S.A.No. 1179 of 2007

T.V.THAMILSELVI, J.

This matter was taken up for hearing under the caption "For Being Mentioned" today at the instance of the learned counsel for the appellant.

2. The learned counsel for appellant would submit that this Court by judgment dated 05.03.2025 allowed the above Second Appeal. However, he would submit that the appearance of learned counsel for appellant was mentioned as Mr.K.Balakrishnan instead of Mr.C.R.Prasanan in the judgment. Hence, he prayed to amend the same and requested to issue fresh order copy.

3. Heard the contentions of learned counsel for appellant and perused the order.

4. Considering his submissions, Registry is directed to substitute the appearance of learned counsel for appellant Mr.K.Balakrishnan as **"Mr.C.R.Prasanan"** in the judgment.

5. Registry is directed to incorporate above correction in the Order of this Court in S.A.No.1179 of 2007 dated 05.03.2025 and issue fresh order copy to the appellant.

08.08.2025

rpp

T.V.THAMILSELVI, J.

rpp

S.A. No.1179 of 2007

08.08.2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.03.2025

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A.No.1179 of 2007
and
M.P.No.1 of 2007

1.Mylathal
2.Shanthamani

... Appellants

Vs.

1.Vellingiri (died)
2.Rangasamy
3.Nagaraj
4.Jayammal
5.Vijayalakshmi
6.Kowsalya
7.M.R.Dhanraj
8.V.Balamurali
9.V.Kannapiran
10.Devibala

... Respondents

(R7 impleaded vide order of court dated 18.12.2018 made in MP.No.1 of 2010 in S.A.NO.179 of 2007(RPAJ)

(R1 died, RR 8 to 10 B/R Lrs of the deceased R1 vide Court order dated 22.02.2024 made in CMPs.29519,29548 & 24547 of 2023 in S.A.NO.1179 of 2007 (GAMJ).

PRAYER : Second Appeal is filed under Section 100 of the Code of Civil

Procedure, prayed against the Judgment and Decree dated 20.11.2003 made in A.S.No.154 of 2002 passed by the learned I Additional District Judge, Coimbatore, preferred against the judgement and decree dated 01.08.2002 in O.S.No.2173 of 1998, passed by the learned II Additional District Munsiff, Coimbatore.

For Appellants : Mr.K.Balakrishnan

For Respondents : Ms.T.R.Gayathri
For M/s.Sarvabhauman Associates
For R2, 3, 5 & 6

M/s.R.Sivakumar For R7
R1 - Died
R4 - Died
R8 To R10 - Refused

JUDGMENT

The appellants have filed this Second Appeal against the Judgment and Decree dated 20.11.2003 made in A.S.No.154 of 2002 passed by the learned I Additional District Judge, Coimbatore, preferred against the judgement and decree dated 01.08.2002 in O.S.No.2173 of 1998, passed by the learned II Additional District Munsiff, Coimbatore.

2. For the sake of convenience, the parties herein are referred to as they were ranked in the suit.

3. The appellants are the defendants 1 & 2 in O.S. No. 2173 of 1998. Challenging the concurrent findings of the courts below, defendants 1 and 2 have preferred this appeal.

4. Before the trial court, the sons and daughters of Olinga Konar, as legal heirs, filed a suit for declaration and other consequential reliefs against defendants, who are the wife, sons, and daughter of the deceased Dasa Konar. After contest, the trial court granted relief in favor of the plaintiffs. The same was confirmed in A.S. No. 154 of 2002 by the first appellate court. Challenging these concurrent findings, the defendants preferred this appeal.

5. Brief Facts of the Case: Olinga Konar had three brothers, namely Dasa Konar, Anakutti Konar, and Kanniyappa Konar. When they were minors, Olinga Konar purchased the suit properties on August 18, 1937, using the ancestral nucleus, in his name and in the names of his minor brothers, as their guardian, for their welfare. However, Olinga Konar remained in possession and enjoyment of the suit properties until his death in

1997.

6. On November 21, 1951, the first defendant's husband, Dasa Konar, who was the brother of Olinga Konar, sold his undivided half-share through a sale deed. The properties purchased amounted to 3 acres, in which each brother entitled to 75 cents. Dasa Konar sold his undivided 1/4 share of 75 cents to Olinga Konar for a sum of Rs. 500/-. Thereafter, Olinga Konar enjoyed the property along with his legal heirs, the plaintiffs.

7. Taking advantage of Olinga Konar’s illiteracy, his brother Dasa Konar fraudulently obtained his thumb impression and fabricated a settlement deed dated 07.02.1968, in his favour, in respect of landed property, which is now shown as the B-scheduled property. However, Olinga Konar never intended to settle the property in favour of his brother. The plaintiffs only became aware of this settlement deed after receiving a reply notice from the counsel of the first defendant. In fact, the settlement deed was allegedly fabricated through impersonation, and the properties had not yet been divided. Even otherwise, Olinga Konar had no right to settle the property in respect of an undivided share. Hence, the present suit was filed to

declare the sale deed standing in the name of Olinga Konar as valid and binding upon the defendants and to declare the alleged settlement deed dated February 7, 1968, in respect of the B-scheduled property as null and void.

8. Upon considering the evidence from both sides, the learned trial judge framed three issues, and both parties adduced oral and documentary evidence. On the side of the plaintiffs, PW1 was examined, and Exhibits A1 to A6 were marked. On the side of the defendants, DW1 and DW2 were examined, and Exhibits B1 to B9 were marked.

9. Considering the evidence on record, the learned trial judge concluded that the 1/4 undivided share belonging to the first defendant's husband, Dasa Konar, was sold to the plaintiffs' father, Olinga Konar, in 1951. The said sale deed, Exhibit A3, was shown as the A-scheduled property, and its validity was accepted. Originally, the properties had been purchased by Olinga Konar out of ancestral funds for himself and on behalf of his minor brothers, which was undisputed. However, the subsequent gift deed, allegedly executed by Olinga Konar in favour of the first defendant's husband, Dasa Konar, was in dispute.

10. The plaintiffs contended that Dasa Konar fraudulently fabricated the settlement deed, marked as Exhibit B9, dated February 7, 1968. As per the evidence of DW2, Shanmugam, an attesting witness to the document, in his chief examination, stated that he signed as the first witness in the settlement deed. In cross-examination, he further deposed that on each page of the settlement deed, Dasa Konar affixed his signature, which was considered by the learned trial judge.

11. The trial court observed that in Exhibit A3, Dasa Konar had signed on the first page, whereas in the settlement deed, Exhibit B9, the signature of Olinga Konar was absent. Instead, it was mentioned as "Keeral." The absence of Olinga Konar's signature created suspicion in the court's mind, leading to the conclusion that the document was fabricated by Dasa Konar.

12. Furthermore, as per Exhibit B1, a lease document, Olinga Konar had affixed his thumb impression. DW2 deposed that he had seen Olinga Konar fix his thumb impression at the time of execution, but no such

thumb impression was available in the document, this itself proved that the document was fraudulently created by the defendants. Therefore, the said document was declared null and void, and the suit was decreed accordingly. Additionally, the defendants failed to prove possession based on Exhibit B9, further supporting the court's decision to decree the suit in favour of the plaintiffs. Challenging the said findings, the appeal preferred by defendants 1 and 2 was dismissed, confirming the findings of the learned trial judge.

13. The learned counsel for the appellants challenges the concurrent findings of the courts below on the following grounds:

i) The courts below erred in holding that the Ex.B9 settlement deed is not valid in law and not binding on the respondents/plaintiffs.

ii) The courts below erred in overlooking that Ex.B9 is a genuine document, validly accepted and acted upon, and that the station records had been changed in the names of the appellants.

iii) The courts below erred in holding that Ex.B1 is not proved, overlooking the fact that the lease was admitted by the plaintiff's witness, PW1, in his cross-examination and that Ex.B1 was marked without any objection from the plaintiff.

iv) The courts below ought to have considered that the executant had placed his thumb impression before the Sub-Registrar and that Ex.B9 was identified and attested by the witnesses.

v) The courts below failed to note that the respondents had not produced a document dated 14/12/1956 to compare the thumb impression available in Ex.B9, and that an adverse inference ought to have been drawn.

vi) The courts below erred in overlooking that Ex.B9 is more than 30 years old and, therefore, is deemed to be true and valid.

vii) The courts failed to see that Ex.B9 has been proved in the manner prescribed by law.

viii) The courts below failed to recognize that Ex.A3 had not been proved in the manner known to law.

14. This Court admitted the second appeal on 12.11.2007 on the following substantial questions of law:

"a) Whether, in law, the courts below erred in holding that Ex.B9, the settlement deed, is not valid in law, overlooking that it is more than 30 years old and was produced from proper custody?

b) Whether, in law, the courts below erred in wrongly casting the burden on the defendants/appellants, overlooking the fact that it was the duty of the plaintiff to prove his plea of fraud regarding Ex.B9?

c) Whether, in law, the courts below erred in granting a decree for injunction based on Exs.B1 to B3, which indicate the properties to be joint, in the absence of any other documents showing possession on the plaintiff's side?"

15. The learned counsel for the appellants argues that the

settlement deed, Exhibit B9, dated 07.02.1968, was executed in favour of Dasa Konar, the husband of the first defendant, by his brother, Olinga Konar. Since then, Dasa Konar had been enjoying the property until his demise, after which the defendants have been enjoying the property as absolute owners. However, nearly 30 years later, the plaintiffs, who are the legal heirs of the settler, Olinga Konar, filed the suit challenging the said settlement deed without assigning any reason for the inordinate delay. The courts below failed to take note of the fact that the documents are more than 30 years old, and instead, they erroneously presumed as invalid. The legal presumption in favour of such old documents was not considered by the courts, warranting interference and setting aside of the findings.

16. Further, the counsel argues that the gift deed was true and valid. However, since the plaintiffs claimed that the said document was fraudulently created by Dasa Konar, the burden was upon them to prove the alleged fraudulent act, no concrete evidence was adduced by the plaintiffs, yet the suit was decreed in their favor, which is illegal and liable to be set aside.

17. In response, the learned counsel for the respondents/plaintiffs submits that Dasa Konar, the husband of the first defendant, had already sold his 1/4th undivided share of 75 cents to his elder brother, Olinga Konar, in the year 1968. Thereafter, taking advantage of the latter's illiteracy, Dasa Konar fraudulently obtained the settlement deed in his favor. Even otherwise, Dasa Konar had no right to an undivided share, and the courts below rightly appreciated these facts and decreed the suit, warranting no interference. Hence, he prays for the dismissal of the appeal as being devoid of merit.

18. Considering both submissions, it is an undisputed fact that the suit property, along with a larger extent, was purchased by Olinga Konar for himself and for the benefit of his minor brothers. Dasa Konar was one of the brothers of the plaintiff's father, Olinga Konar. In favour of Dasa Konar, the plaintiffs father, Olinga Konar, executed a settlement deed in respect of 50 cents in 1968, marked as Exhibit B9. Based on this, the legal heirs of Dasa Konar, after his demise, claimed absolute ownership of the property. However, the plaintiffs disputed the settlement deed, alleging that it was fraudulently created by the first defendant's husband, Dasa Konar.

19. Since the plaintiffs had taken this defense, the burden was upon them to prove the alleged fraudulent act of Dasa Konar. To support their claim, the plaintiffs relied solely on the evidence of DW-2, who deposed that he had witnessed the thumb impression being obtained from Olinga Konar. However, upon comparison, there was no correlation, and the name was recorded as "Keeral " in the settlement deed.

20. Considering the said evidence, both the courts below held that the document was a fabricated one and was not executed by Olinga Konar. At this stage, the learned counsel for the defendant pointed out that Exhibit B9 is 30 years old, as it was executed in the year 1968. Therefore, there is a legal presumption that it is a true and valid document.

21. After 30 years, the plaintiff has now come forward with the present suit. No reason was assigned for the inordinate delay on their part. Since all parties involved were close relatives, and the mutation of records, including the payment of taxes, stood in the name of the defendants, it is evident that they were aware of the facts much earlier. However, they

initiated the suit nearly 30 years later without assigning a proper reason for the inordinate delay.

22. A bare perusal of the settlement deed shows that neither the signature nor the thumb impression was obtained, and only "Keeral" was mentioned. In those days, if a person was unable to sign, he would be given a pen and asked by the concerned authorities to put a mark on the document, which was then recorded as "Keeral." However, the defendants contended that Olinga Konar affixed his thumb impression before the Registrar, and this claim was not denied by the plaintiffs.

23. By relying on the evidence of DW2, the courts below concluded that DW2 had seen the thumb impression affixed by Olinga Konar, however, no such thumb impression was found in the document (Keeral). Accordingly, the trial court found that the document was fabricated. Admittedly DW2 was examined newly about 40 years after the execution of the said document, probably he might not be able to recollect all the facts at this stage. The courts below failed to consider the legal presumption attached to the document that is 30 years old. Exhibit B9, the settlement deed of the

year 1968, is now nearly 50 years old from the date of execution. Therefore, it falls under the definition of a 30-year-old document, i.e., under **Section 90 of the Indian Evidence Act,** *"Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested",* and its genuineness and validity are lawfully presumed. The courts below failed to consider this provision of law and erroneously relied the evidence of DW2. Such findings are totally erroneous and liable to be set aside. Accordingly, Question of Law A is answered.

24. Similarly, when the plaintiffs approached the court, claiming that Exhibit B8, the Settlement Deed, was obtained fraudulently from his father by Dasa Konar, the burden of proof was upon the plaintiffs to establish that the document was fraudulent, not upon the defendants. However, the courts below erroneously held that the defendants failed to prove that it was

not fraudulently executed. The burden lay on the plaintiffs, who claimed that the document was fraudulent, but the courts below failed to apply the correct legal principle and erroneously shifted the burden. Such a finding is perverse and liable to be set aside. Accordingly, Question of Law B is answered.

25. Admittedly, for nearly 40 years, the B-schedule property has been under the possession of Defendants 1 and 2. As per the Settlement Deed, the title belongs to them, and possession follows the title. They are deemed to be in joint possession. Moreover, they produced certain documents, including tax receipts, to show that they have been in enjoyment of the B-schedule property. Despite this, the suit was decreed in favour of the plaintiffs, which is erroneous. Furthermore, the trial court granted a permanent injunction against true owners, D1 and D2, as such is illegal, which is also liable to be set aside. Accordingly, Question of Law C is answered. If the findings are not properly appreciated, perverse in nature, this Court empowered to cause interference.

26. Accordingly, the second appeal is allowed, and the suit is dismissed as devoid of merit. Consequently, connected miscellaneous

petition is closed. There shall be no order as to costs.

05.03.2025

Index : Yes/No
Speaking Order: Yes/No
Nutral citation: Yes/No
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To

1. The I Additional District Judge, Coimbatore.

2.The II Additional District Munsiff, Coimbatore.

3.The Section Officer, VR Section,
High Court of Madras.

T.V.THAMILSELVI, J.

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and M.P.No.1 of 2007

05.03.2025