 2003**  
**and C.M.P.(MD)No.1564 of 2023**

1.Fathimuthu (Died)

2.Faritha Beevi

3.Ismail (Died)

4.Fathima Jinna

5.Shajakhan

6.Noorjahan

(Appellants 4 to 6 are brought on record as  
LRs of the deceased 3<sup>rd</sup> appellant vide Court  
Order dated 23.01.2023 made in C.M.P.(MD)  
No.12711 of 2022)

... Appellants

**Vs.**

1.Faritha Beevi (Died)

(1<sup>st</sup> respondent died and minor respondents  
2 and 4 are declared as Major vide Court order  
dated 18.10.2022 made in C.M.P.(MD)Nos.9104 and  
9106 of 2022)



A.S.No.1077 of 2003

2.Arapathnisha

(Name of R2 is amended vide Court order dated 20.07.2022 made in C.M.P.(MD)No.6151/2022 and declared as Major vide Court order dated 24.06.2022 made in C.M.P.(MD)No.9106/2022)

3.Sahul Hameed

(Minor 3<sup>rd</sup> respondent declared as Major vide Court order dated 24.06.2022 made in C.M.P.(MD)No.10088/2021)

4.Thowlath Beevi

(Name of R4 is amended vide Court order dated 20.07.2022 made in C.M.P.(MD)No. 6148 of 2022 and declared as Major vide Court order dated 24.06.2022 made in C.M.P.(MD)No.9104/2022)

5.Mohamed Bueroji

6.L.Nizar Ahmed

7.Nizara Banu

(R6 and R7 (LRs of predeceased daughter of deceased A1 are brought on record as LR of A1 vide Court order dated 16.12.2016 in C.M.P.(MD)No.8924 of 2016)

... Respondents

**PRAYER:** This Appeal Suit is filed under Section 96 of C.P.C. against the judgment and decree dated 22.08.2003 made in O.S.No.180/1997 on the file of the Additional Subordinate Judge, Kumbakonam.

For Appellants : Mr.R.Devaraj

For Respondents : Mr.G.Gomathisankar



A.S.No.1077 of 2003

## **JUDGMENT**

WEB COPY

Aggrieved over the decree and judgment of the Additional Subordinate Judge, Kumbakonam., in O.S.No.180/1997, dated 22.08.2003, the present appeal has been filed by the appellants.

2. For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3. The brief facts, leading to the filing of this Appeal, are as follows:-

3.1. The first plaintiff is the second wife of Pakkiri Mohammed. The plaintiffs 2 to 4 are her children. The first defendant is the first wife of the Pakkiri Mohammed and second defendant is her daughter. Third defendant is the husband of the second defendant. Fourth defendant is the brother of the third defendant. The said Pakkiri Mohammed was doing business in Singapore and earned a lot of money and out of the said income, he has purchased the suit properties. While he was in Singapore, he suffered a paralytic stroke and his mental conditions were totally affected. The first plaintiff with the help of one Rahim, brought the said Pakkiri Mohammed to India and given treatment in the private hospital. After treatment, when the Pakkiri Mohammed and first plaintiff was in Keelamanthur



*A.S.No.1077 of 2003*

Village, the third defendant came to Keelamanthur and took Pakkiri Mohammed stating that he will give a proper treatment to his father-in-law at Therilandur and he has also promised that Pakkiri Mohammed will be shifted to the Apollo Hospital for better treatment. However, the third defendant did not take the said Pakkiri Mohammed to the Apollo Hospital, as promised, and taking advantage of the critical conditions of the Pakkiri Mohammed, the third defendant in collusion with the fourth defendant had created some forged documents and obtained a power of attorney. Based on the above said power of attorney, sale deeds have been executed in favour of the second defendant in respect of items 2 to 6.

**3.2.** Hence, it is the contention of the plaintiffs that the sale transaction are absolutely invalid and not supported by any consideration. The documents have been created in collusion with the third defendant, taking advantage of the ill health of the Pakkiri Mohammed. It is the contention of the plaintiffs that at the time of execution of the documents, Pakkiri Mohammed was affected by paralytic stroke on his right side and he was not in a position to execute any document. Therefore, those documents were not valid in the eye of law, since the documents were obtained while Pakkiri Mohammed was in death bed illness and suffering from serious illness and not in a position to take any decision. Hence, the suit.



A.S.No.1077 of 2003

WEB COPY

4. First defendant filed a written statement denying the relationship between the first plaintiff and the Pakkiri Mohammed. According to her, Pakkiri Mohammed married only the first defendant and the first plaintiff was a servant maid in their house and the plaintiffs 2 to 4 are not the children of Pakkiri Mohammed and there was no marriage between the Pakkiri Mohammed and the first plaintiff. Therefore, the plaintiffs are not entitled to any share in the property. According to the first defendant, the Pakkiri Mohammed has executed a power of attorney in favour of the 4<sup>th</sup> defendant on 23.05.1994. In pursuant to the power deed, certain properties have been sold to the defendants 2 and 3 for valid consideration.

4.1. It is further stated in the written statement that the fourth defendant has also misused the funds arising from the sale consideration and therefore, a dispute arose between the 4<sup>th</sup> defendant and the defendants 1 to 3. Hence, at the instigation of the 4<sup>th</sup> defendant, the plaintiffs have filed a suit. It was the further contention of the first defendant that Pakkiri Mohammed while returning to India was in sound state of mind and he has not suffered any illness while he was in Singapore. After returning from Singapore, he was residing in Item No.6 of the



*A.S.No.1077 of 2003*

property with the first defendant and his family. Thereafter, he was suffered from paralytic stroke. However, he was in sound state of mind. He was treated in the Hospital at Thanjavur. While Pakkiri Mohammed was in the hospital, the first plaintiff has trespassed into the 6<sup>th</sup> item of the property and occupied the same, after knowing that the Pakkiri Mohammed has decided to execute the power of attorney.

**4.2.** It was also the contention of the first defendant that the Pakkiri Mohammed has borrowed a sum of Rs.2,50,000/- from defendants 2 and 3 towards medical expenses and in order to clear the debt, he has executed a power of attorney in favour of the 4<sup>th</sup> defendant, while he was in sound state of mind. The fourth defendant sold the second item of the property in favour of the second defendant. Sale deed was executed in favour of second defendant in respect of item Nos.3 and 6 and sale deed was executed in favour of the third defendant in respect of item Nos.4 and 5. It is the further contention that item Nos.1 and 7 to 9 originally belonged to the first defendant and she has executed the settlement deed in favour of the said Pakkiri Mohammed. However, the said settlement has not acted upon and possession was also not handed over. Therefore, item Nos.1 and 7 to 9 are the absolute property of the first defendant. Only item Nos.10 and 11



A.S.No.1077 of 2003

alone belong to Pakkiri Mohammed. All the documents have been executed for valid consideration, while he was in sound state of mind. Hence, opposed the suit.

5. Based on the above pleadings, the trial Court has framed the following issues:

1. Whether the plaintiffs are entitled to 61/80 shares in the suit property?
2. Whether the plaintiffs are entitled to get accounts from the defendants 1 and 2?
3. Whether it is correct that as per the written statement, the plaintiffs are not entitled to any share in the suit properties?
4. Whether it is true that the first plaintiff is the wife of Pakkiri Mohammed and the plaintiffs 2 to 4 are the children born to the Pakkiri Mohammed and first plaintiff?
5. Whether Exs.B1 to B6 are valid in the eye of law and binding on the plaintiff?
6. To what other relief, the plaintiffs are entitled?



*A.S.No.1077 of 2003*

**6.** Before the trial Court, on the side of the plaintiffs, two witnesses were examined as P.W.1 and P.W.2 and 27 documents were marked as Exs.A1 to A27. On the side of the defendants, one witness was examined as D.W.1 and 6 documents were marked as Ex.B1 to Ex.B6.

**7.** On the basis of the evidence and materials, the learned trial Judge answered the issues against the defendants and granted preliminary decree in favour of the plaintiffs, granting 2/32 shares to the first plaintiff and 7/32 shares to the plaintiffs 2 to 4 and also directed to conduct separate enquiry with regard to furnishing accounts in the final decree proceedings. Challenging the above said decree and judgment, the present appeal came to be filed by the defendants 1 to 3.

**8.** The main contention of the learned counsel for the appellants / defendants that item Nos.1, 7 to 9 of suit properties originally belonged to the first defendant and though she has executed a settlement deed in favour of her husband Pakkiri Mohammed, the same has not been acted upon and possession was always with the first defendant. Therefore, his contention that the suit properties cannot be treated as property of the Pakkiri Mohammed. Since the gift deed has not been acted upon, the first defendant is the absolute owner of the property. It is the



*A.S.No.1077 of 2003*

further submission of the learned counsel for the appellants / defendants that while examining P.W.1, at the first instance she has categorically admitted that she has not produced any documents to substantiate the relationship with the said Pakkiri Mohammed. Only during further examination, she has produced certain documents to show that she was a legally wedded wife of Pakkiri Mohammed. According to the learned counsel, those documents have been filed later, only to fill up the lacuna in her evidence and those documents also not proved in the manner known to law. The trial Judge has simply relied upon the documents without examining the author of the documents. Hence, it is his contention that the relationship between the plaintiff and the deceased Pakkiri Mohammed has not been established.

9. While pendency of the appeal, an application has been filed by the appellants / defendants in C.M.P.(MD)No.1564 of 2023 for reception of additional document viz., power of attorney dated 23.05.1994 executed by the Pakkiri Mohammed, since the Court below has non-suited the sale deeds on the ground that the power of attorney dated 23.05.1994 was not filed. According to the appellants / defendants, the third defendant died during the pendency of the appeal on 12.12.2022. When the legal heirs of the third defendant was brought on record,



*A.S.No.1077 of 2003*

it came to light that the power of attorney was with him and only after search, the power of attorney came into possession of the defendants. Therefore, seeks to file the said power of attorney as additional document.

**10.** Learned counsel appearing for the appellants / defendants submitted that the trial Court has non-suited Exs.B1 to B6, on the ground that the power of attorney, which is basis for execution of such documents, not filed before the trial Court. Hence, it is his contention that as the execution of the power of attorney has not disputed, the power of attorney is absolute necessary for effective adjudication. Hence, it is his contention that the additional documents should be received as evidence and no further oral evidence is required on their side.

**11.** The learned counsel appearing for the appellants / defendants further submitted that when the document has been registered before the Registrar, there shall be a presumption that every officials act done in a proper manner. Pakkiri Mohammed appearance before the Sub-Registrar and execution of document clearly indicate that he was in a sound state of mind while executing the power of attorney. Therefore, the contention of the respondents / plaintiffs that Pakkiri Mohammed was not in a mental faculty and he was totally bedridden cannot be



*A.S.No.1077 of 2003*

countenanced. It is his further submission that when the document has been duly registered while Pakkiri Mohammed was in sound state of mind, the Trial Court ought not to have rejected the subsequent sale deeds executed based on the power of attorney. The plaintiffs have not filed any documents to show that said Pakkiri Mohammed was not in a position to take any rational decision at the relevant point of time. Merely because, he has suffered some paralytic stroke, it does not mean that he lost the mental faculty and he was not in a position to take a rational decision. Hence, it is his contention that the plaintiffs have not established the relationship. Therefore, the trial Court granting relief in favour of the plaintiffs is not according to law.

**12.** In the event, if the Court come to the conclusion that relationship between the first plaintiffs and Pakkiri Mohammed is established on record, then the plaintiffs are entitled to share only in item Nos.10 and 11. Item Nos.2 to 6 already sold, which has not been challenged separately. As far as item No.1 is concerned, it is the contention that though gift deed was executed in favour of the Pakkiri Mohammed by the first defendant, the same has not been acted upon. Therefore, it is his contention that judgment of the trial Court should be set aside and suit to be dismissed.



*A.S.No.1077 of 2003*

**13.** The learned counsel appearing for the respondents / plaintiffs would submit that the additional documents filed for execution of power of attorney is not disputed and the power of attorney has been obtained taking advantage of the ill-health of the Pakkiri Mohammed, while he was in dead bed illness. Further, it is his submission that the only question to be decided in this appeal is whether those documents are binding on the plaintiffs and valid in the eye of law. According to him, there are evidence available on record to show that the documents are obtained by undue influence, taking advantage of the deceased mental as well as physical conditions. Hence, those documents are not binding on the plaintiffs. Further submitted that if the power deed is received as additional evidence, no oral evidence is required.

**14.** In respect of the merits of the appeal, it is his contention that the entire evidence, adduced by both sides, clearly show that the first plaintiff is a legally wedded wife of the Pakkiri Mohammed and the plaintiffs 2 to 4 are the children born to Pakkiri Mohammed and first plaintiff. Said Pakkiri Mohammed was suffered serious paralyze stroke in Singapore and the first plaintiff brought him back to the India with the help of one Rahim. The documents filed on their side clearly established the above fact. While said Pakkiri Mohammed was treated and



*A.S.No.1077 of 2003*

living with the first plaintiff, the third defendant on the premise of giving better treatment at Apollo Hospital took the Pakkiri Mohammed to their house and some how or other created documents and immediately sale deeds have been executed in favour of defendant Nos.2 and 3 and those documents are suffered by undue influence and fraud. Besides the defendants have also not discharged their burden in showing the good faith in transactions. Hence, submitted that the trial Court has considered the entire evidence both oral and documentary evidence and come to the right conclusion and opposed the appeal.

**15.** In the light of the above submissions, now the points arise for consideration in this appeal are as follows:

1. Whether the appellants / defendants are entitled to file additional documents viz., the power of attorney and whether the same was executed by the Pakkiri Mohammed while he was in sound state of mind?
2. Whether the plaintiffs have discharged their burden in establishing the relationship with the said Pakkiri Mohammed?
3. Whether the appellants / defendants have discharged their burden to prove the good faith in transactions?



A.S.No.1077 of 2003

**POINT No: 1**

WEB COPY

16. The document, which is sought to be filed in the appeal stage is only a registered power of attorney dated 23.05.1994, said to have been executed by the deceased Pakkiri Mohammed. It is the case of the defendants that those documents was originally with the third defendant and only after his death, when the legal heirs are brought on record came into possession of the defendants. Therefore, said document is absolutely necessary for effective adjudication of the lis. Though it is the contention of the appellants / defendants that the document came into possession only after the death of Ismail, in the cross examination of D.W.1, she stated that after the execution of the power of attorney, the same has been handed over to her.

17. Though the stand of the appellants / defendants in C.M.P.No.1564 of 2023 is totally against the evidence of D.W.1 in the cross examination, this Court is of the view that since the entire issue revolving around the execution of the documents by Pakkiri Mohammed, the mere reception of receiving the documents as additional evidence will not dent the evidence already tendered by both sides. As both sides fairly admitted before this Court that there is no oral evidence, with



*A.S.No.1077 of 2003*

regard to the above document since sufficient evidence is already available on record with regard to the validity of the documents, this Court received the power of attorney as additional evidence and marked as Ex.B7 on the side of the defendants. Accordingly, the point is answered.

**POINT NO: 2**

18. It is the specific case of the plaintiffs that the first plaintiff is a legally wedded wife, whereas the it is the case of the defendants that the first plaintiff has never married the said Pakkiri Mohammed and the other plaintiffs are not children of the said Pakkiri Mohammed. The defendants have also taken a stand that the plaintiff was a servant maid in their house, except that there is no other relationship between the parties. In order to substantiate the stand of the plaintiffs, P.W.1 has asserted in her evidence that she married Pakkiri Mohammed and out of wedlock, the other plaintiffs were born to them. In order to substantiate the same, P.W.2, one Kamalutheen, who is the Head of the concerned Mosque was examined. He has also substantiated the version of the first plaintiff that she was second wife of the Pakkiri Mohammed and marriage was solemnized as per the Muslim law. Besides, the plaintiffs have also filed documents viz., Ex.A14 and



*A.S.No.1077 of 2003*

A15, letters written by Pakkiri Mohammed addressed to the first plaintiff, wherein he himself admitted that he is the husband of the first plaintiff. These letters were not disputed seriously except contending that these have been filed later in the suit.

**19.** It is relevant to note that the letters were sent by Airmail (Par Avion) in the year 1986 and 1987. Plaintiffs have filed the suit as indigent persons. Therefore, creating such a document by such an indigent person that too from the post of Singapore is highly impossible. It is relevant to note that Ex.A16 is also a letter addressed to the first plaintiff by one Rathinasamy informing about the ill-health of her husband in Singapore. This also is of the year 1993. These documents clearly shows that first plaintiff is the wife of the said Pakkiri Mohammed. Though Ex.A18 and Ex.A19 were also filed to show some treatment given in Singapore, the author of the document has not been examined and therefore, much reliance cannot be given.

**20.** Further the fact remains that Ex.A20-marriage certificate issued by Chozhaapuram Mosque and Ex.A21, marriage certificate issued by the Kumbakonam Tahsildar have also been filed. On a perusal of the birth certificates



*A.S.No.1077 of 2003*

viz., Exs.A22 to A.24 relating to plaintiff Nos.2 to 4, issued by the concerned local authority, wherein it is clearly stated that the name of the father is Pakkiri Mohammed and the name of the mother is the first plaintiff. These documents are the extract of the birth register issued under Section 12 of the Registration of Birth and Death Act, 1969, and those documents are also not seriously disputed when the entries are made in the public office and extract has been issued by the public authorities. There is a presumption attached to the entries made in the birth register. It is relevant to note that all the extracts shall be certified by the Registrar or any other officer authorised by the State Government to give such extracts as provided in Section 76 of the Indian Evidence Act, 1872. As per Section 17 of the Registration of Birth and Death Act, 1969, such extracts shall be admissible in evidence for the purpose of proving the birth and death to which the entry relates. These extracts are issued by the authorised office under the Act. Therefore, the same proved the birth of the plaintiffs 2 to 4. Besides the name of the Pakkiri Mohammed has been shown as father of the plaintiffs 2 to 4 and husband of the first plaintiff.

**21.** That apart, the passport of the first plaintiff - Ex.A.25 and the passport of her husband- Ex.26 have also been filed by the plaintiffs, wherein, in the first



A.S.No.1077 of 2003

plaintiff's passport, her husband name is clearly mentioned as Pakkiri Mohammed.

WEB COPY This aspect clearly show that the said Parrkiri Mohammed is the husband of the first plaintiff.. Though Ex.P27 was also filed, the above document was not substantiated by the author of the document. Be that as it may. P.W.2, the President of the Jamath has clearly spoken about the relationship of the first plaintiff and Pakkiri Mohammed. Further it is also admitted in the written statement that the first plaintiff is their servant maid. It is also now admitted that first plaintiff is in possession of the 6<sup>th</sup> item of the property. These facts clearly show that the plaintiff is none other than the second wife of the Pakkiri Mohammed. Accordingly, this point is answered.

**POINT NO. 3:**

**22.** It is admitted by both sides that Pakkiri Mohammed was working in Singapore. It is the specific case of the plaintiffs that while he was in Singapore, he suffered by paralytic stroke and he was brought to India by one Rahim. D.W.1 clearly in her evidence stated that while the said Pakkiri Mohammed was in Singapore, he suffered a paralytic stroke and with the help of one Rahim, brought the said Pakkiri Mohammed to India. After came back to India, Pakkiri



*A.S.No.1077 of 2003*

Mohammed was treated in Thanjavur Hospital and while he was in the hospital, third defendant came from abroad. Thereafter, he took them to Therilandur and thereafter admitted in the Mayiladuthurai hospital. She has also admitted that since his father's health condition became worse, he could not be moved to the Apollo Hospital. While he was in treatment all the documents viz., Ex.B1 to B7 came into existence.

23. Further, P.W.1 has stated in her evidence that while the said Pakkiri Mohammed was given treatment in the Thanjavur Hospital, the third defendant took the Pakkiri Moahmmed to his house under the pretext that he will give treatment in Apollo hospital. Her version is clearly substantiated by the admission of D.W.1 in the cross examination that Pakkiri Mohammed was treated in various hospital after returning from Singapore. The medical certificate issued by the Tan Tockseng Hospital, Singapore which was marked as Ex.A19, though it is not substantiated by the Doctor, also indicates that the said Pakkiri Mohammed was suffered by paralytic stroke and he was requested to return to India immediately. Though this certificate was not proved by examining the author, the fact remains that prior to the certificate, a letter was also written by one Rathinasamy to the first plaintiff about the ill-health of the Pakkiri Mohammed, which was marked as



*A.S.No.1077 of 2003*

Ex.A16. Be that as it may. The fact remains that after Pakkiri Mohammed returned to India, the said Pakkiri Mohammed was admitted in the various hospitals, which was admitted by the D.W.1 in the cross examination.

**24.** Ex.P27 is the minutes of the village Jamath. Though the minutes in Ex.A.27 indicate that Pakkiri Mohammed was in coma stage all along, Ex.P27 has not been proved before the trial Court. Be that as it may. The fact remains that the power of attorney was executed while he was suffering from paralytic stroke and he was totally immobilized. The recitals of Ex.P27 shows that he was suffering from paralytic stroke and he was not in a position to manage the property. Therefore, power of attorney has been executed in favour of the 4<sup>th</sup> defendant. The power of attorney was registered on 25.03.1994. The power of attorney was registered, though the normal presumption would arise that the official acts done in proper manner. The question arises whether this power of attorney was obtained by the persons, who are in active confidence. The evidence of D.W.2 further indicates that they are also actively participated, they were present at the time of executing the power of attorney and she also admitted that his father has not signed in the document only put thumb impression. The husband of the second defendant was also very much present at the relevant point of time.



*A.S.No.1077 of 2003*

**25.** The evidence of D.W.1 also clearly shows that the one hand and legs of the said Pakkiri Mohammed has completely paralyzed at the relevant point of time. It is the contention of the appellants / defendants that they have spent considered amount towards medical expenses to their father and sale deed were executed only towards such consideration. It is relevant to note that no documents whatsoever has been filed to show that what was the nature of the treatment given to said Pakkiri Mohammed, whether he was in sound state of mind at the relevant point of time or not. Further, there was no document has been filed to show that what was the amount spent towards the medical expenses and the same has been adjusted as sale consideration in the subsequent documents viz., Ex.B1 to B6.

**26.** It is also relevant to note that it is the normal human conduct of the wife and children to treat their father voluntarily. Therefore, getting the sale deed towards medical expenses is highly against the normal human conduct. Therefore, this Court can very well presume that such a conduct is against normal human conduct, particularly taking note of the conduct of the parties. As per Section 114 of the Evidence Act, it is highly improbable to contend that for treating own father by the children sale deed has been executed by father through his power agent. Such contention is quite unnatural and against the normal human conduct of the



*A.S.No.1077 of 2003*

affectionate wife and children. Be that as it may. The evidences adduced before the trial Court particularly the evidences of P.W.1 and P.W.2 clearly show that the deceased Pakkiri Mohammed was totally immobilized and he was not in a position to speak at the relevant point of time.

27. The evidence of D.W.1 also clearly shows that he was suffered from paralytic stroke in one hand and leg and he has been continuously treated in various hospital. However, no material has been placed by the defendants to show that despite such paralytic stroke, he was in a position to take a rational decision i.e., he was in sound state of mind at the relevant point of time. Only when the husband of D.W.1 came to India, thereafter, the power of attorney has been registered . Thereafter, Ex.B1 to B6 sale deeds in respect of other properties have also been executed and the deceased died immediately within a short period on 12.07.1994. The power of attorney said to have been executed on 23.05.1994 and Pakkiri Mohammed died within a short period. During treatment and also at the time of execution of power of attorney, the defendants were in a position to dominate the will of the deceased and he was under their control. Besides he was also suffering from paralytic stroke and was taking treatment and was totally immobilized. Therefore, once it is established that the defendants were in a



*A.S.No.1077 of 2003*

position to dominate the Will of the deceased at the relevant point of time and having apparent authority over the deceased and they are standing in the fiduciary relationship with deceased which resulted in execution of any documents such documents will be vitiated by undue influence.

**28.** The relevant pleading made by the plaintiffs in the plaint clearly show that the third defendant took the deceased under the promise of giving better treatment and kept him in their custody and the first plaintiff was never allowed to see her husband thereafter. This facts clearly show that the appellants / defendants were having real and apparent authority over the deceased and he was also suffering from paralytic stroke and immobilized. Such view of the matter, when the appellants / defendants have failed to produce any document to show that the deceased was in sound state of mind at the relevant point of time, while executing the power of attorney, mere registration of the power of attorney in the registration office will not relieve the appellants / defendants from proving the good faith of the transactions.

**29.** Admittedly, the defendants were in a position of active confidence and apparent control over the deceased Pakkiri Mohammed, while he was taking



*A.S.No.1077 of 2003*

treatment, he was all along in their custody. Therefore, any document executed at the relevant point of time by the deceased Pakkiri Mohammed, the burden lies on the defendants to prove the good faith in the transactions, as per Section 111 of the Evidence Act. As discussed above, no material whatsoever has been filed to show that the appellants / defendants have produced any documents to show that the deceased was in sound state of mind and he was capable of understanding it and form a rational decision while executing the document. The appellants / defendants have not produced any scrap of paper to show that despite the ill health and paralytic stroke, the deceased was in sound state of mind for the purpose of executing the document and he was capable of taking rational decision. There was no reason as to why the appellants / defendants have not produced any medical records, despite the alleged medical treatment given by them and spent so much of amount, which is a basis for consideration in Ex.B1 to B6.

**30.** In such view of the matter, this Court is of the view that the appellants / defendants, who are in a position to dominate the Will of the deceased viz., Pakkiri Mohammed and all the documents have been executed within a span of 50 days, when he was seriously suffered paralytic stroke, the appellants / defendants have not discharged their burden in proving the good faith in transactions. Yet another



*A.S.No.1077 of 2003*

submission has been argued by the learned counsel for the appellants / defendants in respect of item Nos.1, 7 to 9, that the properties have been originally gifted to the said Pakkiri Mohammed by the first defendant viz., the first wife. However, said gift has not been acted upon. In a written statement of the first defendant it is pleaded that the settlement deed was executed in favour of the Pakkiri Mohammed by the first defendant. However, the same has not been acted upon. It is relevant to note that the settlement deed has not seen the light of the day and not filed before this Court and first defendant is also not entered into the witness box and no material to show that the properties are in her name and she is in enjoyment of the property. Therefore, once the settlement deed is executed and transferred, there is no requirement to hand over the possession, since the transfer is made by way of document. Such view of the matter, the mere assertion that settlement is not acted upon does not hold water. Accordingly, this point is answered.

**31.** In view of the above, all the registered documents executed in favour of appellants / defendants 2 and 3 are not binding on the plaintiffs / respondents and invalid and will not convey any title to them. This Court is of the view that since it is a suit for partition, there need not be any separate challenge in those documents and the documents rightly could be avoided by the plaintiffs.



*A.S.No.1077 of 2003*

**32.** In the result, this Appeal Suit is dismissed and the judgment and decree passed by the Additional Subordinate Judge, Kumbakonam in O.S.No.180 of 1997, granting preliminary decree is confirmed. However, this Court is of the view that the shares calculated by the trial Court is not proper and therefore, this Court modifies the same as follows:

The first plaintiff and first defendant being the wives have certainly entitled to 5/80 each shares in all the suit properties. The daughters viz., plaintiffs 2 and 4 and the fourth defendant will collectively entitled to 42/88 shares and each will get 14/80 shares as per Muslim law in all the suit properties. Plaintiff No.3, son will get double the share of the daughters and he would get 28/80 shares in the suit properties in all the suit properties.

**33.** In respect of the improvements said to have been made by the appellants / defendants 2 and 3 in the property, the same can be worked out in the final decree proceedings as held by the trial Court. In all other aspects, the judgment of the trial Court is confirmed. The plaintiffs / respondents are liable to pay the Court



A.S.No.1077 of 2003

fee payable on the suit. C.M.P.(MD)No.1564 of 2023 is allowed and the document viz., power of attorney dated 23.05.1994, executed by the Pakkiri Mohammed is marked as Ex.B7. No costs.

**23.03.2023**

NCC : Yes /No

Index : Yes/No

Internet : Yes

vsm

**Note:**

**The document viz., the power of attorney dated 23.05.1994 executed by the Pakkiri Mohammed is marked as Ex.B7.**

**23.03.2023**

To

- 1.The Additional Subordinate Judge, Kumbakonam.
- 2.The Section Officer,  
Vernacular Records,  
Madurai Bench of Madras High Court,  
Madurai.



WEB COPY



*A.S.No.1077 of 2003*

**N.SATHISH KUMAR, J.**

vsm

**A.S.No.1077 of 2003**

**23.03.2023**