

AS.No.857 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2025

CORAM

THE HONOURABLE MR.JUSTICE M. JOTHIRAMAN

AS.No.857 of 2018

1.N.Kasthuri

2.E.Saroja

...Appellants/Defendants 2 and 3

Vs.

D.Marimuthu (Died)

...Respondent/1st Defendant

M.Ramalingam

...Respondent/Plaintiff

Prayer : This First Appeal is filed under Section 96 r/w. Order 41 Rule 1 Code of Civil Procedure 1908, against the judgment and decree dated 13.09.2017 passed in O.S.No.29 of 2013 by the Principal District and Sessions Court, Tiruvallur.

For Appellants : Mr.S.Gunaseelan

For Respondent : Mr.K.B.Vivekanandhan

J U D G M E N T

The unsuccessful defendants 2 and 3 have preferred this appeal. The suit is filed for declaration of title and for permanent injunction. The trial Court decreed the suit as prayed for.



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2. The parties are referred to according to their litigative status before the trial Court.

3. The brief case of the plaintiff is as follows:

The plaintiff is the only son of the first defendant/D.Marimuthu. The defendants 2 and 3 are the sisters of the plaintiff. The first defendant purchased the suit schedule property from one G.Kuppuswamy. The first defendant has built a tiled house in a portion of the suit schedule property and later, the first defendant gifted the suit schedule property in favour of the plaintiff under a registered settlement deed dated 12.04.1990. The plaintiff dismantled the thatched house and constructed a terrace house in the year 1994. Thus, the plaintiff is in exclusive possession and enjoyment of the suit schedule property from the year 1990 onwards as separate and absolute possession without any hindrance. The plaintiff is the only son of the first defendant and hence, out of love and affection, the first defendant settled the suit schedule property in favour of him. The said settlement deed was acted upon and the settler has no interest or right over the same. While so, due to misunderstanding, the first



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defendant seems to have cancelled the settlement deed, without consent and knowledge of the plaintiff and taking advantage of the cancellation of the settlement deed, the defendants 2 and 3 are trying to interfere with the plaintiff's possession.

4. Pending the suit, the first defendant/D.Marimuthu died on 13.02.2010, leaving behind the plaintiff and the defendants 2 and 3. The defendants 2 and 3 have been recognised as legal representatives of the first defendant.

5. The written statement was filed by the first defendant which was adopted by the third defendant and the third defendant also filed additional written statement. The second defendant remained absent and was set *ex-parte*.

6. The brief case of the defendants is as follows:

The suit property is the absolute property of the first defendant. It is true that the first defendant constructed a house in the suit property. The settlement deed dated 12.04.1990 was obtained by the plaintiff from



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the first defendant under undue influence as if for the purpose of obtaining loan. The first defendant never intended to settle the suit property to the plaintiff. The allegation that the plaintiff constructed the house in the property was denied. At the time of filing the suit, the plaintiff is not the absolute owner of the suit schedule property because the settlement deed dated 12.04.1990 was cancelled by the first defendant and subsequently, on 16.07.2009, the first defendant executed a settlement deed in favour of the plaintiff, second and third defendants settling the suit schedule property equally. Without challenging the cancellation of settlement deed dated 16.07.2009 and the further settlement deed dated 16.07.2009, the plaintiff could not seek a remedy for declaration of title. The suit property was not settled out of love and affection in favour of the plaintiff. The plaintiff has also agreed to give shares in the suit property to his sisters but later refused to give share and also severely beaten the first defendant in his old age and thrown him in the street. During the enquiry before the Welfare Officer and other officers, the plaintiff admitted the shares of the defendants 2 and 3 in the suit schedule property.



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7. Based on the above pleadings, the trial Court has framed the following issues:

1. Whether the Settlement dated 12.04.1990 was received under undue influence?

2. Whether the first defendant (died) is estopped after the cancellation of the Settlement dated 12.04.1990 ?

3. Whether the plaintiff's case would be affected in the absence of the plaintiff claiming any relief as against the Settlement Cancellation Deed dated 16.07.2009 and the consequential Settlement dated 16.07.2009 executed in favour of the plaintiff, 2nd and 3rd defendant ?

4. Whether it is true that the Settlement dated 12.04.1990 was acted upon?

5. Whether the parties to the Suit are entitled to any other reliefs?

8. During the trial, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and one S.Kumaresan was examined as P.W.2 and Ex.A1 to Ex.A33 were marked. On the side of the defendants, the third defendant/Saroja herself was examined as D.W.1 and Latha, Social Welfare Officer, was examined as D.W.2 and Ex.B1 to Ex.B5 were marked. Ex.C1 also was marked as Court document.



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9. The findings of the trial Court:-

There is no recital found in the settlement deed with regard to cancellation of the said deed and the settlement deed was executed with sound mind and able body by the first defendant. The defendants have failed to establish that the settlement deed was executed under fraud, coercion and undue influence. The plaintiff has proved the case and was entitled to the relief as prayed for.

10. The point for determination arises in this appeal is

- (i) whether the plaintiff is entitled for the relief of declaration? and
- (ii) whether the unilateral cancellation of the settlement deed executed by the first defendant is valid?

11. The learned counsel appearing for the appellants/ defendants 2 and 3 would submit that the first defendant had executed a settlement deed in favour of the plaintiff on 12.04.1990 only to an extent of 2,180 sq.ft, whereas, the plaintiff had sought for declaration of title to an extent of 3,687.5 sq.ft. There are no revenue records filed by the plaintiff to



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claim title in respect of 3,687.5 sq.ft of land. The first defendant cancelled the settlement deed on 16.07.2009 and on the same day, the first defendant executed another settlement deed in favour of the plaintiff, second and third defendants. The plaintiff has not challenged the cancellation of the settlement deed and the subsequent settlement deeds executed in favour of the plaintiff, second and third defendants. The plaintiff has no legal right to claim declaration of title without declaring that the cancellation of settlement deed is null and void. To strengthen their contentions, he relied on the judgment of the Hon'ble Supreme Court of India reported in the case of ***Hussain Ahmed Choudhury and others vs. Habibur Rahman (Dead) through legal heirs and others***, reported in ***2025 INSC 553*** to show that filing a suit for cancellation of a sale deed and seeking a declaration that a particular document is inoperative as against the plaintiff are two distinct and separate suits.

12. The learned counsel would further submit that the first defendant has given a complaint to the Social Welfare Officer and during the enquiry, the plaintiff stated that he will give share to the defendants 2



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and 3. When the defendants pleaded that the settlement deed is not out of love and affection and it was received from him by way of fraud, the first defendant is entitled to cancel the settlement deed. To strengthen their contentions, he relied on the judgment of this Court reported in the case of *N.Nagarajan and others vs. Schekar Raj* reported in *MANU/TN/7393/2022* to show that the settlement deed can be cancelled unilaterally, when the plaintiff has failed to maintain his father. Also yet another judgment in the case of *S.Rajan vs. R.Srinivasan and others* reported in *MANU/TN/1268/2025* was relied to show that love and affection being the consideration for settling the properties, the condition to maintain the senior citizen is an implied condition under Section 23(1) of the Senior Citizens Act and non maintenance of senior citizens would entitle them to file a complaint.

13. *Per contra*, the learned counsel appearing for the respondent/plaintiff would submit that the settlement deed was executed by the first defendant in favour of the plaintiff out of love and affection in the year 1990 and the plaintiff demolished thatched house and constructed a terrace house in the suit property, out of his self-earnings



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and he has paid the property tax to the Municipality. The plaintiff is in exclusive possession and enjoyment of the suit schedule property from the year 1990 without any hindrance. The Settlement Deed was acted upon and the gift was also accepted by the plaintiff. The first defendant was a retired Railway employee and got pension of Rs.6,000/- per month. Hence, the question of maintaining him does not arise and the averments stated in the cancellation deed is not correct and valid one. The first defendant is estopped from cancelling the settlement deed under the principles of estoppel. The first defendant has no right to cancel the settlement deed which was executed 20 years ago in favour of the plaintiff and which was already acted upon. There is no reason to interfere with the judgment and decree of the trial Court. To strengthen his contention, he has relied upon the judgment of this Court reported in 2024 (1) MWN (Civil) 137 in ***Selvaraj vs. V.K.Parasuram (Died) and others***, to show that the settlement deed is valid and acted upon and cannot be found fault with. An another judgment of the Hon'ble Full Bench of this Court reported in 2022 (5) CTC 257 in ***Sasikala vs. the Revenue Divisional Officer-cum-Sub Collector, Devakottai, Sivagangai District***, was relied to show that the Sub-Registrar, namely, the



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Registering Authority has no power to accept the unilateral cancellation of settlement deed.

14. This Court has considered the submissions made by both sides and perused the materials available on record.

15. The first defendant/Marimuthu is the father of the plaintiff and the second and third defendants are the sisters of the plaintiff. Ex.A1 is the Settlement Deed executed by the first defendant in favour of the plaintiff on 12.04.1990 measuring to an extent of 2,180 sq.ft. Based on Ex.A1/Settlement deed, the plaintiff is claiming title over the suit schedule property. In this regard, the plaintiff pleaded in the plaint that though in the settlement deed, the breadth wise measurement is being stated as 39 feet, its actual breadth is 59 feet which is in usage and enjoyment by the plaintiff and it was a mistake of typographical error in the schedule to the settlement and it was not corrected since no dispute arises with anyone.



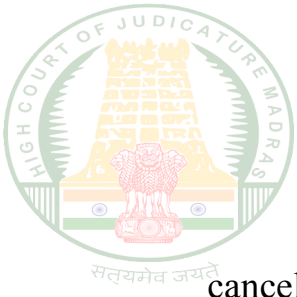
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16. It is an admitted fact that the first defendant cancelled the settlement deed on 16.07.2009 vide Ex.A2 and on the same day, the first defendant executed another settlement deed in favour of the plaintiff, the second and third defendants. Before this Court, either of the parties have not chosen to file the settlement deed executed in favour of the plaintiff, second and third defendants. It is also an admitted fact that the suit was filed on 25.06.2012 (i.e.,) after cancellation of the settlement deed dated 16.07.2009.

17. P.W.1/Plaintiff, namely, Ramalingam, in his cross-examination categorically admits that his father executed a settlement deed in his favour to an extent of 2,180 sq.ft. He has not stated the total extent of the suit property. Though he had sought for declaration of title to an extent of 3,687.5 sq.ft, he has not taken any steps to rectify the extent mentioned in the settlement deed.

18. P.W.2/Kumaresan, in his cross-examination, states that the suit schedule property is more than 2,200 sq.ft and the first defendant has



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cancelled the settlement deed in the year 2009. He did not know after cancellation of the settlement deed, whether the first defendant had executed another settlement deed in favour of the plaintiff, the second and third defendants.

19. The first defendant has pleaded that the settlement deed was obtained due to influence, since the plaintiff is the only son to the first defendant. The plaintiff mislead the first defendant and made the first defendant to execute the settlement deed and the first defendant never intended to settle the property in favour of the plaintiff. In order to prove the above facts, the first defendant/Marimuthu did not enter into witness box, since he died during the pendency of the suit.

20. Similarly, DW1/Saroja, in her chief-examination has stated that the settlement deed executed in favour of the plaintiff is not on the basis of love and affection, but, the plaintiff got the property from the first defendant by playing fraud by stating that for getting loan from his office the settlement deed should be in his favour. In order to prove the above said facts, the defendants have not chosen to examine any independent



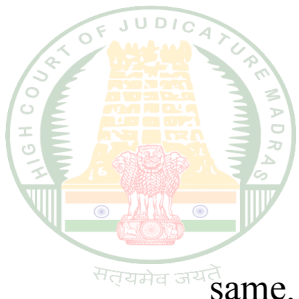
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witness to that effect. The burden of proof lies on the defendants has not been discharged. It is to be noted that though the first defendant is alleged to have been executed the settlement deed under undue influence and coercion, he did not dispute or deny the very execution of the settlement deed and it can be inferred under Ex.A3 to Ex.A33 that the settlement deed was acted upon.

21. The enquiry report along with the letter dated 23.03.2009 submitted by the deceased first defendant has been placed before the Court below and the same has been marked as Ex.C1. According to the appellant, during the enquiry before the Social Welfare Officer (DW2), the plaintiff admitted that he will settle the suit schedule property to his two sisters, but, the plaintiff did not act as per his statement.

22. Keeping in mind the ratio laid down in *Sasikala's* case cited *supra*, the unilateral cancellation of gift deed is not revocable. The first defendant actually admitted the execution of the settlement deed in favour of the plaintiff, however, challenged the settlement deed only on the ground that the first defendant had subsequently chosen to cancel the

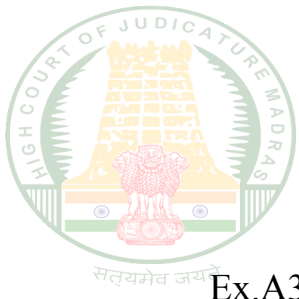


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same. Therefore, the requirements of Section 68 of the Evidence Act, come into play here.

23. It is to be noted that if the first defendant had denied the execution of the settlement deed, then the burden would have been upon the plaintiff to establish the genuineness of the settlement deed executed by the first defendant. The plaintiff, on the strength of oral and documentary evidence, has proved that his father executed settlement deed in his favour and he had mutated the revenue records and also remains in enjoyment of the suit property. Such concrete evidence on record has been let in by the plaintiff and there is no evidence on the side of the defendants to prove that the settlement deed was obtained under due coercion and influence. Further, having regard to the settlement deed dated 12.04.1990, the first defendant did not have any right to unilaterally cancel the settlement deed on 16.07.2009 vide cancellation deed in Document No.5169 of 2009. The settlement deed was acted upon and the property tax and electricity charges have been paid only by the plaintiff which factum was established by the plaintiff by producing Ex.A3 to Ex.A9, EX.A11 to Ex.A14, Ex.A22, Ex.A23, Ex.A26 to



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Ex.A31, Ex.A33. The issue raised in this appeal has been rightly answered by the Court below and there is no reason to interfere with the judgment and decree of the Court below. The point is answered accordingly.

24. In the result, this First Appeal is dismissed by confirming the judgment and decree dated 13.09.2017 passed in O.S.No.29 of 2013 on the file of the Principal District and Sessions Court, Tiruvallur. There shall be no order as to costs.

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Index : Yes
Internet : Yes
Speaking Order
Neutral Citation : Yes
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To

The Principal District and Sessions Court, Tiruvallur.



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