



A.S.(MD) No.112 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 22.04.2026

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

A.S.(MD)No.112 of 2025

and

C.M.P.No.4656 of 2025

K.P.S.Palanivel Rajan

: Appellant/2nd defendant

Vs.

1. K.P.S.Alagu Deepa

.. 1st Respondent/1st defendant

2. P.Uma Shanthi

.. 2nd Respondent/Plaintiff

3. A.Deepthi Sanjana

4. A.Susila Priya

.. Respondents 3 & 4 /defendants 3 & 4

PRAYER: This Appeal Suit is filed under Section 96 r/w.Order 41 Rule 1 of the Code of Civil Procedure, to call for the records and set aside the



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judgement and decree, dated 31.10.2023 passed in O.S.No.222 of 2021, by the learned Additional District and Sessions Court, Periyakulam, Theni and allow this appeal with costs throughout.

For Appellant : Mr.J.Lakshmi Shankar

For Respondents : Mr.T.C.S.Thillai Nayagam – for R1

JUDGMENT

(Judgment of this Court was delivered by **R.POORNIMA, J.**)

This Appeal had been filed by the 2nd defendant, challenging the judgment and decree dated 31.10.2023, passed in O.S.No.222 of 2021, on the file of the learned Additional District and Sessions Court, Periyakulam, Theni.

2. The present appellant is the 2nd defendant. The plaintiff, sister of the defendants filed a suit for partition and separate possession of the suit schedule property.



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3. The case of the plaintiff is that one Thiru.K.Pannai Sethuraman, who is the father of the plaintiff, an Advocate by profession married one Tmt.S.Rajeswari. Out of the said wedlock, the plaintiff, 2nd defendant and one Vasanthi were born. The defendant 3 and 4 are the children to Vasanthi, since deceased. Smt.Rajeshwari, wife of Pannai Sethuraman predeceased her husband on 17.01.1981. Subsequently, Thiru.Pannai Sethuraman, married one Leelavathy on 01.07.1981 and out of the said wedlock, the 1st defendant, Alagu Deepa was born.

4. The plaintiff contends that after the death of his first wife, Rajeshwari, his father approached his father-in-law, Thiru.Sivalingam Chettiar, seeking financial assistance for the purchase of agricultural lands. In response, the said Sivalingam Chettiar mortgaged his properties situated at Devadanapatti Village under a registered Mortgage Deed bearing No.3172 of 1981 dated 14.09.1981 and raised a sum of Rs.20,000/-, which has been marked as Ex.A1. The said amount was handed over to Pannai Sethuraman.

5. Out of the said funds, Pannai Sethuraman purchased four



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items of agricultural lands comprised in various survey numbers situated at Kamakapatti Village, Genguvarpatti Firka, Periyakulam Taluk, Theni District, under four separate sale deeds bearing Nos.3193, 3194, 3195, and 3196, all dated 14.09.1981, which are marked as Exs.A2 to A5. Since the properties were acquired from and out of the funds provided by the plaintiff's grandfather, namely Sivalingam Chettiar, the said properties are claimed to be joint family properties.

6. Subsequently, Thiru.Pannai Sethuraman executed an unregistered Gift Settlement Deed dated 30.06.1982 in favour of the plaintiff, the first defendant, and her sister Vasanthi in respect of the suit schedule properties. It is further stated that the plaintiff and defendants 2 to 4 alone are the descendants of Sivalingam Chettiar, whereas the first defendant has no relationship whatsoever with him. This fact is said to be evidenced by an undertaking dated 30.06.1982 executed by Thiru.Pannai Sethuraman in his own handwriting in the presence of witnesses. As the original of the said undertaking is lost or untraceable, a copy has been produced and marked as Ex.A6. Thiru.Pannai Sethuraman died on 19.06.2021. It is stated that all other properties belonging to him had



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already been settled in favour of his children, except the suit schedule properties, which were left out. Hence, the present suit has been filed by the plaintiff seeking partition and separate possession of the suit schedule properties.

7. According to the plaintiff, he is entitled to a 1/3rd share in the suit properties, and defendants 2 to 4 are each entitled to 1/3rd share. Accordingly, the suit has been filed for partition and separate possession.

8. Defendants 2 to 4 have filed written statements supporting the claim of the plaintiff. The first defendant alone has contested the suit.

9. The 1st defendant, in her written statement, has denied the contention of the plaintiff that the suit properties were purchased out of financial assistance obtained by Thiru.Sivalingam Chettiyar by mortgaging his property on 14.09.1981. According to the 1st defendant, Thiru. Pannai Sethuraman was a practicing Advocate and had also served as a Member of the Legislative Assembly from 1977 to 1980. He was a well-established and affluent person who had been purchasing several



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properties since 1955 and was a reputed advocate at Periyakulam. Hence, there was no necessity for him to borrow money from any person for the purchase of the suit schedule properties.

10. It is further contended that the recitals in Exs. A2 to A5 clearly establish that the said properties were purchased out of his own independent funds. After the demise of his first wife Rajeshwari, the said Pannai Sethuraman married the mother of the 1st defendant, Tmt.Leelavathi. She took care of the children born through the first wife as her own and performed their marriages in a grand manner by providing sufficient jewels, sridhanam, and incurring substantial expenses. Out of his love and affection towards his second wife, Tmt.Leelavathi, Thiru.Pannai Sethuraman executed a registered Gift Settlement Deed dated 21.06.1989 in her favour in respect of suit schedule properties (a), (b), (c), and (d), along with another property. From the date of settlement, Tmt. Leelavathi became the absolute owner of the said properties, took possession thereof, mutated the revenue records in her name, and enjoyed the same exclusively by personal cultivation.



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11. The 1st defendant, after her marriage with Mr.Senthil Kumar, has been residing at Chennai and subsequently moved to the United States of America in November 2010, where she continues to reside with her husband.

12. It is further stated that Thiru.Pannai Sethuraman executed a registered Will dated 27.10.2010, whereby he bequeathed his self-acquired properties among his children born through his first wife, namely the plaintiff, the 2nd defendant, and another daughter Vasanthi, as well as the 1st defendant born through his second wife, Tmt. Leelavathi.

13. Under the said Will : The “A” Schedule properties, comprising five items including house sites, coconut thopes, and agricultural lands in Thenkarai, Periyakulam, Thamaraiikulam, and Adukkam Village, were bequeathed to the 2nd defendant. The “B” Schedule properties, consisting of a house site measuring 1701 sq.ft at Thenkarai South Car Street, Periyakulam, and 7.50 acres of hill thope at Adukkam Village, were allotted to the plaintiff, Tmt.Umashanthi. The



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“C” Schedule properties, similar in nature, were bequeathed to Tmt.Vasanthi, mother of defendants 3 and 4. The “D” Schedule property, comprising 10 acres and 15 cents of land at Adukkam Village, Kodaikanal, was allotted to the 1st defendant.

14. Upon the death of Thiru.Pannai Sethuraman on 19.06.2021, the Will came into effect, and the plaintiff and defendants became absolute owners of their respective properties and have been in exclusive possession and enjoyment thereof.

15. The 1st defendant further contends that the present suit for partition has been filed by the plaintiff at the instigation of the 2nd defendant with an ulterior motive to usurp the properties of this defendant. Hence, the plaintiff is not entitled to the relief of partition as prayed for in the plaint and has no right whatsoever to seek such relief.

16. The learned trial Court, had framed the following issues for consideration:-

1. Whether the plaintiff is entitled for 1/3rd share



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and for recovery of possession ?

2. Whether the plaintiff is entitled for permanent injunction ?

17. Before the trial Court, on behalf of the plaintiff P.W.1 to P.W.3 were examined and Ex.A.1 to A9 were marked. On the side of the defendants D.W.1 and D.W.2 were examined and Ex.B1 to Ex.B.10 were marked.

18. On considering all the oral and documentary evidence, the trial Court dismissed the suit. Challenging the said judgement and decree, the 2nd defendant has filed this appeal.

19. During the course of arguments, the learned counsel for the appellant submitted that the suit properties covered under Ex.A2 to Ex.A5 were purchased out of the funds generated from Ex.A1. It was further contended that Ex.A1 and Ex.A2 to Ex.A5, all dated 14.09.1981, were registered on the same day before the Sub-Registrar and formed part of a single transaction.



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20. The learned counsel also pointed out that Thiru Pannai Sethuraman, in the recitals of the gift deed, had stated that the properties were purchased not only from his own funds but also from the funds derived from his first wife. However, this aspect was not taken into consideration by the trial Court.

21. Further, the learned counsel for the appellant contended that Ex.A6 constitutes a family arrangement and, therefore, does not require compulsory registration, placing reliance on the relevant judicial precedents.

22. The learned counsel for the appellant further stated that Ex.A1 is family arrangement and therefore it need not be registered and in support of his contention he rely upon the judgment reported in ***Kale and Others Vs. Deputy Director of Consolidation and Others*** reported in ***1976(3) SCC 119***, wherein it has been held as follows :

“44.In view of our finding that the family settlement did not contravene any provision of the law but was a legally valid and binding settlement in accordance with the law, the view of Respondent No. 1 that it was against the



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provisions of the law was clearly wrong on a point of law and could not be sustained. Similarly the view of the High Court that the compromise required registration was also wrong in view of the clear fact that the mutation petition filed before the Assistant Commissioner did not embody the terms of the family arrangement but was merely in the nature of a memorandum meant for the information of the Court. The High Court further in law in not giving effect to the doctrine of estoppel which is always applied whenever any party to the valid family settlement tries to assail i The High Court further erred in not considering the fact that even if the family arrangement was not registered it could be used for a collateral purpose, namely, for the purpose of showing the nature and character o possession of the parties in pursuance of the family settlement and a o for the purpose of applying the rule of estoppel which followed from the conduct of the parties who having taken benefit under the settlement keep their mouths shut for full seven years and later try to resile from the settlement. In Shyam Sunder and others v. Siya Ram and another (1) it was clearly held by the Allahabad High Court that the compromise could have been taken into consideration as a piece of evidence even if it was not registered or for that matter as an evidence of an antecedent title. The High Court observed as follows:

"The decision in Ram Gopal v. Tulshi Ram,-AIR 1928



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All. 641 (FB)-is clear that such a recital can be relied upon as a piece of evidence.

It is clear, therefore, that the compromise can be taken into consideration as a piece of evidence. x x x To sum up, therefore, we are of the view that the compromise could have been relied upon as an admission of antecedent title.”

23. He also relied upon the judgment rendered in ***Jansirani and Others Vs. G.Loganathan & Others*** reported in ***2007 Supreme (Mad) 1208 = 2007 (4) MLJ 485***, which reads as follows :

“EVIDENCE Partition Deed Section 63(2), Section 65 The court discussed the admissibility of a xerox copy of a partition deed and its compliance with the Evidence Act. The court held that the xerox copy falls within the definition of secondary evidence under Section 63(2) and can be admitted without the need for comparison with the original. It also ruled that the requirement of notice under Section 65(a) was unnecessary as the defendants denied the existence of the original document. The document was deemed to be a partition deed requiring registration and stamp, making it inadmissible for any purpose other than applying the rule of estoppel.”



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24. The rejection of Ex.A1 by the trial Court for the reason that it is inadmissible due to want of registration, is unsustainable in law and liable to be set aside. Since the property purchased from out of the funds borrowed from the maternal uncle of Pannai Sethuraman ,the Court ought to have considered that Thiru.Pannai Sethuraman only stood in the character of trustee in respect of the suit properties vis-a-vis his children through his first wife, and by his commitment under Ex. A6, he is clearly estopped and has no right to execute Ex.B2 or Ex.B5 settlement deeds in favour of the second wife.

25. It is further contended that the 1st defendant relied upon the recitals in Ex. B1 Will to be a final word on the matter about the self-acquisition of the suit properties by Thiru.Pannai Sethuraman without considering that, the beneficiary under the Will can always ignore any portion of the disposition which is invalid and there is no question of estoppel.

26. It is not proved that Smt.Leelavathy was in possession and enjoyment of the property under Ex.A9. The said Pannai Sethuraman



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cancelled Ex.B2 Settlement Deed, since it has not been acted upon and such a cancellation was not challenged by Leelavathy, in the manner known to law.

27. Ex. B5 Settlement Deed is not proved in accordance with Section 68 of the Indian Evidence Act and such a document was not at all pleaded in the written statement, since the plaintiff proved Ex. B5 settlement deed in the manner known to law, the assumption that Ex.A9 cancellation is invalid and Ex.B2 settlement is valid, is totally without basis and it is factually and legally unsustainable. It is alleged that Ex. B6 has been executed by Leelavathi Sethuraman much before Ex.B5 came in to force as such Leelavathi had no right over the property as on 01.08.2008 and Ex. B2 has already been cancelled under Ex.A9 and it is alleged that said Leelavathy executed a Will on 01.08.2008 but the same was not properly proved as per Section 63(c) of the Indian succession Act and Section 68 of the Indian Evidence Act.

28. D.W.2, one of the attesting witness in the alleged will has not been clearly established by stating that the executor identified the



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attest or when he attested the Will. D.W.2 is giving false evidence and he is an assistant of the document writer and cooked up witness.

29. He relied upon the judgment in ***Govindan Chettiar Vs. Akilandam @ Seethalakshmi and 24 Others*** reported in ***1997 (3) LW 673***, which reads as follows :

“28. I have already said that the attesting witnesses in this case have not identified the signature of the deceased, nor the attestation by them. They only give a general statement about the procedure of attestation. When the signatures of the testator and the attestors are not identified, it cannot be said that the Will is properly proved. In 1996-II-M.L.J 596 (Suguna Bai v. Muniammal @ Dhanalakshmi and others), I had occasion to consider a similar question. In paragraph 18 of the judgment, I have held thus:-

"Even though D.W 5 speaks that he is an attestor when he was examined, I do not find that the Will is shown to him and the signatures of the various attestors or the testator are identified by him. It is seen that Ex. B-8 was marked through D.W 3, the third defendant, wherein the Court noted "subject to proof". I do not find that any step



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has been taken by the third defendant (appellant) to have the same proved in accordance with law, i.e, when attestation to a Will is sought to be proved, naturally, the witness must say that the document contains either the thumb impression or signature of the attester, and that he has also signed in token of the attestation. He must identify the signature as seen in the document.."

(Emphasis Supplied)

In this case, the Will is marked through D.W 1 who is the propounder. The Will is not even shown to D.W 2 or D.W 3. Along with the same, the statement in the written statement that the deceased was senile even from 1961 also gains importance. Being business partners of the appellant, they were interested in him."

30. He also relied upon the judgment in ***Kamalam (died) and Others Vs. Sasikala and Others*** reported in **2024 SCC Online Mad 12290** wherein it has been held as follows :

"26. Let me first take up the Will of Late.Pechinanna Asari. D.W.3 is one of the attesting witnesses to the said Will, Ex.B-12. D.W.3 claims that he knows Pechianna Asari for over 15 years. He has stated in his chief examination that he read the Will and that the testator



signed the Will in his presence and thereafter, he attested the Will, then the other attesting witness, Chinnasamy signed in his presence. He has further stated that the Testator was in a sound and disposing state of mind at the time of execution of the Will.

27. The evidence of D.W.3 falls way short of the requirements under Section 63(c) of the Indian Succession Act. D.W.3 does not state that the Will was signed in the presence of both the witnesses and that the Testator saw the other attesting witness sign the Will. He only states that he saw the other attesting witness sign the Will. Therefore, the only attesting witness examined to prove due execution of the Will, Ex.B-12 has failed to adduce necessary and satisfactory evidence to establish that the Testator executed the Will as required under the law.

28. Coming to the Will, Ex.B-13, executed by Late P.Ramathal, admittedly none of the attesting witnesses were examined before the Trial Court. D.W.4, one, Arulprakash has been examined to prove due execution and attestation of Ex.B-13. D.W.4 was an identifying witness before the Registrar concerned, at the time of registration of the Will. He has stated that he knew P.Ramathal for about 20 years. He has only spoken about the registration formalities being done in his presence. Curiously, the sad Will of P.Ramathal is dated 27.11.1996



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and the said Will is said to have been attested by two witnesses, Sangeetha and Boopathi. The said Boopathi has also signed as one of the identifying witnesses at the Registrar's office on 10.12.1996. Even though D.W.4 has also been elaborately cross examined on the side of the Plaintiffs as well as defendants 1 and 5, first and foremost, it needs to be seen as to what is the evidentiary value of his statements, in chief and cross. Admittedly, D.W.4 is not an attesting witness to the will, Ex.B-13.”

and prayed to allow the appeal and set aside the judgment and decree of the trial Court.

31. The learned counsel for the first respondent submitted that the plaintiff, who instituted the suit, has not preferred any appeal as against the decree and judgment of the trial Court. In contrast, the present appeal has been filed by the appellant, who was arrayed as the second defendant, and it is contended that the suit itself was instituted at his instigation.

32. It is further submitted that during the course of trial, the



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appellant/second defendant had filed a counter statement admitting the averments contained in the plaint. However, he did not choose to enter the witness box, nor did he adduce any evidence to substantiate the case of the plaintiff. In such circumstances, his failure to step into the witness box and support the plaintiff's case warrants the drawing of an adverse inference against him.

33. In this regard, reliance is placed on the principle embodied under Section 114 illustration (g) of the Indian Evidence Act, and on the judgment of the Hon'ble Supreme Court in ***Iswar Bhai C. Patel vs. Harihar Behera and Others (Civil Appeal No.1417 of 1982, dated 16.03.1999)***, wherein it has been held as follows:

“It is significant that while the plaintiffs put the defendant in the witness-box, they themselves had not the courage to go into the witness-box. Plaintiffs were the best persons to give evidence, and their failure to go into the witness-box must, in the circumstances, go strongly against them.”

34. The learned counsel further contended that the defendant



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advanced arguments beyond the scope of pleadings in the written statement, which are liable to be eschewed in law.

35. It is also argued that the plaintiff relied upon Ex.A6, which is only a xerox copy. The plaintiff failed to lay the necessary foundation for the admissibility of secondary evidence by proving that the original document was either lost or in the custody of the defendants despite due diligence. Therefore, Ex.A6 is not admissible in evidence. Moreover, the said document contains several corrections and interpolations, and in the absence of the original document, it is not possible to ascertain whether such alterations existed in the original.

36. Further, it is submitted that Ex.A6, being a Gift Settlement Deed, has not complied with the mandatory requirements under Section 17 of the Registration Act and Section 123 of the Transfer of Property Act, and hence it is invalid in the eye of law.

37. During cross-examination, the plaintiff admitted that the



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defendants are in possession of the suit property. The first defendant has also produced documentary evidence, such as patta passbook and property tax receipts, to establish possession and enjoyment.

38. The learned counsel further contended that one Pannai Sethuraman had executed Ex.B10, a Gift Deed dated 21.06.1989, in favour of his second wife, Smt. Leelavathy, clearly stating that the property purchased in the year 1981 was his self-acquired property. The said deed also explicitly declares that the gift is irrevocable, and possession was handed over on the same day.

39. Subsequently, the said Leelavathy obtained patta (Ex.B3) and paid property tax (Ex.B4), thereby evidencing continuous possession and enjoyment of the property.

40. It is further argued that the cancellation deed (Ex.B9) is invalid in law, as the executant has no unilateral right to cancel an irrevocable settlement deed.



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41. Additionally, Thiru.Pannai Sethuraman executed a Will dated 27.10.2010 (Ex.B1) and another Will (Ex.B2) in favour of his children, including the plaintiff, the second defendant, and one Vasanthi, wherein he has also referred to the earlier gift executed in favour of Leelavathy.

42. Reliance was placed on the judgment in Govindaraju (died) and others Vs. Rathinammal and other reported in 2004 (3) CTC 9, which reads as follows :

“12. But, in this case, learned counsel for the appellants has come forward with the submission that since the 1st appellant/plaintiff denied the execution of Ex.B1, the 2nd defendant cannot rely on the Proviso to Sec.68 of the Act and so she cannot rely on Ex.B1 to establish her title, as the same has not been proved by examining one of the attestors as contemplated under Sec. 68 of the Act. If the averments in the plaint connote the specific denial as contemplated under the Proviso to Sec. 68 of the Act, the 2nd defendant cannot rely on Ex.B1 to establish her title as she did not examine any one of the



attestors.

13. So it has to be appreciated whether the 1st appellant/plaintiff has come forward with any such "specific denial". So we have to appreciate the averments in the plaint regarding the denial, which are as follows:

"5. It was no wonder, therefore, that Murugesh fell an unwilling prey to their designs and succumbed ultimately to the pressure tactics. An involuntary document dated 15.9.1973 was extorted from Murugesh by the second defendant, purporting to be an irrevocable settlement of the suit properties.

6. It is submitted that the said document was void ab initio. It was not acted upon. Possession was not given to the second defendant thereunder. Murugesh continued to be the owner and was in possession. The second defendant too did not accept the gift. It was, as stated earlier, the result of threat, intimidation coercion and undue influence and was in the same legal position as a voidable contract."

Except these vague statements, there is no other averment in the plaint with respect to execution of Ex.B1 by Murugesh. So it is for us to decide whether such pleading in the plaint can be construed as "Specific denial". "specific" means expressly, distinctly or definitely and not an ambiguous or vague stage. It should be something over and above a general denial as some



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meaning must be given to the word "specific". What has to be specifically denied or disputed is the execution of the document or the attestation.

14. The learned Judges of the Calcutta High Court in the decision in Nund Kishore Lal v. Kanee Ram Tewary, ILR 29 Cal. 355, while dealing with the statement in the written statement that the execution of the deed had been brought about by fraud of the plaintiff, held that the same was not a specific denial of execution of the document.”

43. In support of his contention, the learned counsel relied upon the judgment in N.P.Saseendran Vs. N.P.Ponnamma and Others reported in 2025 (4) CTC 80, which reads as follows :

“Transfer of Property Act, 1882 (4 of 1882), Sections 122 & 126 Stamp Act, 1899 (2 of 1899), Article 33 Kerala Stamp Act, 1959 (Ker. Act 17 of 1959), Article 31 - Gift - Settlement - Essentials Present transfer of Ownership Acceptance Revocation Registered document executed by Father in favour of Daughter conveying Ownership of Suit property - Settlor reserved Life interest in favour of himself and his wife Also reserved right to receive Income and Mortgage upto limited extent No restriction on Daughter's right to construct House and hold property Held, test is whether disposition operates in praesenti Vesting of Ownership in praesenti evident from



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recitals - Transfer in praesenti with limited reservation amounts to valid Gift/Settlement - Delivery of possession not condition sine qua non to validate Gift - Execution and registration by Donee/Settlee constitutes valid acceptance Unilateral cancellation impermissible unless Deed contains conditions for Revocation laid down in K. Balakrishnan v. K. Kamalam, followed rightly construed as Settlement by High Court and concurrent finding that document is a Will, held, erroneous Appeal dismissed, Judgment passed by High Court confirmed. (Paras 11, 11.3, 14.1, 15.1, 15.2 & 18).”

and hence, the unilateral cancellation deed executed under Ex.B9 is not a valid document.

44. He further stated in the cancellation deed Ex.A9 he acknowledges the possession and enjoyment of the property by Smt.Leelavathy for more than 20 years. It further reveals that subsequently, on 01.08.2008 Leelavathi executed a Will in favour of the 1st defendant anticipating the mischief of 2nd defendant and the same also proved by examining a witness. Therefore, the trial Court rightly dismissed the suit which needs no interference and the appeal is liable to



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be dismissed.

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45. Heard the learned counsel on either side and perused the materials available on record.

46. According to the appellant, the suit properties were purchased out of funds allegedly provided by the father of the plaintiff, Thiru Pannai Sethuraman, through his maternal uncle, who was also his father-in-law, in the year 1981.

47. It is not in dispute that the suit properties were purchased in the name of Thiru Pannai Sethuraman under Exs.A2 to A5 in the year 1981. However, the crucial question is whether those properties were purchased out of funds borrowed from his father-in-law, Thiru.Sivalingam Chettiyar. The appellant has failed to establish the same.

48. A careful perusal of Exs.A2 to A5 clearly shows that the recitals attribute the source of funds to Thiru Pannai Sethuraman himself.



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There is no reference whatsoever indicating that the consideration flowed from his father-in-law. Further, Ex.A1, the alleged mortgage deed, does not support the appellant's case. It does not state that the mortgage was executed for the purpose of purchasing the suit properties in the name of the grandchildren. On the contrary, it merely recites that the mortgage was executed to discharge debts and meet expenses.

49. Further, both oral and documentary evidence establish that Thiru Pannai Sethuraman was not a person of limited means. He was a practicing advocate and had been purchasing several properties from as early as 1955. Therefore, the contention that he was compelled to borrow funds for purchasing the suit properties is not substantiated.

50. It is also relevant to note the surrounding circumstances. The first wife of Thiru.Pannai Sethuraman died on 17.01.1981. He subsequently married one Leelavathi on 01.07.1981. The suit properties were purchased only thereafter, on 14.09.1981. If indeed the father-in-law intended to purchase properties for the benefit of his grandchildren, nothing prevented him from purchasing the same directly in their names,



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appointing their father as guardian. The alleged indirect mode suggested by the appellant appears unnatural and improbable.

51. The appellant further relies on Ex.A6, said to be a settlement deed executed by Thiru.Pannai Sethuraman in favour of his children through the first wife. However, the original of Ex.A1 has not been produced. The explanation that it is lost or untraceable has not been satisfactorily proved. In the absence of proper foundation for non-production of the original, the secondary evidence (xerox copy) is inadmissible in law.

52. Moreover, a perusal of the copy of Ex.A6 reveals interpolations and corrections. In the absence of the original document, it is impossible to ascertain whether such alterations were made at the time of execution or subsequently, thereby casting serious doubt on its genuineness.

53. The attesting witness examined as PW2 also does not support the appellant's case. Though he attempted to depose regarding



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the alleged source of funds, in cross-examination he admitted that he had no knowledge about the execution of Ex.A1. He is closely related to the first wife of Thiru Pannai Sethuraman and is therefore an interested witness. His evidence does not inspire confidence.

54. Further, PW2 stated that he handed over a copy of the alleged settlement deed to the plaintiff at the time of her marriage, indicating that the plaintiff had knowledge of the document as early as 1981–82. However, despite such knowledge, she neither took steps to take possession of the property nor attempted to mutate the revenue records in her name, nor sought to obtain the original document. This conduct is inconsistent with her claim.

55. Even assuming Ex.A6 to be a settlement deed, it must satisfy the mandatory requirements under Sections 122 and 123 of the Transfer of Property Act, 1882. A valid gift of immovable property must be effected by a registered instrument and must be accepted by the donee during the lifetime of the donor.



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56. In the present case, the alleged settlement deed is unregistered and the acceptance of the gift has not been proved. Therefore, the document is invalid in law. Further, Section 17 of the Registration Act mandates compulsory registration of instruments of gift of immovable property. The executor being a practicing advocate, it is highly improbable that he would execute an unregistered gift deed, fully aware of its legal invalidity.

57. On the other hand, the evidence on record clearly establishes that Thiru Pannai Sethuraman executed a registered gift deed (Ex.B2) in favour of his second wife, Leelavathi, as early as 1989. The donee accepted the gift, took possession, and her name was duly mutated in the revenue records. She remained in continuous possession and enjoyment of the property.

58. Though a cancellation deed (Ex.A9) is said to have been executed later, such unilateral cancellation of a completed gift is void in law, particularly after possession has been delivered and accepted.



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59. Subsequently, under Ex.B5 dated 09.07.2009, Thiru.Pannai Sethuraman executed another settlement deed in favour of Leelavathi, expressly acknowledging that the earlier cancellation was invalid and reaffirming her possession and enjoyment.

60. Further, under Ex.B1, a Will executed in 2010, he clearly referred to the earlier gift in favour of Leelavathi and bequeathed other properties to his children, including the appellant. The parties have accepted the Will and have taken possession of the properties allotted to them. Having accepted the Will, they are estopped from disputing the earlier settlement in favour of Leelavathi.

61. The plaintiff, despite having knowledge of the Will, has neither challenged it nor even referred to it in the plaint. Her case that the suit properties were omitted from partition is therefore unsustainable.

62. Even with respect to the Will executed by Leelavathi (Ex.B6) in favour of the first respondent, the same has been duly proved through an attesting witness. Minor discrepancies in the evidence of the



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witness do not invalidate the Will when its execution and attestation are otherwise established.

63. In view of the above, the plaintiff has failed to prove her case. On the contrary, the defendants have established valid title and possession through registered documents. The Trial Court has rightly dismissed the suit, and the same does not warrant any interference.

64. In the result, this Appeal Suit is dismissed, by confirming the judgement and decree, dated 31.10.2023 passed in O.S.No.222 of 2021, by the learned Additional District and Sessions Court, Periyakulam, Theni. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

(G.R.S., J.) (R.P., J.)
22.04.2026

Index :Yes/No
Internet :Yes/No
RM



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To

1. The Additional District and Sessions Court,
Periyakulam, Theni.

Copy to

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



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**G.R.SWAMINATHAN, J.
and
R.POORNIMA, J.**

RM

Judgment made in
A.S.(MD)No.112 of 2025

22.04.2026