



A.S(MD)No.9 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.01.2026

Pronounced on : 06.04.2026

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

A.S(MD)No.9 of 2022

1.Jenova,
W/o.Late.Rajkumar,
No.19, Raja Nagar,
North Main Road,
Thiruvaiyaru Town and Munsif,
Thanjavur District.

2.Rajesh,
S/o.Late.Rajkumar,
No.19, Raja Nagar,
North Main Road,
Thiruvaiyaru Town and Munsif,
Thanjavur District.

3. Minor.Harini,
D/o.Late.Rajkumar,
No.19, Raja Nagar,
North Main Road,
Thiruvaiyaru Town and Munsif,
Thanjavur District.

... Appellants/5, 6, 7th Defendants

*(Minor represented by her mother and natural
guardian Jenova 1st Appellant)*

Vs.



A.S(MD)No.9 of 2022

1.K.Jesukumar,
S/o.Late.Kulandhaisamy,
No.2A, Kallukatti Street,
North Gate,
Thanjavur Town and Munsif.

...1st Respondent/Plaintiff

2.Shanthi,
W/o.Mohanraj,
D/o.Late.Kulandhaisamy,
No.67A, Kallukatti Street,
North Gate,
Thanjavur Town and Munsif.

3.Edison,
S/o.Late.Kulandhaisamy,
No.2A, Kallukatti Street,
North Gate,
Thanjavur Town and Munsif.

4.Ananthi,
W/o.Jeyaraj,
D/o.Late.Kulandhaisamy,
No.71, Ground Floor,
Pookkollai Road,
Mannarkudi Taluk,
Thiruvarur District.

5.Nirmalraj,
S/o.Late.Kulandhaisamy,
No.2A, Kallukatti Street,
North Gate,
Thanjavur Town and Munsif,

6.Rani,
W/o.Late.Theerthanathan,
No.2A, Kallukatti Street,
North Gate,
Thanjavur Town and Munsif.



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7. Minor.Renisha,
D/o.Late.Theerthanathan,
No.2A, Kallukatti Street,
North Gate,
Thanjavur Town and Munsif.

8.Minor.Rithickraj,
S/o.Late.Theerthanathan,
No.2A, Kallukatti Street,
North Gate,
Thanjavur Town and Munsif.

...2 to 8 Respondents/
1 to 4, 8 to 10 Defendants

*(7th and 8th Minor Respondents Represented by their
mother natural guardian the 6th respondent Rani)*

PRAYER:- This Appeal Suit is filed under Section 96 of the Civil Procedure Code, to allow the appeal suit and to set aside the judgment and decree, dated 08.10.2021 passed by the II Additional District and Sessions Judge, Thanjavur in O.S.No.37 of 2017 and to pass such further or other orders as this Court may be deem fit and proper in the facts and circumstances of the case.

For Appellants	: Mr.T.R.Subramanian
For R1	: Mr.G.Karnan
For R2 to R8	: Mr.D.Senthil

JUDGMENT

This Appeal is directed against the judgment and decree, dated 08.10.2021 passed in O.S.No.37 of 2017 on the file of the learned II Additional District and Sessions Judge, Thanjavur.



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2. The appellants are the defendants 5 to 7 in O.S.No.37 of 2017 on the file of the II Additional District and Sessions Court, Thanjavur. The first respondent is the plaintiff and the respondents 2 to 8 are the defendants 1 to 4 and 8 to 10 in that suit. The 1st respondent/plaintiff filed the suit for partition seeking 1/7 share in the suit property.

3. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

4. The brief facts are as below:

(a) The case of the plaintiff (1st respondent herein):-

The plaintiff and the defendants 1 to 4 are sons and daughters of Kulandhaisamy and Philominal Mary. They have five sons, namely Rajkumar, Edison, Thetharnathan, Jesukumar and Nirmal Raj and two daughters, Shanthi and Anandhi. Out of five sons, 1st son Rajkumar, died on 19.07.2016, leaving his wife, son and daughter (defendants 5 to 7 herein) and the third son Thetharnathan died on 15.07.2015 leaving his wife and minor son and minor daughter (defendants 8 to 10 herein). The plaintiff's father Kulandhaisamy, was



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doing vegetable business and his sons were helping their father in the business.

From out of the income derived from the business, the suit property was purchased in the name of Kulandhaisamy through registered sale deed, dated 13.05.1984 for the benefit of the joint family. They constructed RCC building which consists of three shops and there are also 9 tiled houses in a row. The plaintiff and other sons contributed their income for the construction of houses. Except the defendants 5 to 7, the plaintiff and other defendants are residing in the houses. Their father Kulandhaisamy, died intestate on 28.09.2015, leaving the plaintiff and defendants as heirs. The plaintiff and the defendants are Christians and they are governed by the Indian Succession Act. The first son Rajkumar, converted as Hindu and deserted the family in 2001 and he was living with his family. Later, he died on 19.07.2016. The 5th defendant, the wife of deceased Rajkumar, issued a notice, dated 15.03.2017, claiming absolute right and title over the suit property. The plaintiff told her that her husband was entitled to 1/7 share, but she did not heed the words. Hence, the plaintiff filed the suit for partition claiming his 1/7 share in the suit properties.



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(b) The case of the defendants 5 to 7:-

The 5th defendant's husband Rajkumar, who is the son Kulandhaisamy, was hard worker at his age of 20 and earned more as he was a graduate. The suit property was purchased out of the income of her husband, hence, the father Kulandaisamy settled the suit property in favour of his son Rajkumar by registered settlement deed, dated 10.09.2012. Therefore, no question of intestacy arises on the death of Kulandhaisamy. The physical possession of property was lawful with the settlee. The plaintiff and other defendants indulged in unlawful activities and caused much inconvenience to these defendants, so the 5th defendant sent a complaint before the District Collector and higher police officials. The plaintiff and other defendants have no right over the suit property. Hence, the suit may be dismissed.

(c) The case of the defendants 1 to 4 and 8 to 10:-

These defendants adopt the case of the plaintiff and contended that their father Kulandhaisamy, did not execute any kind of deed in favour of the deceased Rajkumar, who is the husband of the 5th defendant. These defendants are entitled to 1/7 share each.



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parties:

5.The trial Court framed the following issues upon the pleadings of both

(1) Whether the settlement deed, dated 10.09.2012 as stated by the defendants 5 to 7 is true, valid and came into force?

(2) Whether the settlement deed was executed upon undue influence by deceased Rajkumar as alleged by other defendants.

(3) Whether the plaintiff is entitled to 1/7th share in the schedule mentioned properties?

6.During trial, the plaintiff examined himself as P.W.1 and marked exhibits as Ex.A.1 to Ex.A.6. On the defendants' side, the 4th defendant was examined as D.W.1, but no exhibits were marked on his side, on the defendants 5 to 7 side, D.W.2 and D.W.3 were examined and Ex.B.1 to Ex.B.15 were marked.

7. On appreciation of evidence and the submissions made on behalf of the parties, the trial Court has held that the defendants 5 to 7 have not proved the settlement deed as true, valid and came into force, so the plaintiff is entitled



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to 1/7 share in the suit property. Accordingly, the trial Court has passed preliminary decree in favour of the plaintiff in respect of 1/7th share in the suit properties by its judgment and decree, dated 08.10.2021.

8. Aggrieved by the judgment and decree of the trial Court, dated 08.10.2021, the defendants 5 to 7 have preferred this appeal.

9. Both parties have made lengthy arguments in respect of their respective cases. On hearing both sides and on perusing the material records along with grounds of appeal, both sides admitted that the suit property is self acquired property of Kulandhaisamy. He had five sons and two daughters. The plaintiff is one of the sons of Kulandhaisamy. The first son Rajkumar, died leaving behind his wife and children, the defendants 5 to 7 herein. The 3rd son Thetharnathan, died leaving behind his wife and children, the defendants 8 to 10 herein. The other two sons and two daughters are shown as defendants 1 to 4. The plaintiff's case is that their father Kulandhaisamy died intestate, so he is entitled to 1/7th share. The defendants 5 to 7 claim that out of his own income, the 1st son purchased the suit property in the name of his father Kulandhaisamy, who later executed a registered settlement deed, dated



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10.09.2012, in favour of first son Rajkumar and that after the death of Rajkumar they alone are entitled to the suit property. Hence, the main dispute between the parties is in respect of settlement deed, dated 10.09.2012, which is marked as Ex.B.1.

10. The points for consideration in this appeal are:

- 1. Whether Ex.B.1 registered settlement deed, dated 10.09.2012 is true and valid one in the eye of law?*
- 2. Whether the appeal is to be allowed?*

11. Point Nos.1 & 2:

The learned counsel for the appellants/defendants 5 to 7 submitted that there is no dispute that the suit property stood in the name of Kulandhaisamy. The case of the plaintiff is that the defendants 5 to 7 have not produced the original settlement deed and have not examined any of the attesting witnesses to prove the same. The defendants 5 to 7 pleaded about the execution of settlement deed in their written statement. The plaintiff in his reply statement stated that the 5th defendant's husband Rajkumar by playing fraud, misrepresentation and undue influence, obtained settlement deed from his



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father. Regarding this version, the plaintiff has not stated the particulars of pleadings as required under Order VI Rule 4 of CPC and the plaintiff has not proved the same by producing material evidences. The other defendants have stated that if at all the father Kulandhaisamy executed any settlement deed in favour of Rajkumar, it is a sham and nominal and it was never intended to be acted upon as Kulandhaisamy was not the absolute owner of the suit property because the other siblings contributed their income for the purchase of the property and construction therein. From these, there is no denial by the plaintiff or other defendants and hence, the execution is admitted.

12.The learned counsel for the appellants further submitted that the settlement deed, dated 10.09.2012, is registered one and the defendants 5 to 7 produced a certified copy of settlement deed as Ex.B.1. while adducing evidence, the plaintiff side has also not specifically denied the settlement deed, but simply stated that the settlement deed is forged one, which is not said to be a specific denial. Moreover, the father Kulandhaisamy executed the registered settlement deed in the year 2012 and he died in the year 2015 nearly after three years after the deed. There was no objection raised by the plaintiff or other defendants. There are some exception in respect of registered deeds as per



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Sections 64 and 65 of the Indian Evidence Act, particularly under Section 65(b) where the existence of deed is proved. Ex.B.1 is certified photo copy of settlement deed. The photo of father affixed in Ex.B.1 is admitted. The plaintiff or other defendants have not taken any steps to prove that the signature is forged one by way of sending the same to handwriting expert. The Sub Registrar has properly attested the signature and photo, so the Sub Registrar acted properly and hence, the execution of deed is proved. The name of Rajkumar was muted in revenue records under Ex.B.7. Therefore, in the absence of specific denial, the defendants 5 to 7 are entitled to invoke the proviso to Section 68 of the Evidence Act and thereby the defendants 5 to 7 have proved the settlement deed, dated 10.09.2012. Another ground for the case of the defendants 5 to 7 is the lost of the original deed. The settlement deed is registered one, which is not irretrievable one. So, the loss of document during transit is held to be permanent loss which is covered by Section 65 of the Indian Evidence Act. Hence, the defendants 5 to 7 have sufficiently proved the Ex.B.1 - Settlement Deed. Unless Ex.B.1 is set aside or cancelled, the plaintiff or other defendants are not entitled to seek partition.



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13.In support of their arguments, the learned counsel for the defendants 5 to 7 has relied on the following rulings:

(1) 2023 (1) CTC 30 Division Bench of Madras High Court in S.Shanmuga Sundaram /v/ S.Mohan case. In paragraph Nos.16, 19 and 20 it is held as follows:

“16.In the absence of the specific denial the person, who seeks to prove the document can invoke the proviso to Section 68 of the Indian Evidence Act. The specific denial must relate to the execution of the document. In the present case, the appellant had stated in the plaint that the document may even be forged. In our view that cannot be said to be a specific denial. That apart, report of the Handwriting Expert Ex.C.1 shows that the signature of the deceased in the document tallied with the admitted signature. The appellant was not able to establish that the signature was forged. In the absence of the specific denial as regards the execution of the document, the first respondent in our view is entitled to invoke the provision to section 68 of the Evidence Act.....

19. As regards voluntariness and sound disposing state of mind we find that the deceased Sengodan was alive for nearly 40 days after the settlement deed. The settlement deed was executed at the Sub Registrar's Office and the endorsement



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confirms the presence of the deceased Mr.Sengodan physically for the purpose of registration..... However, in order to invoke section 111, the appellant has to first establish that the first respondent was in a position to dominate the Will of the deceased and he was in active confidence that he had obtained unfair advantage by using that position. The appellant apart from merely stating that the deceased died 40 days after the execution of the settlement deed has not proved that the deceased was not in a sound disposing state of mind. In order to establish undue influence over a person of the stature of the deceased, the appellant ought have produced the materials to show that the first respondent was in active confidence and was in a position to exercise undue influence over the deceased.....

20. That apart, there is a presumption that a registered document is validly executed. The registered document therefore, prima facie would be valid in law. The onus of proof, thus would be on the person who leads evidence to rebut that presumption. In this case, the appellant had not rebutted the presumption in favour of the registered document. In this regard, the judgment of the Hon'ble Apex Court in Prem Singh v. Birbal 2006 (5) SCC 353 which has been extracted in the judgment of the Hon'ble Apex



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Court in Jamila Begum v. Shami Mohd 2019 (3) CTC 810 (SC) is applicable to the facts of the case.”

(2) AIR 2006 Madhya Pradesh 107 in the case of **Rekha Rana and Ors. /v/ Ratnashree Jain**, in paragraph No.16.1, it is held as follows:

“16.1.When once the case for the introduction of secondary evidence is made out, certified copy got from the Registrar’s office can be admitted under Section 57, Subsection (5) of the Indian Registration Act without other proof than the Registrar’s certificate of the correctness of the copy and shall be taken as a true copy. It seems to me that the plaintiffs have satisfied the Court that the necessary prerequisites for the introduction of secondary evidence as contemplated under sections 65 and 66 of the Evidence Act have been made out. When once it is proved that the party is entitled to adduce secondary evidence, then the question arises. “What is the mode of proof of the certified copy?” As stated already under Section 57(5) of the Indian Registration Act, a certified copy obtained from a Registrar’s office shall be admissible for the purpose of proving the contents of the original document. That means that mere production of a certified copy without any further oral evidence to support it would be enough to



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show what the original document obtained. That a registration copy is the copy of a public document contemplated under Section 74, Sub-section (2) of the Indian Evidence Act, is indisputable and the copy of such a document is a certified copy of a public document under Section 76 of the Indian Evidence Act.”

(3) AIR 2010 (NOC) 424 (DEL) in the case of Shir Prem Chandra

Jain /v/ Sri Ram. It is held in Paragraph Nos.6 and 7 as follows:

“6. As far as the reasoning given by the trial Court in the present case is concerned, the trial court has understood the word ‘lost’ in Section 65 as ‘irretrievably lost’, thus the plea of the petitioner of the document being ‘untraceable’ has been held to be not a plea of ‘lost’ and thus not covered by Section 65.

7. The meaning of lost in the Black’s Law Dictionary 6th edition is “An article is lost when the owner has lost the possession or custody of it, involuntarily and by any means, but more particularly by accident or his own negligence or forgetfulness, and when he is ignorant of its whereabouts or cannot recover it by an ordinarily diligent search.



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8.*It is sufficient to prove that the document is not available at the relevant time and its whereabouts are unknown then.*”

(4) (1996) 7 Supreme Court Cases 767 in Noorul Hoda /v/ Bibi Raifunnisa and Others case, in paragraph No.6 it is held as follows:

“6.when the plaintiff seeks to establish his title to the property which cannot be established without avoiding the decree or an instrument that stands as an insurmountable obstacle in his way which otherwise binds him, though not a party, the plaintiff necessarily has to seek a declaration and have that decree, instrument or contract cancelled or set aside or rescinded....”

14. Per contra, the learned counsels for the first respondent/plaintiff and other defendants have argued that the plaintiff and defendants are Christians, the plaintiff is the younger son of Kulandhaisamy, who purchased the suit property. The plaintiff specifically stated that Kulandhaisamy died intestate in his plaint in paragraph No.4, so the plaintiff is entitled to 1/7 share in the suit property. As per the provisions of Order VIII Rule 3 of CPC, it is for the defendant to deny the averments specifically. The 5th defendant has not produced the original settlement deed along with written statement, the burden



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of proof of the settlement deed is only upon the 5th defendant, who pleaded the same. The 5th defendant stated in her written statement that the suit property was purchased by her husband Rajkumar, in the name of his father and the entire sale amount was paid by her husband. Such a plea is barred under Section 4 of the Binami Transaction Act. The suit property was purchased by Kulandhaisamy by virtue of Ex.A.1 - Sale Deed, dated 13.05.1984 and the contents of the sale deed show that the sale consideration was paid by Kulandhaisamy.

15.The learned counsel for the 1st respondent/plaintiff and other respondents have further argued that the 5th defendant has not produced the original settlement deed, but only marked certified copy of the settlement deed as Ex.B.1 with objection. The signature of Kulandhaisamy found in Ex.A.1 sale deed and Ex.B.1 settlement deed seems to be differed. Moreover, there is no reason stated by Kulandhaisamy for exclusion of other heirs in the settlement deed, so the settlement deed is not valid. So, the burden of proof of Ex.B.1 is on the 5th defendant. The 5th defendant has not examined any attestors or even the scribe. Though the 5th defendant stated that the original settlement deed was lost, the same was not proved by producing acceptable materials.



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Therefore, the original itself is inadmissible, and the copy of the same could not be considered as secondary evidence without production of the original. Moreover, in order to enable a party to produce secondary evidence, it is necessary for the party to prove the existence and execution of the original documents. In this case, the attestors and scribe were not examined, much less the Sub Registrar was not examined. Therefore, Ex.B.1 cannot be looked into and it is void document, hence, the same need not be set aside, hence the plaintiff is entitled for partition. The trial Court has correctly concluded that the Ex.B.1 settlement is not proved and that the plaintiff is entitled to partition. The appeal may be dismissed.

16.In support of their contention, the learned counsels relied on the judgment of the Hon'ble Supreme Court rendered in **J.Yashoda /v/ Shobha Rani case** reported in **(2007) 4 MLJ 958 (SC)**, it is held in paragraph Nos.6 and 8 as follows:

“6.Secondary evidence, as a general rule is admissible only in the absence of primary evidence. If the original itself is found to be inadmissible through failure of the party, who files it to prove it to be valid, the same party is not entitled to introduce secondary



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evidence of its contents.

8.Section 65 deals with the proof of the contents of the documents tendered in evidence. In order to enable a party to produce secondary evidence it is necessary for the party to prove existence and execution of the original document. Under Section 64, documents are to be provided by primary evidence. Section 65, however, permits secondary evidence to be given of the existence, condition or contents of documents under the circumstances mentioned. The conditions laid down in the said section must be fulfilled before secondary evidence can be admitted. Secondary evidence of the contents of a document cannot be admitted without non-production of the original being first accounted for in such a manner as to bring it within one or other of the cases provided for in the section.”

17. In reply, the learned counsel for the appellants/defendants 5 to 7 has submitted that admittedly, the plaintiff has not issued any notice to produce the original document. Further, in a partition suit, all parties are plaintiffs. The sale deed stands in the name of Kulandhaisamy, which is of the year 1984,



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he executed a registered settlement deed in the year 2012, and he died in the year 2015. So, the Ex.B.1 - Settlement Deed is not a void document. There is a difference between void and invalid documents. There is no specific denial for execution of settlement by Kulandhaisamy except on the grounds of forgery or undue influence. So, the provisions of Section 68 of the Indian Evidence Act are in favour of the defendants 5 to 7 and there is no need to examine the attestors. Therefore, the appeal may be allowed.

18.On perusal of appeal records, trial Court records and on consideration of arguments advanced by both sides, the relationship between the parties is not disputed. There is a rival dispute only on the settlement deed, dated 10.09.2012. The settlement deed was registered one. It was not disputed. Admittedly original settlement deed was not filed, instead certified copy of the settlement deed was marked as Ex.B.1. The first respondent pleaded in the plaint that their father Kulandhaisamy, died intestate on 28.09.2015. The appellants/defendants 5 to 7 have specifically mentioned in their written statement that the said Kulandhaisamy had executed registered settlement deed, dated 10.09.2012, in favour of his first son Rajkumar, who is the husband of the 5th defendant and father of defendants 6 and 7. The plaintiff filed the



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reply statement stating that “the 5th defendant’s husband Rajkumar by playing fraud, misrepresentation and undue influence, obtained the settlement deed from his father”. On perusal of records, the plaintiff has not pleaded when the fraud was played and with whose assistance it happened and that whether the plaintiff has taken any coercive steps against the said fraud by way of filing any case or police complaint. Hence, as rightly argued by the defendants 5 to 7, the plaintiff has not stated about particulars of pleadings as required under Order VI Rule 4 of CPC.

19. At this juncture, the case of the appellant/defendants 5 to 7 is that the execution of the settlement deed is accepted and so there is no specific denial. If it is so, the settlement deed being registered is proved under the proviso of Section 68 of the Indian Evidence Act. The material records of this case reveal that the disputed document is registered one and therefore, as guided by the settled legal principle that a document is presumed to be genuine if the same is registered, as held by the Hon’ble Supreme Court in **Prem Singh and Ors. v. Birbal and Ors.** The relevant portion of the said decision reads as follows:

“27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in



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law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption.”

(emphasis supplied)

In view thereof, in the present case, the initial onus was on the plaintiff, who had challenged the registered document. On perusal of the evidence adduced by both sides there is no rebuttal presumption against the settlement deed in question.

20.On perusal of citations relied on by both sides, the **Division Bench of the Madras High Court in S.Shanmuga Sundaram /v/ S.Mohan case reported in 2023 (1) CTC 30**, it is clearly held that the specific denial must relate to the execution of the document and that the pleading regarding fraud and forgery cannot be said to be a specific denial. Therefore, this Court is of the considered view that there is no specific denial against the settlement deed, dated 10.09.2012, executed by the Kulandhaisamy in favour of his son Rajkumar.



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21.Section 68 of the Indian Evidence Act is extracted hereunder:

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“68. Proof of execution of document required by law to be attested. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.”

From the above, the execution of the settlement deed is accepted. Except denial that the signature is forged, the plaintiff has not denied the settlement deed, including the photo of Kulandhaisamy affixed. The Sub Registrar has also attested the photo, which proves the physical presence of the Kulandhaisamy before him at the time of registration. Since all the parties are plaintiffs in a suit for partition, the plaintiff can very well examine the alleged attestors to the deed to substantiate his contra version.



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Therefore, this Court is of the view that the execution of the settlement deed by Kulandhaisamy was not specifically denied and so, the appellants/defendants 5 to 7 are entitled to invoke the proviso of Section 68 of the Indian Evidence Act. The trial Court has not properly appreciated the evidences adduced in the case on hand and hence, the conclusion of the trial Court in respect of the settlement deed is incorrect.

22.The next argument put forth by the plaintiff is that the defendants 5 to 7 have not produced the original settlement deed. Admittedly, the settlement deed is a registered document, i.e., public document. If so, a non-traceable public document can be used by having certified copy of the same. The defendants 5 to 7 have taken steps for tracing the same by way of filing a police complaint, which is not disproved by the plaintiff. Though there is some delay, the fact remains that the defendants 5 to 7 have properly lodged a police complaint regarding the missing of settlement deed. Therefore, the non-production of the original settlement deed will not affect the case of the defendants 5 to 7. Their contention that the document being 'untraceable' has been held to be a plea of 'lost' and thus is covered by section 65 as rightly relied on by the ruling by defendants 5 to 7 reported in **AIR 2010 (NOC) 424**



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(DEL) in the case of **Shir Prem Chandra Jain /v/ Sri Ram**. Therefore, the argument of the plaintiff that Section 65 (b) & (c) is not applicable to the facts of the case, has no force or substance.

23.The specific argument of the defendants' 5 to 7 side is that until the settlement deed is cancelled or set aside, the plaintiff cannot seek for partition as the deed is the main obstacle to the plaintiff. On perusal of records, the defendants 5 to 7 in their written statement clearly pleaded that Kulandhaisamy had executed registered settlement deed, dated 10.09.2012, in favour of his first son Rajkumar. Thereafter, he died in the year 2015 after lapse of three years. Hence, his other sons and daughters, i.e., the plaintiff and other defendants, might have known about the execution of settlement deed. Even after filing written statement with contents about the execution of the registered settlement deed, the plaintiff has not taken any steps to cancel or set aside the same by way of filing case before the appropriate forum, much less to add prayer for cancellation of the settlement deed in the suit on hand. Moreover, there are other properties available to their family except the suit property as seen from the evidence of P.W.1 and D.W.1. Therefore, the plaintiff cannot seek for partition without setting aside or cancelling the settlement deed



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as rightly put forth by the defendants 5 to 7 by relying on ruling reported in **(1996) 7 Supreme Court Cases 767 in Noorul Hoda /v/ Bibi Raifunnisha and Others case**, (stated supra) in which it is held in paragraph No.6 as follows:

“6.when the plaintiff seeks to establish his title to the property which cannot be established without avoiding the decree or an instrument that stands as an insurmountable obstacle in his way which otherwise binds him, though not a party, the plaintiff necessarily has to seek a declaration and have that decree, instrument or contract cancelled or set aside or rescinded.....”.

24.As discussed above, the settlement deed, dated 10.09.2012 under Ex.B.1, is proved by the appellants/defendants 5 to 7 and the trial Court has erred in holding that it is not valid. Therefore, the plaintiff cannot seek for partition in respect of the property covered in Ex.B.1 - Settlement Deed. Considering the above facts and circumstances, the judgment and decree of the trial Court are liable to be set aside and the appeal is to be allowed. The point Nos.1 and 2 are answered accordingly.



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25. In the result, this Appeal Suit is allowed.

(i) The judgment and decree, dated 08.10.2021 passed in O.S.No.37 of 2017 on the file of the learned II Additional District and Sessions Judge, Thanjavur are set aside.

(ii) The suit in O.S.No.37 of 2017 on the file of the learned II Additional District and Sessions Judge, Thanjavur is dismissed. No costs.

06.04.2026

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
VSD

To

1.The II Additional District and Sessions Judge,
Thanjavur,
Thanjavur District.

2.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

**Pre-Delivery Judgment made in
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