



WEB COPY



S.A.No. 1029 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>27.01.2025</i>
<i>Pronounced on</i>	<i>19.03.2025</i>

CORAM:

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. No.1029 of 2014
and M.P.No.1 of 2014

Panneerselvam
S/o. Ramar Udayar,
Asakalathur Village,
Kallakurichi TK

... Appellant / First defendant

Vs.

1. Ramamoorthy Udayar
S/o. Chidambara Udayar,
Eyyanar Village,
Kallakurichi.

... First Respondent / Plaintiff

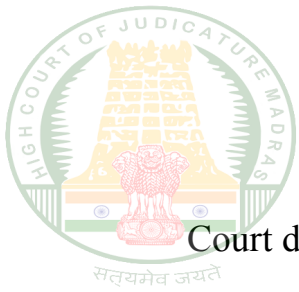
2. Ramar Udayar
S/o. Narayana Udayar,
Asakalathur Village,
Kallkurichi TK.

3. Mookayi Ammal (Died)
W/o. Thangavel Udayar.

4. Sekar (LR's of R3)
S/o. Thangavel Udayar
Both are at Puliyanakurichi Village,
Athur TK,
Salem District.

... Respondents 2 to 4 / Defendants 2 to 4

(R3 died. R4 is legal heirs of R3 and he is already on record vide order of the



S.A.No. 1029 of 2014

Court dated 20.10.2022 in S.A.1029/2014)

WEB COPY Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, against judgment and decree dated 29.03.2012 passed in A.S.No.92/2011 on the file of the Sub Court, Kallakurichi confirming the judgment and decree dated 28.06.2011 passed in O.S.No.454/2004 before the Principal District Munsif's Court, Kallakurichi.

For Appellant	: Mr.T.Sezhian for Mr.R.Meenal
For R1	: Mr.V.Manohar
For R2 & R4	: Ms.M.Savitha Devi
R3	: Died

JUDGMENT

The appellant is the first defendant. The plaintiff has filed a suit for partition by claiming half share in the suit properties. The trial Court has decreed the suit as prayed and passed a preliminary decree for half share in the suit properties in favour of the plaintiff. The first appeal preferred by the defendants was dismissed by confirming the judgment of the trial Court. Aggrieved over the same, the first defendant has preferred the present Second Appeal.

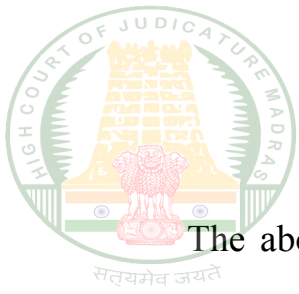


S.A.No. 1029 of 2014

WEB COPY 2. The facts pleaded by the plaintiff in the plaint in brief:-

The suit properties were originally belonged to one Chinthambi Udaiyar who is the father-in-law of the plaintiff. Chinthambi Udaiyar had two daughters and no sons. The third defendant is one of the daughter of Chinthambi Udaiyar and the other daughter's name is Valliammai. Chinthambi Udaiyar had settled the suit property in favour of third defendant and Valliammai through a settlement dated 20.09.1968 and handed over possession. At that time Valliammai was a minor and hence her mother Agilandammal had taken possession as her guardian and she had handed over the properties to Valliammai after she attained majority. Valliammai married the plaintiff. The suit properties were kept as common by the third defendant and Valliammai.

2.1 In the year 1979 Valliammai had suffered some Gynecological issues. By making use of the above situation the third defendant and her mother Agilandammal along with the third defendant and her husband Thangavelu convinced her to mortgage her share of the property by stating that she would require money for her treatment. Instead of getting the mortgage deed they had managed to get a settlement deed dated 26.03.1979 by cheating her.



S.A.No. 1029 of 2014

The above settlement deed was in favour of the third respondent's son by name Sekar represented by his grandmother Agilandammal. On 24.04.1979

Valliammai sent a legal notice stating that the settlement deed dated 26.03.1979 is a fraudulent one. On receiving that Agilandammal sent a reply on 02.05.1979 stating that she was not aware of any settlement deed and that could have been a created one. Valliammai continued to be in possession of her share as usual.

2.2. On 05.11.1979 Valliammai executed a settlement deed in favour of the plaintiff and from then onwards the plaintiff is in enjoyment of the property by paying the property tax. In view of the plaintiff's enjoyment of the suit property, patta has also been granted in his favour. The third defendant had sold her half share in respect of Items 3 to 7 in favour of the second defendant. The third defendant and her son Sekar had tried to sell the whole of the properties in Items 10 and 11 in favour of the second defendant. On coming to know the above attempt, the plaintiff had sent a legal notice on 25.02.2000 to the defendants 3 and 4. On receiving the said notice, the defendants 3 and 4 sent a reply notice on 25.01.2022 with false allegations. So the whole of the suit properties in Items 10 and 11 have been sold to the defendants 3 and 4. The defendants 3 and 4 did not have any right to sell



S.A.No. 1029 of 2014

Items 10 and 11 in favour of the plaintiff. The first defendant has got only half share in Items 10 and 11.

3. The written statement filed by the defendants 2 and 3 in brief:

The fact that the father of the third defendant had executed a settlement deed dated 20.09.1968 in her favour and her sister Valliammai is correct. It is false to state that the settlement deed in favour of the third defendant's son the fourth defendant was obtained by fraud on 26.03.1979. The plaintiff had deserted Valliammai and he was having extra-marital relationship with the other women. Hence, Valliammai was under the custody of her sister, the third defendant. Only out of love and affection, Valliammai had executed the settlement deed in favour of the fourth defendant on 26.03.1979. From then onwards Items 3 to 7 and 10 and 11 were enjoyed by the third defendant's family. The plaintiff had never been in individual or joint enjoyment of the suit property and the settlement deed in favour of the plaintiff dated 05.11.1979 is not true and valid. It should be a concocted document by playing fraud on Valliammai. The defendants 3 and 4 are alone are in the enjoyment of the suit property without any interference. The third defendant had executed a sale deed in respect of Items 3 to 7 in favour of the second defendant on 02.03.1993 and handed over possession. The third and fourth



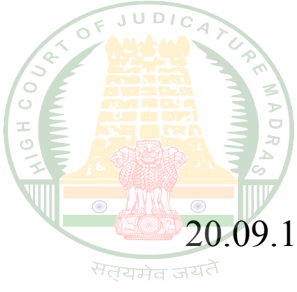
S.A.No. 1029 of 2014

WEB COPY

defendant have sold Items 10 and 11 in favour of the first defendant and handed over possession. The third defendant, Valliammai and Agilandammal have sold Items 1 and 2 in favour of one Poomalai Udayar and his wife Azhagammal on 17.09.1993 and 05.12.1973 and handed over possession. From then onwards Items 1 and 2 were enjoyed by Poomalai Udayar family.

3.1 The defendants 1 and 2 have annexed their house with Item 10 after they had purchased the same. The plaintiff ought to have filed the suit by claiming declaration. Items 1 and 2 are not in the enjoyment of the defendants and hence no relief can be claimed in respect of Items 1 and 2 against the defendants. The suit is barred by limitation as the settlement deed has been executed as early as on 05.11.1979. Hence the suit is liable to be dismissed.

3.2 The settlement deed executed in favour of Valliammai and the third defendant by their father Chinnathambi Udaiyar on 20.09.1968 is true. It is false to state that Valliammai was cheated to execute the sale deed dated 26.03.1979 in favour of the fourth defendant. As the plaintiff was having illegal intimacy with other woman, the plaintiff was living along with her mother and her sister, the third defendant. So the settlement deed dated



S.A.No. 1029 of 2014

WEB COPY

20.09.1968 has been executed in favour of the fourth defendant only out of love and affection. The allegations that Valliammai has sent a legal notice on 24.04.1979 and for which Agilandammal had issued reply notice on 02.05.1979 are all false. The alleged settlement deed dated 05.11.1979 in favour of plaintiff is false. Valliammai had sold a portion of the suit property in favour of Manikandan on 06.02.1987 itself. Valliammai had sold Items 1 and 2 along with the third defendant and her mother Agilandammal on 17.09.1973 and 05.12.1973. The plaintiff had never been in enjoyment of any of the suit properties and it is false to state that Valliammai had executed a settlement deed on 05.11.1979 in favour of the plaintiff. The plaintiff is not entitled to any relief as prayed. The fourth defendant was in enjoyment of Items 3 to 7 and 10 and 11 along with the third defendant and they have been sold subsequently to defendants 1 and 2 and now they are in enjoyment of the same.

4. On the basis of the above pleadings the trial Court framed the following issues:

- “ 1. 26.3.1979 தேதியிட்ட தான செட்டில்மெண்ட் பத்திரம் ஏமாற்றி வாங்கப்பட்டதா ?
2. 5.11.1979 தேதியிட்ட தான செட்டில்மெண்ட் பத்திரம் ஏமாற்றி உண்மையானதா ?

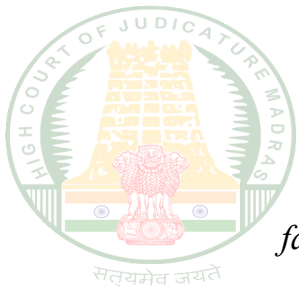


3. தாவா 3 முதல் 11 அயிட்ட சொத்துக்களில்
வாதிக்கு பாதி பாகம் கிடைக்கத்தக்கதா ?
4. அவசியமான தரப்பினரை சேர்க்காத தோஷத்தால்
இவ்வழக்கு பாதிக்கபட்டுள்ளதா ?
5. வாதி கோரும் பாகப்பிரிவினை பரிகாரம் அவருக்கு
கிடைக்குக் கூடியதா ?
6. வாதிக்கு வேறு என்ன பரிகாரம் கிடைக்கத்தக்கது?"

5. During the trial, on the side of the plaintiff two witnesses have been examined as P.W.1 and P.W.2 and Exs.A1 to A14 were marked. On the side of the defendants two witnesses have been examined as D.W.1 and D.W.2 and Exs.B1 to B21 were marked. At the conclusion of the trial and on considering the evidence available on record the trial court decreed the suit by allotting half share and passed a preliminary decree in respect of half share in favour of the plaintiff. The first appeal preferred by the first defendant was also dismissed by confirming the judgment of the trial Court. Aggrieved over the same, the present Second Appeal has been preferred by the first defendant.

6. The Second Appeal has been admitted on the following Substantial Questions of Law:

i) Whether in law the courts below are right in granting a decree in



S.A.No. 1029 of 2014

WEB COPY

favour of the first respondent when the suit was hit by non-joinder of

necessary parties, limitation and payment of court fee under Section

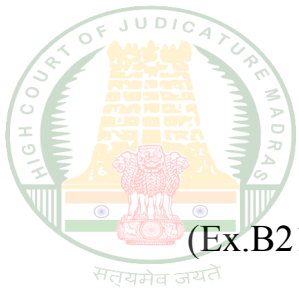
37(2) of TN Court Fee and Suits Valuation Act ?

ii) Whether in law the courts below are right in overlooking Ex.A2

settlement was accepted and acted upon and that it could not be

unilaterally cancelled by the settlor vide 2011 2 CTC 1 FB ?”

7. Mr.T.Sezhian, the learned counsel for the appellant / first defendant submitted that the suit is bad for non-joinder of necessary party namely Valliammai; the first respondent / plaintiff was not in joint enjoyment and hence the court fees paid under Section 37(1) Tamil Nadu Court Fee and Suit Valuation Act, is not correct; the courts below had not considered the evidentiary value of Ex.A2 settlement deed in favour of the fourth defendant; the said settlement deed is valid, accepted and acted upon; having settled the property by virtue of Ex.A2, the settlor has got no power to revoke the settlement deed and she has no power to execute an another settlement deed in favour of the plaintiff; the courts below had overlooked the fact that Valliammai has been living with the third defendant and not with her husband; Items 10 and 11 have been sold to the first defendant for a valuable consideration and he is a bonafied purchaser for value; the courts below have misconstrued Ex.A2 settlement as a Will which is not correct; the patta



S.A.No. 1029 of 2014

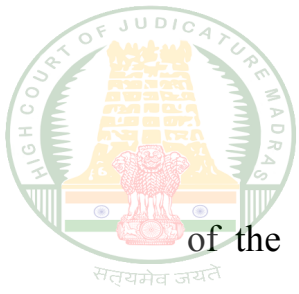
(Ex.B21) and Adangal extract (Ex.A18) were not considered properly.

WEB COPY Valliammai had the right to reside in the suit property even after the title passed to the fourth respondent and that was also not appreciated.

8. Mr.V.Manohar, the learned counsel for the first respondent, submitted that Valliammai had executed a settlement deed in favour of the plaintiff on 05.11.1979 and thereafter he had been in possession and enjoyment of the same. It is right for the courts below to arrive at a conclusion that the plaintiff is entitled to half share in the suit property.

9. For the sake of convenience, the parties are described as per their rank in the suit filed before the trial Court.

10. The original owner of the suit property was Chinnathambi Udaiyar. The plaintiff claims that Chinnathambi Udaiyar had settled his properties in favour of his two daughters namely Valliammai and the third defendant through a settlement deed dated 29.09.1968. The settlement deed has come into force as the beneficiaries have taken possession. However, Valliammai who is the younger daughter of Chinnathambi Udaiyar was a minor at the time of executing the settlement deed and hence her mother Agilandammal had taken possession as a guardian. The plaintiff claims ownership in respect



S.A.No. 1029 of 2014

WEB COURT

of the share settled in favour of Valliammai stating that Valliammai had settled her share of the property in his favour after his marriage with her. It is the claim of third and fourth defendant that Valliammai did not have cordial relationship with the plaintiff and she had been living with her sister, the third defendant and mother Agilandammal. It is stated that during that time Valliammai had executed a settlement deed in favour of the fourth defendant who is the son of the third defendant on 26.03.1979. The settlement deed alleged to have been executed by Valliammai in favour of the plaintiff is on 05.11.1979 which is subsequent to the earlier settlement in favour of the fourth defendant. The plaintiff claims that the settlement deed in favour of the fourth defendant was obtained by fraud by the third defendant.

11. The plaintiff has alleged that on 24.04.1979 Valliammai had sent a legal notice that the settlement deed dated 26.03.1979 executed in favour of the fourth defendant is a fraudulent one and on receiving that her mother Agilandammal had sent a reply on 02.05.1979 stating that she was not aware of any settlement deed and that could have been a created one. The Courts below have decreed the suit by believing the version of the plaintiff that the earlier settlement deed dated 26.03.1979 is a fraudulent one and it has not been acted upon. Curiously, the plaintiff had not chosen to examine



S.A.No. 1029 of 2014

WEB COPY

Valliammai as a witness in order to confirm the facts pleaded by him. The first appellate Court applied its own reason for not examining Valliammai by stating that Valliammai who stood in a hostile relationship, if called as a witness on the side of the plaintiff, would not have supported the case of the plaintiff. The above reason is something which the plaintiff himself has not stated before the Court. Even in case Valliammai has called upon as a witness and if she did not support the case of the plaintiff, he could have requested the Court to treat him as a hostile witness and cross-examine her. When the settlement deed was executed by her father in the year 1968, Valliammai was said to be a minor and hence her mother was appointed as guardian. At no point of time the plaintiff had ever filed a suit to declare the settlement deed dated 26.03.1979 as null and void and that will not bind Valliammai. Neither Valliammai had filed any suit that the settlement deed executed by her on 26.03.1979 will not bind her.

12. It is not the contention of the plaintiff that Valliammai had ever cancelled the settlement deed dated 26.03.1979. Despite the same, the Courts below had chosen to decree the suit in favour of the plaintiff by stating that Ex.A2-settlement deed dated 26.03.1979 has not been acted upon. Even for the purpose of proving the settlement deed dated 24.04.1979, the plaintiff

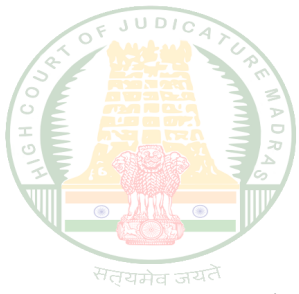


S.A.No. 1029 of 2014

WEB COPY

has not chosen to examine Valliammai who claimed to be the executant of the settlement deed. The lower Court had convinced itself by comparing the contents in the settlement deed dated 26.03.1979 (Ex.A2) and the other settlement deed dated 05.11.1979 (Ex.A5). It is stated that in Ex.A2 settlement deed executed in favour of the fourth defendant, Valliammai has made a condition that the absolute right in respect of the suit property can be enjoyed only after her lifetime and till her lifetime she will be having life interest over the same.

13. In support of his submission, the learned counsel for the respondent has cited the judgment of *Allahabad High Court in Jagat Narain and another Vs. Laljee and others* reported in *1964 SCC OnLine 99* and submitted that the chance of a heir apparent cannot be transferred and it is of no effect and claimed that what is transferred in Ex.A2 – settlement deed would fall within the exceptions provided under Section 6 of the Transfer of Property Act. But Ex.A2 – settlement deed appears to be a conditional settlement deed and it just postpones the absolute right in favour of the settlee and there is no uncertainty seen in the terms of the settlement deed. Hence, it is wrong even to presume that what is transferred vide Ex.A2 is a right of a mere expectant heir.



S.A.No. 1029 of 2014

WEB COPY

14. The appellant / first defendant has also made a reference about Section 43 of the Transfer of Property Act which states about the erroneous representation of a person who executes a deed of conveyance by claiming ownership over the property. Such transfers, at the option of the transferee, operate on any interest which the transferror may acquire in such property at any time during which the contract of transfer subsists. The above provision has got no application to the facts of the present case for the very reason that the plaintiff has not proved that the executor Valliammai is not the owner of the property at the time when she executed Ex.A2.

15. If the plaintiff accepts that by execution of Ex.A2, Valliammai had lost her title, that would not be possible for her to execute another settlement deed in favour plaintiff vide Ex.A3. Some of the judgments were cited by the respondent has got no relevance to the facts involved in this case.

16. Without the substantive evidence of Valliammai, the trial Court has come to its own conclusion stating that the earlier settlement deed executed by Valliammai is *non-est* in law. The courts below have held that Ex.A5 – settlement deed dated 05.11.1979 is a valid settlement deed which would pass title in favour of the plaintiff even without him claiming the relief as to



S.A.No. 1029 of 2014

WEB COURT

declaration in view of the cloud caused upon his title. The alleged reply notice sent by Agilandammal was also not proved by the plaintiff in order to completely ignore Ex.A2-settlement deed.

17. Even for any extraneous reasons, Ex.A2 settlement deed has got the characteristics of the Will only and by execution of Ex.A5 settlement deed, Ex.A2 got cancelled and that fact has to be stated only by the executant of these two documents by name Valliammai and not by the plaintiff himself. When Valliammai is alive, the plaintiff has filed the suit for partition without claiming the relief of declaration as to the property on which the plaintiff claims title through Ex.A5. The fact that Valliammai is alive has not been denied. Valliammai's mother Agilandammal who is said to have sent the reply notice to her may or may not be alive to say about the fact about her reply notice. But Valliammai is very much alive and she has to say about the genuineness of Ex.A9 and A10, legal notice and reply notice.

18. The plaintiff appears to have produced a patta of the year 2010 for a property which is said to have been acquired by him in the year 2009 through Ex.A5. So the case of the plaintiff is also in support by preponderance as he did not produce any document subsequent to the year 1979 till the year 2010, to show that patta has been transferred in his name.



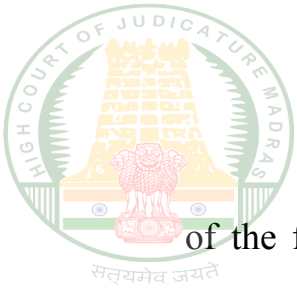
S.A.No. 1029 of 2014

WEB COPY

Some of the tax receipts did not contain any date and they have been simply marked as Exs.A6 to A8. Irrespective of the validity of Ex.A2, the deficiencies in the case of the plaintiff would only show that Valliammai is still holding a possession over the suit property. It was Agilandammal who is said to have been in the 10th Item of house property and the house receipts have been produced from the year 1979 to 1993. The plaintiff without establishing the fact that he is in joint possession of the suit properties, had chosen to take advantage of Section 37(2) of the Tamil Nadu Court Fee and Suits Valuation Act, and paid the Court fee under the said provision. The Courts below had ignored all the above fact also.

19. The plaintiff has further claimed that he has half share in Items 10 and 11 which were sold by the defendants 3 and 4 in favour of the first defendant and the first defendant is in enjoyment of the same by having entered into the property on 01.07.2002. The plaintiff's own pleading would prove that he is not in the enjoyment of the above Items and that the first defendant is in enjoyment of the same but that was also overlooked by the trial Court by taking it slightly.

20. The plaintiff has not sought the relief to declare the sale deed in favour

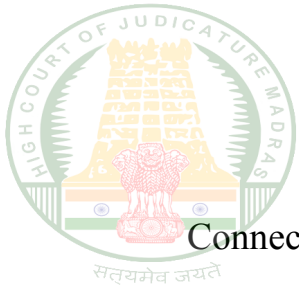


S.A.No. 1029 of 2014

of the first defendant dated 02.05.2002 and the sale deed in favour of the second defendant on 02.03.1993 are void as against the half share claimed by him. On an improper suit filed by the plaintiff without adding necessary party namely Valliammai who still holds the life interest over the suit property and by not getting her account about the title of the suit properties atleast by examining as a witness, the trial Court has chosen to decree the suit and the first appellate Court also did not deal with the grounds of the appeal in a proper manner and has misdirected itself by taking deviance in the appreciation of evidence.

21. As the essential legal points raised by the appellant / first defendant in the second appeal have been omitted to be dealt by the Courts below and on the context of facts pleaded and admitted by the plaintiff, the second appeal deserves to be allowed. In view of the discussions made above, the **substantial questions of law are answered in favour of the appellant / first defendant.**

22. In the result, the Second Appeal is **allowed** and the judgment and decree dated 29.03.2012 passed in A.S.No.92/2011 on the file of the Sub Court, Kallakurichi, is hereby set aside and the suit in O.S.No.454/2004 on the file of the Principal District Munsif's Court, Kallakurichi, is dismissed. No costs.



S.A.No. 1029 of 2014

Connected miscellaneous petition is closed.

WEB COPY

19.03.2025

Index: Yes/No

Speaking Order / Non-speaking order

Neutral Citation Case : Yes / No

bkn



S.A.No. 1029 of 2014

WEB COPY

- To:
1. The Sub-Court, Kallakurichi.
 2. The Principal District Munsif, Kallakurichi.



WEB COPY



S.A.No. 1029 of 2014

R.N.MANJULA, J.

bkn

Pre-delivery judgment made in
S.A. No.1029 of 2014

19.03.2025