IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-02-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 559 of 2015
and MP.No.1 of 2015

S.Sundari
W/o Shanmugasundaram D.No.73/11d,Rajaji Rd
Behind Vijaya Hospital Salem Town, Salem Dt.

..Appellant

Vs

1.M.Shanmuga Sundaram
S/o M.A.Manivasagam, D/97/18a, Narayanasamypuram, Arisipalayam,
Salem Salem Tk
2.The Commissioner
The Salem Corporation, Salem. ..Respondent(s)

Prayer: This Second Appeal is filed under Section 100 of the CPC to set aside the Judgment and Decree dated 01.04.2015 passed in AS.No.52 of 2014 by the II Additional District Judge, Salem, which confirmed the Judgment and Decree dated 15.07.2014 passed by the II Additional Subordinate Judge, Salem, in OS.No.488 of 2011.

For Appellant(s): Mr.P.Jagadeesan

For Respondent(s): Mr. C.K.M.Appaji for R 1
No appearance for R2

JUDGMENT

This Second Appeal has been preferred against the decree and Judgment passed by the II Additional District Judge, Salem in AS.No.52 of 2014 dated 01.04.2015

2. The appellant is the plaintiff in the main suit filed for declaration to declare that the settlement deed executed by the plaintiff in favour of the defendant as null and void and to grant permanent injunction restraining the 1st defendant from interfering with the plaintiff's peaceful possession and enjoyment of the property and for grant of decree of mandatory injunction directing the 2nd defendant to restore the water tap connection to the suit property. The trial court has dismissed the suit. Aggrieved by the said decree and judgment passed by the trial court, the 1st defendant has preferred appeal suit in A.S.No.15 of 2014 on the file of the II Additional District Judge, Salem. The first appellate court also dismissed the suit by confirming the decree and judgment passed by the trial court. Aggrieved by the said decree and judgment, this present Second Appeal has been filed by the defendant.

3. The case of the plaintiff is that the suit property absolutely belonging to the plaintiff and she purchased the property through registered sale deed dated 04.06.2001 and from the date of purchase, she has been in possession and enjoyment of the property. The house situated in the property has water tap connection under Assessment No.2013664. At the time of purchase, there was a tiled house in the suit property. Thereafter, she altered the same and constructed the terraced house by spending her own money. The property tax, water tap connection and EB service connection are all in the name of the

plaintiff and she has regularly paying the necessary charges for the property to the Government. The Plaintiff married one Thangaraj and begotten a male child. Due to misunderstanding arose between them, marriage between the plaintiff and the Thangaraj was dissolved by customarily. Thereafter, the 1st defendant voluntarily expressed his willing to marry the plaintiff and to look after the plaintiff and her son Sivamani. Therefore, the plaintiff and the 1st defendant got married at Tirupati temple in the year 1999. After the marriage, the plaintiff and 1st defendant lived in the suit property. The 1st defendant had taken agency of Ramco Cement and requested the plaintiff to give guarantee for taking Agency of Ramco Cement. Believing the words of the 1st defendant, the plaintiff executed a document believing that it was a surety for the business of the 1st defendant.

3.1. While so, all of a sudden, on 12.01.2011, people from 2nd defendant / Corporation came to the suit property and disconnected the water tap connection provided to the suit property. When the same was enquired by the plaintiff, she came to know about the gift settlement deed dated 29.11.2001 in favour of the 1st defendant. The plaintiff no need to execute any document in favour of the 1st defendant and no such document has been acted upon. Till date, the possession of the property is under the plaintiff and the settlement deed is void and same was obtained without disclosing the nature of the document from the illiterate and innocent lady. The plaintiff came to know about the fraudulent document only on 13.01.2011. The 2nd defendant disconnected the water tap connection. Based on the above said settlement deed, without water tap connection, the plaintiff is facing difficulties for the day-to-day affairs. Therefore, the plaintiff issued notice to the 2nd defendant through her counsel dated 22.01.2011 by calling upon him to restore the water tap connection. Even after that, the 2nd defendant has not come forward to restore the water tap connection. The 1st defendant cunningly created a false document in support of the suit property in order to grab the suit property. Therefore, the settlement deed dated 29.11.2001 is liable to be set aside and the water tap connection has to be restored.

4. The case of the defendant is that the defendant denied all the allegations levelled in the plaint. It is false to say that the suit property belongs to the plaintiff through sale deed dated 04.06.2001 and also she is in possession and enjoyment of the suit property. It is false to state that the defendant and the plaintiff got married at Tirupati temple in the year 1999. It is also false that this defendant has taken the agency of Ramco Cement and thereby insisted the plaintiff to execute the document and at that time, he obtained settlement deed, thereafter, on 12.01.2007, the 2nd defendant came to the suit property and disconnected the water tap connection, at that time, only she came to know about the settlement deed dated 29.11.2001.

4.1. The plaintiff has not come forward with clean hands to get the relief of declaration and injunction. It is correct to state that he was a Ramco Cement agent. In fact the defendant had got illegal connection with the plaintiff and due to income tax problem, this defendant purchased the suit property in the name of the plaintiff on 06.06.2001 as a benami. The entire sale consideration was paid by this defendant. The plaintiff has no capacity for herself to purchase any property as she has no independent income. The plaintiff is only the name lender to the document. The plaintiff, on oral permission, was residing in the suit property along with her son. This defendant only had constructed the house in the suit property by demolishing the old tiled house. Subsequently, this defendant being the owner of the suit property, the plaintiff voluntarily executed a gift settlement deed in favour of this defendant to give back the title of the suit property to this defendant. Subsequently, the plaintiff had got another illegal connection with somebody and turned against this defendant. The plaintiff called herself to be the owner of the suit property as he is residing in the suit property. On knowing the illegal act of this plaintiff this defendant had cancelled the oral permission given to the plaintiff to reside in the suit property. This defendant is about to take legal action to get the possession of the suit property from the plaintiff. There is no cause of action for the suit and hence, the suit is liable to be dismissed.

5. WRITTEN STATEMENT BY 2nd Defendant :

The contention of the 2nd defendant is that this defendant issued proceedings on 01.12.2010 effecting the name transfer in Property Tax in the name of the 1st defendant and on 10.12.2010, the 1st defendant submitted an application to transfer water connection in the name of 1st defendant and the same was transferred in his name by order dated 21.12.2010 and he has paid water charges and another application submitted by the 1st defendant on 23.12.2010 to disconnect the water connection and it was done w.e.f 24.03.2011 as per the order of the Assistant Commissioner, Salem Corporation, Hasthampatti Zonal in Na.Ka.J3/627/2010 dated 24.03.2011. There is no connection between the plaintiff and the 2nd defendant and this defendant is no way connected with the said transactions. This defendant has effected the name transfer in respect of Property Tax and water connection only based on the valid documents submitted by the 1st defendant and the name transfer is effected subject to the conditions that the name transfer is changeable depending upon the court orders. This defendant is not aware of the relationship and the transaction between the plaintiff and the 1st defendant.

6. Based on the aforesaid pleadings and after hearing both sides, the trial court has framed the following issues for trial.

i) Whether the 1st defendant had purchased the property in the name of the plaintiff?

ii) Whether the 1st defendant had obtained settlement deed dated 29.11.2001 by playing fraud on the plaintiff?

iii) Whether the plaintiff is entitled for declaration over the property ?

iv) Whether the plaintiff is entitled to the relief of permanent injunction ?

v) Whether the plaintiff is entitled to mandatory injunction in respect of water tap connection?

vi) To what other reliefs, the plaintiff is entitled ?

7. Before the trial court, on the side of the plaintiff, PW1 was examined and marked as Ex.A1 to Ex.A9. On the side of the defendants, DW1 and DW2 were examined and marked as Ex.B1 to Ex.B17.

8. The trial court after analysing the evidences adduced on both sides and perusing the records, dismissed the suit. Aggrieved by the said decree and Judgment, the defendant has preferred the first appeal. The first appellate court also, after hearing both sides, framed the following points for determination.

"*i) Whether the suit property is a self-acquired property of the plaintiff?*
ii) Whether the settlement deed dated 29.11.2011 is to be declared as null and void?
iii) Whether the plaintiff is entitled to declaration of title

in the suit property?

iv) Whether the plaintiff is entitled to the relief of permanent injunction as against the 1st defendant?

v) Whether the plaintiff is entitled to relief of mandatory injunction as against the 2nd defendant?"

9. Thereafter, the first appellate court after elaborate discussion, dismissed the appeal by confirming the decree and judgment of the trial court. Aggrieved by the said decree and judgment, the plaintiff has preferred this Second Appeal.

10. This court at the time of admitting the Second Appeal formulated the following the Substantial Questions of law:

a. Whether or not the gift settlement deed Ex.A6 alleged to have executed by the plaintiff in favour of the 1st defendant was acted upon and came into force?

b. When it is an admitted fact that the first defendant never took possession of the suit property after the alleged execution of Ex.A6 gift settlement deed and the plaintiff alone continued to be in possession till date, whether or not the alleged gift settlement deed acted upon and the 1st defendant could claim title to the suit property based on Ex.A6?

c. In as much as the defendant himself categorically admitted that he only helped the plaintiff in getting the name transfer for property tax assessment under Ex.A5 on 20.03.2008, whether it is open to him to claim the suit property under Ex.A6 which was never acted upon?

11. Learned counsel appearing for the appellant would submit that the plaintiff has filed the suit for relief of declaration declaring that the settlement deed dated 29.11.2011 executed by the plaintiff in favour the 1st defendant is null and void. According to the plaintiff, she purchased the property through sale deed dated 04.06.2001 and the same has been marked as Ex.A1. However the 1st defendant denied the sale deed and stated that he only purchased the property in the name of the plaintiff since he got illegal connection with her. However, the lower appellate court correctly held that as per law, any property stands in the name of the Hindu female is to be considered as her separate property. However, erroneously held that the plaintiff failed to appreciate that the defendant claimed title of the property based on the sale deed that he purchased the suit property in the name of the plaintiff as benami is totally illegal and unsustainable, therefore, it is the duty of the defendant to establish the genuineness and validity and due execution of the said document. Once the said finding of the lower court has been reversed by the lower appellate court, it is proved that the plaintiff is the absolute owner of the suit property. According to the 1st defendant, the settlement deed was executed on 29.11.2001. But the plaintiff has categorically denied the execution and pleaded that the same was obtained by mis-representation and fraud that the 1st defendant has taken the agency of Ramco cement and for the same, he requested the plaintiff to give guarantee. Believing the said words, she executed the deed as guarantee for the

agency of Ramco cement. The plaintiff discharged her initial burden by examining herself as PW1 and the suit property was purchased by her under the sale deed dated 06.04.2001. Therefore, the plea of benami set up by the 1st defendant is wholly unsustainable in law.

11.1. The 1st defendant described the plaintiff as his wife in the settlement deed Ex.A6 and sale deed in Ex.A1 and other documents Ex.A9, per contra in his written statement, alleged that he got only illegal connection with the plaintiff. Therefore, these cumulative circumstances established the fraudulent intention of the 1st defendant to deprive the right of the plaintiff over the suit property. The plaintiff transferred the house tax assessment in her name in the year 2001 itself and the 1st defendant has not exercised any right over the suit property, even after the gift settlement deed therefore it has not acted upon. Therefore, the burden shifts upon the 1st defendant to prove that the settlement deed is true and valid. In order to prove the settlement deed, the 1st defendant has not examined any witness to prove the execution of settlement deed and the trial court confirmed that the 1st defendant has failed to prove the settlement deed in accordance with law and the 1st defendant has not chosen to file any cross objection or appeal as against the findings. Though the 1st defendant alleged that he got settlement deed in the year 2001, he has not taken any steps to take possession of the property and even in the written statement, he reserved his right to take steps for recovery of possession which itself shows that he was never in possession pursuant to the settlement deed. Therefore, the settlement deed has not acted upon.

11.2. Further one Baskaran filed a suit in O.S.No.301 of 2004 as against the 1st defendant for recovery of money and he attached the suit property and no notice was served to the plaintiff and the plaintiff was not a party to the suit. Therefore, the findings of the first appellate court that the plaintiff has not taken any steps to raise the attachment are not correct. Therefore, the findings of the courts below that the Ex.A6/gift deed was voluntarily executed by the appellant in favour of the 1st defendant are wholly erroneous. The plaintiff has clearly established that the settlement deed was obtained by playing fraud. Therefore, the plaintiff proved her case by producing proper and sufficient evidences and the defendant/DW1 himself admitted that he only helped the plaintiff to transfer property tax records in her name. Therefore, the alleged settlement deed was never acted upon and the defendant cannot claim any right based on the settlement deed Ex.A6 But both the courts below failed to appreciate the above facts in a proper and perspective manner. Therefore, the \decree and judgment passed by the courts below are liable to be set aside and the second appeal is liable to be allowed.

12. Learned counsel for 1st respondent would submit that originally the suit property was purchased by the 1st defendant in the name of the plaintiff

through sale deed dated 04.06.2011 and the plaintiff had no financial capacity to purchase the suit property and she had no any independent income and thereafter, the plaintiff executed the settlement deed in favour of the 1st defendant and he also accepted the settlement deed. The 1st defendant had some intimacy with the plaintiff and thereby they were living together. Thereafter, the plaintiff had got illegal contact with another person and thereby, he cancelled the oral permission given to the plaintiff from residing in the suit property and the water tap connection also disconnected through the 2nd defendant. The plaintiff has only filed the suit for declaration to declare that the settlement deed as null and void, without seeking the relief of declaration in respect of the suit property. The settlement deed in favour of the 1st defendant was acted upon and he was residing along with the plaintiff even after the execution by her and already the suit was filed by one Baskaran in OS.No.301 of 2004 against the 1st defendant seeking relief of recovery of money. The suit property was attached in that execution proceedings and there was no any fraud and misrepresentation in executing the settlement deed as alleged by the plaintiff.

12.1. On the side of the plaintiff, she was examined as PW1 and marked as Ex.A1 to Ex.9. On the side of the defendant, they examined DW1 and DW2 and marked Exhibits Ex.B1 to B17. After analysing the evidences, the trial court had fairly came to the conclusion that the plaintiff has no independent income to purchase the said property and thereafter, she voluntarily executed the settlement deed and thereby, the said agreement has been acted upon and therefore, dismissed the suit. The first appellate Court also dismissed the appeal by confirming the decree and judgment by holding that the plaintiff is not entitled to any relief. Both the courts have rendered the concurrent findings and there are no grounds to interfere with the concurrent judgments of the courts below and no substantial questions of law involved in this case. Therefore, this Second Appeal is liable to be dismissed.

13. This Court heard both sides and perused the records.

14 For sake of convenience and brevity the parties herein after will be referred to as per their ranking/status before the trial Court

15. In this case, the plaintiff has filed the suit for the relief of declaration declaring that the settlement deed executed in favour of the 1st defendant gift deed dated 29.11.2001 in favour of the 1st defendant as null and void and to grant permanent injunction restraining the 1st defendant from interfering with the plaintiff's possession and enjoyment of the suit property and to grant the decree of the mandatory injunction directing the 2nd defendant to restore the water tap connection.

16. According to the plaintiff, the suit property originally belonged to her by way of sale deed dated 06.04.2001 and she raised pakka construction after removing the tiled house. The plaintiff already got married with one Thangaraj and begotten a male child Sivamani. Due to misunderstanding, between the plaintiff and her husband Thangaraj, they were separated and subsequently the 1st defendant married the plaintiff in the year 1999 at Tirupati Temple and they lived together and the 1st defendant insisted the plaintiff to be a guarantor for the Ramco cement agency. Thereby she executed a document believing the words of the 1st defendant. Thereafter, on 13.01.2011, people from the 2nd defendant/ Corporation came to the suit property and disconnected the water tap connection. At that time, on enquiry she came to know that the 1st defendant had obtained a gift settlement deed dated 29.11.2001 under the guise of execution of guarantee for the Agency of Ramco cement. Therefore, the appellant has filed this suit.

17. The 1st defendant denied the marriage between the plaintiff and 1st defendant. According to him, he got illegal relationship with the plaintiff. In order to avoid the tax problem, he purchased the suit property in the name of the plaintiff through sale deed dated 04.06.2001. Thereafter, they lived together and the 1st defendant also permitted the plaintiff and her son to reside in the suit property and thereafter, the plaintiff herself executed a settlement deed in favour

of the 1st defendant dated 29.11.2001 and the possession of the property was handed over to the 1st defendant. He along with the plaintiff were residing there. After some time, the plaintiff got illegal connection with another man and thereby dispute arose between them and then she refused to vacate the premises. Thereafter, the 1st defendant mutated the revenue records in his name. The properties of the plaintiff was attached through the court proceedings and the plaintiff has not taken any steps to raise any attachment. Therefore, the defendant sought for dismissal of the suit.

18. Based on the pleadings, the trial court has framed necessary issues and the trial court dismissed the suit by observing that the property was purchased through the sale deed in the name of the plaintiff on 04.06.2001. At that time, the tiled house was situated in the property and thereafter, a house was constructed and in the house warming ceremony invitation dated 20.01.2002, the name of the plaintiff and the 1st defendant have been printed as family and the plaintiff failed to prove the source of income to purchase that property. Further, she already filed a suit in OS.No.7 of 2011 as against her husband Thangaraj for maintenance. In that suit, she filed the suit as indegent person. Had the plaintiff purchased the property she should have mentioned this property in the said suit, but the said suit was filed on behalf of minor son. The settlement deed in favour of the 1st defendant has not been proved in accordance with the provisions of Section 68 of the Indian Evidence Act. At the

same time, the plaintiff who filed the suit has to prove her case. Therefore, the plaintiff failed to prove that she purchased the property. The plaintiff herself admitted the execution of settlement deed. But according to her, it was obtained by playing fraud. Since the property itself not purchased by the plaintiff, the trial court has not answered for the issue in respect of the settlement and dismissed the suit. Since the property is not only under the enjoyment of the plaintiff but also by the tenants and thereby the trial court dismissed the suit for the relief of permanent injunction and the mandatory injunction.

19. Per contra, the first appellate court framed points for determination, Point No.3 would not arise because there is no prayer by the plaintiff to declare the title of the property and the declaration is only in respect of the settlement deed. However, the first appellate court came to the conclusion the once the property is purchased in the name of the female, it has to be treated as a separate property and the plaintiff herself executed the settlement deed in favour the 1st defendant. The plaintiff has not taken any steps to raise attachment when the property was attached by the third party in a money suit filed against the 1st defendant and the plaintiff failed to prove the misrepresentation and the fraud played by the defendant in executing the settlement deed and therefore, dismissed the appeal by confirming the dismissal of the suit by the trial court. However, rendered findings that in the previous suit, the suit was filed as indegent person on behalf of the minor and thereby the affidavit filed by the

plaintiff in the suit as indigent by not disclosing the suit property, no way affected the case of the plaintiff. In this context, the first appellate court failed to consider that once the property purchased in the name of female, it has to be presumed that the property is a self-acquired property unless the contrary is proved.

20. This court has carefully perused the records. In fact the findings of the trial court that the plaintiff failed to prove the financial capacity to purchase the property are erroneous for the simple reason that once the property is purchased in the name of the female, it has to be presumed that the property was purchased by her and the same is her separate property unless the contrary is proved. Here the 1st defendant failed to prove the contrary. Further, the first appellate court came to the fair conclusion that the property purchased by the plaintiff and it is her separate property. Therefore, the aforesaid findings of the first appellate court need not be interfered by this court. As far as the settlement is concerned, according to the plaintiff, the 1st defendant insisted the plaintiff to be a guarantor for the dealership of the Ramco cement and thereby, she executed the guarantee deed but the defendant obtained the settlement deed under the guise of guarantee deed. The Settlement deed dated 29.11.2011 is a registered settlement deed. Once the document is registered, it has a statutory presumption that the deed was registered by following the procedures unless the contrary is proved. Mere pleadings that the plaintiff was under the impression that it was the deed

of guarantee for the Ramco Cement dealership to the 1st defendant is not sufficient and she has to establish the fraud played by the 1st defendant in obtaining the settlement deed. It is not disputed that the plaintiff and 1st defendant were residing in the same roof and according to the plaintiff, she got married with the 1st defendant but the 1st defendant denied the marriage. However, she admitted the execution of the settlement deed but only denied the nature and character of the document.

21. It is not the case of the plaintiff that she is an illiterate and without knowing the contents of the documents, she executed the settlement deed and the plaintiff signed in the document. Once the settlement deed is registered, and the sub Registrar also certified in that effect thereby it has a statutory presumption that the deed was executed in accordance with law. Once the plaintiff admitted the execution of the deed, it is a duty of the plaintiff to prove the fraud played by the defendant and 1st defendant need not prove the execution of the settlement deed by examining the witnesses, since the plaintiff herself admitted the settlement deed.

22. In this context, the learned counsel appearing for the appellant would submit that the 1st defendant who relied upon the settlement deed has to prove the execution of settlement. But he failed to examine the attesting witnesses to prove the execution of settlement deed. He relied upon the following

Judgments:-

1. Valliammal Vs. Sokkammal 2012 (4) CTC 639, High Court of Madras

2. Kalli Naicker Vs. Jaganathan 2013 (1) CTC 318, 2011 SCC Online Mad 1539

23. On a careful perusal of the abovesaid Judgments, it is clear that the acceptance of gift by Donee is essential for a valid gift and proof of settlement deed atleast one of the attesting witness has to be examined and it is mandatory to examine the attesting witness to prove the execution of the settlement deed.

24. In the case on hand, the 1st defendant has not filed any suit for declaring the settlement deed is valid and not filed the suit by claiming the title of the property, per contra the plaintiff only filed the suit to declare the settlement deed as null and void. Once she admitted the execution of the settlement deed, then the plaintiff has to prove the fraud played by the defendant and above said judgment cited by the appellant would no way helpful to support the argument of the appellant/plaintiff.

25. Moreover, the plaintiff filed the suit for maintenance along with her son as against her husband and the said petitions and the orders passed by the court have been marked as Ex.11 and Ex.12 respectively, wherein the plaintiff has categorically stated that no any movable or immovable properties in her name and prayed to declare her as indigent. The court dismissed that petition.

The date of order passed by the court is on 27.10.2010 whereas the plaintiff has executed the settlement deed dated 29.11.2001. Therefore, if the settlement is not acted upon as alleged by the plaintiff, then she ought to have mentioned the above said suit property as her property in the schedule of the indegent petition. But she has not shown this property as a property in the schedule in the indegent petition proceedings. Moreover, the suit property was attached through court proceedings in OS.No.301 of 2004 but the plaintiff has not filed any petition to raise the attachment. If the property originally belonged to the plaintiff, she ought to have taken steps by filing claim petition, but she has not filed any petition challenging the attachment.

26. Learned counsel for the appellant would submit that no notice has been served to the plaintiff and she is not a party to the proceedings and thereby, she had no knowledge about the attachment proceedings. Once the plaintiff is in possession of the property, she ought to have knowledge about the service of notices and thereby the contention of the appellant's side counsel is not acceptable to that regard. Moreover, the settlement deed is dated 29.11.2011 but the plaintiff being the party to the settlement deed has filed the suit after a long time alleging that she only came to know about the settlement deed when the 2nd defendant officials came to the house. The plaintiff being party to the document, cannot take such a plea and once the document is registered, there is a constructive notice under Section 3 of the Transfer of

Property Act, on that ground also the suit is not maintainable. However the courts below have not considered these aspects.

27. The first appellate court also rendered findings that Ex.11 and Ex.12, the said petition filed by the plaintiff in the year 2009 in the name of her son. But the Ex.B11 and Ex.12 shows that both the mother and son had filed the above said petition and therefore, the above said findings that the first appellate court in respect of the Ex.B11 and Ex.B12 are unsustainable. Once the plaintiff filed a suit for declaration, it is her duty to establish the case through sufficient evidence and she cannot take advantage of the weakness defendant's case. Moreover the plaintiff has not sought for the relief of declaration in respect of the property but she only filed the suit challenging the settlement deed. However, she sought for permanent injunction and mandatory injunction in respect of the property without seeking declaration relief in respect of the property. Mere relief of declaration to declare the settlement deed as null and void is not maintainable without seeking relief of declaration of title of the property when the 1st defendant denied the title of the plaintiff. Therefore, the plaintiff ought to have filed a suit for declaration declaring the title of the property. Therefore, the plaintiff is not entitled to any relief through the suit and both the courts have rendered concurrent findings and this court need not interfere without any valid grounds.

28. As far as the substantial questions of law formulated by this court are concerned, the plaintiff herself admitted the execution of gift settlement deed in favour of 1st defendant, but according to her, it was not executed as gift deed and it was executed only for the purpose of Agent of Ramco Cement. According to the 1st defendant, he obtained agency in the Ramco agency long back. So, it is the duty of the plaintiff to prove that when the agency was taken by the 1st defendant and no any document produced by the plaintiff to prove the same and Ex.B3 to Ex.B6 shows that the tax assessment and the water tap connection were transferred in the name of the defendant in the month of December 2010. Once the settlement deed is executed, it has some statutory presumption that it was executed in the manner known to law unless the contrary is proved, but the plaintiff failed to prove the contrary and the plaintiff herself admitted that after the execution of the settlement deed, both the plaintiff and the 1st defendant were residing in the said property thereby the defendant No.1 is in possession and enjoyment of the property. Once the 1st defendant is in possession after the settlement deed then this court can infer that the settlement was accepted by the 1st defendant. Therefore, the said settlement deed came into effect and acted upon.

29. As far as the substantial question of law (b) Whether or not the alleged gift settlement deed acted upon and the 1st defendant could claim title to

the suit property based on Ex.A6 is concerned, it is admitted that from the date of purchase of the property in favour of the plaintiff, the plaintiff and the 1st defendant are in possession and enjoyment of the property. Once the 1st defendant also is in joint possession along with the plaintiff, it cannot be said that the first Defendant never took possession. Though the defendant pleaded in the written statement that he will take steps for recovery of possession from the plaintiff, it does not mean that the 1st defendant is not in possession. The plaintiff herself admitted that she lived along with the 1st defendant and the 1st defendant has not filed any suit for title over the property, and he only pleaded that he has title over the properties and thereby the plaintiff who filed the suit for declaration, has to prove her case independently. Thus, the substantial questions of law is answered.

30. As far as substantial question of law (c) Whether it is open to him to claim the suit property under Ex.A6 which was never acted upon? is concerned, the defendant during the cross-examination admitted that he only helped the plaintiff in getting the name transferred for the property tax assessment and merely because the tax assessment stood in the name of the plaintiff even after execution of the settlement deed in favour of the 1st defendant, it does not mean that the settlement deed does not acted upon. This court in the previous point decided that the settlement deed was duly executed and acted upon. Thereafter the property tax has been transferred in the name of the 1st defendant and the 1st

defendant could claim the suit property under Ex.A6 since it was acted upon. Therefore, the plaintiff has to prove her case but she failed to prove the same.

31. In view of the above said discussion and answers in the substantial questions of law, this Second Appeal has no merits and deserves to be dismissed. Accordingly, this Second Appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

24-02-2026

Neutral Citation: Yes/No
GV

To

1.M.Shanmuga Sundaram
S/o M.A.Manivasagam, D/97/18a, Narayanasamypuram, Arisipalayam, Salem
Salem Tk
2.The Commissioner
The Salem Corpn Salem.

3.The Section Officer,
V.R.Section,
High Court, Madras.

P.DHANABAL J.

GV/aav

SA No. 559 of 2015

24-02-2026