



S.A.Nos.1145 and 1149 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	29.07.2025
Pronounced on	19.09.2025

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A.Nos.1145 and 1149 of 2019

M. Kuppan

...Appellant in both S.As

Vs.

Kanniappan

...Respondent in both S.A.s

Prayer in S.A. No.1145 of 2019 : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 29.03.2019 passed in A.S. No.66 of 2010, on the file of the Additional District and Sessions Court, Kancheepuram District at Chengalpattu, reversing the Judgment and decree dated 03.08.2010 passed in O.S. No.174 of 2006, on the file of the Additional Subordinate Court, Chengalpattu.

Prayer in S.A. No.1149 of 2019 : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 29.03.2019 passed in A.S. No.67 of 2010, on the file of the Additional District and Sessions Court, Kancheepuram District at Chengalpattu, reversing the Judgment



S.A.Nos.1145 and 1149 of 2019

WEB COPY and decree dated 03.08.2010 passed in O.S. No.104 of 2005, on the file of the Additional Subordinate Court, Chengalpattu.

For Appellant : Ms. Ba. Nalini

for Mr.K.V. Babu in both the appeals

For Respondent : Mr.K.A. Mahendra Kumar in both the appeals

COMMON JUDGMENT

The above second appeals arises out of the common judgment and decree dated 29.03.2019 passed in A.S. No.66 of 2010 and A.S. No.67 of 2010 on the file of the Additional District & Sessions Judge, Kancheepuram, Chengalpattu, reversing the common judgment and decree dated 03.08.2010 in O.S. No.104/2005 & O.S. No.174/2006 on the file of the Additional Subordinate Judge, Chengalpattu.

2. One Kanniappan (respondent herein) filed a suit in O.S.No.174/2006 for declaration of title and for permanent injunction against Saraswathi Ammal and Kuppan (appellant herein) and the said Saraswathi Ammal filed a suit in O.S. No.104/2005 against Kanniappan



S.A.Nos.1145 and 1149 of 2019

WEB COPY seeking for cancellation of the settlement deed dated 30.12.2004 in favour of the defendant therein and for permanent injunction restraining him from interfering with her peaceful possession and enjoyment of the suit property.

3. For the sake of convenience, the parties are referred to as per their ranking in O.S. No.174/2006.

4. The case of the plaintiff (respondent herein) in O.S.174/2006 is as follows:

4.1. The plaintiff is the absolute and exclusive owner of the suit property. He got the same by way of a Registered settlement deed dt. 30.12.2004 executed by his mother Saraswathi Ammal. The Settlement is true, valid and acted upon. Patta No.219 for the suit property stands in the name of Saraswathi Ammal for the suit properties. The 2nd Defendant is alleged to have purchased the suit property from the 1st defendant and made an attempt to interfere with the Plaintiff's peaceful possession and



S.A.Nos.1145 and 1149 of 2019

enjoyment of the suit property. Hence the suit is for declaration of title and for permanent injunction.

4.2. The 1st defendant resisted the claim of the plaintiff by stating that there is no prayer against her, but she has been added as a party without any reason. She further stated that she was the absolute and exclusive owner of the suit properties. She purchased 0.67 cents of land out of 5 acres 40 cents in S.No.54/1 under two Registered sale deeds dated 5.3.1973 and 22.3.1973. After purchase, patta has been transferred in her name and S.No.54/1 has been Sub Divided into 54/1B. 0.22.0 hect., and S.No.54/1D. 0.33.0. hect., After purchase she dug up a well and also put up 3 H.P. Motor pump set in items 2 and 3 of the schedule and obtained Service connection in her name. It is further stated that she has been in possession and enjoyment of the said items from the date of purchase. She further stated that she is 70 years old and an illiterate women having less vision and is suffering from paralytic attack and staying with her daughter Sinthamany at Guduvancheri. During the 3rd week of December 2004, the plaintiff took her to his house in Chennai



S.A.Nos.1145 and 1149 of 2019

WEB COPY

for giving treatment for her ailments. During her stay at Chennai the plaintiff fraudulently created a document styled as Settlement deed without her knowledge. She does not know the contents of the document, and the same was not explained to her. According to her it is a sham, nominal and fraudulent document. The plaintiff refused to sign the document. But the plaintiff affixed her Left Thumb Impression without her consent. The alleged settlement deed did not see the light of the day. It was not accepted and acted upon. On 27.1.2005 with great difficulty and with the help of her son-in-law she went to Sub Registrar Office, Thirukkalukkundram and cancelled the settlement deed alleged to have been obtained on 30.12.2004 in a fraudulent manner. After cancellation, she executed a registered power deed on 03.02.2005 in favour of her son-in-law, namely T. Jothi. The said Power agent has sold the suit property to the 2nd defendant and now the 2nd defendant is in possession. Thereafter, the respondent/plaintiff issued a notice on 7.2.2005, for which she replied on 11.2.2005. Hence prayed for dismissal of the suit with costs.



S.A.Nos.1145 and 1149 of 2019

WEB COPY 5. The 2nd defendant resisted the claim of the plaintiff by stating that the 1st defendant has given a power of attorney to one P.Jothi son of Purushothaman Naicker under Registered Power of attorney deed dated 3.2.2005. The said power agent has sold the suit property to him and now he is in possession of the suit property. To avoid technical flaw, the 1st defendant has also filed a suit OS No.104/05 on the file of Additional Sub Court, Chengalpattu for cancellation of the settlement deed obtained by the plaintiff on 30/12/2004 registered under document No.4228/2004 SRO Thirukkalukundram. From the date of purchase, the 2nd defendant alone is in possession and enjoyment of the suit property. The alleged settlement deed in favour of the plaintiff has been duly cancelled by the 1st defendant. In fact the possession is always with the 1st defendant. Hence the alleged settlement deed is not accepted and acted upon. In any event, he is a bonafide purchaser for value and his right has to be protected and prayed for dismissal of the suit.

6. Saraswathi Ammal, the 1st defendant in O.S.174/2006 filed a suit in O.S. No.104/2005 against Kanniappan, the plaintiff in O.S.



S.A.Nos.1145 and 1149 of 2019

WEB COPY No.176/2006, seeking for cancellation of the settlement deed dated 30.12.2004 executed in his favour and for permanent injunction restraining him from interfering with her peaceful possession and enjoyment of the suit property by taking the same plea as found in the written statement filed by her in O.S. No.174 of 2006. The defendant in the said suit had taken the same plea as found in the plaint in O.S. No.174 of 2006.

7. The trial court, vide its judgment and decree dated 03.08.2010, decreed the suit in O.S. No.104/2005 and dismissed the suit in O.S. No.174/2006. Aggrieved by this, Kanniappan filed A.S. Nos.66 and 67 of 2010 before the Additional District & Sessions Judge, Kancheepuram, Chengalpattu. During the pendency of the appeal suits Saraswathi Ammal died. The first appellate court, vide its common judgment and decree dated 29.03.2019, reversed the findings of the trial court and allowed the appeals. Aggrieved by this Kuppan (2nd defendant in O.S. No.174/2006) preferred the present second appeals.



S.A.Nos.1145 and 1149 of 2019

WEB COPY 8. The Second Appeal No.1145 of 2019 has been admitted on the following substantial questions of law:

"a) Whether the judgment and decree of the lower appellate Court in granting the relief of declaration and permanent injunction sought for by the 1st respondent herein are based upon perverse findings and conclusions and misdirected against the evidence on record and also against the principle of law pertaining to the facts of the case?

b) Whether the lower Appellate Court is correct in holding that the settlement deed is valid when late Saraswathi Ammal and the appellant herein have clearly proved that the settlement deed was never accepted and acted upon by the settlee as per Section 123 of the Transfer of Property Act?"



S.A.Nos.1145 and 1149 of 2019

WEB COPY 9. The Second Appeal No.1149 of 2019 has been admitted on the following substantial questions of law:

"a) Whether the judgment and decree of the lower Appellate Court in not granting the relief of cancellation of settlement deed and permanent injunction sought for by the late Saraswathi Ammal are based upon perverse findings and conclusions and misdirected against the evidence on record and also against the principle of law pertaining to the facts of the case?

b) Whether the lower Appellate Court is correct in holding that the settlement deed is valid when late Saraswathi Ammal and the appellant herein have clearly proved that the settlement deed was never accepted and acted upon by the settle as per Section 123 of the Transfer of Property Act?"



S.A.Nos.1145 and 1149 of 2019

WEB COPY 10. The learned counsel for the appellant submits that the settlement deed executed on 30.12.2004 by the late Saraswathi Ammal in favour of the respondent was an outcome of mis-representation and fraud played by the respondent. The said settlement deed was never accepted and acted upon by the settlee as per Section 123 of the Transfer of Property Act, 1882. The cancellation deed dated 27.01.2005 was never challenged before the trial court. While so, the first appellate court ought not to have reversed the judgment of the trial court by relying upon an untenable contention that the reason stated in the cancellation deed is not admissible. Her further contention is that none of the attesting witnesses to the settlement deed were examined before the trial court by the respondent as required under Section 68 of the Indian Evidence Act. The trial court has rightly held that when the execution of the settlement deed was subsequently denied by late Saraswathi Ammal, it is mandatory for the respondent to examine atleast one attesting witness to prove the validity and genuineness of the settlement deed, which the respondent has miserably failed to do so. Her further contention is that the respondent neglected his parents and therefore there is no necessity for

Page 10 of 24



S.A.Nos.1145 and 1149 of 2019

WEB COPY

Saraswathi Ammal to execute the settlement deed in favour of the respondent. In fact, the respondent who filed the suit in O.S.No.24/2005 on the file of the Munsif Court, Thirukazhukundram, has intentionally not whispered about the cancellation deed executed by Saraswathi Ammal. The possession of the property was only with Saraswathi Ammal till her demise and all the revenue records stood in the name of Saraswathi Ammal till her death would establish the fact that the alleged settlement deed executed in favour of the respondent was not accepted and acted upon. Since the said Saraswathi Ammal was an aged and illiterate woman severely affected by paralytic attack, she was misrepresented and dragged on to the office of Sub Registrar by the respondent for the purpose of executing settlement deed without explaining the contents of the documents. The first appellate court ought to have considered all the above facts and should have held that the execution of the settlement deed is unenforceable in law. While so, the first appellate court erroneously shifted the burden on Saraswathi Ammal to prove the execution of the document whereas the burden of proof is only on the party who claims title on the strength of the document.



S.A.Nos.1145 and 1149 of 2019

WEB COPY 10.1. The learned counsel for the appellant/2nd defendant in O.S.

No.174/2006 submits that, when the validity of the settlement deed itself is challenged on the ground of fraud and coercion and in the absence of establishment of the validity of settlement deed, the question of validity of cancellation will not arise for consideration. Only after proving the validity of the settlement deed and if it is found to be valid, only then the question of validity of cancellation have to be considered. She would further contend that a person claiming title under the settlement deed, must prove the attestation as per Section 68 of the Indian Evidence Act. In the present case, the settlement deed has not been proved as required under the law. She would further submit that in the event of neglecting the senior citizen, the deed of settlement or gift is liable to be annulled. To support her contention, she relied on the following judgments:

- i. P. Sivabushanam and ors vs. E. Sivamani and ors reported in MANU/TN/2337/2012*
- ii. C. Velu and two ors vs. P. Subramanian reported in 2009 (6) CTC 78.*



S.A.Nos.1145 and 1149 of 2019

WEB COPY **iii. S. Mala vs. District Arbitrator & District Collector, Nagapattinam**

and ors reported in MANU/TN/1339/2025

Hence, he prayed to set aside the judgment and decree passed by the first appellate court.

11. On the other hand, the learned counsel for the respondent would submit that the mother of the respondent Saraswathi Ammal purchased the property under two registered sale deeds dated 05.03.1973 and 22.03.1973 marked as Ex.A1 and Ex.A2. She then executed a settlement deed under Ex.A3 dated 30.12.2004 in favour of her son, the respondent herein, the property measuring 1 acre 43 cents in S.Nos 54/1B and 54/1D respectively. Thereafter on 27.01.2005 she executed a deed of cancellation within one month from the date of execution of the above settlement deed on 30.12.2004 unilaterally without the consent of the respondent herein. No recital pertaining to illiteracy, poor eye sight, fraud and coercion thereon was found in the cancellation deed, but, it is only mentioned that the same was cancelled for want of money. She then executed a Power of Attorney on 03.02.2005 in favour of his son-in-law,



S.A.Nos.1145 and 1149 of 2019

WEB COPY namely P. Jothi, and registered the same. The said General Power of Attorney was not marked as exhibit in the above suits.

11.1. It is further contended that, on 07.02.2005, under Ex.B6 Saraswathi Ammal issued a legal notice subsequent to execution of general power of attorney informing that the settlement deed has been cancelled. Even in the said notice, nothing is whispered about fraud, coercion, forceable obtainment of thumb impression by the respondent, but execution of settlement deed in favour of the respondent was admitted therein. The respondent replied under Ex.B7 reply notice stating that the settlement deed is acted upon and he is in possession of the property. Thereafter, the power of attorney of Saraswathi Ammal executed a registered sale deed on 18.02.2005 in favour of Kuppan, the appellant herein who is the adjacent land owner, by suppressing the facts of issuance of notice and reply notice by the respondent herein, which is prior to the date of sale deed. The alleged sale transaction has been done with ulterior motive. On 25.04.2005, the said Saraswathi Ammal issued another legal notice under Ex.A5 to the respondent subsequent to the

Page 14 of 24



S.A.Nos.1145 and 1149 of 2019

WEB COPY

filing of the suit in O.S. No.24/2005 on the file of the District Munsif, Thirukazhukundram by the respondent herein. Only in the said notice all the fraudulent allegations were made against the respondent which is total contra to her earlier notice and cancellation deed. The above allegations were not substantiated either by oral or documentary evidence before the trial court. The respondent has filed a suit in O.S. No.24/2005 which was transferred and renumbered as O.S. No.174 /2006 on the file of the Sub Court, Chengalpattu against Saraswathi Ammal and the present appellant/2nd defendant for declaration of respondent's title and for permanent injunction. Even in the settlement deed, Saraswathi Ammal has stated that possession has been handed over to the respondent on the date of execution of the settlement deed itself. She had also handed over all the original title deed to the respondent/plaintiff. However, within one month, at the instigation of her daughter, she had executed the cancellation deed which exposes ulterior motive.

11.2. Subsequent to the cancellation of settlement deed unilaterally, Sarraswathi Ammal filed a suit in O.S. No.104/2005 before



S.A.Nos.1145 and 1149 of 2019

WEB COM

the Sub Court, Chengalpattu, for the relief of cancellation of settlement deed executed by her in favour of the respondent and for permanent injunction not to interfere in the possession . However, prior to filing of the suit, she had executed cancellation deed and her power of attorney has executed a sale deed in favour of the appellant herein, which implies that the said Saraswathi Ammal ceased to be owner of the property and that she has no *locus standi* to file the suit as the owner of the property. Suppressing the material fact about the issuance of earlier notice dated 07.02.2005 and the reply notice dated 11.02.2005 by the respondent herein nor about the execution of power of attorney and the sale deed in favour of the appellant, the above suit was filed and moreover, the said Saraswathi Ammal failed to include the aforesaid documents in the above suit. The appellant herein is not a party to the above suit in O.S. No.104/2005. The suits in O.S. Nos.104/2005 and 174/2006 were tried jointly. In the cross examination the said Saraswathi Ammal admitted that she is not aware of execution of General Power of Attorney in favour of his son-in-law nor about the subsequent sale deed in favour of the appellant herein and she had also admitted that she has neither given any



S.A.Nos.1145 and 1149 of 2019

police complaint about the fraud and theft nor about the theft of documents against the respondent. She further deposed that she was not aware of the contents of the cancellation deed nor she had knowledge about who had instructed for the drafting of cancellation deed and that she has not instructed anybody to sell the property. Further she had also deposed that she was not aware of the advocate who had drafted the cancellation deed. After full fledged trial, the suit in O.S. No.174/2006 filed by the respondent herein was dismissed and the suit in O.S. No.104/2005 was decreed. In the circumstances, the respondent Kanniappan preferred the appeal suits in A.S. No.66/2010 and 67/2010 on the file of the Additional District and Sessions Judge, Kancheepuram, Chengalpattu. During the pendency of the first appeal, the said Saraswathi Ammal died on 06.02.2011. Since she had already transferred the property she had no right or claim over the property. Hence, her legal heirs were not impleaded. However, the alleged purchaser Kuppan, the appellant herein, was impleaded as party to the proceedings. The first appellate court reversed the judgment and decree dated 03.08.2010 in O.S. No.104/2005 & O.S. No.174/2006 on the file of

Page 17 of 24



S.A.Nos.1145 and 1149 of 2019

WEB COPY

the Additional Subordinate Judge, Chengalpattu, against which the present second appeals have been preferred by Kuppan, the 2nd defendant in O.S. No.174/2006, before this Court.

11.3. It is further submitted that the appellant herein has no *locus standi* to claim any right in the suit filed by Saraswathi Ammal, who was not having any right or interest over the property at the time of filing of the suit. It is further contended that till date no declaration suit has been filed by the appellant herein. Therefore, the appellant has no *locus standi* to prosecute the appeals.

11.4. Thus the learned counsel for the respondent submits that, the unilateral cancellation of settlement deed is impermissible in law and that after transfer of title in favour of the plaintiff in O.S. No.174/2006, the settlor, the mother of the plaintiff, who is the 1st defendant in the above suit and plaintiff in O.S.No.104/2005 has no right to cancel the settlement deed executed in the absence of any specific covenant in the deed of settlement. He would further contend that in the case of



S.A.Nos.1145 and 1149 of 2019

allegation of fraud and mis-representation, the burden lies upon the 1st defendant, the mother of the plaintiff to prove which she has failed to do so. To support his contention he relied on the following decisions.

- i. M/s. Latif Estate Line India Ltd. vs. Mrs. Hadeeja Ammal reported in AIR 2011 MADRAS 66.*
- ii. Order of this court dated 10.10.2018 in W.P. No.27342 of 2016 (N. Vijaya Baskar vs. A. Gokul Anand and 5 others).*
- iii. Daya Ram vs. Smt. Lakshmina & ors reported in 2008 SCC Online All 170.*

Besides that, there is no question of law in the present second appeals much less substantial questions of law. Hence, prayed for dismissal of the second appeals.

12. Heard on both sides.

13. It is not in dispute that the respondent herein filed a suit in O.S.No.174/2006 before the Sub Court, Kancheepuram, Chengalpattu against his mother Saraswathi Ammal and Kuppan (appellant herein) for



S.A.Nos.1145 and 1149 of 2019

WEB COPY

declaration of his title and for permanent injunction. It is also not in dispute that the said Saraswathi Ammal filed a suit in O.S. No.104/2005 before the same court against the respondent herein for the relief of cancellation of settlement deed and for permanent injunction not to interfere with her possession. The trial court after full fledged trial dismissed the suit filed by the respondent herein in O.S. No.174/2006 and decreed the suit filed by Saraswathi Ammal in O.S. No.104/2005. On perusal of records, it is seen that, even prior to the filing of suit by Saraswathi Ammal in O.S. No.104/2005 she had executed a settlement deed, cancellation deed and a sale deed in favour of Kuppan, the appellant herein, through her power agent. While so, the said Saraswathi Ammal had no *locus standi* to file the suit when she ceased to be the owner of the property. Moreover, on a bare perusal of the plaint filed in O.S. No.104/2005, it is seen that she has suppressed the earlier notice dated 07.02.2005 sent to the respondent herein and a reply notice dated 11.02.2005 sent by the respondent. Moreover, execution of general power of attorney or sale deed in favour of Kuppan was also not stated by her in the said plaint. The first appellate court rightly dismissed the



S.A.Nos.1145 and 1149 of 2019

WEB COPY
suit filed by Saraswathi Ammal. Moreover, the said Saraswathi Ammal, neither in the cancellation deed nor in her legal notice dated 07.02.2005, whispered about the alleged coercion and threat by the respondent herein. In the cancellation deed, it is only mentioned that she has cancelled the settlement deed executed in favour of her son for want of money. Since the factum of fraud, coercion and the factum of neglecting the mother was not established by the defendants in O.S. No.174/2006, the judgments relied upon by the learned counsel for the appellant is not applicable in the present case. As rightly pointed out by the learned counsel for the respondent/plaintiff in O.S. No.174/2006, after transferring the title in favour the respondent and in the absence of any specific covenant in the settlement deed, the settlor has no right to unilaterally cancel the settlement deed in favour of the respondent/plaintiff. Moreover, the allegation of fraud and coercion was also not established by the appellant/2nd defendant.

14. The first appellate court, based on the records and materials placed before it and by analyzing the oral and documentary evidence, has



S.A.Nos.1145 and 1149 of 2019

WEB COM

rightly concluded that the unilateral cancellation of the settlement deed by Saraswathi Ammal, is against the well settled law. Considering the fact that the respondent alone is in possession of the suit property, the first appellate court has rightly held that the settlement deed was accepted and acted upon by the settllee as per section 123 of Transfer of property Act and accordingly granted the relief of declaration and permanent injunction as sought for by the respondent herein and rightly dismissed the suit filed by Saraswathi Ammal for the relief of cancellation of settlement deed and permanent injunction by holding that she has no *locus standi* to file the above suit since she ceased to be the owner of the property. No infirmity or perversity is found in the said finding of the first appellate court, which warrants any interference by this Court. Moreover, the questions of law framed in the second appeals are more of factual aspects and no question of law arises much less substantial question of law to be determined in the present second appeals.



S.A.Nos.1145 and 1149 of 2019

WEB COPY 15. In the result,

- i. The Second Appeals are dismissed. No costs.
- ii. The Common judgment and decree dated 29.03.2019 passed in A.S. No.66 of 2010 and A.S. No.67 of 2010 on the file of the Additional District & Sessions Judge, Kancheepuram, Chengalpattu, is upheld.

19.09.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To

1. The Additional District & Sessions Judge,
Kancheepuram, Chengalpattu
2. The Additional Subordinate Judge, Chengalpattu .
3. The Section Officer, VR Section, High Court, Madras.



WEB COPY



S.A.Nos.1145 and 1149 of 2019

K.GOVINDARAJAN THILAKAVADI,J.
bga

Pre-delivery common judgment in
S.A.Nos.1145 and 1149 of 2019

19.09.2025