



C.S. No.177 of 2021

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Order	Date of Pronouncing the Order
27.09.2024	28.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.S. No.177 of 2021

Ravi K.Bhaskar

... Plaintiff

-vs-

Murali K.Bhaskar

... Defendant

This Civil Suit is filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure, 1908, and prayed for a judgment and decree:-

- (i) Declaring the settlement deed, dated 11.12.2007, registered as document No.4902 of 2007, on the file of the Sub Registrar, Purasawalkam, as null and void.
- (ii) Declaring the settlement deed dated 10.10.2011,



WEB COPY

C.S. No.177 of 2021

registered as document No.3853 of 2011, on the file of the Sub Registrar, Purasawalkam, as null and void.

- (iii) Declaring the settlement deed dated 21.10.2016, registered as document No.3838 of 2016, on the file of the Sub Registrar, Purasawalkam, as null and void.
- (iv) Directing the defendant to render accounts of the estate of Late.Meenambal Bhasakaran, mother of the plaintiff and defendant, pertaining to her movables and consequently directing the defendant to pay and hand over the plaintiff's half share in the said estate.
- (v) Directing the defendant to render accounts of the estate of Late.A.R.Bhaskaran, father of the plaintiff and defendant, pertaining to his movables and consequently directing the defendant to pay and hand over the plaintiff's half share in the state.
- (vi) Directing the defendant to pay the plaintiff the costs of the above suit.

For Plaintiff : Mr.A.R.Karunakaran



C.S. No.177 of 2021

WEB COPY

For Defendant : Mr.T.R.Rajagopalan
Senior Counsel
assisted by Mr.P.J.Rishikesh

J U D G M E N T

This suit is for partition and separate possession of the suit schedule properties, after declaring the settlement deeds, dated 11.12.2007, 10.10.2011 and 21.10.2016 as null and void and for partition of the plaintiff's $\frac{1}{2}$ share in the suit schedule properties and for rendition of accounts.

2. The plaintiff is the elder brother and the defendant is the younger brother. They are sons of Late.A.R.Bhaskaran and Late.Meenambal Bhaskaran. As per the plaint, both the plaintiff and defendant are educated in Chennai and moved over to USA.

3. The plaint schedule consists of three items of properties. Of which, A – Schedule property is situated at Kellys Road, Kilpauk, Chennai, B – Schedule property is situated at Arignar Anna Nagar, Naduvakkarai Village and C – Schedule property is situated at Jawahar Nagar, Peravallur Village, Chennai.



C.S. No.177 of 2021

WEB COPY

4. As per the plaint, the A-Schedule property has been purchased in the name of Meenambal Bhaskaran, mother of the plaintiff and defendant and B and C-Schedule properties have been purchased in the name of A.R.Bhaskaran, father of the plaintiff and defendant.

5. The plaint further proceeds that Meenambal Bhaskaran, mother of the plaintiff and defendant, acquired title to the A-Schedule property through inheritance and under a release deed dated 22.12.1969 from her siblings. Whereas, A.R.Bhaskaran, father of the plaintiff and defendant, purchased the B and C – Schedule properties under two separate sale deeds dated 28.09.1987 and 30.12.1966 respectively.

6. A.R.Bhaskaran and Meenambal Bhaskaran, father and mother of the plaintiff and defendant died on 09.07.2019 and 08.08.2016 respectively at Chennai and their death certificates have been marked as Exs.P7 and P4 respectively.

7. The relationship between the parties, ownership of the A-Schedule property with the mother and ownership of the B and C – Schedule properties with the father and the date of death of the parents of the plaintiff



C.S. No.177 of 2021

WEB COPY and defendant, as stated supra, are not in dispute.

8. Admittedly, Meenambal Bhaskaran executed a settlement deed (Ex.P1) dated 11.12.2007, registered as document No.4902 of 2007, on the file of the Sub Registrar, Purasawalkam, in favour of the defendant settling the A-Schedule property to him. Since there was a mistake in the said settlement deed, a revocation deed (Ex.P2) dated 10.10.2011, registered as document No.3852 of 2011, on the file of the Sub Registrar, Purasawalkam, revoking the earlier settlement deed (Ex.P1) dated 11.12.2007 was executed and another settlement deed (Ex.P3) dated 10.10.2011, registered as document No.3853 of 2011, on the file of the Sub Registrar, Purasawalkam, was executed.

9. After 2 ½ months from the date of the death of Meenambal Bhaskaran, A.R.Bhaskaran executed a settlement deed (Ex.P5) dated 21.10.2016, registered as document No.3838 of 2016, on the file of the Sub Registrar, Purasawalkam, in favour of the defendant settling the B and C – Schedule properties to him.

10. Under the plaint, the plaintiff denied the knowledge of



C.S. No.177 of 2021

WEB COPY

execution of the settlement deed (Ex.P5) by A.R.Bhaskaran in favour of the defendant. Exchange of notices between the parties have been marked as Exs.P8 to P16. The further communications between the parties have also been marked as Exs.P17 to P27.

11. The defendant has filed his written statement. The sum and substance of the written statement is that out of the love and affection his mother Meenambal Bhaskaran executed a settlement deed settling A-Schedule property in his favour. His elder brother, namely, plaintiff has not attended the funeral ceremony and the 16th day ceremony of their mother, who died on 08.08.2016. Thereafter, their father A.R.Bhaskaran executed a settlement deed (Ex.P5), dated 21.10.2016, in favour of the defendant out of the love and affection in respect of the B and C – Schedule properties and hence, the suit schedule properties are not available for partition. The other relationships as well as the allegations and counter allegations have been discussed infra. Further, according to the defendant, he has also executed a settlement deed dated 21.10.2016 in favour of his son, and hence, prayed for dismissal of the suit.



C.S. No.177 of 2021

WEB COPY

12. Based on the above pleadings, on 15.07.2022, the following issues have been framed by this Court:

- (i) Whether the alleged settlement deed executed by the mother of the plaintiff and defendant dated 10.10.2011 is a conditional gift based on whether her husband would execute a similar settlement deed in favour of the plaintiff with respect of his properties?
- (ii) Whether the defendant has accepted the gift?
- (iii) Whether the alleged settlement deed dated 21.10.2016 executed by the father of the plaintiff and defendant is a valid deed of settlement at all?
- (iv) Whether the plaintiff is entitled to half share of the rents received by the defendant from the plaintiff schedule B & C properties?
- (v) Whether the suit is barred by limitation?
- (vi) Has not the plaintiff undervalued the suit schedule mentioned properties and has paid inadequate Court fee under the garb of seeking declaratory reliefs?



C.S. No.177 of 2021

WEB COPY

(vii) Were not the settlement deeds executed by the parents out of their own free will and accord and out of natural love and affection in favour of the defendant.

(viii) Whether the plaintiff is entitled to the reliefs as prayed for?

13. On behalf of the plaintiff, he has been examined as P.W.1 and marked Exs.P1 to P28 on his side and on behalf of the defendant, he has been examined as D.W.1 and no document has been marked on his side.

14. Learned counsel for the plaintiff would submit that there is a recital in the settlement deed dated 10.10.2011 (Ex.P3) that as per the understanding between the husband and wife, namely, father and mother of the parties to the suit, the mother is executing the settlement deed in favour of the younger son in respect of the property owned by her and the father shall execute a settlement in future date in respect of the properties owned by him in favour of the elder brother. Hence, the settlement deed dated 10.10.2011 (Ex.P3) has a conditional clause and therefore, the settlement deed dated 21.10.2016 (Ex.P5) executed by the father in favour of the defendant in



C.S. No.177 of 2021

WEB COPY

respect of the B and C – Schedule properties is null and void and it has been executed by force, coercion and misrepresentation and hence, the learned counsel for the plaintiff prayed for granting of the reliefs as prayed for in this suit.

15. Per contra, learned Senior Counsel appearing for the defendant would contend that by virtue of the settlement deed dated 10.10.2011 (Ex.P3) executed by the mother in favour of the defendant in respect of A – Schedule property and another settlement deed dated 21.10.2016 (Ex.P5) executed by the father in favour of the defendant in respect of the B and C – Schedule properties, no property is available for partition and hence, the learned Senior Counsel prayed for dismissal of this suit.

16. Heard the learned counsel on either side and carefully perused the materials available on record.



C.S. No.177 of 2021

WEB COPY

Issue Nos.(i), (ii) and (vii):

17. After hearing the rival submissions and taking into consideration the oral and documentary evidence of the respective parties, with regard to their educational qualification, marital life and employment, it is seen that the plaintiff went to USA in the year 1980 and did his Master Degree and Ph.D., during 1984 – 1988, solemnized his marriage (first marriage) in the year 1988 and started a Company in the year 1990. In the year 1991, his parents visited USA. Thereafter, in the year 1994, for higher education and employment, the defendant went to USA and his parents visited USA in the year 1994 also. In the year 1995, the defendant married a girl from India.

18. It remains to be stated that the first marriage of the plaintiff was with a girl of non-Indian and there are allegations and counter allegations between the plaintiff and defendant. Both the plaintiff and defendant formed an Indian Company in the year 1999. As per the plaint averments and also the evidence of P.W.1, due to misunderstanding, the plaintiff obtained dissolution of marriage with the girl of non-Indian and got married second time in the year 2000.



C.S. No.177 of 2021

WEB COPY

19. It is the specific case of the plaintiff that the defendant was employed under him during 1994 – 2002. With the aid and support of the plaintiff, the defendant got green card in the year 2002. Their parents visited USA during 2002 – 2003 also. Photographs, to that effect, have been marked as Ex.P28.

20. It is on record that the defendant's wife and daughter returned to India in the year 2012 and stayed along with the parents of the defendant. It remains to be stated that the said factum has not been disputed by the plaintiff, though he has not admitted explicitly, but not denied explicitly.

21. The plaintiff chose to make allegations against the wife of the defendant that she had a close proximity and relationship with his first wife and the defendant rumoured that the plaintiff is a womanizer and that reflected in the matrimonial life, ultimately ended in divorce, which has been stoutly denied by the defendant in his cross-examination.



C.S. No.177 of 2021

WEB COPY

22. Be that as it may, considering the scope of the suit, i.e., suit for partition, with regard to as to whether the suit schedule properties are available for partition as elicited in the issues, it is to be noted that the execution of the settlement deed dated 10.10.2011 (Ex.P3) executed by the mother in favour of the defendant for A-Schedule property has not been disputed by the plaintiff. Thereafter, the defendant's wife and daughter returned to India and stayed along with the parents of the defendant, which has also not been disputed by the plaintiff. The plaintiff and his son visited the defendant in USA in the year 2012 and 2014 as could be seen from the evidence of the plaintiff in his chief-examination.

23. The crux of the issue in this suit for partition is as to whether the settlement deeds dated 10.10.2011 (Ex.P3) and 21.10.2016 (Ex.P5) are true and valid and they are binding upon the parties.

24. For the sake of clarity, however, at the risk of repetition, it is to be noted that initially, the mother executed a settlement deed, dated 11.12.2007 (Ex.P1) in favour of the defendant for the A-Schedule property. Since there were some corrections in the said settlement deed, a revocation deed (Ex.P2) was executed on 10.10.2011 revoking the earlier settlement deed



C.S. No.177 of 2021

WEB COPY (Ex.P1) and on the same day, another settlement deed dated 10.10.2011 (Ex.P3) was executed in favour of the defendant for the A-Schedule property.

25. Ex.P5 is the settlement deed dated 21.10.2016 executed by the father in favour of the defendant for the B and C – Schedule properties, which has been executed after 2 ½ months from the date of death of the mother. In this connection, the oral evidence of the plaintiff and defendant, more so their cross-examinations, assume significance.

26. The plaintiff in his chief-examination has specifically stated that on the date of death of his mother on 08.08.2016, due to pre-occupation in his official work, he could not attend the funeral ceremony of his mother. Though he promised, he could not attend the 16th day ceremony of his mother due to the reason that the circumstances were beyond his control. In such circumstances, his father was bit upset on the plaintiff. By raising the sentiment of his father, the defendant has obtained the settlement deed dated 21.10.2016 (Ex.P5) in his favour from his father fraudulently. Therefore, the said settlement deed has to be declared as null and void.



C.S. No.177 of 2021

WEB COPY

27. The above allegations of the plaintiff have been denied by the defendant in his written statement as well as in his evidence. The defendant, in his cross-examination, has categorically deposed that his father was showering love and affection towards him and from the year 2012 for four long years, his wife and daughter were staying with his parents and were taking care of them. Out of the said love and affection, his father executed the settlement deed dated 21.10.2016 (Ex.P5) in his favour.

28. The parties have made allegations and counter allegations against each other. However, no independent witness has been examined by either of the parties, which assumes significance.

29. The plaintiff visited his father during the months of August and December, 2017. His father died on 09.07.2019. The plaintiff attended the funeral ceremony of his father. The said factum has not been disputed by the defendant either in his written statement or in his evidence. In such circumstances, I find that the allegations and counter allegations made by the plaintiff and the defendant in their plaint and written statement respectively and also by way of oral evidence as P.W.1 and D.W.1, with regard to the sore relationship between them, are not germane to the facts and circumstances of



C.S. No.177 of 2021

WEB COPY the case on hand.

30. As pointed out by the learned Senior Counsel appearing for the defendant, on perusal of the plaint, it is seen that there is no specific pleading with regard to the coming into existence of the settlement deed dated 21.10.2016 (Ex.P5) executed by the father in favour of the defendant, as contemplated under Section 16 of the Indian Contract Act, 1872. Furthermore, he would submit that there is a bald allegation in the plaint that the defendant and his wife have managed to make his father to sign the settlement deed (Ex.P5) and the said factum was concealed by the defendant and his wife, despite the request made by the plaintiff.

31. Per contra, learned counsel for the plaintiff would contend that the settlement deed dated 10.10.2011 (Ex.P3) executed by the mother to the defendant in respect of A-Schedule property contains a conditional clause and in view thereof, the document (Ex.P5) cannot be treated as a “Settlement Deed”, rather it has to be treated as a “Will”.

32. On perusal of the evidence available on record, I find that



C.S. No.177 of 2021

WEB COPY

except the defendant, who has been examined as D.W.1, no other witness has been examined on his behalf. Thus, the scope of the suit has been narrowed down as to whether the settlement deeds dated 10.10.2011 (Ex.P3) and 21.10.2016 (Ex.P5) are true and valid.

33. It is to be noted that since the settlement deed dated 11.12.2007 (Ex.P1) has been revoked under the revocation deed dated 10.10.2011 (Ex.P2), the issue to be considered can be confined only to the settlement deed dated 10.10.2011 (Ex.P3) alone.

34. In order to find out whether the settlement deed dated 10.10.2011 (Ex.P3) is a conditional gift deed, the test that has to be applied is to read the recitals of the said document. While reading the document, which is captioned / nomenclatured as “Settlement Deed”, the deed of construction shall be in the form of harmonious construction as held by the Apex Court in various decisions. In respect of the “Settlement Deed”, the doctrine of *ejusdem generis* is to be applied.



C.S. No.177 of 2021

WEB COPY

35. Keeping the above rudimentary interpretation of the clause contained in the document, let us now examine the settlement deed dated 10.10.2011 (Ex.P3), wherein it has been contended as under:

“WHEREAS the SETTLOR on considering the fact that her elder son Mr.Ravi Krishna Bhaskar who is also residing at U.S.A has no intention of returning to India and also considering the fact that her husband is proposing to settle the two properties owned by him in favour of my elder son and the value of which properties would be more or less equal to the value of the Said Property that I am in terms of this Deed settling in favour of the SETTLEE herein, and since the SETTLEE who is also presently residing at U.S.A has decided to come back India and has no property in India, the SETTLOR herein with an intent to provide for the SETTLEE's well being and to provide him a place of residence in India, since it is also her sentiment that he resides in this house, the SETTLOR has decided to settle the Said Property absolutely in favour of the SETTLEE herein.”

36. The submissions of the learned counsel for the plaintiff are kept in mind in this regard.

37. After perusing the settlement deed (Ex.P3), I find that it is a



C.S. No.177 of 2021

WEB COPY

separate document executed by the moner in favour of the defendant. The argument advanced by the learned counsel for the plaintiff in this regard is that the above said recital is a conditional one laying a condition upon the father of the parties to the suit that he has to execute a settlement deed in respect of the properties owned by him in favour of the plaintiff and therefore, since the father of the parties to the suit had executed a settlement deed dated 21.10.2016 (Ex.P5) contrary to the recitals of the settlement deed dated 10.10.2011 (Ex.P3), both settlement deeds have to be declared as invalid for non-compliance of the condition contained in the settlement deed (Ex.P3), which is extracted supra.

38. This Court has given its anxious consideration to the above contention of the learned counsel for the plaintiff. However, this Court could not affix its seal of approval for more than one reason. The settlement deed dated 10.10.2011 (Ex.P3) and the settlement deed dated 21.10.2016 (Ex.P5) are different and distinct and they came into existence at different points of time and therefore, the recitals in one deed will not make the recitals in the another deed executed by the other person as invalid.

39. It remains to be stated that had there been a joint settlement



C.S. No.177 of 2021

WEB COPY

deed by the parents of the parties, namely, father and mother for the joint schedule of properties and if such a clause has been made, then it is appropriate for the Court to appreciate the said arguments advanced on behalf of the plaintiff.

40. To dismay, it is found that the settlement deed (Ex.P3) is of the year 2011 and the settlement deed (Ex.P5) is of the year 2016 and both of them have been executed by different persons. Hence, the recitals contained in the settlement deed (Ex.P3) are only a reasoning for settling the property. It will not form as a pre-condition on the father to execute a settlement deed on the same lines as desired by the mother. Being the owner of B and C – Schedule properties, the father has got every right to settle his properties in favour of his son and therefore, the recital in the settlement deed (Ex.P3) cannot be read with the recitals in the other document, since the deponents of the documents are different and distinct. Accordingly, the above contention of the learned counsel for the plaintiff is hereby negated.

41. It is to be stated that the mother executed the settlement deed (Ex.P3) on 10.10.2011 and she died on 08.08.2016. For five long years, the plaintiff knew about the execution of the settlement deed. But, he has not



C.S. No.177 of 2021

WEB COPY

chosen to challenge the same. As admitted by the plaintiff, in his cross-examination, the wife and daughter of the defendant returned to India only in the year 2012. In other words, only after execution of the settlement deed dated 10.10.2011 (Ex.P3), the wife and daughter of the defendant returned to India and stayed along with the parents of the defendant.

42. Therefore, this Court is of the considered view that the said settlement deed is duly acted upon the parties and they have been in possession of the property and hence, all the requirements of Sections 122, 123 and 124 of the Transfer of Property Act, 1882 being satisfied, possession being handed over to the wife and the property was administered by the wife and husband, as admitted by the plaintiff in his cross-examination, all would go to show that the settlement deed (Ex.P3) has been duly acted upon by the defendant after accepting the gift and hence, this Court has no hesitation to come to the conclusion that the settlement deed (Ex.P3) has been proved in the manner known to law. Consequently, the plaintiff cannot lay his hands in respect of the A-Schedule property and seek share. Hence, the claim of the plaintiff in respect of A-Schedule property is hereby negated and the settlement deed (Ex.P3) has been executed out of true and love and affection and accordingly, Issue Nos.(i), (ii) and (vii) are answered in favour of the



C.S. No.177 of 2021

WEB COPY defendant and against the plaintiff.

Issue Nos.(iii) and (viii):

43. On coming to the next set of issues surrounding the settlement deed (Ex.P5) as to whether the plaintiff is entitled for share in the B and C – Schedule properties and whether the settlement deed (Ex.P5) is valid is concerned, the oral evidence of the plaintiff and defendant are kept in mind.

44. Learned Senior Counsel appearing for the defendant would contend that there is no specific pleading in the plaint challenging the settlement deed (Ex.P5) said to have been obtained by the defendant under undue influence and force, as contemplated under Section 17 of the Indian Contract Act, 1872.

45. Learned counsel for the plaintiff would submit that in view of the clause contained in the document (Ex.P5), the same cannot be treated as a “Settlement Deed” and it has to be treated only as a “Will” and consequently, in view of non-examination of any of the attestors to the said document, the same is non-est in law.

46. Per contra, learned Senior Counsel appearing for the



C.S. No.177 of 2021

WEB COPY

defendant would contend that in the absence of any pleading, no amount of evidence can be looked into.

47. As stated supra, the document (Ex.P5) is captioned as “Settlement Deed”. It has also been registered as such. In the preamble portion of the document, the father of the defendant has stated that out of natural love and affection towards the defendant, who is his younger son, he desires to settle the properties in his favour.

48. Before going into the evidence of the plaintiff and defendant and the settlement deed (Ex.P5), it is to be noted that the law on this point has been recapitulated as under:

(i) In **Ramaswami Naidu v. Gopalakrishna Naidu**, reported in **1977 (90) Law Weekly 430**, a similar issue has been considered, wherein this Court has held as follows:

“3. The broad tests or characteristics as to what constitutes a will and what constitutes a settlement have been noticed in a number of decisions. But the main test to find out whether the document constitutes a will or a gift is to see whether the disposition of the interest in the property is in praesenti in favour of the settlees or



C.S. No.177 of 2021

WEB COPY

whether the disposition is to take effect on the death of the executant. If the disposition is to take effect on the death of the executant, it would be a will. But if the executant divests his interest in the property and vests his interest in praesenti in the settlee, the document will be a settlement. The general principle also is that the document should be read as a whole and it is the substance of the document that matters and not the form or the nomenclature the parties have adopted. The various clauses in the document are only a guide to find out whether there was an immediate divestiture of the interest of the executant or whether the disposition was to take effect on the death of the executant. If the clause relating to the disposition is clear and unambiguous, most of the other clauses will be ineffective and explainable and could not change the character of the disposition itself. For instance, the clause prohibiting a revocation of the deed on any ground would not change the nature of the document itself, if under the document there was no disposition in praesenti. In such a case the clause prohibiting revocation will be contrary to law and will be ineffective. If, on the other hand, the document is a settlement, merely because 3 right of revocation is given, it would not change the character of the document as a settlement 'because such a clause will be against law and will be invalid. The nomenclature of the document



WEB COPY

C.S. No.177 of 2021

nor the fact that it had been registered also will not be of any assistance in most of the cases unless the disposition is very ambiguous and extraneous mid is required to construe that clause.”

(ii) In **P.S.Deivaprasad @ P.S.Veerabadran vs.**

Dr.P.D.Balaji and others, reported in **2001 (1) CTC 520**, the point that arose for consideration was that what is the distinction between the “Will” and “Settlement Deed” and this Court has held as follows:

“13. The recitals extracted above would clearly indicate that the property given under Ex.P1 could be enjoyed by Nayagammal without any power of alienation and it is only after her life time her daughters shall acquire absolute right. There is no absolute and instantaneous transfer of interest in praesenti to the beneficiaries viz. her daughters. It cannot be said that there was absolute or complete divestment of the right, title or interest of the executant Nayagammal on the date of the execution of the deed. But it is a case where the conferment of the rights were postponed till the life time of Nayagammal. A reading of the recitals would clearly reveal that they are sufficient to hold that the document is only in the nature of a Will and at any rate not a settlement.

14. A reading of the said document as a whole will clearly point to the intention of the executant that



WEB COPY

C.S. No.177 of 2021

she desired the document to be a Will to come into force after her life time. In the instant case, it is true that the document itself has been styled as a settlement deed and it is also registered. It cannot be disputed that the accepted definition of a Will is that it is an instrument, whereunder a person makes disposition of his properties to take effect after his life time. In the instant case, after looking into the substance of the document under Ex.P1, the treatment of the property by the executant, the intention appearing both expressly in the instrument and by necessary implication, it would be clear that her intention was to execute a Will and not a settlement.”

(iii) In **Sellayi (deceased) & others vs. Valliammal @ Pappu & others**, reported in **2015-1-L.W.739**, this Court has held that if the clause in the document contains some of the features that of the “Settlement Deed” and some of the features that of the “Will”, in such circumstances, the Court has to consider that document only as a “Will” and not as a “Settlement Deed”.

49. With the above proposition of law, this Court proceeds to



C.S. No.177 of 2021

WEB COPY

consider the recitals in the settlement deed dated 21.10.2016 (Ex.P5). This document is in respect of B and C – Schedule properties. In the preamble portion, the settlor has also expressed his displeasure against the plaintiff in the following manner:

“WHEREAS the Settlor's elder son Ravi Krishna Bhaskar had no contacts with the family and had never visited the family for past several years. Further, he had also no care or interest in the Settlor's family all along. He did not even attend the funeral and ceremonies of Settlor's wife Meenambal Bhaskaran.”

50. It is further stated that the settlor, out of love and affection towards his younger son, has desired to settle the B and C – Schedule properties in favour of the defendant and in the indenture portion of the document, it has been contended as follows:

“The Settlor is irrevocably settling the property shown as Item No.1 and 2 detailed in Schedule absolutely in favour of the Settlee and this Settlor is “retaining life interest” in respect of the properties and the Settlor will be entitled to receive rents and income from the properties till his life time. The property shown as Item No.1 and 2 hereby settled will devolve on the Settle “after the life time of the Settlor”. The Settlor is reserving life-interest in respect of the Schedule



C.S. No.177 of 2021

WEB COPY

mentioned property without any other condition.”

51. In clause (2), it has been stated that in consideration of the love and affection that the settlor has towards the settlee, the settlor gifts the property to the settlee and the settlee has been given with symbolic possession of the property and the settlee is entitled to enjoy the property absolutely with full ownership rights and forever free from all encumbrances “after the life of the settlor”.

52. In clause (6), it has been stated as follows:

“6.The Settlor has also delivered the documents of title in original in relation to the property as shown as Item No.1 and 2 of Schedule to the Settlee and has signed and delivered letters of consent for the Settlee to effect mutation of records relating to the property, on the file of the public authorities which the Settlee may carry out after the life time of the Settlor.”

53. In clause (7), it has been stated as follows:

“7.The Settlor states that the Settlee will



WEB COPY

C.S. No.177 of 2021

become the absolute owner of the property as shown as Item No.1 and 2 of the Schedule “after his life time” and will be owned by him absolutely. After the lifetime of the Settlor, the Settlee is at liberty to sell the property shown as Item No.1 and 2 separately or jointly. The Settlee shall take all decisions concerning the property shown as Item No.1 and 2 in case of any future transactions / developments.”

54. In clause (8), it has been stated as follows:

“8.The Settlor is entitled to develop the property as shown as Item No.1 and 2 of Schedule during his lifetime and the Settlee will join for such future development.”

55. On perusal of clause (6) of the settlement deed (Ex.P5), as extracted supra, it is seen that effecting mutation of records relating to the property can be carried out by the settlee after the lifetime of the settlor. However, clause (7) reads that the settlee shall become absolute owner of the property “after the lifetime of the settlor”. In clause (8), it is stated that in the event of the settlor wants to develop the property during his lifetime, the settlee shall also join with the settlor for such development.



C.S. No.177 of 2021

WEB COPY

56. Thus, the document (Ex.P5), though it is captioned as “Settlement Deed”, the clauses (6) to (8) of the said document would go to show that mutation of revenue records can be effected only after the lifetime of the settlor and the settlee will become the absolute owner of the property after the lifetime of the settlor and the settlor is entitled to develop the property during his lifetime along with the settlee.

57. Hence, I find that the document (Ex.P5) clearly indicates that “only after the lifetime of the settlor”, namely, father, the right to deal with the property comes to the son. In other words, as observed in the above cited decision, for the deed of settlement, *in praesenti* i.e., at present, the title has to be vested with the beneficiary.

58. At this juncture, it remains to be stated that if a document is made as a record of the “past transaction”, for instance, family arrangement leading to division of property, the same is called as “the family settlement”. So also, for the “Settlement deed”, the property is to be vested with the settlee “at present” and in respect of the “Will”, the right, title and ownership of the property shall vest with the settlee in the “future date”. Hence, if there is a clause consisting of both present and future in respect of vesting of title of the



C.S. No.177 of 2021

WEB COPY

property to the beneficiary, the document has to be termed as “hybrid in nature”.

59. A salient feature of the “Settlement Deed” is that there must be absolute and instantaneous transfer of interest *in prasenti* to the beneficiary as held by this Court in **P.S.Deivaprasad**'s case. If there is a complete disinvestment of right, title and interest of the executant “on the date of the execution” of the document, then it is a “Settlement Deed”. If the disinvestment of right, title and interest of the executant is “postponed to a future date”, namely, after his death, it has to be construed as a “Will”.

60. In order to ascertain the “Settlement Deed”, though it is registered, the property given under the document has to be enjoyed by the settlee in the present date immediately after the registration. For the said purpose, in order to cull out the intention behind the execution of the said document and the nature of the right has been devolved under the document, the recitals of the document should be read as a whole and the substance of the document should be looked into. Though the document is styled as “Settlement Deed”, if it contains the features of the “Will”, then it has to be treated as “Will” and not as a “Settlement Deed”.



C.S. No.177 of 2021

WEB COPY

61. As stated supra, in view of the recitals in the clauses (6) to (8) of the document (Ex.P5), whereby there is no complete disinvestment of right, title and interest of the executant for the present, as held by this Court in **Sellayi's** case. Hence, the document (Ex.P5) has to be treated as a “hybrid document” and as per the decision of this Court in **P.S.Deivaprasad's** case, such document has to be treated only as a “Will” in the eye of law.

62. Accordingly, I have no hesitation to come to the conclusion that the document (Ex.P5) dated 21.10.2016, though it is captioned as “Settlement Deed”, the essence of the same shows that the right, title and interest of the executant has not been dis-invested at present, however postponed to a future date and hence, it is to be treated as a “Will”.

63. In order to prove the Will, the persons, who claim title under the document have to examine anyone of the attestors of the Will as contemplated under Section 63 of the Indian Evidence Act, 1872 and Section 68 of the Indian Succession Act, 1925. To dismay, the defendant has not chosen to examine anyone of the attestors of the document (Ex.P5), which assumes significance.



C.S. No.177 of 2021

WEB COPY

64. On a perusal of the document (Ex.P5), I find that one Priya Bhaskar, wife of Muralikrishna Bhaskar, is the first attestor and one M.Arumugam, son of Mannu Pillai, is the second attestor.

65. Though the defendant entered into the witness box, he has not chosen to examine anyone of the attestors, since the document (Ex.P5) has now been held only as a “Will” and therefore, the same cannot be treated that it has been proved in the manner known to law for non-examination of the attestors, who are admittedly alive as per the evidence deposited in the cross-examination of the defendant.

66. Since the defendant has not chosen to examine anyone of the attestors, so as to comply with Section 63 of the Indian Evidence Act, 1872 and Section 68 of the Indian Succession Act, 1925, for non-examination of the attestors to prove the Will, this Court has no hesitation to hold that the document (Ex.P5) is *non est* in law. Hence, the B and – C Schedule properties are available for partition. Accordingly, the Issue Nos.(iii) and (viii) are answered.



C.S. No.177 of 2021

WEB COPY

Issue Nos.(iv), (v) and (vi):

67. Since the plaintiff is one of the co-owner of the property, in view of the discussions made in the preceding paragraphs, the suit is not barred by limitation and the suit cannot be stated to be undervalued as stated by the defendant in the written statement. Consequently, the plaintiff is entitled to half share in the rents received by the defendant from the B and C – Schedule properties. Accordingly, Issue Nos.(iv), (v) and (vi) are answered in favour of the plaintiff and against the defendant.

68. In fine,

- (i) The settlement deed, dated 10.10.2011 (Ex.P3) is true and valid.
- (ii) The document dated 21.10.2016 (Ex.P5), though it is captioned as “Settlement Deed”, for the findings rendered in the preceding paragraphs, it has to be treated only as a “Will” and for non-examination of the attestors of the said document, it is held that the document (Ex.P5) is not proved in the manner known to law. Consequently, the plaintiff is entitled for half share in the B and C – Schedule properties along with the



WEB COPY

C.S. No.177 of 2021

rent and the plaintiff is not entitled for any share in the A-Schedule property.

- (iii) Accordingly, the suit is dismissed as against the A-Schedule property and partly-decreed as against the B and C – Schedule properties. The plaintiff is entitled for half share in the B and C – Schedule properties along with the rent.
- (iv) There shall be a preliminary decree on the above lines.
- (v) For mesne profits, separate application has to be filed as contemplated under the Code of Civil Procedure.
- (vi) Considering the relationship between the parties, there is order as to costs.

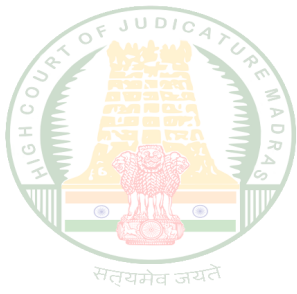
28.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

1. List of Witnesses examined on the side of the plaintiff:-

P.W.1 – Mr.Ravi K.Bhaskar

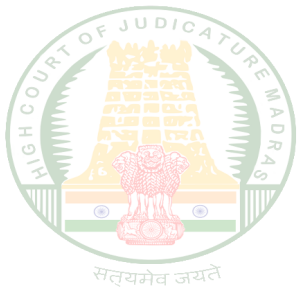
2. List of Exhibits Marked on the side of the plaintiff: Exs.P1 to P28.



C.S. No.177 of 2021

WEB COPY

S.No	Exhibits	Description of Documents
1	P1	Settlement Deed registered as Document No.4902 of 2007
2	P2	Revocation Deed registered as Document No.3852 of 2011
3	P3	Settlement Deed registered as Document No.3853 of 2011
4	P4	Death Certificate of Mrs.Meenambal Bhaskaran
5	P5	Settlement Deed registered as Document No.3838 of 2016
6	P6	WhatsApp chat between the plaintiff and defendant
7	P7	Death Certificate of Mr.A.R.Bhaskaran
8	P8	Notice issued by the counsel for plaintiff to the defendant
9	P9	Notice issued by the counsel for defendant to the counsel for plaintiff
10	P10	Notice issued by the counsel for plaintiff to the counsel for defendant
11	P11	Notice issued by the counsel for plaintiff to the counsel for defendant
12	P12	Notice issued by the counsel for defendant to the counsel for plaintiff via Email
13	P13	Notice issued by the counsel for plaintiff to the counsel for defendant via Email.
14	P14	Notice issued by the counsel for defendant to the counsel for plaintiff via Email
15	P15	Notice issued by the counsel for plaintiff to the counsel for defendant
16	P16	Notice issued by the counsel for defendant to the counsel for plaintiff
17	P17	Emails exchanged between counsel for plaintiff and counsel for defendant (series)



C.S. No.177 of 2021

WEB COPY

S.No	Exhibits	Description of Documents
18	Ex.P18	Email sent to the plaintiff by the defendant
19	Ex.P19	Email sent to the defendant by the plaintiff
20	Ex.P20	Letter from the father of the plaintiff to the plaintiff
21	Ex.P21	Letter from the mother of the plaintiff to the plaintiff
22	Ex.P22	Letter from the parents of the plaintiff to the plaintiff
23	Ex.P23	Letter from the parents of the plaintiff to the plaintiff
24	Ex.P24	Letter from the parents of the plaintiff to the plaintiff
25	Ex.P25	Letter from the father of the plaintiff to the plaintiff
26	Ex.P26	Letter from the mother of the plaintiff to the plaintiff and his ex-wife
27	Ex.P27	Letter with card from the parents of the plaintiff to the plaintiff, his ex-wife and son
28	Ex.P28	Photographs of the plaintiff with his parents, wife and child during his parents' stay with them in USA (four photographs)

3. List of witnesses examined on the side of the defendant:

P.W.1 – Mr.Murali K.Bhaskar

4. List of Exhibits marked on the side of the defendant:

Nil

28.01.2025

krk



WEB COPY



C.S. No.177 of 2021

RMT.TEEKAA RAMAN, J.

krk

JUDGMENT
IN
C.S. No.177 of 2021

28.01.2025