



S.A.No.432 and 436 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.01.2024

PRONOUNCED ON : 03.04.2024

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.Nos.432 and 436 of 2023
and
C.M.P.No.13200 and 13241 of 2023

[S.A.No.432 of 2023]

1.J.Dhanalakshmi
2.S.Naveenraj

... Appellants

V.s

H.Mageswari

... Respondent

Prayer in S.A.No.432 of 2023: Second Appeal is filed under Section 100 of C.P.C to set aside the judgment and decree passed in A.S.No.43 of 2019 by the Sub Court, Poonamallee dated 14.12.2022 which reversing the judgement and decree passed in O.S.No.306 of 2010 by the Principal District Munsif Court at Poonamalle dated 30.01.2019.

For Appellants	: M/s.S.Vijayakumar, Senior Counsel for Mr.G.Rajesh
For Respondent	: M/s.T.Pon Suyambu Vinayaham



S.A.No.432 and 436 of 2023

[S.A.No.436 of 2023]

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E.Radhakrishnan

... Appellant

V.s

H.Mageswari

... Respondent

Prayer in S.A.No.436 of 2023: Second Appeal is filed under Section 100 of C.P.C to set aside the judgment and decree passed in A.S.No.42 of 2019 by the Sub Court, Poonamallee dated 14.12.2022 which reversing the judgement and decree passed in O.S.No.39 of 2011 by the Principal District Munsif Court at Poonamalle dated 30.01.2019.

For Appellants	: M/s.S.Vijayakumar, Senior Counsel for Mr.G.Rajesh
For Respondent	: M/s.T.Pon Suyambu Vinayaham

COMMON JUDGEMENT

The above two appeals arise in respect of a dispute relating to the same property. The two Second Appeals with their corresponding First Appeal numbers and the suit numbers are herein below set out.



S.A.No.432 and 436 of 2023

2. S.A.No.436 of 2023 is filed challenging the judgement and decree in A.S.No.42 of 2019 on the file of the Sub Judge, Poonamallee which in turn has been filed challenging the judgment and decree in O.S.No.39 of 2011 on the file of the Principal District Munsif, Poonamallee.

3. S.A.No.432 of 2023 is filed challenging the judgment and decree in A.S.No.43 of 2019 on the file of the Sub Judge, Poonamallee which in turn has been filed challenging the judgement and decree in O.S.No.306 of 2010 on the file of the Principal District Munsif, Poonamallee. Both the appeals have been filed by the plaintiff.

4. O.S.No.39 of 2011 has been filed for cancelling the rectification deed executed by E.Radhakrishnan, the defendant therein dated 15.07.2010.



5. O.S.No.306 of 2010 has been filed for an injunction restraining the defendants, their men, agents or any other persons through them from raising any building by encroaching the undivided share of 1520 sq.ft. of land of the suit property. This suit has been filed against one J.Dhanalakshmi and minor S.Naveenraj. The parties are referred to in the same ranking as in the suit O.S.No.306 of 2010 and the defendant in O.S.No.39 of 2011 is referred by his name, Radha Krishnan.

Plaint in O.S.No.39 of 2011:-

6. It is the case of the plaintiff that E.Radhakrishnan, the sole defendant in O.S.No.39 of 2011 was the absolute owner of the land measuring 3781 sq.ft. and the building consisting of ground and a first floor totally measuring 1622 sq.ft. i.e; 811 sq.ft. for each floor which has been described the “A” schedule property. On 10.12.2003, the said E.Radhakrishnan had executed an irrevocable settlement deed under which he had made the following settlements:-



WEB COPY (a) 2261 sq.ft. of vacant land was settled on the eldest son R.Ravichandran along with the land a right of usage of the 6 feet common passage was also granted to the eldest son. The property settled on the eldest son has been described as the B schedule in the settlement deed.

(b) The grandson of the settler, minor S.Navinraj through the 2nd son R.Sampath Raj was allotted an undivided share of 1520 sq.ft. of land together with 811 sq.ft. built up area in the ground floor. He was also given a right of usage in the six feet wide common passage.

(c) The 3rd son R.Harikrishnan was allotted an undivided share in the 1520 sq.ft. of land together with the 1st floor of the building measuring 811 sq.ft. and a right of usage of the six feet wide common passage. The property allotted to the share of the Naveenraj has been described as the C schedule and the property allotted to Harikrishnan



has been described as the D schedule in the settlement deed. His grandson Naveenraj and his son Harikrishnan has been jointly allotted the extent of 1520 sq.ft.

(d) The property which has been allotted to Naveenraj and Harikrishnan abuts the street called Nakkeeran Street. The property that has been allotted to Ravichandran is the rear portion behind the share allotted to Naveenraj and Harikrishnan. The property that has been allotted to him is in an inverted 'L' shape.

7. It is the case of the plaintiff that on 25.02.2008, Harikrishnan, the 3rd son of E.Radhakrishnan, who is none else than her husband, had executed a settlement deed in her favour in respect of the D schedule property that had been settled on him by his father. Similarly, the eldest son Ravichandran had settled the portion settled on him (the "B" schedule) to his wife Thenmozhi under a registered settlement deed dated 24.03.2008. The said Thenmozhi in turn had executed a



settlement deed in favour of her sister J.Dhanalakshmi who is the mother and guardian of minor Naveenraj in respect of the B schedule property. Thereafter, it is the contention of the plaintiff that without her knowledge the defendant had executed a rectification deed whereby the extent of the undivided 1520 sq.ft. of land has been reduced to 1250 sq.ft. by providing the six feet wide common passage in this undivided share measuring 1520 sq.ft.

8. The plaintiff would submit that the six feet passage has to be allotted in the B schedule and not in the undivided shares described as C and D schedule in the settlement deed. Therefore, the plaintiff has come forward with the suit in question for the reliefs set out supra.

Written statement of the defendant:-

9. The defendant would submit that the husband of the plaintiff is a party to the rectification deed. In fact, earlier the plaintiff had filed a suit O.S.No.306 of 2010 against the defendant's daughter-in-law



Dhanalakshmi and his grandson minor Naveenraj for an injunction.

The plaintiff who was aware of the rectification deed even then had not sought for cancellation of the rectification deed nor was the defendant herein impleaded in that suit.

10. Therefore, the defendant would submit that the present suit is hit by the provisions of Order 2 Rule 2 of the CPC. The defendant had set out in great details (para 4.a.) as to why the settlement deed and the allotments had taken place. He would submit that he had allotted 2261 sq.ft. vacant land to his son with a frontage of 15 feet abutting the Nakkeeran Street and a six feet wide common passage. The grandson and the son, Naveenraj and Harikrishnan respectively were given an undivided share in the 1250 sq.ft. with minor Naveenraj being allotted the ground floor of the building measuring 811 sq.ft. and Hariskirshnan being allotted to the 1st floor of the building measuring 811 sq.ft.



11. The defendant would submit that by an oversight he had omitted to annex the plan and since there was a typing mistake with reference to the location of the passage, he had executed the rectification deed to bring the dispute between the parties to a close as the plaintiff taking advantage of the ambiguity has been taking the family to the police station.

12. The defendant would submit that he had weighed equity when he had executed the rectification deed. The total frontage of the entire property abutting Nakkeeran Street is 47 feet, out of which 32 feet was allotted to the plaintiff's husband and minor Naveenraj under the earlier settlement deed and 15 feet was allotted to the eldest son. If the six feet passage is exclusively carved out from the share of the 1st defendant, the same would be against equity as the frontage would get reduced. Therefore, taking into consideration the equity between the parties, the defendant had executed the rectification deed and the same had been executed to the knowledge of his 3 sons which included the



plaintiff's husband. Therefore, he would pray that the suit be dismissed.

Plaint in O.S.No.306 of 2011:-

13. The facts as set out in the earlier plaint have been more or less repeated and the plaintiff has added that she has been residing with her family members in the first floor of the building described as “D” schedule. It is her contention that defendants, who are residing in the ground floor of the building described as “C” schedule, are attempting to construct on the “B” schedule property by encroaching the undivided share allotted to the plaintiff under the settlement deed as a common passage. It is her contention that it is the only way to reach the first floor. She would submit that even this space is encroached upon, her access to her property would be totally cut off. That apart, the pipeline and sewage etc., have to be taken through this undivided share. She would submit that when she had objected, the defendants had threatened her. It is her contention that the rectification deed has



been executed without her knowledge. Therefore, the plaintiff had come forward with the suit in question for the relief of injunction without seeking any relief with reference to the rectification deed.

Written statement of the defendants in O.S.No.306 of 2010:

14. The first defendant had filed a written statement for herself and for the minor second defendant, Naveenraj. In the written statement, the defendants would submit that since the common passage had not been delineated in the settlement deed, the rectification deed came to be executed on 15.07.2010 and that the said rectification deed is binding on all parties. The defendants would submit that the description of the “B” to “D” schedule properties have not been properly set out in the settlement deed. The western boundary shown in the “B” schedule is not Achari's house, but it is the 6 feet width common passage and the property of the plaintiff and the second defendant and also the Achari House. The “C and “D” schedule properties do not measure 1520 sq.ft but measure 1250 sq.ft. measuring



26 feet east-west both on the North and South and not 32 feet east-west. It is the contention of the defendants that the plaintiff cannot object to the construction, as the construction is taking place only in the exclusive property of the defendants measuring 2261 sq.ft. That apart, the defendants would submit that the construction in the “B” schedule is being done only in accordance with the sanctioned plan and the plaintiff cannot question the same. The defendants would submit that when they had commenced construction, the plaintiff had started quarrelling and therefore, the first defendant was constrained to lodge a police complaint on 25.08.2010 before the Avadi Police Station under C.S.R.No.191 of 2010. The police had advised the plaintiff not to interfere with the construction, but however the plaintiff had rushed to the Court by filing the suit in question. Therefore, the defendants sought to have the suit dismissed. They had also filed a counter claim seeking damages of a sum of Rs.50,000/- as there was no cause of action against the 2nd defendant.



Trial Court:

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15. The learned Principal District Munsif, Poonamallee had tried the suits together. The learned Judge had framed the following issues in O.S.No.306 of 2010:

- 1. Whether the plaintiff is entitled to the suit relief?*
- 2. To what other reliefs?*

On 11.06.2013, an additional issue was framed as follows:

Whether the damage claimed by the 2nd defendant is legally valid and maintainable.?

16. In the suit O.S.No.39 of 2011, the learned Judge had framed the following issues:

- 1. Whether the plaintiff is entitled to the relief of cancellation of rectification deed?*
- 2. To what other reliefs is the plaintiff entitled to?*



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17. The learned Judge has proceeded to record the evidence in O.S.No.306 of 2010, the husband of the plaintiff, Harikrishnan had examined himself as P.W1 and the brother of the plaintiff, Ravichandran had examined himself as P.W2 and Exs.A1 to A12 were marked. On the side of the defendants, the first defendant had examined himself as D.W1 and the second defendant's father, Sampathraj was examined as D.W2 and Radhakrishnan, the defendant in O.S.No.39 of 2011 was examined as D.W3 and Exs.B1 to B6 were marked.

18. The trial Court, on considering the evidence on record, proceeded to dismiss both the suits. The two suits were taken up on appeal by the plaintiff in A.S.Nos.42 and 43 of 2019 on the file of the Subordinate Court, Poonamallee.

Lower Appellate Court:

19. The lower appellate Court allowed the appeals on the ground



that on the date of the rectification deed, the defendant did not have any right over the property since he had already executed a settlement deed in favour of the plaintiff's husband, Harikrishnan, the 1st defendant's sister's husband Ravichandran and the 1st defendant's son, Minor Naveenraj. The learned Judge observed that the rectification deed dated 15.07.2010 which was marked as Ex.A5 had been executed by the original settlor, E.Radhakrishnan after a period of 7 years from the date of the execution of the settlement deed by which time he had lost his right, title and interest in the suit property. Consequently, the learned Judge proceeded to nullify the rectification deeds under Exs.A2, A3 and A4. Challenging the same, the defendants in A.S.No.42 and 43 of 2019 are before this Court.

Substantial questions of law:

20. After hearing the arguments on either side, the substantial questions of law that arise for consideration in the above second appeal are as follows:



(a) Whether the first appellate Court is right in law in declaring Ex.A5 (Rectification deed) is invalid, despite the executor (settlor) having expressed his intention while being examined as D.W3 in the suit?

(b) Whether the first appellate Court is right in law, when the executant is always at liberty to rectify the error apparent on the face of the record for proper enjoyment of the properties allotted to the respective parties.

Submissions of the learned counsel for the appellants:

21. Mr.S.Vijayakumar, learned senior counsel who appeared on behalf of the learned counsel for appellants / defendants would submit that the rectification deed is only a sequel to the original settlement deed. In the original settlement deed Ex-A1 though the settlor has set aside the 6 feet wide common passage in the property totally measuring 3781 he had not defined this passage. However, from the recitals contained in the settlement deed, it is crystal clear that the same



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is situate between the property that has been jointly allotted to the share of the Naveenraj and Harikrishnan and the property of the Ravichandran. The total east-west measurement of the property on the north is 47 feet. 32 cents is allotted to the share of the plaintiff's husband and Minor, Naveenraj. The property that has been settled on the plaintiff's husband is the property that is now settled on her. It also appears that, since this ambiguity was giving rise to disputes amongst the parties with they frequenting the police station, the father, Radhakrishnan had decided to specifically demarcate the 6 feet passage to enable the son to whom he had allotted the property in the extreme south to have access to the main road and also to give the others right in the passage as well. He would submit that father has himself got into the box to explain the reason for executing the rectification deed. He would further submit that the allegation in the suit O.S.No.306 of 2010 that the defendants are attempting to interfere with the plaintiff's enjoyment of the 6 feet wide common passage is absolutely false and is but a figment of the plaintiff's fertile imagination. He would submit



that the Courts have to interpret the document and do equity to the parties. He would further submit that if the true intention of a party has not been expressed in the instrument, then party to that instrument can rectify the mistake. In this regard, he would rely upon the judgment of the Hon'ble Supreme Court reported in ***(2013) 3 SCC 801 [Josphe John Peter Sandy Vs Veronica Thomas Rajkumar and Another]***. He would rely upon another judgment of the Hon'ble Supreme Court reported in ***2023 SCC Online SC 1046 [Shri Nashik Panchavati Panjarpol Trust and Others Vs. Chairman and Anoher] {Civil Appeal No.2857 of 2011} [Shree Nasik Panchavati Panjarapole Trust and Others Vs. State of Maharashtra and Another] {Civil Appeal No.2858 of 2011}*** and would refer to the observations therein at paragraph No.8. He would therefore submit that this Court may allow the appeals and set aside the judgment and decree of the lower appellate Court.



Submissions of the learned counsel for the respondent/plaintiff:

WEB COPY 22. The plaintiff had presented his arguments in the form of written arguments. The contentions therein are as follows:

The settlor had, in clear and categoric terms, mentioned that Ex.A1-Settlement Deed is a final deed and is irrevocable. Having declared so, the defendants had proceeded to execute the rectification deed dated 15.07.2010 that too after the parties have acted upon the settlement deed. On 25.02.2008, Harikrishnan one of the sons of the defendant, Radhakrishnan and the husband of the plaintiff had bequeathed his share in favour of the plaintiff. Likewise, the other son, Ravichandran had executed a settlement deed in favour of his wife, Thenmozhi on 24.03.2008. Thereafter, the said Thenmozhi had executed a settlement deed in favour her sister, J.Dhanalakshmi on 11.08.2008. After the same had been acted upon, the defendant in O.S.No.39 of 2011 has proceeded to execute a rectification deed dated 15.07.2010. The plaintiff would further contend that the rectification deed has come into existence behind her back and without her



knowledge. He would submit that the rectification deed is against the principles of equity and fair play. He would submit that, as per Ex.B2, the property in question has two passages. He would further submit that even where a settlement deed reserves a life interest on the settlor, once the document is executed, the property would devolve absolutely on the settlee with effect from the date of the execution of the settlement deed. In this regard, the learned counsel for the plaintiff would rely upon the judgment of the Hon'ble Supreme Court in **(1996) 9 SCC 388 / Namburi Basava Subramanyam Vs. Alapatti Hymavathi and Other]**.

Discussion.

23. Heard the learned counsels on either side and perused the records available on record.

24. The omission to attach a plan to a settlement deed has led to this litigation. The litigation by itself is surprising since a common



passage is already in existence on site and which is being used by the parties right from the year 1990 as contended by P.W1, Harikrishnan, the husband of the plaintiff. An Advocate Commissioner has been appointed to note down the physical features of the property and she has also submitted her report and plan, which, though wanting in some respects, atleast throws lights on the physical features of the suit schedule property as it exists. The Report and plan have not been marked as exhibits but the physical features contained therein has not been objected to by the parties. The plaintiff has only objected to the measurement given in the Advocate commissioner's plan. The total property measures an extent of 3781 sq.ft. The property measures 47 feet East-West on the North immediately abutting Nakeeran Street, 47 feet on the South with one Muthukrishnan's property as its southern boundary. On the east, it measures 76 feet north-south and is bounded by one Radha's house and on the western side, the property measures North-South 85 feet and Achari house is situate on the west. From the Advocate commissioner's plan, it is evident that a house consisting of a



ground and first floor is already in existence, and this house is situated on the extreme western end of the property. The building totally measures 1622 sq.ft i.e., 811 sq.ft on the ground floor and a similar extent on the first floor and there is vacant land around the house. On the east of this building and a bit of vacant space, the Advocate Commissioner's report and plan would indicate the existence of a gate and from the gate, there is a passage leading to the end of this building right upto the "B" schedule property in Ex.A1-Settlement deed. To the south of this passage and the building and to the east of this passage, is the property that has been settled on the eldest son, Ravichandran. The property settled on Ravichandran, as earlier stated, is in the shape of an inverted "L". The bone of contention now between the plaintiff and the defendants is the location of this passage which is described in the settlement deed. The plaintiff's case is that this passage has to be allocated in the portion which has been allotted to Ravichandran. The measurements of each of the property that has been settled have also been provided in the settlement deed. The property which has been



allotted to Ravichandran has been described as the 'B' schedule measuring 76 feet North-South on the eastern side and 35 and 45 feet North-South on the West, 15 feet East-West on the North, 47 feet East-West on the South. Likewise, the 'C' and 'D' schedule property which has been allotted jointly to the plaintiff and the second defendant measures 32 feet East-West on the North, 32 feet East-West on the South, 45 feet North-South on the East and 50 feet North-South on the West.

25. Ex.A1-Settlement deed clearly states that all the owners would have a common right to the 6 feet passage. The intent of the settlor appears to be very clear that existing passage would be used by the person to whom the portion on the rear has been allotted to along with the other owners. From the records, it appears that there has been no dispute till such time as the property had been settled in favour of the plaintiff and the first defendant. The property that has been settled on the first defendant in O.S.No.306 of 2010 under Ex.A4-Settlement



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Deed dated 11.08.2008 is the share that had been allotted to Ravichandran under Ex.A1, namely, the “B” schedule. Ravichandran had in turn settled his share on his wife, Thenmozhi under Ex.A3. Likewise, the plaintiff's husband had settled his share, namely “D” schedule on the plaintiff on 25.02.2008 under Ex A2. Thereafter, it appears that there has been a spate of complaints being lodged and therefore, the father namely, E.Radhakrishnan, has brought an end to the dispute by clarifying and describing the “B” schedule property vide Ex.A5, Rectification Deed. A perusal of the cross examination of P.W1, Harikrishnan, would clearly show how the parties have been enjoying the passage from the year 1990. In his cross examination, he would submit as follows:-

“நீதிமன்ற ஆணையரை நியமிக்க நான் மனு
தாக்கல் செய்தேன். நீதிமன்ற ஆணையர் தனது
வரைபடத்தில் பி அட்டவணை சொத்துக்கு மேற்குபுறத்தில்
பாதை வருவதாக நீதிமன்ற ஆணையர் குறிப்பிட்டுள்ளார்
என்றால் சரிதான். பொதுபாதையை காட்டும் வகையில்
செட்டில்மெண்ட் ஆவணத்தில் வரைபடம்
இணைக்கப்படவில்லை. 2003ல் செட்டில்மெண்ட் ஆவணம்



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ஏற்பட்ட பிறகு பொதுப்பாதையை பயன்படுத்திவருகிறோம்.
2003க்கு செட்டில்மெண்ட் ஆவணம் ஏற்பட்ட பிறகு
பொதுப்பாதையை பயன்படுத்திவருகிறோம். 2003க்கு
முன்பாகவும் 1990 முதல் நீதிமன்ற ஆணையர்
குறிப்பிட்டுள்ள பாதையை பயன்படுத்திவரப்பட்டது.”

This would clearly show that the parties, even after the settlement deed in the year 2003, had continued to use the passage as described in the Advocate Commissioner's plan since 1990.

26. It is admitted by all the parties that when the settlement deed was executed, proper care had not been taken to draw a plan showing the shares as well as the common passage, which has lead to the current dispute. It has been the intent of the settlor that all the settlees should have a right to enjoy the 6 feet pathway as described by P.W1, the husband of the plaintiff. It is clearly evident that even on the date when the settlement deed was executed, a common passage was in existence which has been described in the Advocate commissioner's plan. The appellate Court has allowed the appeal only on the ground



that the settlor, namely, Radhakrishnan did not have the right to the property on the date when he had executed the Rectification Deed.

27. It is not in dispute that the entire property belonged to a single owner, from whom the others had derived a share. The pathway in question was already in existence, admittedly, from the year 1990 and P.W1 has admitted to the fact that this was the passage that was being used by all the parties. It is not in dispute that under Ex.A1, Settlement deed the Settlor, Radha krishnan has clearly described that the 3 settlees would commonly enjoy a 6 feet passage. Another fact that compels this court to come to the conclusion that the Settlor has intended the existing passage to be used by the settlees is on account of the fact that in the 'B' schedule property Radhakrishnan has been allotted the vacant land measuring 2261sq.ft together with Well and Toilet. A perusal of the Advocate Commissioner's plan indicate that the Toilet with an old EB meter is situate just East of the passage. Therefore, in order to give effect to the terms of his settlement,



E.Radhakrishnan is well within his right to execute the rectification deed Ex.A5. The Hon'ble Supreme Court in the judgment reported in

(2013) 3 SCC 801 [Joseph John Peter Sandy Vs. Veronica Thomas Rajkumar and Another] was considering a more or less similar case.

In this case also, the father of the parties to the litigation had executed two settlement deeds in the name of his daughter, the first respondent therein and in the name of his son, the appellant therein in respect of the door Nos. 22 and 23 respectively. The appellant therein would submit that it was only later that the father had come to know that the property which was given to his daughter ought to have been given to his son, and vice versa, to his daughter. Therefore, the parties had entered into an Exchange Deed. However, this deed was not given effect to and the appellant had filed a suit seeking a direction to the father to execute the Rectification Deed. Thereafter, the father and the appellant therein had executed a Rectification Deed by which the property which had been given to the daughter was given to the son.

The daughter therefore had gone to the Court for a declaration that the



rectification deed was null and void. The learned Judges had considered Section 26 of the Specific Relief Act which provides for rectification of instrument. Section 26 of the Specific Relief Act would read as follows:

26. When instrument may be rectified.—

(1) When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing not being the articles of association of a company to which the Companies Act, 1956 (1 of 1956) applies does not express their real intention, then—

(a) either party or his representative in interest may institute a suit to have the instrument rectified; or

(b) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified; or

(c) a defendant in any such suit as is referred to in clause (b), may, in addition to any other defence open to him, ask for rectification of the instrument.



(2) If, in any suit in which a contract or other instrument is sought to be rectified under subsection (1), the court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the court may, in its discretion, direct rectification of the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

(3) A contract in writing may first be rectified, and then if the party claiming rectification has so prayed in his pleading and the court thinks fit, may be specifically enforced.

(4) No relief for the rectification of an instrument shall be granted to any party under this section unless it has been specifically claimed:

In the case on hand, the Rectification Deed has already been executed and the plaintiff seeks to have it declared as null and void. The Settlor, Radhakrishnan, has clearly spelt out his true intention in the original settlement deed-Ex.A3 where it is his contention that all the settlees should enjoy the 6 feet wide common passage. Since the 6 feet wide



common passage had not been described in the settlement deed, problems had arisen after the properties had settled on the respective wives and therefore, the real intention with which the instrument had been executed was not given effect to.

28. In the judgment cited supra, the learned Judges had however held against the appellant on the ground that he had not proved the intention behind the execution of the Rectification Deed and dismissed the appeal, but however the learned Judges had observed that the document which has been styled as an “agreement deed to exchange” **has to read as a Rectification Deed** which could have been done only by the settlor and not by the contesting parties.

29. In the judgment of the Hon'ble Supreme Court reported in *(2005) 11 SCC 234 [Kokilambal and Others Vs. N.Raman]*, it has been held as follows:



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“Settlement is one of the recognised modes of transfer of movable and immovable properties under Hindu law. In order to find out the correct intent of the settlor, the courts have to read the settlement deed as a whole and draw their inference from its content. Therefore, the terms of the settlement should be closely examined and the intention of the settlor should be given effect to”

30. In the case before us, the settlor has been impleaded as a party and he has also given evidence as to what his real intent was and the reason for which he has executed a Rectification Deed. The deed has been executed only by him. Therefore, the lower appellate Court was in error in holding that the Rectification Deed is an invalid one, totally overlooking the tenor and language of Ex.A1, Settlement deed. Therefore, the substantial question of law No(a) is answered against the plaintiff.



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WEB COPY 31. As regards the substantial question of law No..(b), relying upon the judgment of the Hon'ble Supreme Court cited supra and the observation that the rectification could be done only by the settlor, this question of law is also answered against the plaintiff. Accordingly, these second appeals are therefore allowed. The judgment and decree of the lower appellate Court is set aside and the judgment and decree of the trial Court is confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

03.04.2024

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation :Yes/No
srn
To,

1. The Sub Court, Poonamallee
2. The Principal District Munsif Court at Poonamalle
3. The Section Officer,
V.R.Section,
High Court, Madras.



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S.A.No.432 and 436 of 2023

P.T.ASHA, J.,

srn

S.A.No.432 and 436 of 2023
and
C.M.P.Nos.13200 and 13241 of 2023

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