

SA(MD)No.403 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.08.2025

Pronounced on : 10.09.2025

CORAM

THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

S.A.(MD)No.403 of 2019

and

C.M.P.(MD)No.8008 of 2019

1. Esther Thilagavathy
W/o.Late.Chelladurai,
Anna Nagar 12th Street (West),
Rajagopal Nagar, Thoothukudi.

2. Juliet Mary
D/o.Late.Chelladurai,
Anna Nagar 12th Street (West),
Rajagopal Nagar,
Thoothukudi.

... Appellants/Respondents/ Defendants

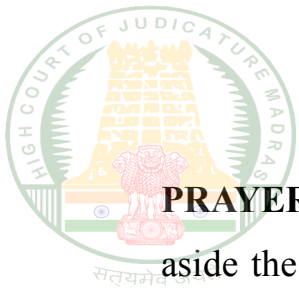
Vs.

1. Jansy Priya
D/o.Late.Chelladurai,
D.No.1/440, Rajagopal Nagar,
Anna Nagar 12th Street, (West),
Thoothukudi Town.

2. Minor Backiya Diana
D/o.Late.Chelladurai,
D.No.1/440, Rajagopal Nagar,
Anna Nagar 12th Street (West),
Thoothukudi.

(Minor 2nd Respondent Rep by
Her Mother Ponrathy)

... Respondents/Appellants/ Plaintiffs



PRAYER in SA: The Second Appeal filed under Section 100 C.P.C., to set aside the Judgment and decree dated 24.04.2019 passed in AS.No.76 of 2014 on the file of the Sub Court, Thoothukudi reversing the Judgment and decree dated 06.08.2013 passed in OS.No.328 of 2009 on the file of Additional District Munsif Court, Thoothukudi and thus render justice.

PRAYER in CMP: To Stay the operation of the Judgment and decree dated 24.04.2019 passed in AS.No.76 of 2014 on the file of the Sub Court, Thoothukudi reversing the Judgment and decree dated 06.08.2013 passed in OS.No.328 of 2009 on the file of Additional District Munsif Court, Thoothukudi, pending disposal of the above second appeal and thus render justice.

APPEARANCE OF PARTIES:

For Appellants : Mr.G.Prabhu Rajadurai, Advocate
Mr.I.Robert Chandrakumar, Advocate

For Respondents : Mr.M.P.Senthil, Advocate
Mr.G.Venugopal, Advocatefor R1

JUDGMENT

Heard.

2. This Second Appeal arises from the judgment and decree dated 24.04.2019 in A.S. No.76 of 2014 passed by the learned Subordinate Judge, Thoothukudi. By the impugned judgment, the first appellate Court reversed the trial Court's dismissal of O.S. No.328 of 2009 (Additional District Munsif,



Thoothukudi) and decreed the suit, declaring that the unilateral cancellation of a prior registered settlement deed is void, with a consequential injunction thereby dismissing the counter claim of the defendant. During the pendency of the appeal, the first appellant passed away, and the second appellant, already on record as her daughter, now prosecutes the appeal as the sole legal heir.

3. The plaintiffs initially filed the suit for permanent injunction restraining the defendants from disturbing their possession over the suit property. Subsequently, they sought an additional prayer for declaration that the unilateral cancellation deed dated 25.08.2006 executed by their father cancelling the earlier settlement deed dated 08.03.2006 is null and void. The plaintiffs, claiming to be the daughters of late Chelladurai through his second wife, rested their case on the settlement deed dated 08.03.2006.

4. The defendants contended that the first defendant was the lawful wife of Chelladurai and that the second defendant was their daughter, thereby denying the plaintiffs' status as his daughters. They further contended that the settlement deed dated 08.03.2006 was invalid, since Chelladurai had himself cancelled it on 25.08.2006. In addition, they maintained that the suit property was jointly owned by the first defendant and Chelladurai, and hence he had no absolute right to execute the settlement deed. On these grounds, the defendants filed a counter-claim seeking declaration of title and recovery of possession.



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5. The trial Court dismissed the plaintiffs' suit and decreed the defendants' counter-claim. On appeal, however, the first appellate Court reversed the trial Court's judgment and decreed the suit in favour of the plaintiffs and dismissed the counter claim.

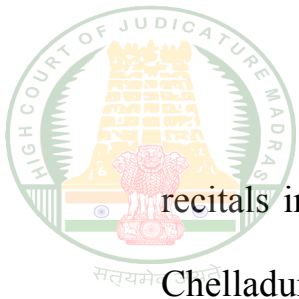
6. Upon admitting this Second Appeal on 04.09.2019, this Court framed the following substantial questions of law:

“(i) Whether the First Appellate Court is correct in law in overlooking the legality of the settlement deed as the Executants had no power of dispossession over the property settled?

(ii) Whether the Lower Appellate Court is correct in law in upholding the paternity of the plaintiffs merely on the entries in the school records, particularly when her mother was married to another person and there was no marriage between herself and the Defendant's husband Chelladurai?”

7. The appellants argued that the property was jointly acquired and, in the absence of partition, Chelladurai had no authority to settle any portion in favour of the plaintiffs. The trial Court accepted this contention, holding that the property remained jointly acquired and that there was no valid acceptance.

The first appellate Court, however, upon reappraisal of the evidence and the



recitals in the deed, concluded that an oral partition had taken place between Chelladurai and his first wife. The settlement deed was found to convey only the share allotted to Chelladurai, and not the entirety of the property. The defendants never disputed the recital of oral partition contained in the settlement deed.

8. On these facts, the finding of the first appellate Court that Chelladurai had settled only his separated share obtained through an oral partition is legally sustainable. His competence to dispose of the said share thus stands established, and no error of law is made out. Accordingly, the first substantial question of law is answered against the appellants.

9. With respect to the second substantial question of law, the trial Court held that, as the plaintiffs' mother had been married to another man, the plaintiffs had failed to establish their paternity through Chelladurai. The first appellate Court, however, on a comprehensive reappraisal of the materials, found that: a) in the settlement deed, Chelladurai expressly described the plaintiffs as his daughters; b) he signed their school transfer certificate and travel card as "father"; c) his bank records carried their names as nominees. On this basis, the appellate Court concluded that Chelladurai had consistently acknowledged the plaintiffs as his daughters during his lifetime. Once such



acknowledgment of paternity is made by the father himself, no further enquiry is warranted.

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10. Although the marriage of the plaintiffs' mother with Chelladurai is void, the legitimacy of the children born from such a union remains protected under law. Consequently, the finding that the plaintiffs are the legal heirs of Chelladurai is well-founded and warrants no interference.

11. It must, however, be observed that the plaintiffs' claim over the suit property rests not on inheritance but on the settlement deed executed by Chelladurai. Once the oral partition and Chelladurai's independent right to alienate his share are established, the plaintiffs' title under the settlement deed also stands confirmed. In this view, the issue of paternity becomes immaterial, for Chelladurai was competent to effect the gift, and the plaintiffs were competent to accept it.

12. During the pendency of this Second Appeal, the first defendant passed away, which was recorded on 01.08.2025 and it was observed therein that the issue in the appeal centres on the unilateral cancellation of a settlement deed executed by the plaintiffs' father. Although reliance was placed on *M/s.Latif Estate Line India vs Hadeeja Ammal and others*, reported in



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2011-I-L.W.673 and *Sasikala vs Revenue Divisional Officer, Sub Collector,*

Devakottai and another, reported in **2022 (5) CTC 257**, concerning unilateral cancellation of settlement deeds, no substantial question of law was framed on that aspect. Moreover, even in the grounds of appeal, the appellants' plea was that the settlement deed was sham and nominal and stood cancelled prior to its acceptance. No independent plea was raised regarding the legality of unilateral cancellation.

13. In the foregoing circumstances, this court finds no error, infirmity, irregularity, or perversity in the findings of the first appellate Court. Accordingly, this Second Appeal is dismissed, and the judgment and decree in A.S. No.76 of 2014 dated 24.04.2019 are affirmed. There shall be no order as to costs. Consequently, connected miscellaneous petitions, if any, stand closed.

10.09.2025

Index: Yes/No

Speaking Order / Non-speaking order

Neutral Citation: Yes / No

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DR.A.D. MARIA CLETE,J.

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To

- 1.The Additional District Munsif Court
Thoothukudi.
- 2.The Sub Court,
Thoothukudi.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
SA.(MD)No. 403 of 2019

10.09.2025