



SA.No.958/2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED 09.12.2025

CORAM

THE HONOURABLE MRS. JUSTICE N.MALA

**SA.(MD).No.958/2010**

1.Rajan Babu  
2.R.Muthulakshmi  
3.R.Sundarapandian  
4.R.Rajeswari  
5.Minor R.Pandeeswari  
**[5<sup>th</sup> appellant is minor  
rep.by he mother & next friend  
2<sup>nd</sup> friend]** .. Appellant

Versus

1.S.Soundarapandiyan  
2.Janakiraman  
3.K.Nageswari .. Respondents

**Prayer:-** Second Appeal filed under Section 100 CPC, against the judgment and decree dated 26.11.2007, made in AS.No.8/2006 on the file of the learned I Additional District Judge, Madurai, confirming the judgment and decree dated 01.07.2005 made in OS.No.694/2000 on the file of the learned I Additional Subordinate Judge, Madurai.



WEB COPY



SA.No.958/2010

For Appellants : Ms.B.Bhuvaneshwari  
For Respondents : Mr.G.Prabhu Rajadurai

### **JUDGMENT**

(1)The Second Appeal is filed against the judgment and decree of the Lower Appellate Court in A.S.No.8 of 2006 dated 26.11.2007, confirming the judgment and decree of the Trial Court in O.S.No.694 of 2000 dated 01.07.2005.

(2)The defendants in the suit are the appellants in the second appeal.

(3)The parties will be referred to as per their rank in the Trial Court.

(4)The plaintiffs and the defendants are brothers and sisters. The suit was filed by the plaintiffs for partition of their 1/5<sup>th</sup> share each, in the suit schedule property. The plaintiffs' case was that the property originally belonged to their maternal grandmother, Mahamayee Ammal, she having obtained the same under a Settlement Deed dated 22.02.1946. The plaintiffs' contended that by virtue of the Settlement Deed, their maternal grandmother was in possession and enjoyment of the property in her own right. While so, on 26.12.1991, Mahamayee Ammal executed a registered Will in favour of her only daughter, Chellammal, the mother of



SA.No.958/2010

WEB COPY

the plaintiffs and defendants. The plaintiffs' mother Chellammal died on 20.07.1996, and Mahamayee Ammal, the grandmother, died on 25.05.2000. The plaintiffs contended that on the death of Mahamayee Ammal, the plaintiffs and the defendants, as the children of her deceased daughter, Chellammal, succeeded to the suit property as her legal heirs. The plaintiffs and the defendants became entitled to 1/5<sup>th</sup> share each in the suit schedule property. While so, the plaintiffs requested the defendants for partition of the suit property. Since the defendants did not co-operate, the plaintiffs were constrained to file the suit for partition of their 3/5<sup>th</sup> share and for other reliefs.

(5)The defendants in their written statement admitted the relationship of the parties, the execution of the Will, in favour of their mother, Chellammal and that she predeceased their grandmother, on 20.07.1996. The defendants contended that Mahamayee Ammal, after the death of Chellammal, had cancelled the Will under the Cancellation Deed, dated 27.05.1997 and thereafter, executed the registered Settlement Deed on 28.05.1997 in favour of the 2<sup>nd</sup> defendant. The defendants further contended that the Settlement Deed was acted upon and that the revenue



SA.No.958/2010

WEB COPY

records were mutated in favour of the second defendant, even during the life time of Mahamayee Ammal. The defendants therefore contended that the second defendant had become the absolute owner of the property and therefore, the plaintiffs were not entitled to any share in the same. The defendants therefore prayed for dismissal of the suit.

(6)The plaintiff filed a reply statement contending that the Cancellation Deed as well as the Settlement Deed were concocted documents and that the second defendant, taking undue advantage of the health condition of the Mahamayee Ammal, fraudulently got the said documents executed in his favour. According to the plaintiffs, the Will dated 26.12.1991 was the last Will of Mahamayee Ammal and on the death of Mahamayee Ammal, the plaintiffs by intestate succession became entitled to 1/5<sup>th</sup> share each in the suit property.

(7)The second defendant filed an additional written statement denying the contention of the plaintiffs that the Cancellation Deed and the Settlement Deed were concocted documents. The second defendant further submitted that his grandmother, Mahamayee Ammal was in sound physical and mental health and that she lived for over 3 years from the date of



SA.No.958/2010

WEB COPY

execution of the Cancellation Deed and the Settlement Deed. The second defendant therefore submitted that there were no merits in the suit and it deserved to be dismissed.

(8) Before the Trial Court, the plaintiffs filed two documents and examined the third plaintiff as P.W.1 and the defendants marked nine documents and examined three witnesses.

(9) The Trial Court after framing the necessary issues, dismissed the suit holding that the Cancellation Deed (Exhibit B3) and the Settlement Deed (Exhibit B4) were concocted documents. The Trial court, therefore decreed the suit as prayed for. The defendants filed an appeal in A.S.No.8 of 2006, before the I Additional District Judge, Madurai, against the judgment and decree of the Trial Court.

(10) On the death of the first defendant during the pendency of the appeal, his legal heirs were impleaded as appellants 3 to 6 before the Lower Appellate Court.

(11) The Lower Appellate Court dismissed the appeal suit, confirming the judgment and decree of the Trial Court. Aggrieved by the judgment and



SA.No.958/2010

WEB COPY

decree of the Lower Appellate Court, the defendants filed the second appeal.

(12)While admitting the second appeal, this Court framed the following substantial question of law:-

*[1]Whether the Courts below have committed an error in law in omitting to consider the fact that the cancellation of the 'Will' dated 26.12.1991 marked as Ex.A1 by the testator did have no legal effect since the legacy created in the "Will" had lapsed by operation of law under Section 105 of the Indian Succession Act, on the death of the sole legatee under the said "Will"?*

*[2]Whether the findings of the Courts below that Ex.B4-Settlement Deed, dated 28.05.1997 was not genuine is perverse?*

(13)The learned counsel on both sides conceded that the Will dated 26.12.1991, lapsed by operation of law and therefore, the first substantial question of law required no consideration. The learned counsels conceded that they confine their arguments only to the 2<sup>nd</sup> substantial question of law.

(14)The learned counsel for the appellant submitted that the Settlement Deed was valid since it was executed by the settlor out of her own, free



SA.No.958/2010

WEB COPY

will and volition and out of love and affection for the 2<sup>nd</sup> defendant. The counsel further submitted that none of the other legal heirs took care of Mahamayee Ammal during her life time and that, it was only the second defendant who took care of her till her death and therefore, out of natural love and affection, she executed the Settlement Deed in his favour. The learned counsel referred to the evidence of the witnesses examined on both sides and submitted that the findings of the Court below were perverse.

(15)The learned counsel for the respondents submitted that there were several circumstances as pointed out by the Courts below, which created suspicion on the validity of the Settlement Deed and therefore, the Courts below were right in finding that the Settlement Deed was a concocted document. The learned counsel submitted that this Court exercising jurisdiction under Section 100 CPC, will be circumspect in disturbing the concurrent findings of fact.

(16)Heard both sides and perused the materials placed on record.

(17)The admitted facts are that, the plaintiffs and the defendants are brothers and sisters. The suit property belonged to their maternal



SA.No.958/2010

WEB COPY

grandmother, Mahamayee Ammal, and that she executed a registered Will on 26.12.1991, in favour of their mother, Chellammal, and that their mother Chellammal predeceased their grandmother, Mahamayee Ammal. It is the case of the plaintiffs, that on the death of Mahamayee Ammal, the plaintiffs as well as the defendants were entitled to equal shares in the suit property and therefore, the plaintiffs filed the suit for partition of their 1/5<sup>th</sup> share each, in the suit schedule property. The defendants case on the other hand is that during the life time of Mahamayee Ammal, she executed a registered Cancellation Deed dated 27.05.1997 under Exhibit B3, and a Settlement Deed dated 28.05.1997, under Exhibit B4, in favour of the second defendant out of natural love and affection for him since he took care of her and was a bachelor. The defendants contended that as the second defendant, became the absolute owner of the property by virtue of the Settlement Deed, the relief claimed by the plaintiffs was untenable.

(18)The issue before this Court is whether the Settlement Deed [Ex.B3] executed by Mahamayee Ammal, grandmother of the plaintiffs and the defendants, in favour of the second defendant, is valid.



SA.No.958/2010

WEB COPY

(19) This Court is of the view that the burden is heavily on the 2<sup>nd</sup> defendant as beneficiary of the Settlement Deed, to prove its validity, since under the said Deed, the other legal heirs are deprived of a share in the suit property. The 2<sup>nd</sup> defendant's case is that Mahamayee Ammal executed the Settlement Deed in his favour because it was only he who took care of her till her death. It is to be seen if the said reason, in the facts of the case, is established. It is seen that during the relevant period the 2<sup>nd</sup> defendant, as a bachelor was residing with his brother, 1<sup>st</sup> defendant, along with his grandmother in a portion of the house. The 2<sup>nd</sup> defendant was a driver by profession and therefore, necessarily he would have been mostly away from home. The Appellate Court took note of this fact and observed that the said reasoning was unbelievable. The learned counsel for the plaintiffs submitted that the evidence on record showed that Mahamayee Ammal had equal love and affection for all her grandchildren and just because she stayed with the 2<sup>nd</sup> defendant, it cannot be said, she did not love the others any less. The learned counsel referring to the recitals in the Settlement Deed, contended that the execution of the same, was not voluntary, and that the 2<sup>nd</sup> defendant imposed her to execute it in



SA.No.958/2010

WEB COPY

his favour. From the recitals in the Settlement Deed, it is clear that the 2<sup>nd</sup> defendant demanded Mahamayee Ammal to settle the property in his favour. It will be pertinent to point out here that DW1 [wife of 1<sup>st</sup> defendant] and the attesor of Ex.B4 also deposed that on the frequent demands of the 2<sup>nd</sup> defendant, Mahamayee Ammal, executed the Settlement Deed in his favour. It is seen that DW2, the wife of the 1<sup>st</sup> defendant, [sister-in-law of the 2<sup>nd</sup> defendant] and DW3-attesor of Ex.B3, in their cross examination, admitted that Mahamayee Ammal, did not discriminate between her grandchildren and that she had equal love and affection for all of them. While so, there was no reason for her to deprive the other legal heirs of a share in the property. Therefore, the contention of the learned counsel for the plaintiffs that Mahamayee Ammal did not voluntarily settle the property, has some substance. The Courts below found that in Ex.A1 and Ex.A2, Mahamayee Ammal had affixed her signature, but in Ex.B3, she affixed her thumb impression and the explanation of the 2<sup>nd</sup> defendant that as Mahamayee Ammal's hands were shaking due to old age, she did not affix her signature, was found to be implausible because the 2<sup>nd</sup> defendant as well as his own witnesses,



SA.No.958/2010

WEB COPY

namely, DW1 and DW3, clearly deposed that she was hale and healthy at the time of execution of the Settlement Deed. Even the 2<sup>nd</sup> defendant himself deposed that the settlor lived for three years post the execution of the Settlement Deed. Therefore, the findings of the Courts below that the affixture of the thumb impression in the Settlement Deed, particularly when Mahamayee Ammal had affixed her signature in Exs.A1 and A2, raised a doubt on the execution of the Settlement Deed, cannot be faulted.

(20)The evidence on record explicitly reveals that the 2<sup>nd</sup> defendant actively participated in the execution and registration of Ex.B3. The Courts below have extensively referred to the relevant portions of the evidence of DW1, DW2 and DW3 and held tht the participation of DW2 in the execution of Ex.B3, created a cloud on its validity. I deem it unnecessary to extract the evidence of the aforesaid witnesses, since I am satisfied that the Courts below have properly appreciated the evidence on record.

(21)Having thoroughly gone through the evidence on record and the concurrent judgments of the Courts below, I find absolutely no perversity in the appreciation of evidence by the Courts below and therefore, I am of the view that, the judgments of the Courts below and therefore, I am of



SA.No.958/2010

the view that the judgments of the Courts below call for no interference.

(22) This Court, therefore finds absolutely no merit in the Second Appeal and hence, the same is dismissed. No costs.

09.12.2025

AP

Index : Yes / No

Internet : Yes / No

NCC : Yes / No

Speaking Order: Yes / No

To

1. The I Additional District Judge  
Madurai.

2. The I Additional Sub Judge  
Madurai.

3. The Section Officer  
VR Section, Madurai Bench of  
Madras High Court, Madurai.



WEB COPY



*SA.No.958/2010*

**N.MALA, J.,**

**AP**

**SA.(MD).No.958/2010**

**09.12.2025**