



S.A.(MD)No.1088 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Judgment Reserved On	Judgment Pronounced On
22.10.2024	24.10.2025

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

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1.M.Rahumal Beevi
2.M.Saleem

...Appellants

--Vs--

1.M.Ameer Ali
2.Y.Syed Ali Fathima
3.A.Noorul Jasmi
4.A.Noorul Najni
5.M.Ahmed Basheer

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree passed in A.S.No.116 of 2005, dated 29.12.2005, on the file of the 1st Additional Sub Judge, Nagercoil, confirming the Judgement and Decree passed in O.S.No.129 of 2004, dated 16.06.2005, on the file of the Principal District Munsif Court, Nagercoil.

For Appellants : Mr.K.P.Narayana Kumar
For Respondents : Mr.T.Arul



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JUDGMENT

The present second appeal is preferred by the defendants 1 and 2 against the judgment and decree, dated 29.12.2005, passed in A.S.No.116 of 2002 on the file of the I Additional Sub Court, Nagercoil, confirming the judgment and decree, dated 16.06.2005, passed in O.S.No.129 of 2004 on the file of the Principal District Munsif Court, Nagercoil.

2. The 1st plaintiff died and the plaintiffs 2 to 5 are the respondents 1 to 4 in the present second appeal. The defendants 1 and 2 in the suit are the appellants herein and the 3rd defendant is the 5th respondent herein. For the sake of convenience, the parties are referred as plaintiffs and defendants, as per the ranking in the suit.

3. The suit is filed for partition and separate possession of plaintiffs' 4/7th share in the plaint schedule properties by metes and bounds and for declaration that the power of attorney, dated 18.09.2000, registered as document No.489 of 2000 in District Registrar's Office, Nagercoil and the settlement deed No.1239 of 2000, dated 25.09.2000, of Sub Registrar's Office, Boothapandy, as null and void and for permanent injunction restraining the second defendant from making



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encumbrance in the plaint schedule properties and restraining them from disturbing the peaceful possession of the suit property.

4.The brief facts as stated in the plaint are as under:

4.i) The 1st and 2nd plaintiffs and the 3rd defendant are brothers. The 1st defendant is their sister and the 2nd defendant is the son of the 1st defendant. The 1st plaintiff died on 18.11.2004 leaving behind the plaintiffs 3 to 5 as legal heirs and they were impleaded as parties. The plaint schedule property belongs to the 1st and 2nd plaintiffs' and 1st and 3rd defendants' and their father namely, Mohamed Mydeen, who died on 16.10.2000. The said Mohamed Mydeen was working in a Mosque and retired from service from January 1999 due to his old age and settled at Thittuvilai along with the 2nd plaintiff Ameer Ali. The plaint schedule properties are paddy fields which belonged to the father Mohamed Mydeen and were looked after by the 2nd plaintiff who was cultivating the paddy fields and paying kottahs of paddy to his father Mohamed Mydeen. The deceased father Mohamed Mydeen was living with the 2nd plaintiff till August 2000 and he left the house for taking treatment for his eyes at Tirunelveli. The 1st defendant daughter promised to take care of him during the time of treatment. Under that pretext, the 1st defendant came to 2nd plaintiff's house to take the wearing apparels and other belongings of the father Mohamed Mydeen from the house of the 2nd plaintiff.



Thereafter, the father was staying with the 1st defendant and he used to come to 2nd plaintiff's house then and there. But suddenly he died on 16.10.2000 at the residence of 1st defendant. After the demise of the father Mohamed Mydeen, the plaintiffs 1 and 2 and the defendants 1 and 3 are entitled to succeed to his properties under Mohamedan Law. The plaintiffs 1, 2 and the 3rd defendant being the sons are entitled to 2/7th share each and the 1st defendant daughter is entitled to 1/7th share in the plaint schedule property. After four days of the death and before the plaintiffs could recover from the sudden demise of the father, the 2nd defendant (son of the 1st defendant) met the 2nd plaintiff Ameer Ali at his shop on 20.10.2000 and claimed that he is the sole owner of the plaint schedule property as per settlement deed executed by the 1st defendant. The 2nd defendant further stated that the plaintiffs 1, 2 and the 3rd defendant are having no right in the plaint schedule properties and insisted to surrender the plaint schedule properties to him. The plaintiffs were shocked and surprised over the said claim made by the 2nd defendant. Hence, they enquired about the claim and came to know that a fraudulent settlement was brought to existence by the 1st defendant in favour of her son 2nd defendant.

4.ii) Under the said deed, the 2nd defendant was made as the owner of the property. In the said settlement, the 1st defendant claimed that she was



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empowered under the Power of Attorney alleged to have been executed by the deceased Mohamed Mydeen to bequeath the properties to her son. The Power of Attorney, dated 18.09.2000, which is registered in document No.489 of 2000 before the District Registrar, Nagercoil, is not genuine. If the deceased father Mohamed Mydeen really intended to make any gift to the 2nd defendant, he would have straight away bequeathed the property to the second defendant. Hence, the power deed and settlement deed are forged documents and it is created only to deny the rights of the plaintiffs 1, 2 and 3rd defendant. The 1st defendant who had removed the belongings of the deceased father also carried away the earlier title deed of the plaint schedule properties and cooked up the power deed. The said deed under which the 1st defendant claimed right is void and unenforceable in law. The deceased Mohamed Mydeen never subscribed his signature in the deed and it is fraudulently created by defendants 1 and 2. There is no necessity for the deceased father Mohamed Mydeen to appoint any agent at the age of 82. Hence, no right flows from the alleged power of attorney to the 1st defendant to convey the property to her son 2nd defendant. The deceased Mohamed Mydeen never lived at the place called Mela Kalungadi. After his retirement, he was residing along with the 2nd plaintiff only. The witness in the alleged Power of Attorney are also bogus. The object for which the power is conferred is also not specific and the same is ambiguous and vague. Hence, it is a fraudulent document created by



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adopting unlawful means. The signature of Mohamed Mydeen is forged and the same is a nullity. Hence, the alleged power deed ought to be declared as null and void. Though the document is styled as settlement deed, the 1st defendant has gifted under the said document. Further, she cannot make a valid gift as contemplated under Mohammed Law in favour of the 2nd defendant. There is no complete divestment of ownership in the properties. The 1st defendant is not in a capacity to do the same, hence, the same is invalid. Since the power deed executed by the deceased father Mohamed Mydeen is void, no right flows out of it from the 1st defendant to deal with the property. Accordingly, the settlement deed executed on the strength of power of attorney is void and it did not confer any right to the second defendant in respect of the suit property. Further, the alleged power deed does not direct the 1st defendant to settle the properties in favour of the 2nd defendant. The said settlement deed will not bind on the plaintiffs' the rights on the property, since the power deed and the settlement deed caused a cloud over the title of the plaintiffs. Hence, the same should be declared as null and void. The deceased Mohamed Mydeen was having bank accounts both in the form of fixed deposits as well as savings account in Indian Overseas Bank, Thittuvilai, where he had deposited Rs.30,000/- in fixed deposit and Rs.40,000/- in savings bank account and the plaintiffs reserves their right to realize the same by taking appropriate proceedings. Since the defendants are trying to sell the property, an



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injunction is necessary restraining them to deal with the property. As per Mohamedan Law, the plaintiffs 1, 2 and the 3rd defendant being the sons are entitled to share along with 1st defendant. Hence, the suit for partition is filed.

5. The defendants 1 and 2 have filed written statement denying the averments of the plaint, but had admitted paragraphs 1 and 2 of the plaint and stated that the father Mohamed Mydeen used to reside with the 1st defendant / daughter who would look after the father. The plaint schedule property belongs to the deceased Mohamed Mydeen, who had cultivated the properties and the 2nd defendant assisted in agricultural operations. The averment that she took away the belongings is false and the same is denied. While the father Mohamed Mydeen was alive, he decided to gift the properties to the 2nd defendant and executed a Power of Attorney in Document No.489 of 2000 in favour of the 1st defendant in order to avoid going to the register office often. Thereafter, the 1st defendant on behalf of Mohamed Mydeen executed a settlement deed in favour of the 2nd defendant. As per the settlement deed, the possession and enjoyment was granted with immediate effect and he is now in possession and enjoyment of the same. The Power of Attorney deed and the settlement deed are registered documents and they are genuine and the same cannot be questioned by the plaintiffs. The settlement deed is valid in the eye of Mohamedan Law, since immediate divest of



the properties took place in favour of the 2nd defendant. While executing the Power of Attorney deed the father Mohamed Mydeen was undergoing native treatment near the Catherine Booth Hospital at Putheri from one Samuel and the said Samuel's residence is in Mela Kalungadi. The averments in paragraphs 10 to 12 of the plaint are denied and nothing happened on 20.10.2000 as alleged. The 2nd defendant is in possession and enjoyment of the suit properties. The revenue records are mutated and the 2nd defendant is paying the Revenue Tax. The plaintiffs are not entitled to any share. There is no cause of action. The suit as framed is not maintainable in law and the plaintiffs are not entitled to any relief. Hence, the defendants 1 and 2 prayed to dismiss the suit.

6. On the basis of the rival pleadings, the Trial Court has framed the following issues:

- “1. Whether the Power of Attorney No. 489/2000 deed is a true one or not? It is valid or not?*
- 2. Whether the settlement deed executed by 1st defendant in favour of 2nd defendant is valid or not? Is it void ab initio and unenforceable in Mohamathian Law?*
- 3. Whether the 2nd defendant has any right over the suit property as per settlement deed?*
- 4. Whether the plaintiffs are entitled to the relief as prayed for?*



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5. *Whether the suit is not maintainable?*
6. *To what other reliefs are entitled to the plaintiff?*
7. *What is the order of the cost?"*

On the side of the plaintiffs PW 1 and 2 were examined and Exhibits A1 to A7 were marked. On the side of defendants, DW1 was examined and Exhibits B1 to B14 were marked. Court Document Exhibit X1 was also marked. In the result, the suit was decreed and the documents in Exhibits B1 and B2 (equal document Exhibit A7) were declared as null and void and were set aside. The preliminary decree for partition granting 4/7th share by metes and bounds to the plaintiffs was decreed and the relief of permanent injunction restraining the 2nd defendant from interfering the plaintiffs' possession was also granted. Aggrieved over the same, the defendants 1 and 2 preferred Appeal Suit in A.S.No.116 of 2005, wherein the following points for considerations were framed:

- “1. Whether the Power of Attorney, dated 18.09.2000, executed by the father was legally valid?*
- 2. Based on the said power deed, whether the settlement executed by the 1st defendant to the 2nd defendant is valid?*
- 3. Whether the plaintiffs are entitled to the declaration?*
- 4. Whether the plaintiffs are entitled to permanent injunction?*
- 5. To what other relief?"*



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7. After hearing the rival submissions, the Appellate Court confirmed the judgment and decree passed by the Trial Court. Aggrieved over the same, the present second appeal is preferred by the defendants 1 and 2.

8. The second appeal was admitted on the following substantial questions of law:

“1. Whether the 1st Appellate Court is right in granting the decree of injunction though the possession was found in the hands of the 2nd defendant?

2. Whether the 1st appellate Court is right in concluding against the defendants without considering the settled proposition of law the gift of immovable property registered deed of gift signed by the donor and attested by the witness is valid specifically admitted execution of deed in favour of the appellant and the deed can be said to be duly proved even if in case of attesting witness is not called for during its execution?”

9. The deceased Mohamed Mydeen was having three sons and one daughter namely, Abdul Latheef, Ameer Ali, Ahmed Basheer and Rahumal Beevi respectively. Abdul Latheef is shown as 1st plaintiff and during the pendency of the suit, he died. Therefore, the plaintiffs 3 to 5 were impleaded as his legal heirs. The 3rd son is shown as the 3rd defendant in the suit. The said Rahumal Beevi and



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her son namely, Saleem are defendants 1 and 2. If the father Mohamed Mydeen died interstate, the said three sons would be getting 2/7th share as per Mohammedan Law and the 1st defendant would be getting 1/7th share in the suit property. However, the 1st defendant is claiming that the father had executed a Power of Attorney in her favour. The claim of the 1st defendant is that the father had an intention to settle the property in favour of the 1st defendant hence he had executed power of attorney. The said contention of the 1st defendant cannot be accepted, since if the father had intention to settle the property in favour 1st defendant, then he would have straight away executed settlement deed / gift deed in favour of the 1st defendant. Likewise if the father had intention to execute settlement deed / gift deed to the 2nd defendant / grandson, he would have straight away executed the settlement deed / gift deed in favour of the 2nd defendant. When the father had executed power of attorney deed in favour of the 1st defendant, then the 1st defendant executed settlement deed in favour of the 2nd defendant is creating cloud over the transaction.

10. Further it is seen that the Power of Attorney was executed on 18.09.2000 and the settlement deed was executed on 25.09.2000 which just 7 days after the Power of Attorney. When the deceased Mohamed Mydeen was able to execute Power of Attorney and he appeared before the register office, it is highly



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improbable that the Power of Attorney is necessary to execute the settlement deed in favour of the 2nd defendant. As held supra if the deceased Mohamed Mydeen intended to gift the entire property to the 2nd defendant, he would rather execute the settlement deed directly without executing the Power of Attorney in favour of the 1st defendant.

11. A specific contention was raised by the plaintiffs that the deceased Mohamed Mydeen was able to travel in the bus for the execution of power deed and the same would prove that the father was hail and healthy. Therefore, this Court is of the considered opinion when the father is hail and healthy, it is unnecessary to execute the power deed. As rightly pointed out by the plaintiffs, execution of power deed creates a doubt and cloud over the execution of both the documents, i.e., Power of Attorney Deed and Settlement Deed.

12. The next contention raised by the plaintiffs is that the deceased Mohamed Mydeen was able to affix the signature in the cheque leaves which are marked as Exhibit X1, dated 31.08.2000, 09.09.2000 and 14.09.2000, which would prove that the deceased Mohamed Mydeen was in a habit of affixing the signature but in the Power of Attorney, dated 18.09.2000, he has affixed only the thumb impression. It is seen that the last cheque was executed on 14.09.2000 and



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the Power of Attorney, dated 18.09.2000, was executed just four days after the execution of cheque. Therefore, it is highly improbable that the deceased Mohamed Mydeen has affixed the thumb impression on the Power of Attorney. Thereby, it creates a cloud over the Power of Attorney deed. In fact, while deposing, the DW1 Saleem who is the 2nd defendant in the suit had admitted the execution of cheque leaves marked as Exhibit X1. The relevant portion of the deposition is extracted hereunder:

“தாத்தாவிற்கு வங்கியில் கணக்கு உண்டு என்றால் சரி. அதை இறப்பதற்கு எத்தனை நாட்களுக்கு முன்புவரை ஆபரேட் செய்து வந்தார் என்று தெரியாது. என் தாத்தா தன் கணக்கிலிருந்து கடைசியாக பணத்தை 2 செக்குகள் மூலம் எடுத்துள்ளார் என்றால் சரி. அந்த செக்குகளை என் பெயரில் கொடுத்துள்ளார் என்றால் சரி. அதில் அவர் கையெழுத்து போட்டுள்ளார் என்றால் சரி. எக்ஸ் 1, எக்ஸ் 2 செக்குகளில் சலீம் என்று பெயர் எழுதியது நான் தான். தொகையை எழுதியதும் நான் தான். கையெழுத்து போட்டது அவர்.”

13. On perusing the deposition, this Court is of the considered opinion that the plaintiffs have clearly proved that there is no necessity for affixing the thumb impression, when the deceased was in a habit of affixing signature. Therefore, absolute cloud is created over the execution of Power of Attorney and the said settlement deed. It is seen that the original Power of Attorney was not produced



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before the Court and absolutely, there is no reason for not producing the original Power of Attorney. The difficulty expressed by the defendants 1 and 2 is not genuine and the same is evident from the deposition of DW1. The relevant portion of the deposition is extracted hereunder:

“அந்த ஆவணத்தை சார்பதிவாளர் அலுவலகத்திலிருந்து நான் தான் பெற்றுக் கொண்டேன் என்றால் சரி. ரெஜிஸ்டர் ஆபிசிலிருந்து என் தாத்தா பெற்றுக் கொண்டு என்னிடம் தரவில்லை என்றால் சாட்சி 2 நாட்கள் கழித்து வாங்கிக் கொள்ள சொன்னார்கள். என் தாத்தா போகமுடியாது என்பதால் பத்திரத்தை என் பெயரில் கொடுத்தோம். தாத்தா சொல்லி அவ்வாறு செய்தோம். பி.சா.ஆ.2 செட்டில்மெண்ட் பத்திரம் என் ஏற்பாட்டில்தான் எழுதப்பட்டது என்றால் சரி. அதையும் சார்பதிவாளர் அலுவலகத்திலிருந்து நான் தான் பெற்றுக் கொண்டேன் என்றால் சரி”.

14. Further, the 2nd defendant has deposed that the deceased grandfather has expressed his difficulty to appear before the Sub Registrar's Officer, Boothapandi, but he was willing to execute the Power of Attorney at the District Registrar's Office and hence, the Power of Attorney was executed and not the settlement deed. But the said difficulty is highly imaginable, since the Sub Registrar's Officer, Boothapandi, is 7 Km from Kalunkadi and the District Registrar's Office is 5 Km from Kalunkadi. It cannot be accepted that the deceased expressed that he cannot travel two more kilometers. Further, the 2nd defendant has categorically



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admitted that his grandfather Mohamed Mydeen was taken to the District Registrar's Office through bus only. Therefore, a cloud is created over the documents.

15.The further contention of the plaintiffs is that even assuming without admitting that the power of attorney really states to settle in favour of the grandson, it has not mentioned the 2nd defendant's name. Through the 2nd plaintiff, the deceased Mohamed Mydeen has three grandsons and through 3rd defendant, he has three grandsons. If it is taken as grandsons, all the grandsons are entitled to the said settlement and the 2nd defendant alone cannot claim right over the property. Therefore, the alleged settlement deed and the Power of Attorney executed by affixing the thumb impression is not genuine and the defendants 1 and 2 have not proved the said documents as genuine.



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16. Therefore, this Court is of the considered opinion that both the Courts are right in holding that the said documents are created by forgery. Therefore both the Court are absolutely correct in declaring that the Power of Attorney and Settlement Deed are null and void. Consequently, the legal heirs are entailed to share as per Mohammedan Law. Therefore, the plaintiffs are entitled to 2/7th share and the judgment and decree passed by both the Courts are confirmed and the second appeal is dismissed. No costs.

24.10.2025

Index : Yes / No

NCC : Yes / No

Tmg

TO:

1. 1st Additional Sub Judge, Nagercoil.
2. Principal District Munsif Court, Nagercoil.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD).No.1088 of 2011

Dated:
24.10.2025