



S.A.No.819 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 03.01.2025

CORAM:

**THE HONOURABLE Ms. JUSTICE R.N.MANJULA**

S.A. No.819 of 2014

Joseph Haribabu alias  
Parthinathan Haribabu

... Appellant

Vs.

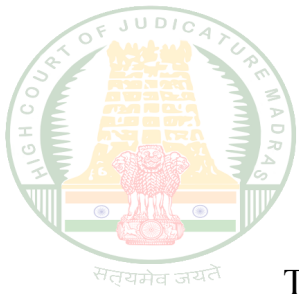
1. Lourdu Anandhi  
2. Amal Deny Princeton

... Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, against the judgment and decree in A.S.No.73 of 2011 on the file of the Sub-ordinate Judge, Poonamallee, dated 29.07.2013 confirming the judgment and decree in O.S.No.553 of 2001 dated 31.01.2011 on the file of District Munsif Court, Poonamallee.

For Appellant : Mr.Dhananjayan

For Respondents : Mr.D.Ferdinand  
for M/s.BFS Legal



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### **JUDGMENT**

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The appellant is the first defendant. The plaintiffs have filed the suit for permanent injunction and declaration to declare the cancellation deed dated 30.06.1999 and for consequential permanent injunction. The trial Court decreed the suit and the first appeal preferred by the first defendant was dismissed by confirming the judgment and decree of the trial Court. Hence the first defendant has preferred this second appeal.

#### ***2. The facts pleaded in the plaint filed by the plaintiffs in brief:***

The first plaintiff is the wife of the first defendant and the second plaintiff is the son of the first defendant. The plaintiffs are the joint owners of the house bearing Plot No.24, Door No.5 of Vani Nagar, Valasaravakkam comprise in S.No.194/3 which is the suit property. The plot was purchased by the first defendant in the year 1983 and it was left vacant. After the first plaintiff got married with the first defendant a house was constructed over the suit property with the financial support offered by the first plaintiff's parents and brothers and by selling her jewels. The first defendant developed an extra marital affair with another woman and ill-treated the plaintiffs and he also deserted them. The first defendant mortgaged the suit property with the second defendant and borrowed a sum of Rs.2,50,000/-. On the

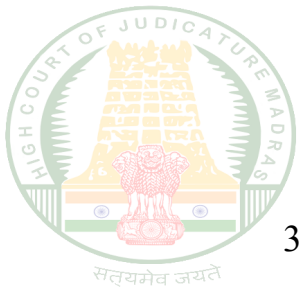


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intervention of the relatives and family members of the first plaintiff, the first defendant settled the suit property in favour of the plaintiffs through a settlement deed dated 28.06.1969 just to make some security for their life. The above settlement is an irrevocable settlement. The plaintiffs have accepted the settlement and started to be in enjoyment of the suit property as its owners by paying loan installments towards the subsisting mortgage in favour of the second defendant.

2.1 During June, 2001 the first defendant demanded the first plaintiff to sell the suit property and threatened her with the help of rowdy elements on 13.06.2001 and the first plaintiff lodged a police complaint. Hence the plaintiffs have filed a suit for permanent injunction restraining the first defendant from interfering the peaceful possession and enjoyment of the suit property and also restraining him from making any encumbrance over the suit property and to declare the cancellation deed dated 30.06.1999 executed by the first defendant as null and void and also to restrain the second defendant from handing over the title deeds of the suit property of the first defendant.



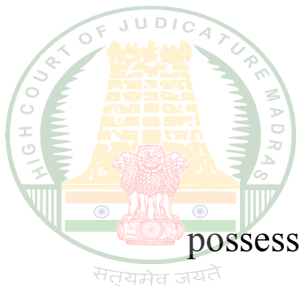
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**3. *The brief averments in the written statement filed the first***

**defendant in brief:**

After purchasing the vacant site the first defendant had constructed a residential building to an extent of 1000 sq.ft. with his own money which was saved by him before his marriage. The first plaintiff's parents and brother did not offer any financial support and it is false to state that first plaintiff's jewels have been utilized for the purpose of raising construction in the suit property. The first defendant mortgaged the suit property for the purpose of constructing a residential building and obtained a loan of Rs.2,50,000/- apart from which the first defendant also spent a sum of Rs.1,50,000/- towards construction. The construction work was entrusted by the brother of the first plaintiff. However, the cost was entirely borne by the first defendant. The first plaintiff and his brother kidnapped the first defendant and obtained signature in various documents and hence the first defendant had lodged a police complaint and the same was registered in Cr.No.618/1999.

3.1 As the settlement deed was obtained by force and threat, the first defendant revoked the same by executing a revocation deed and also publishing the said fact on 13.07.1999. The first defendant is in exclusive



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possession and enjoyment of the suit property from the date of purchase. The first plaintiff and the first defendant lived as husband and wife for one month and thereafter the first plaintiff deserted the first defendant and stayed with her parents. The first plaintiff gave birth to a male child but the child was not born to the first defendant. The first defendant let out the suit premises for rent and the first plaintiff used to collect the rent from the tenants. The first plaintiff was always living at her parents house and she used to visit the first defendant for only 4 or 5 days in a month and that too to collect rent from the tenants.

3.2 The first plaintiff compelled the first defendant to dispose the suit property and settle the sale amount in the name of first and second plaintiffs. As the settlement was executed by force, the first defendant cancelled the sale subsequently. The first plaintiff is living in adultery and she has no marital relationship with the first defendant. The first defendant let out the entire property to one Pichumani and Gurubakyam through a lease deed dated 18.10.2001. The plaintiffs have managed to obtain patta by suppressing the real facts. The second defendant had colluded with the plaintiffs and refused to hand over the title deeds to the first defendant even though the entire dues towards the load have been repaid.



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**WEB COPY 4. *The brief averments in the written statement filed the second defendant in brief:***

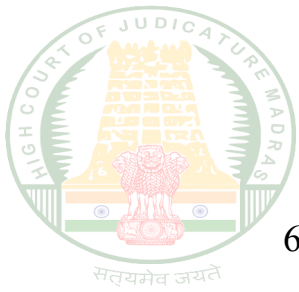
The second defendant has extended credit facility and a loan has been obtained by offering the suit property as mortgage. The loan has been discharged and the second defendant is ready to surrender the documents to the person as per the direction of the Court.

5. On the basis of the above pleadings the following issues were framed by the trial Court:

- 1. Whether the plaintiff had valid title, possession and enjoyment over suit property ?*
- 2. Whether the plaintiff is entitled to the injunction sought for?*
- 3. To what other relief ?*

*Additional issues:*

- 1. Whether the plaintiff is entitled to declaration that the cancellation deed executed by first defendant is null and void ?*
- 2. To what other relief ?*



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6. During the course of trial, on the side of the plaintiff P.W.1 was examined and Exs.A1 to A37 were marked. On the side of the defendants D.W.1 and D.W.2 were examined and Exs.B1 to B12 were marked.

7. At the conclusion of the trial and the materials available on record the trial Court has decreed the suit. The first appeal preferred by the first defendant also got dismissed by confirming the judgment of the trial Court. Now the present Second Appeal has been filed and the substantial question of law is reframed as under:

*“ Whether in law the first appellate Court is right in confirming the judgment and decree and granted the relief of declaration though the said relief is barred by limitation ? ”*

8. Mr.Dhananjayan, the learned counsel for the appellant / first defendant, submitted that the settlement deed has been cancelled after two days of its execution and that itself would show that the settlement deed has been obtained from the first defendant by force; when the suit was filed the plaintiff did not claim the relief of declaration; at the time when an application was filed to amend the plaint to raise the additional relief of declaration, the cause of action has been barred by limitation; the Courts



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below did not consider the evidence available on record which would show that the settlement deed has been obtained by force; the plaintiffs did not prove that the settlement deed has been executed by the first defendant voluntarily; despite the first defendant has proved that the settlement deed has been obtained by force, the same has not been considered by the courts below; when the first plaintiff itself has stated that the first defendant had deserted the plaintiffs and they were frequent quarrel between themselves, it is impractical to make any settlement out of love and affection and that was not considered by the trial Court and the first appellate Court.

9. The relationship between the plaintiffs and the first defendant is not denied. The first plaintiff is the wife and the second plaintiff is the son of the first defendant. The fact that the suit property belonged to the first defendant as a self acquired property through a registered sale deed dated 16.11.1983 which is marked as Ex.B1. The plaintiffs and the first defendant have been living in the suit property as a family. There is some matrimonial issues between the first plaintiff and the first defendant and the first plaintiff stated that the first defendant had deserted the family by developing some illegal intimacy with some other woman. Even though it is claimed by the plaintiffs that the house in the suit property has been constructed with the financial



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support offered by the first plaintiff's father and brother, it is seen that the first defendant also availed loan from the second defendant after he purchased the suit property. Naturally the loan could have also been used for constructing the house. But the house was constructed by first plaintiff's brother and the said fact was not denied by the first defendant himself. In fact in the written of the first defendant he has stated that the construction work was carried out by the first plaintiff's brother with the money arranged by the first defendant. Though the parties have stated their financial involvement in meeting out the expenses towards the constructed house the fact remains that it is not the core issue involved in this case. The issue spins around a settlement deed executed by the first defendant on 28.06.1999 and the subsequent revocation deed executed on 30.06.1999.

10. It is the case of the plaintiffs that the first defendant had executed the settlement deed at the intervention of some relatives and family members after he had deserted them just in order to make some security for their life. However it is claimed by the first defendant that the settlement deed has been obtained by force and he did not execute the same voluntarily. He had stated that he had been kidnapped by the brother of the first plaintiff and he was forced to execute the settlement deed on intimidation. The first



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defendant is said to have given a police complaint in this regard at Virugampakkam police station and a case has been registered in Cr.No.618/1999. However, no charge sheet has been filed. It is learnt that the police has closed the case as 'civil in nature' and advised the parties to approach the civil court. Neither the first defendant has taken any further action by challenging the inaction on the part of the police or the final report if any filed on the complaint given by him.

11. Even though the first defendant had denied his willingness in executing the settlement deed dated 29.6.1999 the fact remains that the registered settlement deed is an irrevocable one. Whenever any dispossession of property has been reduced into writing and executed in a form of a document, the party who claims right on the basis of the said document will have the burden to prove the said fact by producing the very document itself as per Section 91 of the Indian Evidence Act. The burden of the plaintiffs gets discharged by the production of the original document and if the same is admitted as evidence, then the terms found in the document would also be presumed to have been proved. However, under certain exceptional circumstances, the party who denies the recitals in the written document can let in oral evidence or other evidence in order to disprove the



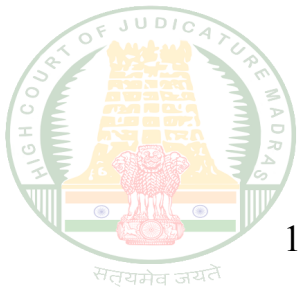
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12. The first defendant had raised a plea stating that though the settlement deed, it was obtained by intimidation and force. Such a contention of the first defendant would fall under the first proviso to Section 92 of the Indian Evidence Act and hence the burden would shift on the first defendant to prove that Ex.A1 settlement deed has been obtained by force and intimidation.

13. In this regard it is pertinent to mention the observation made by the trial Court which has been accepted by the first appellate Court also. The Courts below have observed that in the subsequent revocation deed dated 30.06.1999 the first defendant did not mention the fact that he was forced to execute the settlement deed dated 28.06.1999. On perusal of the revocation deed dated 30.06.1999 which was marked as Ex.B7, there is recitals to the effect that the first defendant had executed a settlement deed 28.06.1999 only voluntarily. However, it is contended that the first defendant had executed another revocation deed dated 12.07.1999 which is marked as Ex.B8 and in which he had detailed how he was forced to execute the settlement dated 28.06.1999.

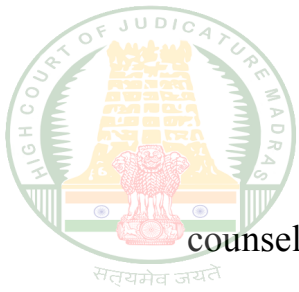


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14. Whenever a settlement deed has been executed by putting a condition that it is irrevocable, the executor of the said document would lose his right to revoke the same. Even if it is presumed that the executant needed to revoke the settlement deed especially for the reason that the earlier settlement deed has been obtained through force or threat, it would be spontaneous to mention those facts in the revocation deed executed subsequently. Even though the revocation deed has been executed two days after the settlement deed dated 28.06.1999, those facts were not stated in the revocation deed dated 30.06.1999. The first defendant had executed another revocation deed on 12.07.1999 just for mentioning that he has been kept under force and coercion to execute the settlement deed dated 28.06.1999. The second revocation deed dated 12.07.1999 is not only a redundant one, it is also patent that it has been executed as an after thought in order to create a make belief.

15. From the conduct of the first defendant it is seen that he had omitted to state all these facts spontaneously in the revocation deed executed by him on 30.06.1999. The criminal complaint given by him alleging threat and force is also not culminated into charge sheet or criminal case in order to come to the rescue of the first defendant. It is submitted by the learned



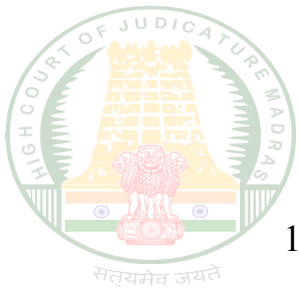
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counsel for the first defendant that the first defendant had let out the suit property even after the settlement deed dated 28.06.1999 and that would show that the same has not been acted upon.

16. Even according to the evidence and the pleadings of the first defendant, it was the first plaintiff who used to collect rent from the tenants and for the said purpose she used to visit the property. So that part of the evidence would also show that the settlement deed dated 28.06.1999 has been very much acted upon and the first plaintiff has the right to collect rent from the tenants even though the first defendant is said to have leased out the property to the tenant.

17. Though there may be loss of love and affection, in view of some matrimonial dispute between the first plaintiff and the first defendant, it is quite possible for the first defendant to make any security for the life of his own son, the second plaintiff, and hence the mentioning of the words “love and affection” could not be viewed so technically to arrive at a conclusion that these words did not carry any meaning, in view of the strange relationship between the first plaintiff and the first defendant.



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18. It is quite practical that the couples who do not live a happy married life can think prudent to make some arrangements in order to part away peacefully. The first plaintiff had submitted that the settlement deed has been executed only due to the intervention of some relatives and the family members after the first defendant had deserted the family. Under such circumstances it could have been possible for holding any negotiation and in consequence thereof the first defendant could have executed the settlement deed.

19. In any event, the burden is on the first defendant to prove that the settlement deed dated 28.06.1999 has been executed only out of threat or intimidation. The materials available on record do not have the strength to prove the above averment made by the first defendant. In the absence of the same the one and only conclusion that the courts can arrive is to declare that the cancellation deed dated 30.06.1999 is null and void.

20. As the courts below have approached both the legal issue and the appreciation of the evidence in a right perspective, I do not find the substantial question of law lies in favour of the appellant / first defendant.



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**WEB COPY** 21. In the result, the Second Appeal is dismissed and the judgment and decree in A.S.No.73 of 2011 on the file of the Sub-ordinate Judge, Poonamallee, dated 29.07.2013, is hereby confirmed and the suit in O.S.No.553 of 2001 on the file of District Munsif Court, Poonamallee, is decreed.

**03.01.2025**

Index:Yes/No  
Speaking Order / Non-speaking order  
Neutral Citation Case : Yes / No  
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To:

1. The Sub-ordinate Judge, Poonamallee.
2. The District Munsif Court, Poonamallee.



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**R.N.MANJULA, J.**

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