

In the Court of the Principal District Judge, Kanniyakumari District at  
Nagercoil.

Present: Thiru B. Karthikeyan, B.L.,  
Principal District Judge.

Thursday, the 26<sup>th</sup> day of March, 2026.

**Appeal Suit No. 141/2023**

**(CNR No.TNKK01-001372-2023)**

**and**

**Appeal Suit No.142/2023**

**(CNR No.TNKK01-001371-2023 )**

**AS No.141/2023:**

Natarajan .. Appellant/Defendant

-Vs-

Seetharaman .. Respondent/Plaintiff

**AS No.142/2023:**

Natarajan .. Appellant/Plaintiff

-Vs-

1. Seetharaman
2. Subramanian
3. Jayakumar
4. Jayanthi

.. Respondents/  
Defendants 1, 3 to 5

On appeals from the common judgment and decree of the  
Court of I Additional Subordinate Judge, Nagercoil in  
O.S.Nos.210/2017 and 287/2016, dated 30.11.2022.

**OS No.210/2017:**

Seetharaman .. Plaintiff

-Vs-

Natarajan .. Defendant

**OS No. 287/2016:**

Natarajan .. Plaintiff

-Vs-

1. Seetharaman  
2. Nithyanantham Asari (Died)  
3. Subramanian  
4. Jayakumar  
5. Jayanthi .. Defendants

These two appeals coming on 12.03.2026 before me for final  
hearing in the presence of

Thiru C. Selvaraj - Advocate for the appellant in both the  
appeals

Thiru S. Justin - Advocate for the respondent in AS  
No.141/2023 and 1<sup>st</sup> respondent in AS  
No.142/2023  
Exparte - Respondents 2 to 4 in AS No.142/2023

and upon hearing both side and upon perusing the grounds of appeals and other materials available on record and having stood over for consideration till this day, this court delivered the following :-

### **COMMON JUDGMENT**

The above appeals have been filed against the common judgment and decree dated 30.11.2022 passed in OS No.287/2016 and OS No.210/2017, by the I Additional Subordinate Judge, Nagercoil, in and by which OS 287/2016 filed for declaration that the settlement deed therein Doc. No.970/2012 of the Joint Sub Registrar's Office, Nagercoil in favour of the 1<sup>st</sup> defendant is fraudulently brought into existence and not binding on the plaintiff, besides for a decree of partition and separate possession of his half share over the plaint schedule property, came to be dismissed and the suit filed by the 1<sup>st</sup> defendant in the said suit namely OS No.210/2017 for declaration of his right and title over the plaint schedule property and for recovery of the same from the defendant namely the plaintiff in OS

287/2016, besides for a decree of mesne profit at the rate of Rs.2500/- per month from the date of the suit to the date in which possession was recovered came to be decreed as prayed for.

2. **OS No.287/2016:** (i) One Nithyanantham Asari and Santhanammal were husband and wife. They had 6 children namely Natarajan, Seetharaman, Subramanian, Jayakumar, Jayanthi and Jayalekshmi. Out of them, Jayalekshmi, an autistic child died unmarried and issueless in the year 2011. Mother Santhanammal died on 15.04.2012. It is the claim of the plaintiff Natarajan in OS 287/2016 that the 1<sup>st</sup> defendant namely the Seetharaman, another son had obtained a settlement deed executed by the said Santhanammal without her free consent. It is his further claim that on the date on which the said settlement deed came into existence (i.e.) on 14.03.2012, Santhanammal was actually undergoing treatment as an inpatient in a hospital. Within one month thereof, she had died on 15.04.2012. It would be further claimed by the plaintiff that the mother of the plaintiff Santhanammal suffered from severe disease, such as spinal bone problem, urinal infection, bed sore, total loss of speaking and understanding capacity and was admitted in the Sankaralingam Hospital, Nagercoil for treatment on

06.03.2012 and continued to get treatment as inpatient till 17.03.2012 and on 17.03.2012, she was discharged from the hospital in a sinking and unconscious state, since her survival is very remote according to the opinion of the Doctors who treated her in the said hospital. Her condition became weaker and weaker and again she was admitted in the hospital on 01.04.2012 and she died on 15.04.2012 while getting treatment in the said hospital.

(ii) During the first week of June 2016, the 1<sup>st</sup> defendant made an attempt to disconnect the electricity provided to the upstairs portion of the building where the plaintiff was residing by stating that the entire suit schedule property belongs to him. Therefore, the plaintiff made an enquiry about the same and came to know on 06.06.2016, that the 1<sup>st</sup> defendant had fraudulently obtained settlement deed from Santhanammal on 14.03.2012 with regard to the entire suit schedule property. He would also contend that Santhanammal was not in a sound state of mind for execution of the settlement deed and there was no reason for her to disinherit the plaintiff totally from the plaint schedule property, besides that no provision has been made in the settlement deed even for her residence or that of her husband namely the 2<sup>nd</sup> defendant. Contending thus, the suit in OS No.287/2016 has been filed by Natarajan, one of the sons of Santhanammal. In the said suit,

the beneficiary of the settlement deed has been arrayed as 1<sup>st</sup> defendant. The father namely Nithyanantham Asari has been arrayed as 2<sup>nd</sup> defendant. The other children alive have been arrayed as defendants 3 to 5.

3. (i) The 1<sup>st</sup> and 2<sup>nd</sup> defendants filed a joint written statement, in and by which the claim of the plaintiff have been denied. It would be claimed that Santhanammal was also having properties and she purchased the suit schedule property by paying the amount that was earned from other properties and by selling few of her jewels. It would be further claimed that Santhanammal was hale and healthy and the 1<sup>st</sup> defendant being their youngest son, Santhnammal and the 2<sup>nd</sup> defendant were residing with him. The younger daughter of Santhanammal was autistic and the mother has taken care of her and she died few months prior to the death of the mother. Accordingly, till the death of Santhanammal, she was in sound mind and capable of taking her own decision. It would be further claimed that the 2<sup>nd</sup> defendant had given away the property detailed as 'A' schedule property in the will executed by him to the plaintiff and the plaintiff who had wholeheartedly accepted it as he wanted to sell it and get the sale proceeds, the 2<sup>nd</sup> defendant extended his co-operation and the plaintiff only received the

entire sale consideration of Rs.19 lakhs.

(ii) This apart, it would also be contended that the 2<sup>nd</sup> defendant and the plaintiff and other sons of the 2<sup>nd</sup> defendant were doing gold jewellery and diamond business. Whileso, Customs Department conducted raid in the business place of the 2<sup>nd</sup> defendant and seized gold of about 800 grams and few lakhs of rupees in cash and the plaintiff and other employees were arrested and the case was registered against the plaintiff, 2<sup>nd</sup> defendant and others. The 2<sup>nd</sup> defendant contested the case, the court found that the 2<sup>nd</sup> defendant and his sons were in lawful possession of the gold and cash and the Customs Department was not justified in seizing the gold. As per the orders of the court, a sum of Rs.2,50,000/- being the value of the gold seized from the 2<sup>nd</sup> defendant was given to the plaintiff by way of cheque. Though the amount was due to the 2<sup>nd</sup> defendant, the whole of the above amount was given to the plaintiff and he has suppressed these facts in the plaint.

(iii) In line with the custom in vogue, the dwelling house of the parents was decided to be given to the 1<sup>st</sup> defendant namely the younger son. With him, the parents were residing with the consent of all the children, pursuant to which, Santhanammal executed a settlement deed on her free will and volition in favour of the 1<sup>st</sup> defendant. She had appeared before the Sub

Registrar and declared her firm decision of giving the property to the 1<sup>st</sup> defendant and got registered the settlement deed. The plaintiff also agreed to vacate the house within six months from the date of execution of deed, but the 1<sup>st</sup> defendant permitted him to reside in the house after the expiry of six months also at the request of the plaintiff. It would also claim that the other children were either given property or jewels at the time of their marriage.

4. The 4<sup>th</sup> defendant has filed a written statement in line with the written statement of the 1<sup>st</sup> and 2<sup>nd</sup> defendants. A separate written statement had also been filed by the 5<sup>th</sup> defendant, though, in line with the other defendants. The 3<sup>rd</sup> defendant remained *exparte* by not filing any written statement.

5. The 1<sup>st</sup> defendant in the said suit, filed OS No.210/2017 by stating that after execution of settlement deed in his favour by Santhanammal on 14.03.2012, he is in possession and enjoyment of the property and defendant was residing in the first floor of the house with his family with the permission of the mother. When the mother executed a settlement deed, the defendant namely Natarajan agreed to vacate the building within 6 months,

but failed to do so. On his request, the plaintiff in OS 210/2017 Seetharaman granted him permission to be in possession of the building on 18.08.2012 in the presence of several witnesses. Thus, the defendant namely Natarajan is in possession of the building by virtue of the said permission given by the plaintiff. Since the building is in dilapidated condition and the walls have developed cracks and the building is in danger to inmates of the house and the building aged more than 75 years, the plaintiff requested vacating the house and handover the vacant possession of the building to him, but the defendant Natarajan, refusing to comply with the same, filed OS 287/2016 challenging the validity of the settlement deed executed by the mother of the plaintiff. On 07.01.2017, notice was issued to the defendant in turn cancelling the permission given to him to reside in the first floor of the building and asking to vacate the building and handover the vacant possession of the same, Natarajan, who received the notice on 10.01.2017 sent an evasive reply on 03.02.2017 through his lawyer leading to the suit. Contending further that the defendant does not have any right in the suit schedule property and the permission given to him was cancelled besides that he will be liable to pay mesne profit at the rate of Rs.2500/- per month from the date of suit till he vacates the building.

6. The defendant in the said suit namely Natarajan filed written statement in line with the plaint averments made in OS No.287/2016 and denying the claims made by the plaintiff in OS 210/2017.

7. **On the basis of the above pleadings, the trial court framed the following issues:**

**In OS No.287/2016:**

- (i) Whether the settlement deed Doc. No.970/2012 is legally valid?
- (ii) Whether the plaintiff is entitled for half share as prayed for in the plaint?
- (iii) Whether the plaintiff is entitled for the relief of declaration as prayed for?
- (iv) What other reliefs the plaintiff is entitled to?

**In OS 210/2017:**

- (i) Whether the plaint schedule property belongs to the plaintiff?
- (ii) Whether the plaintiff is entitled for the relief of recovery of possession in respect of the suit property as prayed for?
- (iii) Whether the plaintiff is entitled for mesne profit as prayed for?
- (iv) What other reliefs the plaintiff is entitled to?

8. The trial court had tried both the suits jointly and had recorded evidence in OS No.287/2016. However, the plaintiff in OS 210/2017 who is the 1<sup>st</sup> defendant in OS 287/2016 namely Seetharaman has been examined as PW1. One Vallinayagam has been examined as PW2. Ex.A1 to Ex.A15 have been marked on their side. On the side of Natarajan, the defendant in OS No.210/2017 and plaintiff in OS No.287/2016 has been examined as DW1 and Ex.B1 to Ex.B17 have been marked on his side.

9. The trial court had referred the parties as per the status in OS 210/2017 in the judgment and the same is being followed in this judgment too, to the extent the context so permits.

10. After considering the evidence and materials on record, the trial court has found that the defendant who has pleaded want of free consent for Santhanammal while executing the settlement deed Ex.A1, is duty bound to prove the same u/s 101 of Indian Evidence Act. However, the basis for such a plea is the claim of the defendant that on the date of execution of the settlement deed Ex.A1 (i.e.) on 14.03.2012, she was undergoing treatment as inpatient in Sankaralingam Hospital, Nagercoil and therefore, the claim of the plaintiff that she executed the settlement deed and registered the same with

free consent on the day cannot be believed at all, whereas the defendant had not produced any material to show that Santhanammal was, in fact, undergoing treatment as inpatient on that particular date. On the other hand, the plaintiff had produced PW2 namely one of the attesting witnesses and also the scribe, a witness who claims to have drafted the settlement deed has spoken about the mental status of the Santhanammal to read and understand document, besides the physical status of Santhanammal to go to document writer office and then Registrar Office. The trial court had also relied on pleadings in the written statement filed in OS 287/2016, wherein it has been claimed that Santhanammal had executed the settlement deed in free will and volition in favour of the plaintiff and had appeared before the Registrar Officer and declared that she had executed the settlement deed. The trial court had relied on the said statement invoking Sec.32 of Indian Evidence Act as he died during the pendency of the suit. The other contention about the failure to reserve right of residence by Santhanammal for her and for her husband during their old age being a suspicious circumstances has been rejected by the trial court by accepting the case of the plaintiff that the defendant has been given some properties as per family settlement and sold the same to someone else, besides that he is the beneficiary of other property

and gold which was seized by the Customs Department. Thus, the trial court has concluded that the settlement deed dated 14.03.2012 (Ex.A1) is valid and binding on the parties. The trial court has further concluded that the defendant is only a permissive occupant of the said schedule property and since there is no right over the suit schedule property, the plaintiff is entitled to recover possession of the suit schedule property, the trial court has also pointed out that since the defendant does not have any right over the suit schedule property and still occupying the suit schedule property without any valid right, he is liable to pay damages to the plaintiff. However, taking note of the facts of the case, the court has decided to calculate mesne profits from the date of filing of the suit in respect of the upstairs portion of the plaint schedule property. The court has also pointed out the plaint averments that the defendant is liable to pay mesne profit at the rate of Rs.2500/- per month has not been disputed by the defendant and the defendant has also adduced any evidence disputing the said contention. Thus, the trial court has found that the defendant is liable to pay mesne profit at the rate of Rs.2500/- per month from the date of suit till the date of delivery of possession of the suit schedule property.

11. (i) The said judgment and decree has been challenged in the above appeals by raising various grounds including that the trial court has not noted that Santhanammal suffered from severe disease, such as spinal bone problem, urinal infection, bed sore, total loss of speaking and understanding capacity and she was admitted in the Sankaralingam Hospital, Nagercoil for treatment on 06.03.2012 and continued to get treatment as inpatient till 17.03.2012 and on 17.03.2012, discharged from the hospital in a sinking and unconscious state, since her survival was very remote according to the opinion of the Doctors who treated her and her condition became weaker and weaker and again she was admitted in the hospital on 01.04.2012 and died on 15.04.2012 while getting treatment in the said hospital.

(ii) The plaintiff had suppressed the execution of the settlement deed till June, 2016, though Santhanammal was said to have executed the settlement deed on 14.03.2012 and that there was no reason for Santhanammal to totally disinherit the plaintiff from the plaint schedule property and no provision has been made in the settlement deed even for her residence or for the 2<sup>nd</sup> defendant. It would be claimed that the trial court had erroneously recorded a finding in para 10 of the judgment that the property in both the suits are one and the same. On the other hand, OS 210/2017 is only

in respect of a portion of the suit property in OS 287/2016 i.e. the upstairs portion of the of building bearing Door No.34 whereas, OS 287/2016 is in respect of 4.35 cents together with the entire building bearing Door No.34. The observation in the judgment that the defendant was claiming possession and exclusive right over the upstairs portion of the suit property has been pointed out to state that the trial Judge has not applied his mind to the pleadings, where the case set out by the defendant in both the suits is for the partition and separate possession of his half share over the property of 4.35 cents with building bearing Door No.34. It would be further claimed that the trial court has erroneously placed the burden of proof on the defendant by referring Sec.101 Indian Evidence Act and had failed to take note of the fact that in the case of illiterate, old and sick person, the burden of proving the genuineness of the document lies on the person who claims benefits under the document. The learned counsel for the appellant further claimed in the grounds of appeal that the following circumstances brought on record provide a strong clue that the settlement deed is fraudulent:

- i. On the date of the execution of the settlement deed, the executent was getting treatment as inpatient in Sankaralingam Hospital, Nagercoil and the said vital fact has been deliberately suppressed in the settlement deed.

- ii. The right to reside in the building for the life time of executant has not been reserved in the settlement deed despite the fact that the suit building is the only building for her residence.
- iii. The suppression of the residence of the defendant in the upstairs portion of the building in the settlement deed.
- iv. Non examination of the father of the plaintiff though he has attested in the settlement deed, though he was alive on the date when the evidence of the 1<sup>st</sup> defendant was closed. In the absence of any explanation, the deliberate avoidance of witness box by the 2<sup>nd</sup> defendant namely the father is strong circumstance to create serious doubt about the genuineness of the settlement deed. Further, the father did not sign as an identifying witness to the settlement deed before the Sub Registrar though he was allegedly present in the Sub Registrar Office at the time the settlement deed was presented for registration and no explanation has been adduced for that. The chances of getting signature of the father in the last paper of the settlement deed by some fraudulent means cannot be ruled out.
- v. Though it is alleged in para 16 of the written statement of defendants 1 and 2, that with the consent of all children of the 2<sup>nd</sup> defendant and the

executant, suit property was given to the 1<sup>st</sup> defendant alone, but none of them have been examined to prove the said consent.

vi. None of the sisters' spouses stood as witnesses as identifying witness to the settlement deed though apart from the plaintiff and the defendant, they have two sisters and brothers.

vii. The deliberate intention to keep the settlement deed a secret by the plaintiff as could be seen from the conduct of the plaintiff that till the date of filing of the suit, the revenue records, electricity connection, water charges which have been provided to the building continued to remain in the name of the executant. If the name had been changed in the name of the plaintiff, it would come to the knowledge of the defendant.

viii. No reason has been assigned for entire property given to the 1<sup>st</sup> defendant in total exclusion of the plaintiff, when, admittedly the 1<sup>st</sup> defendant has not even seen his mother while she was getting treatment in the hospital.

(iii) It would be further contended that the trial court had taken note of some of the circumstances stated above and had dealt with them independently to hold that the said circumstance itself is not sufficient to hold

that the settlement deed is not genuine. However, if the circumstances are put together, the only inference that could be drawn from the settlement deed is not a genuine one. Invocation of Sec.32 of Indian Evidence Act for accepting the pleading in the joint written statement of defendants 1 and 2 in OS No.210/2017 as evidence is misplaced as the trial court had failed to take note of the fact that the 2<sup>nd</sup> defendant in the said suit viz., father Nithyanandam Asari deliberately avoided the witness box thereby indirectly indicating that he was not a consenting party to the settlement deed. The trial court ought to have held that the non examination of the father, who was allegedly present all along with executant during the period of the execution and registration of settlement deed is fatal to the case of the plaintiff, particularly, when he was alive on the date of examination of witnesses and when the plaintiff's evidence was closed. The trial court had given undue emphasis on evidence of PW2 who had claimed that it was the executant and her husband who came to prepare the settlement deed and that he prepared settlement deed, whereas the settlement deed as well as the evidence in the cross examination of PW2 would show that the document was not prepared by him, but was prepared by one Sundaram Pillai of Kottar. Therefore, the trial court ought to have held that the evidence of PW2 is hit by Sec.92g

Indian Evidence Act which bars evidence contrary to the contents of the written document. The trial court ought to have held that the evidence of PW2 is unreliable as according to him, on 12.03.2012, the father Nithyanantham Asari instructed him to prepare the deed and on the next day, he gave PW2 Rs.10,000/- to purchase the stamp papers besides that PW2 himself purchased the stamp papers, whereas, a perusal of the settlement deed shows that the stamp papers were purchased on 12.03.2012 itself (i.e.) one day prior to the alleged payment for purchase of stamp papers. It would also be contended that the observation of the trial court that some property has been given to the defendant vide a will and also that the defendant got benefited by receiving gold from Central Excise Department are totally erroneous and baseless, besides that, the trial court had failed to note that if they are the real reasons, for totally disinheriting the defendant the same would have found a place in the settlement deed. It would also be contended that even PW1 in his evidence did not state so.

12. Heard both. Perused the materials on record.

13. (i) The learned counsel for the appellant reiterated the grounds raised in the memorandum of grounds of appeal and had relied on

the decision in *Vidhyadhar Vs. Mankikrao and another* reported as *AIR 1999 SC 1441* to contend that when a party to the suit does not appear in the witness box and state his own case and does not offer himself to be cross examined by other side, the presumption would arise that the case set up by him is not correct. Relying on the said decision, the learned counsel for the appellant would contend the claim of the plaintiff i.e. the 1<sup>st</sup> defendant in OS 287/2016 that the 2<sup>nd</sup> defendant was present all along with Santhanammal when she visited the document writer's office and they gave instructions to them, besides that he accompanied Santhanammal to the Registrar Office for registration of the said settlement deed have not been supported by any evidence and therefore, a presumption has to be drawn that the said claim is not correct as the father viz., Nithyanantham Asari, arrayed as the 2<sup>nd</sup> defendant in OS.No.210/2017 failed to get into the witness box and support his case. The trial court's reliance on Sec.32 of Indian Evidence Act cannot be justified as the father Nithyanantham Asari was alive till the time their evidence was completed. No reason has been given for not examining the father Nithyanantham Asari, who has signed the written statement in OS. No.210/2017 as 2<sup>nd</sup> defendant when he was alive. Having failed to do so, presumption has to be drawn against the defendants 1 and 2.

(ii) Further, the learned counsel for the appellants would rely on *AIR 1970 SC 1367 (Lakshmi Amma and another Vs. Talengala Narayana Bhatta and another)* in support of his argument that in the light of the complete exclusion of the defendant from any share in the property and also the failure to reserve right of residence of the executant and her husband in the suit schedule property, burden of establishing that the deed was executed by executant voluntarily and without any external pressure or influence, that too, when she was of infirm mind is on the plaintiff. Further, he relied on the decision in *AIR 2003 SC 4351 (Krishna Mohan Kul alias Nani Charan Kul and another Vs. Pratima Maity and others)* and *2008 (2) CTC 433 ( Suguna and another Vs. Vinod G. Nehemiah and others)* to contend that the mere existence of the fiduciary relationship raises a presumption of undue influence and it is always obligatory for the beneficiary under a document to prove the document was executed in accordance with law by showing that the transaction is fair one and not brought forth by reason of fiduciary relationship and that no advantage of position was taken.

14. On the other hand, learned counsel for the respondent would support the reasoning given by the trial court in the judgment. He would contend that even if the plaintiff had not specifically denied the claims made

by the defendant that Santhanammal was an in patient on the date of execution of the settlement, the fact remains that the Sub Registrar who was performing a statutory duty conferred on him under Registration Act has certified that the executant was present before him and that she admitted the execution of the said document as could be seen from the endorsement thereon. This endorsement is coupled with the presumption u/s 114(g) of the Indian Evidence Act. Therefore, in the light of such an endorsement, the failure to specifically deny the claim made by the defendant is not material. On the other hand, in the light of such an endorsement, it is incumbent on the part of the defendant to have let in evidence to prove on his case which he has failed to do. This apart, it would be contended by the learned counsel for the respondent that even as admitted by the defendant, the entire gold seized by the Customs Department belonged to the family, whereas the value of the gold was returned only to the defendant and he had appropriated the same. Therefore, he cannot claim any disinheritance. He would further contend that the execution of the settlement deed has been proved by examining one of the attestors and therefore, the non examination of the 2<sup>nd</sup> defendant is not fatal.

15. **The following points arise for consideration in the above appeals:**

- (i) Whether the trial court was right in holding that the settlement deed document No. 970/2012 is legally valid ?
- (ii) Whether the trial court judgment dismissing OS No. 287/2016 is sustainable?
- (iii) Whether the appeals deserve to be allowed?

**16. Point No.(i) :-**

Ext.A.1, the settlement deed executed by Santhanammal in favour of plaintiff is a registered document. Though the defendant claims that on 14.03.2012 when the said settlement deed was said to have been executed and registered, she was undergoing treatment as in patient and that the plaintiff had taken her out of the hospital under the guise of getting a scan done and had taken her to the office of the Sub Registrar and got the settlement deed registered, the defendant has not produced any material to show that Santhanammal was, in fact, undergoing treatment as inpatient on that date. On the other hand, the plaintiff had examined one Vallinayagam as P.W.2. He is named as one of the attestors in the settlement deed Ext.A.1. He, during his deposition, has stated that he is a licenced copy writer and that he, along with his father and brother S.Sundaram Pillai, a licenced

document writer, are operating from the same office. According to him, Nithyanantham Asari namely the 2<sup>nd</sup> defendant in OS No.210/2017 is a long time customer of their office and that he had got many documents executed and registered for them. It is his further evidence that seven years prior to his evidence, Nithyanantham Asari came to their office and informed them that the house in the name of his wife Santhanammal in which he was residing is being proposed to be settled in favour of the plaintiff Seetharaman with the consent of all the children and requested them to prepare a draft settlement deed. He would also state that he informed the required documents and also about the requirement of stamp papers and the probable expenses and asked him to come with the owner Santhanammal. On the next day, Nithyananatham Asari and Santhanammal came to their office in an auto. Santhanammal requested them to prepare a draft settlement deed in respect of the said property to be settled in favour of the younger son Seetharaman. D.W.2 discussed with her, collected the details and understood the requirements. On the same day, he purchased required stamp paper. Nithyanantham Asari gave him the original documents in the presence of Santhanammal. P.W.2. who collected the documents and informed them that he will get the document drafted and asked

Santhanammal to come with photograph and identity document on the Wednesday at 12 Noon to their office. Accordingly, on the date of registration of the document at 12 Noon Santhanammal came with photograph and the identity document. Nithyananatham Asari also came, along with one more person. P.W.2 read over the draft settlement deed to Santhanammal in the presence of Nithyanantham Asari and another person who came with them. Later, he gave the draft to Santhanammal and asked her to correct the same. Santhanammal read them and stated that it was correct and asked him to prepare the original settlement deed. Accordingly, P.W.2. prepared the original document in a stamp paper and once again gave it to Santhanammal and asked her to read over the same and informed the correctness of the same. She also read over and informed them that it was alright. Later, he took the signatures in the original settlement deed and took Santhanammal to the Sub Registrar Office where Santhanammal presented the settlement deed before the Sub Registrar. The Sub Registrar verified the document details and ascertained the identity of Santhanammal and enquired with her about the same. The person who came with Santhanammal, identified Santhanammal and signed in the settlement deed. The younger brother of P.W.2. namely S. Sundaram Pillai who is the licenced document

writer signed on the document that he had prepared the settlement deed. Later, the Joint Sub Registrar enquired with Santhanammal as to whether she knew the contents of the document. Santhanammal informed him about her intention to settle the house in which she was residing situated in Asarimar North Street to her younger son viz., the plaintiff. After this, Santhanammal signed and affixed her thumb impression. Nithyanantham Asari also signed as a witness. Santhanammal was identified by P.W.2. and another person who came with them,.

17. A reading of the above evidence given a strong impression that the same fulfills the legal requirements as required under Sec. 68 of Indian Evidence Act.

18. However, it is borne out of evidence and is an admitted position that Santhanammal was keeping a very feeble health and was undergoing treatment as inpatient on and off. When the defendant (plaintiff in OS.No. 287/2016) had specifically pleaded that on the date of alleged execution of the settlement deed, Santhanammal was undergoing treatment as inpatient in the hospital and that the settlement deed was fraudulently obtained, the 1<sup>st</sup> defendant (plaintiff in OS No.287/2016) and 2<sup>nd</sup> defendant

who filed a joint written statement in OS.No. 287/2016 did not deny it specifically. Even during cross examination, plaintiff who adduced evidence as P.W.1 did not deny the said contention. On the other hand, he would only state that he does not know. This apart, even though Nithyanantham Asari namely the husband of the settlor Santhanammal who is the 2<sup>nd</sup> defendant in OS No.210/2017 was very much healthy till trial was completed and had died only on 15.04.2012, has not been examined as a witness.

19. Moreover, even though the written statement filed on behalf of the defendants 1 and 2 in OS No.287/2016 did not contain any details as to who gave instruction to execute the settlement deed or who attested the document as witnesses or as to who accompanied with Santhanammal to the Sub Registrar Office, a third party, who claims to have attested the Ext.A.1 settlement deed along with Nithyanantham Asari had eloquently described the same in his proof affidavit filed as P.W.2. As already pointed out, for the entire process of instructing the document writer to prepare the settlement deed and going to the Sub Registrar Office at the time of presentation of the settlement deed, it is Nithyanantham Asami, namely the father of the parties who is the main person. However, he has not

come before the court as a witness and assert the same. This creates a serious doubt as to why Nithyanantham Asami, the 2<sup>nd</sup> defendant in OS No.210/2017 avoided entering into the witness box and as held in AIR 1999 SC 1441 referred above, a presumption that the case set up by the plaintiff is not correct.

20. Admittedly, this is only the property remaining with the parents Santhanammal and Nithyanantham Asari in which they were residing along with the 1<sup>st</sup> defendant Seetharaman's family. It is not anyone's case that Santhanammal and her husband had other assets where they can reside. When such is the situation, the aged parents would have to be at the mercy of Seetharaman, the 1<sup>st</sup> defendant for staying in the said house. Even then, Santhanammal is claimed to have chosen to execute a settlement deed in respect of the only home in favour of the plaintiff without even retaining any right to reside in the house. It is not the case of either of the parties that their parents were discussing any alternate arrangements for their residential requirements. This failure of Santhanammal and her husband Nithyanantham Asari to ensure that they have shelter during their last days also creates a serious doubt about the claim of the plaintiff.

21. The other aspect that is striking is that even while all other brothers and sisters have been bestowed with some asset by the parents, the defendant is the only person who has not been provided with the assets in line with his other siblings. The claim of the plaintiff that the defendant was also bequeathed with some property vide Will dated: 07.02.2002 executed by Nithyanantham Asari and that, even during the lifetime of Nithyanantham Asari, at the pressure given by the defendant, he had sold the immovable property so allotted to him under the Will to a doctor and had received Rs.18 Lakhs towards sale consideration through the father Nithyanantham Asari does not appear believable. Firstly, even according to the defendants, the sale was effected by the father Nithyanantham Asari. No material has been produced to show that the sale consideration was received, in fact, by the defendant. While this being so, the claim that the defendant had been provided assets out of the family assets cannot be accepted at all.

22. This apart, another claim that has been made is that the Customs Department officials raided the workshop belonging to the plaintiff, defendant and their father and had seized nearly 800 grams of gold, besides that after the closure of the case, equal value for the said gold was paid to the

defendant by the Customs Department and the same was appropriated by him. However, there is absolutely no material to show that the gold that was seized from the shop belonged to the family of the plaintiff, defendant and Nithyanantham Asari. In such circumstances, there is no reason to doubt the explanation by the defendant that the said gold belongs to the customers.

23. While the defendant claims that the settlement deed was kept in dark all through the life of executant Santhanammal and had come to his knowledge only when the plaintiff wanted to disconnect the electricity provided to the upstairs portion in which he was residing, the plaintiff would claim that it was well within the knowledge of the defendant and that he was residing in the upstairs portion of the property there as permissive occupant, permission having been granted initially by Santhanammal. In reply to this allegation, the plaintiff and his father in their written statement is OS No.287/2016 claimed that the defendant had promised to vacate the portion and hand over the vacant possession of the portion to the plaintiff within six months from the date of execution of settlement deed and that the fact that plaintiff acquired right over the suit schedule property by virtue of the settlement deed dated: 14.03.2012 was well known to all his family

members. Even the plaintiff who is duty bound to prove his contention, did not produce any material in their support. On the other hand, during cross examination, he would admit that mutation in revenue records have been done in his name only after filing of the present suit.

24. Eventhough the plaintiff has claimed that immediately after the settlement deed, he granted permission to the defendant for residing in the upstairs portion of the suit schedule property in the presence of certain witnesses, named as Kannan S/o. Muthaiyan Chettiar and Ganesh S/o. Kulanthaivelu Asari and others in OS No.210/2016, he has not chosen to examine any one of them. The failure to examine them and to prove that the existence of the settlement deed was well within the knowledge of the defendant as early as in the year 2016 itself or immediately after the execution of the settlement deed creates serious doubt about the intent of the plaintiff and also creates a serious doubt about the genuineness of the settlement deed.

25. In all, the fact that is so revealing is that defendant had been completely kept away from the properties belonging to Nithyanantham Asari and his wife Santhanammal. It is not anyone's case that the defendant

had caused any big inconvenience or embarrassment to his parents. As such, the complete omission of the defendant from the property of his parents also makes the Settlement Deed unconscionable.

26. As already pointed out, the executant namely Santhanammal was sick, undergoing treatment as in patient on and off and had, in fact, died within 30 days from the date of execution of Ext.A1 settlement deed. Similarly, as already pointed out, her husband namely Nithyanantham Asari, arrayed as 2<sup>nd</sup> defendant in OS No.287/2016, who could have been the best witness to support the claims made in the written statement filed by 1<sup>st</sup> and 2<sup>nd</sup> defendant in OS.No. 287/2016 chose not to enter into the witness box to support the pleadings. In these circumstances, the question as to whether Santhanammal was in her perfect senses when she executed the settlement deed and presented for registration and that whether she was in complete agreement of the same looms large.

27. This apart, the claim of P.W.2. that he, in fact, received instruction from Santhanammal and her husband drafted the settlement deed and discussed with them to ensure the correctness of the said document completely run contrary to what is available in Ext.A.1. settlement deed

wherein it states that the said document has been drafted by one S. Sundaram Pillai. It is to be noted here that the said Sundaram Pillai has not been examined.

28. Thus, the argument of the learned counsel for the appellant that the claim of P.W.2 that he is the person who provided the settlement deed runs counter to the contents of the written statement and therefore, is barred by Sec. 92 of Indian Evidence Act also appears weighty.

29. The above circumstances, when seen cumulatively certainly creates serious suspicious surrounding the execution of the settlement deed. These suspicious circumstances have not been dispelled by the beneficiary namely the plaintiff.

30. Though the trial court has dealt with some of the circumstances pointed out above and had concluded that the same, by itself, may not be sufficient to dislodge the settlement deed, as rightly argued by the learned counsel for the appellant when the entire circumstances are

looked together, the picture is completely different. The trial court has conveniently looked at each and every circumstance independently and had given a finding, which is perverse and therefore, the said finding that the settlement deed is genuine deserves to be set aside.

31. In such circumstances, the conclusion of the trial court that the settlement deed Ext.A.1 has been validly executed cannot be sustained.

32. **Point No. (ii) :-**

When the settlement deed is removed from the picture, the property belonging to Santhanammal devolves upon her sons, daughters and husband on the date of her death as provided in Sec.15 of Hindu Succession Act. Thus, the plaintiff and the defendants in OS No.287/2016 become the legal heirs entitled to an equal share in the suit schedule property on 15.04.2012 upon the death of Santhanammal. However, Nithyanantham Asari, the 2<sup>nd</sup> defendant in OS No.287/2016 is deceased now and it is not anyone's case that he has made any testamentary disposition. As such, it is the plaintiff and the defendants 1, 3, 4 and 5 in OS No.287/2016 who become entitled to the suit schedule property. Eventhough the other defendants in the

said suit have claimed that it is only with their consent, the settlement deed was executed in favour of the 1<sup>st</sup> defendant therein, the said claim has been negatived. Therefore, merely on the basis of the said pleadings, they cannot be disinherited. As such, the judgment and decree of the trial court in both the cases deserve to be set aside and a decree of partition granting 1/5 share in the suit schedule property deserves to be granted in favour of the defendant in OS No.210/2017.

33. **AS No.141/2023:**

**In the result,**

(i) this appeal is allowed, and  
(ii) the judgment and decree dated 30.11.2022 passed in OS No.210/2017 by the I Additional Subordinate Judge, Nagercoil are set aside, and

(iii) the suit in OS 210/2017 is dismissed.

(iv) Considering the nature of the suit and relationship of the parties, they shall bear their own costs.

34. **AS No.142/2023:**

**In the result,**

(i) this appeal is allowed, and

(ii) the judgment and decree dated 30.11.2022 passed in OS No.287/2016 by the I Additional Subordinate Judge, Nagercoil are set aside, and

(iii) the suit in OS 287/2016 is decreed in part, and

(a) declaring that the settlement deed Doc.No.970/2012, dated 14.03.2012 of Joint Sub Registrar Office, Nagercoil executed in favour of the 1<sup>st</sup> defendant is set aside as not binding on the plaintiff, and

(b) granting the preliminary decree of partition in favour of the plaintiff that he is entitled for  $\frac{1}{5}$  share in the suit schedule property, and

(iv) Considering the nature of the suit and relationship of the parties, they shall bear their own costs.

Dictated to the Steno-typist, transcribed and typed by her, corrected and pronounced by me in open court, this the 26<sup>th</sup> day of March, 2026.

Sd/-  
Principal District Judge,  
Kanniyakumari at Nagercoil.

Principal District Court,  
Nagercoil.  
Fair Common Judgment  
in **A.S. Nos.141/2023**  
**& 142/2023**  
Dt.: 26 .03.2026