



S.A. No.1346 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 04.02.2025

CORAM

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

S.A.No.1346 of 2010
and
CMP.Nos. 1 of 2010 & 3379 of 2022

1.M.Sivasamy
2.M.Mohankumar

... Appellants

Vs

1.P.Neelamani
2.P.Chandrasekar
3.P.Yuvaraj
4.Papathi Alias Subbulaxmi

... Respondents

*A3 transposed as R4 vide Court Order dated 24.01.2022 made in CMP.Nos.21814 & 21815 of 2021 in S.A.No.1346/10 (RPAJ).

PRAYER: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 21.04.2010 in A.S.No.134 of 2009 on the file of First Additional District Court, Coimbatore, confirming the judgement and decree dated 06.04.2009 in O.S.No.283 of 2006, on the file of the II Additional Subordinate Court, Coimbatore.



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For Appellants : Mr.S.Jaganathan
For R1 to R3 : Mr.K.Krishna kumar
for M/s. Sarvabhavam Associates
For R4 : Mr.R.Dilli Kumar

JUDGMENT

The appellants have filed this Second Appeal against the judgment and decree dated 21.04.2010 in A.S. No. 134 of 2009 on the file of the First Additional District Court, Coimbatore, confirming the judgment and decree dated 06.04.2009 in O.S. No. 283 of 2006 on the file of the II Additional Subordinate Court, Coimbatore.

2. Heard Mr. S. Jaganathan, learned counsel for the appellants, Mr.K.Krishna Kumar, learned counsel appearing for M/s. Sarvabhavam Associates for R1 to R3, and Mr. R. Dilli Kumar, learned counsel appearing for R4, and perused the material available on record.



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3. For the sake of convenience, the parties herein are referred to as

they were ranked in the suit.

4. The appellants are the defendants in O.S. No. 283 of 2006, filed by the respondents 1 to 3 /plaintiffs seeking partition and claiming 1/4th share in the suit property. The plaintiffs contended that the suit property was the absolute property of the late Angathal, who died intestate, leaving behind three sons, one daughter, and the legal heirs of her predeceased son, Prammalingam.

5. The defendants D1 and D2 disputed the plaintiffs' claim, asserting that Angathal did not die intestate but had executed a settlement deed dated 13.02.1995 in favor of D1 and D2 (appellants 1 and 2) during her lifetime. They further contended that they had been in possession and enjoyment of the property ever since and, therefore, denied the plaintiffs' right to any share.



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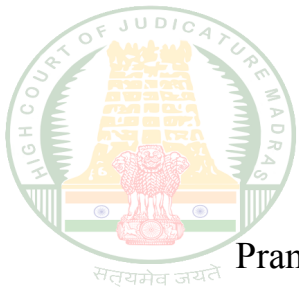
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6. Both parties adduced oral and documentary evidence. Upon considering the arguments and evidence from both sides, the learned Trial Judge decreed the suit, holding that the settlement deed relied upon by the defendants was suspicious and not voluntarily executed by the alleged settlor, Angathal. Consequently, the court held that the plaintiffs were entitled to 1/4th share as prayed for.

7. Challenging the said findings, the defendants filed A.S. No. 134 of 2009 before the First Additional District Judge, Coimbatore. However, the First Appellate Judge confirmed the findings of the Trial Court and dismissed the appeal. Aggrieved by the concurrent findings of both courts, the unsuccessful defendants have preferred this Second Appeal.

8. The brief facts of the case are as follows:

Late Angathal, wife of Marappan, had three sons namely, Sivasamy (D1), Prammalingam (deceased), and Mohankumar (D2) and a daughter, Pappathi @ Subbulaxmi (D3). The first plaintiff is the wife of Prammalingam, while the second and third plaintiffs are their children.



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Prammalingam predeceased his mother, Angathal, on 04.01.2000, leaving behind the plaintiffs as his legal heirs. The relationship between the plaintiffs and the defendants is admitted. It is an undisputed fact that the suit property absolutely belonged to Late Angathal by virtue of a registered sale deed dated 04.06.1973, which was marked as Ex.A1 and is identical to Ex.B1.

9. The case of the plaintiffs is that the Angathal died interstate on 22.03.2006 leaving behind them as legal heirs of predeceased Prammalingam and defendants 1 to 3, as her legal heirs to succeed her property, as defendants not amicable for partition they come forward with the suit, claiming 1/4th share in the property.

10. However, the contesting defendants, namely, Sivasamy (D1) and Mohankumar (D2), denied the plaintiffs' claim, stating that during her lifetime, Angathal voluntarily executed a registered settlement deed dated 13.02.1995 in their favor regarding the suit property. They contended that they accepted the settlement deeds and had been in possession and



enjoyment of the suit property as absolute owners ever since.

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11. In response, the plaintiffs filed a reply statement, disputing the genuineness of the settlement deed. They alleged that fraud was committed upon Late Angathal, who was an illiterate elderly woman, aged about 75 years, and that the settlement deed was obtained by ignoring the other legal heirs, namely, the plaintiffs and her daughter (D3).

12. To support their contention, the plaintiffs relied on the following legal authority before the trial court:

(i) AIR 1970 Supreme Court 37, which stated:

“Contract Act (1872) Section 16: Deed of Settlement Entire property settled in favor of one of the grandsons by executants to the exclusion of his own issues and other grand children - Negligible provision made for wife, who was his third wife, the first two having died before executants married her no provision made regarding her right to reside in the residential house till her death - Executants himself debarred from dealing with property as an owner during life time Executants' found to be of advanced age and in state of senility and suffering from diabetes and other ailments. Facts



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and circumstances leading to execution of deed raising grave suspicion as to genuineness of execution - Grandson, the settlee, failing to discharge the burden of establishing that deed was executed by executants voluntarily and without any external pressure or influence while he was not of infirm mind ad was fully aware of dispositions - Held that settlement deed was invalid. Decision of Kerala High Court, Reversed.”

(ii) AIR 1993 SUPREME COURT 956:

Contract Act (1872) S.23:

Undue influence Onus to prove -Sale deed by tribal woman, who was old, illiterate and blind, in favor of her relative with whom she was living till her death and was dependent on him - no consideration passed at time of sale -Purchaser in position to dominate and take advantage over her - Onus lies on him to prove that sale deed was not executed under undue influence.

(iii) 1992 (2) LAW WEEKLY PAGE.209;

Contract Act Ss 15 to 18 and Evidence Act 102:

Non est factum -Suit by a women alleging that she was illiterate and that the defendant has played fraud upon her and exercised under influence, mis representation and



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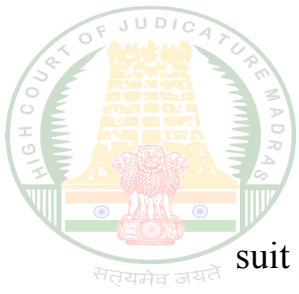
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coercion. Onus upon the defendant to show that there has been no fraud, under influence or coercion, not on the plaintiff to prove the misrepresentation or fraud."

13. The legal principle established in the aforementioned cases emphasizes that the burden of proof lies on the person claiming the settlement deed to demonstrate that it was executed voluntarily and without undue influence.

14. Before the trial court, both parties adduced oral and documentary evidence. On the side of the plaintiffs, the first plaintiff was examined as P.W.1, and exhibits Ex.A1 to Ex.A4 were marked. On the side of the defendants, the first defendant was examined as D.W.1, and two other persons were examined as D.W.2 and D.W.3. Exhibits Ex.B1 to Ex.B11 were marked in support of their case.

15. The learned trial Judge framed four issues, with the primary ones being: (i) Whether the plaintiffs are entitled to claim partition in the suit property? (ii) Whether defendants 1 and 2 are the absolute owners of the



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suit property as per the settlement deed?

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16. Upon considering both oral and documentary evidence, the learned trial Judge held that the plaintiffs had prima facie established that the original owner, Angathal, had excluded them being the widow, daughter-in-law, and grandchildren of Angathal, as well as her daughter, the 3rd defendant, while allegedly executing the document in favour of her two sons, D1 and D2 alone. This itself raised suspicion, thereby shifting the burden upon defendants 1 and 2 to prove that the settlement deeds, Ex.B3 and Ex.B4, were executed by Angathal voluntarily and of her own free will.

17. The evidence adduced by the defendants revealed that one of the attesting witnesses, Selvaraj, was a close relative specifically, the brother-in-law of D.W.1. Furthermore, the attesting witness failed to convince the Court that Angathal executed the documents of her own free will. Similarly, the document writer, D.W.3, contradicted the testimony of D.W.1 regarding the place of attestation of the documents. Additionally, the evidence of D.W.1 disclosed that he and his brother played a crucial role in the

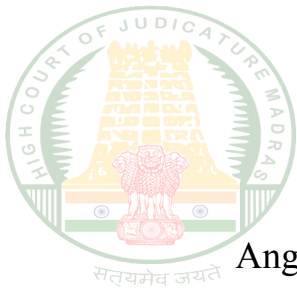


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execution of the said settlement deeds. It also became evident that Angathal had not voluntarily executed the settlement deeds, nor were the plaintiffs made aware of them. These facts and circumstances created suspicion regarding the authenticity and genuineness of the settlement deeds.

18. Accordingly, the learned trial Judge declared that the settlement deeds lacked any justifiable reason to exclude the other legal heirs. Consequently, defendants 1 and 2 failed to discharge the burden of proving that Ex.B3 and Ex.B4 were executed voluntarily by Angathal. Therefore, the settlement deeds were deemed non-existent in the eyes of the law. As a result, the plaintiffs were entitled to claim a share in the property, and the suit was decreed in their favor.

19. Challenging this judgment, the defendants preferred an appeal A.S.No.134 of 2009, before the learned First Additional District Judge, Coimbatore. Upon hearing all submissions, the learned First Appellate Judge independently analyzed the evidence on record and framed the following issues: (i) Whether the settlement deeds executed by the late



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Angathal in favor of D1 and D2 were valid and proved in accordance with the law. (ii) Consequently, whether the plaintiffs were entitled to partition.

20. The learned First Appellate Judge, while considering the evidence adduced by the defendants in support of the settlement deeds, relied upon the testimony of D.W.1 (the first defendant). D.W.1 stated that Angathal's signatures and thumb impressions were obtained in the presence of their father and that, at the time, their sister and her husband were also present. Consequently, their brother-in-law signed as one of the witnesses. However, no signature was obtained from their father.

21. On the contrary, D.W.2, an attesting witness, deposed that before writing the settlement deed, they had gone to the office of the scribe, where the deed was drafted and read over to Angathal. However, his testimony contradicted that of D.W.1. Furthermore, D.W.3, the scribe, did not corroborate that Angathal had affixed her thumb impression at the registrar's office.

22. Due to these inconsistencies in the evidence of D.W.1, D.W.2,



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and D.W.3 regarding the execution of the documents, the learned First Appellate Judge concluded that D1 and D2 had actively participated in creating the alleged settlement deed. They had taken advantage of their mother's old age, with the help of close relatives, and had deliberately excluded one of the sons. This clearly indicated that the settlement deeds were surrounded by suspicious circumstances, and their execution had not been proved beyond a reasonable doubt.

23. Therefore, defendants 1 and 2 had not perfected any right based on the settlement deed, Ex.B3 & Ex.B4. Consequently, the suit property was deemed to belong absolutely to Angathal. As first-class legal heirs of one of her sons, the plaintiffs were entitled 1/4th share in the suit property. Accordingly, the appeal was dismissed, and the findings of the trial Court were confirmed. Challenging these concurrent findings, the defendants have now preferred the present appeal.

24. The learned counsel for the respondents argues that both the Courts below failed to consider both factual and legal aspects in the proper perspective. The scribe was examined as D.W.3, and the attesting witness

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was examined as D.W.2, complying with the requirements under Section 68 of the Indian Evidence Act to prove the truth and genuineness of the settlement deeds dated 13.02.1995. Despite this, the suit was decreed in favor of the plaintiffs, which is erroneous and liable to be set aside.

25. The learned counsel further contends that the initial burden upon the appellants was discharged by examining D.W.2 and D.W.3 to prove the execution of the settlement deeds. However, the learned First Appellate Judge considered the concept of *non est factum*, despite the fact that the plea was not raised by the executant of the settlement deeds dated 13.02.1995, which is a mandate of law. The learned counsel for the plaintiffs neither specifically pleaded nor sought any relief of declaration in respect of the settlement deeds, even after coming to know about them. Nevertheless, the Courts below erroneously granted such relief concerning the settlement deeds, which is totally illegal and liable to be set aside. The decision was based on probability and assumptions, therefore, the findings of the First Appellate Court should be set aside.

26. The Second Appeal was admitted on 03.11.2010, with the



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following substantial questions of law:

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“ a) Whether the Courts below were right in granting the decree for partition when there was a cloud over the title, and the respondents had not chosen to plead, prove, and amend the prayer for declaration and possession of their due shares, if any?

b) Whether the Courts below were right in considering the principle of non est factum in proper perspective under Sections 101 and 102 of the Indian Evidence Act, given that the plea was raised by the respondents and not by the executant of the settlement deeds dated 13.02.1995 (late Mrs. Angathal)?

c) Whether the Courts below properly considered the provisions under Section 68 of the Indian Evidence Act in their entirety and correctly applied them to the case at hand?”

27. In response, the learned counsel for the respondents/plaintiffs



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argues that the Courts below rightly shifted the burden upon defendants 1 and 2, who relied on the settlement deeds said to have been executed voluntarily by the original owner, Angathal. However, they failed to prove that the settlement deeds were executed by her out of her free will through the witnesses D.W.2 and D.W.3. The Courts below rightly appreciated this fact, which requires no interference. Further, the learned counsel pointed out that defendants 1 and 2, who were the beneficiaries of the settlement deeds, also signed as witnesses alternately in each settlement deed. Moreover, one of the witnesses was a close relative, the brother-in-law of D1. Additionally, D1 and D2 actively participated in creating the said settlement deeds, taking advantage of the old age of their mother, which was rightly inferred by the Courts below. Considering the evidence on record, no interference is needed, and the appeal should be dismissed as it lacks merit.

28. *To support their arguments, the respondents relied on the following legal authority: (i) 2023 (4) CTC 831.*



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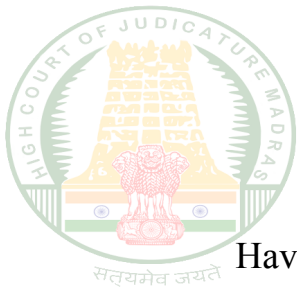


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Indian Succession Act, 1925 (39 of 1925), Section 63(c) - Validity of Will - Discrepancy between Chief-examination and Cross-examination of Attesting Witness Attesting Witness is Interested Witness, being Maternal Uncle of 2nd Defendant's Husband Other Attesting Witness who had produced Will after death of Testator, not examined 1st Defendant, who is Son of Testator, had not entered Witness Box to support case of 2nd Defendant - Entire circumstances surrounding execution of Will appear to be suspicious - First Appellate Court rightly held that Will was not duly proved - Second Appeal dismissed.

29. It is an undisputed fact that the relationships between the parties are admitted. It is also acknowledged that the suit property absolutely belonged to Angathal. The plaintiffs' case is that Angathal died intestate, leaving behind two sons, one daughter, and the legal heirs of her predeceased son, Prammalingam. Since the property was her absolute property, the plaintiffs claim entitlement to a 1/4th share as legal heirs of Prammalingam.

30. On the other hand, defendants 1 and 2, the two sons of Angathal, challenged the plaintiffs' claim, stating that during her lifetime, Angathal executed settlement deeds in their favor. However, no reason was assigned for excluding the other legal heirs of Angathal in the said settlement deeds.

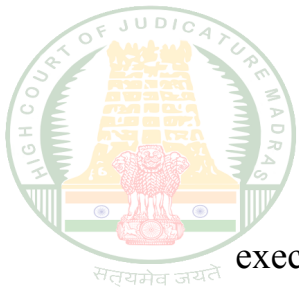


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Having come to know about the said plea, the Courts below rightly inferred that the settlement deeds were not voluntarily executed and granted relief to the plaintiffs.

31. By way of a reply statement, the plaintiffs challenged the validity of the said settlement deeds, stating that it was a fabricated and fraudulent document created by defendants 1 and 2. Therefore, both the Courts below rightly shifted the burden upon defendants 1 and 2 to prove the genuineness of the settlement deeds. By filing the reply statement, the plaintiffs rightly questioned the authenticity of the settlement deeds, as well as another Varthamana relied upon by them.

32. Considering the objections raised by the plaintiffs, the Courts below correctly framed separate issues and shifted the burden of proof upon defendants 1 and 2. However, the evidence adduced by the defendants was not sufficient to establish that the settlement deeds was voluntarily executed by Angathal. Accordingly, the Courts below rightly held that the defendants had not discharged their burden of proof regarding the



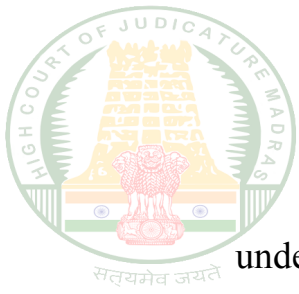
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execution of the settlement deed as a true and valid document. Therefore, the Courts below were correct in granting the decree of partition, as the plaintiffs had specifically pleaded against the genuineness of the settlement deeds in their reply statement. Consequently, question of law A is answered.

33. Furthermore, when the plaintiffs specifically pleaded that the settlement deeds were fabricated and fraudulent, the Courts below, while deciding on the genuineness of the said settlement deed and the intention of the settlor, rightly relied on the proposition laid down in *1985 Allahabad 160 Mallo v. Bakhtawari*, wherein it was held:

"Burden of proof – Donor, an illiterate lady, filing suit for cancellation of a gift deed on the ground that it was obtained by fraud. Burden of proving that the gift deed was valid lay on the donees. Admission by the executant about the existence of the gift deed obtained by fraud did not dispense with the proof of attestation."

34. In respect of the *non est factum* principle, the Court rightly concluded that since the settlor, Angathal, was 75-year-old illiterate woman



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under the custody of defendants 1 and 2, who actively participated in executing the settlement deed in their favor alone, the defendants failed to prove that the settlement deed was executed without their undue influence. Furthermore, the evidence of D.W.1 to D.W.3 contradicted each other and failed to prove the valid execution of the settlement deeds. Therefore, the first appellate Court rightly applied the *non est factum* principle, which requires no interference by this Court. Accordingly, question of law B is answered.

35. The learned counsel for the appellants/defendants submitted that to prove the execution of the settlement deed, they complied with the requirements under Section 68 of the Indian Evidence Act by examining the attesting witness (D.W.2) and the scribe (D.W.3), thereby discharging the initial burden cast upon them. However, the Court erroneously held that they had not proved the genuineness of settlement deeds Ex.B3 and Ex.B4. The Courts below rightly appreciated the evidence of D.W.2, who revealed



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that he was a close relative of D.W.1 and was present in the house where Angathal resided with defendants 1 and 2. However, D.W.1 gave contrary evidence regarding the place and execution of the settlement deed. Additionally, D.W.1 admitted that he and his brother decided to obtain the settlement deeds from their mother, which clearly implies that the execution of the settlement deeds was not voluntarily intended by the settlor, Angathal.

36. Apart from this, the evidence of D.W.3, the scribe, also confirmed that only a thumb impression was obtained. However, D.W.3's testimony did not support D.W.1's statement regarding the execution of the settlement deed. Due to these contradictions, the Courts below rightly held that the document suffered from suspicion and was not proved beyond a reasonable doubt. Therefore, merely examining the attester and the scribe is not sufficient to prove that the document was true and genuine. The evidence must inspire the confidence of the Court, which, in this case, it failed to do. Hence, the Courts below rightly held that defendants 1 and 2 had not proved the execution and the intention of the settlor beyond a



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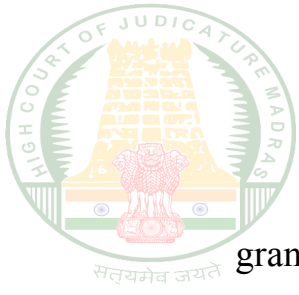
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reasonable doubt, requiring no interference by this Court. Accordingly, question of law C is answered.

37. Moreover, after the execution of the settlement deeds, the mutation of records was not effected. It was only in the year 1996 that steps were taken for mutation, which creates further doubt regarding whether the alleged deeds were ever acted upon. The Courts below rightly concluded the same, which requires no interference. The findings of the Trial Court are confirmed, and the suit is decreed. There is no merit in this appeal.

38. Accordingly, this Second Appeal is dismissed. Consequently, the connected miscellaneous petitions are closed. There shall be no order as to costs.

39. The plaintiffs are entitled to 1/4th share. Since the suit has been pending before the Court since 2006, for nearly 20 years. If any final decree application is filed, the Trial Court is directed to dispose of the same within three months from the date of receipt of a copy of this order, without



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granting unnecessary adjournments.

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04.02.2025

Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking order

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To

1. The I Additional District Court, Coimbatore.
2. The II Additional Subordinate Court, Coimbatore.
3. The Section Officer, VR Section, High Court of Madras.

T.V.THAMILSELVI, J.

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