



WEB COPY



A.S.No.155 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2025

CORAM:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

A.S.No.155 of 2022

J.Bindhu @ Bindupriya

...Appellant/Plaintiff

Vs.

1. J.Amsa

2. J.Rajesh

3 J.Indhupriya

...Respondents/Defendants

PRAYER: Appeal Suit filed under Section 96 of Code of Civil Procedure to set aside the Judgment and decree dated 19.03.2019 made in O.S.No.1297 of 2014 by the Learned IV Additional Judge, City Civil Court, Chennai as far as the suit schedule A property is concerned by allowing this appeal with costs throughout.

For Appellant : Mr.J.Kamaraj

For Respondents : M/s.R.S.Maitreya, for R1 & R2
: Mr.M.Muralidharan, for R3



A.S.No.155 of 2022

WEB COPY

JUDGMENT

The present Appeal suit has been filed against the Judgment and decree dated 19.03.2019 made in O.S.No.1297 of 2014 on the file of the learned IV Additional Judge, City Civil Court, Chennai.

2. The appellant/plaintiff is the first wife daughter of Jayapal. Suit is against the second wife, her son and first wife second daughter of the said Jayapal.

3. Suit for partition on the ground that the plaintiff's father Jayapal married one Chandra and begotten two daughters, one, the plaintiff and another, the third defendant. After the death of Chandra on 28.09.1982, her father Jayapal married the first defendant, Amsa in the year 1985 and the second defendant is the son born through Amsa. The property held by her father, on his death, devolved upon the two daughters born to the first wife, his second wife Amsa/the 1st respondent and her son/the 2nd defendant. During the lifetime, the plaintiff's mother contributed her



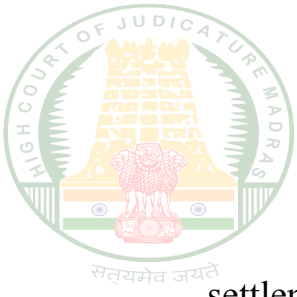
A.S.No.155 of 2022

WEB COPY

money to purchase the suit land and to put superstructure over the same.

4. According to the plaintiff, she and the third defendant are daughters born through the first wife, presently married and living with their respective husband. Whiles, Jayapal was living with his second wife and second defendant/son born through the second wife. He was suffering from intestine disorder and was taken to the hospital unconscious in the month of September 2012. Even after discharge, he was not keeping good health and his health was deteriorating and finally he died on 07.12.2012.

5. The second defendant, claiming that Jayapal has executed a settlement deed on 07.11.2012, month before his death, trying to deprive the rights of the plaintiff and her full blood sister/the third defendant, who are also Class I legal heirs of Jayapal along with 1st and 2nd defendants. Hence the suit by the plaintiff for declaring the registered



A.S.No.155 of 2022

WEB COPY

settlement deed dated 07.11.2012 as null and void and to divide the suit property into four equal shares and allot one to the plaintiff.

6. The suit has been contested by the defendants 1 & 2 admitting that the plaintiff is the daughter of Jayapal born through his first wife Chandra. On demise of his first wife, the said Jayapal married the first defendant, Amsa. The second defendant was born to them in the year 1987. 'A' Schedule property and 'B' Schedule property were purchased by Jayapal from his own income as he was employed in Handicraft Handloom Export Corporation and it was his personal property. The third defendant got herself converted to Islam and got married to one Mohammed Farook in the year 2003, changing her name as Yasminbanu and living separately. The plaintiff got married in the same year and enough Shreedhana was given to her by her father Jayapal. Since then, she is living separately with her husband. Even when Jayapal fell ill, she did not take care of him and it was the 1st & 2nd defendants who took care of Jayapal till his death.



WEB COPY

7. As far as 'A' schedule property is concerned, under the registered settlement deed, it was gifted to the 2nd defendant, reserving life interest to the first defendant. The plaintiff is well aware of the settlement deed and at the time of first death anniversary of Jayapal, the legal heirs of Jayapal decided to share the 'B' schedule property which was left by Jayapal interstate. However, the plaintiff, claiming right over the 'A' schedule property also, had come out with suit for partition in respect of both 'A' & 'B' schedule property.

8. The Trial Court, based on the pleadings framed the following issues:-

“1. Whether the plaintiff is entitled for declaration that the settlement deed dated 07.11.2012 as Doc.No.3463/2012 is null and void and not binding on the plaintiff ?

2. Whether the plaintiff is entitled for partition and to 1/4th share of suit property as prayed for ?

3. To what other relief the parties are entitled ?”



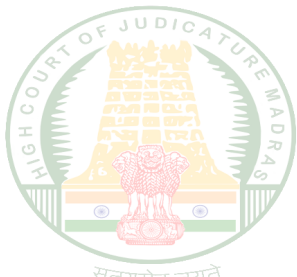
A.S.No.155 of 2022

WEB COPY

9. To prove their respective case, on behalf of the plaintiff, ten documents viz., exhibits A1 to A10 were marked through plaintiff and on behalf of the defendants, sixteen documents were marked through the 2nd defendant. The Trial Court, after considering the evidence, partly allowed the suit holding that, insofar as 'A' Schedule property, the 2nd defendant had established that it was purchased by Jayapal from out of his own income and he had voluntarily settled the 'A' Schedule property in favour of his son, the second defendant herein, which is genuine and binding.

10. As far as 'B' Schedule property is concerned, the Trial Court has found that it has been left interstate by Jayapal and therefore, being the daughter of Jayapal born through his deceased first wife, held that, the plaintiff is entitled for 1/4th share.

11. Being aggrieved by the above judgment, the present appeal suit has been filed by the plaintiff stating that she is entitled for a share in the 'A' schedule property also, which is more valuable than 'B' schedule property and there is no reason for her father to exclude her and her full



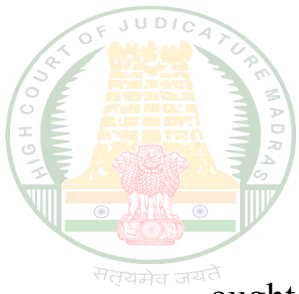
A.S.No.155 of 2022

blood sister, the third defendant from inheriting that property.

WEB COPY

12. Raising suspicion over the settlement deed dated 07.11.2012 on the ground that the settlement deed was executed after Jayapal admitted in the hospital unconcious and he died within a month from executing the settlement deed. Therefore, element of undue influence and durus cannot be eliminated. Further it is contended that, the Trial Court erred in shifting the burden of proving the settlement deed on the plaintiff instead of the 2nd defendant, who claims rights through the said settlement deed.

13. Learned counsel for the appellant, reiterating the grounds of appeals, submitted that the first defendant, who is the second wife of a deceased Jayapal had not mounted the witness box to speak about the health condition of her husband during the relevant period. Having proved that Jayapal was not keeping good health during the relevant point of time and died within a month after executing the said registered settlement deed, the suspicious circumstances over the settlement deed



A.S.No.155 of 2022

WEB COPY

ought to have been cleared by the 2nd defendant, the beneficiary under the settlement deed and not by the plaintiff. A case of fraudulent settlement deed excluding the lawful Legal heirs from inheritance *prima facie* was made out. The defendants 1 and 2 had not discharged the onus of proof.

14. Per contra, the learned counsel appearing for the respondents 1 & 2 submitted that enough financial support was given to the plaintiff by her father Jayapal and the same is well proved through the bank transactions which are marked as Exhibit B4 and it is not the case of the plaintiff that she was not provided with any financial assistance by her father. As far as the settlement deed is concerned, it has been voluntarily executed by the Jayapal stating reasons and got duly registered.

15. The point for consideration is whether the settlement deed dated 07.11.2012 marked as Exhibit A8, a valid document?

16. It is a registered document executed on 07.11.2012. The



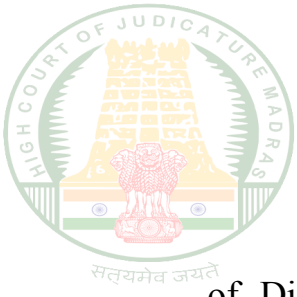
A.S.No.155 of 2022

WEB COPY

execution of the document has been witnessed by two persons. The recital of the settlement deed narrates how Jayapal acquired the property and from whom he had acquired the property. He has also explained the reason why he wants to settle the 'A' schedule property in favour of the second defendant, reserving life interest to the first defendant.

17. It is correct, in the settlement deed there is no reference about the first wife of Jayapal or his two wife children born through his first wife, who are the plaintiff and the 3rd defendant and the 2nd defendant had not examined any of the attesting witnesses. This cannot be a reason to suspect the duly registered settlement deed. When the statute does not mandate to examine the attesting witnesses to prove a registered gift deed, the document otherwise proved is valid.

18. Likewise, the due execution of the deed, Ex.A.8 cannot be suspected merely because of the medical history of Jayapal, which is reflected in Exs.A7 & A9. The Scrutiny of the Medical history of Jayapal as found in Ex.A7 dated 13.09.2012 indicates that he is a known patient



A.S.No.155 of 2022

WEB COPY

of Diabetes mellitus, Hypertension, Coronary artery disease and the investigation done disclose Anemia, Mild Hyperbilirubinemia. There is no indication that the said ailments had affected his mental capacity to take decision. Just because a person was not keeping good health, it does not mean that he was not in good state of mind.

19. It is also to be noted that the necessity to settle the property held by a person mostly arise when he encounters fear of death. Therefore, neither his illness nor his death within one month of executing the settlement deed dated 07.11.2012 will render the deed to be invalid. More so, when the married daughters living separately and have been provided with enough financial support by Jayapal as found from the Bank statement of account, this Court finds that the Trial Court has rightly dismissed the claim of the partition in respect of 'A' schedule property and allowed the same in respect of 'B' schedule property.



A.S.No.155 of 2022

WEB COPY

20. In the light of the above discussion, the Trial Court Judgment and decree dated 19.03.2019 made in O.S.No.1297 of 2014 on the file of the learned IV Additional Judge, City Civil Court, Chennai is confirmed and in the result, this Appeal Suit stands dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

09.07.2025

skt

Index: Yes/No

Speaking/Non Speaking order

Internet: Yes

Neutral Citation: Yes/No

To:

1. The II Additional District Judge,
Vellore at Ranipet.
2. The Section Officer,
High Court of Madras, Chennai.



WEB COPY



A.S.No.155 of 2022

DR.G.JAYACHANDRAN, J.

skt

A.S.No.155 of 2022

09.07.2025