

A.S.(MD)No.190 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

A.S(MD)No.190 of 2018
and
C.M.P.(MD)No.11287 of 2018

S.Shajahan (died)

1.S.Faridha Begam

2.S.Abdul Samad

3.S.Nasreen Begam

4.S.Abu Bakkar Siddiq

.... Appellants / LR's of deceased

1st Defendant

Vs.

1.Zahir Hussain

... 1st Respondent / Plaintiff

2.N.S.Mohammed Salim

3.S.Noorjahan

... 2nd and 3rd Respondent

/2nd and 3rd Defendants

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code, to call for the records and set aside the Judgment and decree dated 16.03.2017 in O.S.No. 53 of 2014 on the file of the Additional District Court (Fast Track) Palani and allow the appeal.



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For Appellants : Mr.H.Lakshmi Shankar

For Respondents : Mr.S.Louis
for R1

: no appearance for R2 & R3

JUDGEMENT

(Judgment of the Court was made by **G.R.SWAMINATHAN, J.**)

This appeal arises out of a partition suit. The first respondent herein filed O.S.No.53 of 2014 on the file of the Additional District Court (Fast Track), Palani to declare that the document dated 01.06.2005 executed in favour of the appellant (Document No.942/2005) is null and void and for partition and separate possession of 2/7th share in the suit schedule properties.

2. The appellant herein who figured as the first defendant filed his written statement controverting the plaint averments. The plaintiff examined himself as P.W.1. A relative by name Mohammed Meeran was examined as P.W.2. Ex.A1 to Ex.A16 were marked. The first defendant examined himself as D.W.2 and his brother Mohammed Salim was marked as D.W.1. Ex.B1 to Ex.B11 were marked. After consideration of the evidence on record, the trial Court vide Judgment and decree dated 16.03.2017 declared that the settlement deed dated 01.06.2005 is null and void. The plaintiff was denied the relief in



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respect of “D” Schedule property. He was given 2/7th share in respect of the other schedule properties. Challenging the Judgment and preliminary decree passed by the court below, this appeal has been filed by the first defendant. Following the pronouncement of the impugned Judgment, the first defendant passed away. His legal heirs have filed this appeal.

3. The learned counsel appearing for the appellant made it clear that the scope of this appeal is confined only to validity of Ex.A14 and Ex.B8 and that if the rights of the appellants over first item of “B” schedule is confirmed, they have no other quarrel with the impugned Judgment and decree. The only point that arises for determination in this appeal is whether the settlement deed dated 01.06.2005 is valid. One reason for characterizing Ex.A14 as null and void was that the propounder of the document namely the first defendant did not produce the original deed. It is interesting to note that the plaintiff himself marked the certified copy. This lacuna pointed out by the court below is now sought to be made good by the appellants by production of the original document itself. In fact, the appellants have filed C.M.P.(MD)No.11288 of 2018 for receiving the original document of Ex.A14. This CMP filed under Order 41 Rule 27 was taken up for consideration along with the main appeal.

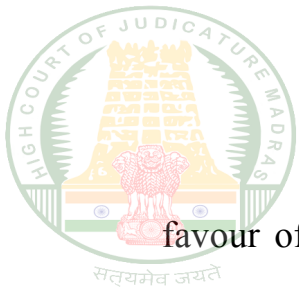


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4. The learned counsel for the appellant submitted that in normal circumstances, when the additional evidence is allowed to be adduced, in the very nature of things, the oral evidence will also be taken. The additional document will be marked through the witnesses. In this case, such an approach need not be adopted. This is because, the execution of Ex.A14 is not in doubt. In fact, it was the plaintiff who himself marked the certified copy. The learned counsel appearing for the appellant pressed into service under Section 60 of the Registration Act, 1908. He further submitted that the document can be straight away marked by way of additional evidence and that there is no need to examine any witness. We find considerable force in the argument of the learned counsel for the appellant. We allow C.M.P.(MD)No.11288 of 2018. This document shall also be marked as Ex.B12. The court below had come to the conclusion that the settlement deed-Ex.A14 is null and void.

5. According to the court below, the execution of this document offends the elementary principles of Mohammedan law. Let us now test if this reasoning of the court below is sound. Ex.A14 is a registered document (Document No.942 of 2005) dated 01.06.2005 on the file of the SRO, Oddanchathiram. It was executed by S.S.N.Sahul Hameed and S.Sabiyabeevi in



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favour of the first defendant. S.S.N.Sahul Hameed and S.Sabiyabeevi are the parents of the plaintiff, D1 to D3. The property covered under this document was the self acquired property of the parents. The parents had jointly purchased the said property vide sale deed dated 30.01.2002 (Document No.131 of 2002). They had settled the said property in favour of the first defendant. However, certain conditions were stipulated. The settlors namely the parents were to jointly enjoy the property during their life time along with the settlee namely the first defendant herein. The first defendant was to take the property absolutely after the demise of the parents. It was further clarified that in case of any emergency, the first defendant had to sell the alienated property. The property had to be alienated jointly by the executants and the first defendant. Particularly, the parents did not reserve any right of alienation or revocation. The aforesaid features are evident even on a bare reading of this document.

6. The learned counsel appearing for the contesting plaintiff would argue that this document should be construed as a Will. If it is construed as a Will, then as per Mohammedan law, bequest can be valid only to the extent of 1/3rd share. Therefore, the whole issue turns on whether the document in question is a Will or settlement deed. For the document to be classified as a Will, it should be evident from the document itself that it would come in the effect after the



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life time of the testator. This is the sole test. In the case on hand, the document

contains the following expression:-

□இதனடியில் சொத்து விபரத்தில் விவரிக்கப்பட்டுள்ள
சொத்துக்களை நாளதுதேதியில் நாங்கள் தங்களுக்கும்
எங்களுக்குமாக சேர்த்து இந்த செட்டில்மெண்ட் பத்திரம் மூலம்
பாத்தியப்படுத்தி எழுதிவைத்த விபரம் என்னவென்றால்□

7. Thus, a bare reading of the above would show that the parents had divested themselves of title. The document was to come into force immediately. The only reservation made in the document was that the settlors also will jointly enjoy the property during their life time. We are therefore satisfied that the document in question cannot be called as Will and that it is only a settlement deed.

8. We carefully went through the testimony of the witnesses. The parents had been quite fair in dealing with their children. The plaintiff who examined himself as P.W.1 fairly stated that he was given the family business. Another property was settled in favour of the second defendant and he had sold the property already. A plot was purchased and given to the daughter. The relationship between the plaintiff and the appellant had broken down and they are living separately for more than 12 years. It was the first defendant who was



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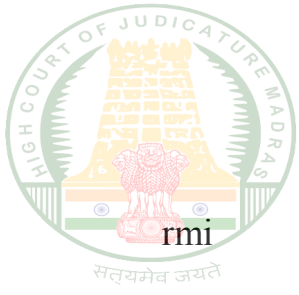
with the parents. Therefore, the parents felt that they should do something for the eldest son and that is why, this document came to be registered. It is true that one of the conditions to effectuate any gift is that there should be delivery. But in this case, the first defendant who is the setlee was also residing in the very same property. Therefore, there was no question of formally effecting delivery of the gift.

9. To a pointed question in the cross-examination, the plaintiff admitted that he had taken the certified copy of the document within 60 days from the date of its execution. Thus, the plaintiff was fully aware of the execution of Ex.A14. He ought to have filed the declaration suit within three days. In this case, the suit was filed after a gap of 9 years. Therefore, the very institution of the suit also can be said to be time barred in respect of Ex.A14.

10. In this view of the matter, we interfere with the impugned Judgment and decree insofar as it declares that Ex.A14 is null and void. In all other respects, the impugned Judgment and decree stands confirmed. This appeal is partly allowed. Preliminary decree has to be modified by deleting the first item of the suit “B” schedule. No costs. Consequently, connected miscellaneous petition is closed.

[G.R.S., J.] [M.J.R., J.]
21.03.2025

Index : Yes / No
Internet : Yes/ No



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The Additional District Court (Fast Track) Palani.

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Madurai Bench of Madras High Court, Madurai.



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