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AS No. 405 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-06-2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

AS No. 405 of 2023

and

CMP Nos.14078 of 2023, 31805 of 2025 & 2905 of 2026

1. P.Nandan Babu
2. V.Sivakumar

..Appellant(s)

Vs

Srisakthi Divya

..Respondent(s)

PRAYER: Appeal filed under Section 96 of CPC to set aside the Judgment and Decree dated 21-04-2023 made in O.S.No.4232 of 2020 (C.S.No.372 of 2016 B) (on the file of the High Court, Madras) on the file of the IV Additional City Civil Judge, Chennai and allow the above appeal.

For Appellant(s): Mr.K.Chandrasekaran
for Mr.R.Kumar

For Respondent(s): Mr.P.Seshadri

JUDGMENT

(Judgment of the Court was delivered by C.V.Karthikeyan J.)

The defendants in OS No. 4232 of 2020, on the file of the Additional Judge, City Civil Court, Chennai, are the appellants herein. OS No. 4232 of



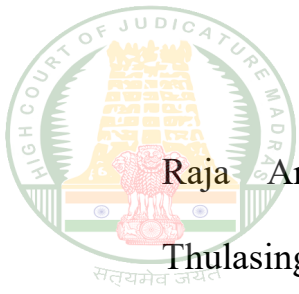
2020 had been initially filed as CS No.372 of 2016 on the Original Side of the High Court. Thereafter, it had been transferred to the City Civil Court, Chennai.

The said suit had been filed seeking a declaration that a settlement deed dated 23.05.2013 registered in the office of the Sub Registrar Office Mylapore executed by late Pushpa in favour of the first defendant P.Nandan as fabricated, fraudulent, void, sham and illegal and to consequently declare a sale deed dated 10.02.2016 registered in the SRO Mylapore, executed by the first defendant in favour of the second defendant, V.Sivakumar as fabricated, fraudulent, void, sham and illegal and not binding on the plaintiff and for a declaration that the plaintiff is the absolute owner of the suit schedule property having inherited and succeeded as the only legal heir of the deceased Pushpa and for recovery of possession and for damages of a sum of Rs.25,000/- for illegal occupation from the date of the plaint till the date of the delivery and possession and for the costs of the suit.

2.By judgment dated 21.04.2023, the suit was decreed with costs necessitating the defendants to file the present Appeal Suit.

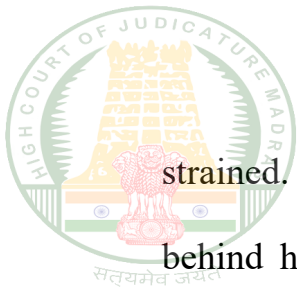
3.OS No. 4232 of 2020:

It had been contended in the plaint that a larger are where the suit property is comprised, at door No.39, new No.75, Thiruvalluvarpettai Street,



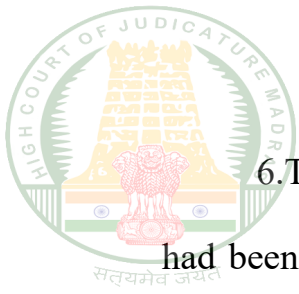
Raja Annamalaipuram, Chennai 600028, originally belonged to one Thulasingham. The suit property measures 403 sq.ft. and comprises house and ground. The wife of Thulasingham was Sadanandhi. They had two sons and two daughters. It had been stated that Thulasingham died in the year 1980 and his wife Sadanandhi died in the year 1984. Each one of his children were entitled to an undivided $\frac{1}{4}$ share in his property. One of his daughters Pushpa was entitled to an undivided $\frac{1}{4}$ share. She had demanded partition. She filed OS No.5816 of 1986 before the XIII Assistant City Civil Court, Chennai, seeking partition and separate possession. Her brothers and sister contested the suit stating that she was not the daughter of Thulasingham. The suit was decreed and a preliminary decree was passed on 25.07.1991. She filed an application seeking final decree. An Advocate Commissioner was appointed. The suit property was divided and the suit property measuring 403 sq.ft. was allotted to her along with superstructure. A separate door number was also given. The superstructure measured about 150 sq.ft. The plaintiff claimed that Pushpa became the absolute owner of the said property. Pushpa demolished the old structure and constructed a new building in the year 2007. She also mutated the revenue records in her name. She also obtained electricity connection.

4.In the suit, it had been claimed that she was not the daughter of Thulasingham. Her relationship with her brothers and sister continued to be



strained. Pushpa had a daughter Sulochana. Her daughter died intestate leaving behind her husband Natarajan and daughter Sri Sakthi Divya. The said Sri Sakthi Divya is the plaintiff in the present suit. She claimed title as the only legal heir of her grandmother Pushpa. She further stated that she had married and had left to Bangalore. She claimed that when her grandmother Pushpa died, she was prevented from performing funeral ceremonies. She then locked the property and left to Bangalore. When she came to the suit property, she was prevented from entering the property. She then came to know that documents have been registered overlooking her right, title and interest.

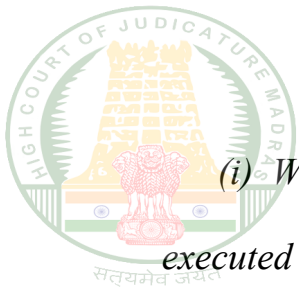
5.It was claimed by the defendants that her grandmother Pushpa had executed a settlement deed in favour of the first defendant on 23.05.2013. Thereafter, it was further claimed that the first defendant had sold the property to the second defendant. These documents created a cloud over the title. The plaintiff claimed that her grand mother had not executed the settlement deed as claimed by the first defendant. She further claimed that the sale deed executed by the first defendant in favour of the second defendant was a sham document and was not binding on her. It was under those circumstances that she had filed the suit seeking a declaration to set aside the said documents and to declare her title and for recovery of possession and for damages for use and occupation.



6. The first defendant filed a written statement claiming that the property had been transferred to him under a settlement deed dated 23.05.2013. It was acted upon and he had taken possession of the property. He was a minor when Pushpa had filed the suit seeking partition and separate possession and did not know the facts of the case. At any rate, he admitted to the title of Pushpa and claimed that owing to love and affection, she had executed the settlement deed in his favour. She had also executed a Will on 17.03.2010 bequeathing the property in his name. He stated that the plaintiff never took care of her grandmother Pushpa. He claimed that the settlement deed having been executed and having been acted upon, cannot be now interfered by any order of the Court. He claimed that suit should be dismissed.

7. The second defendant filed an independent written statement claiming that he is a distant relative of Pushpa and that he was a bonafide purchaser by sale deed dated 10.02.2016. He claimed that from the date of the sale, he became the absolute owner of the suit property. He stated that he was not aware about the earlier suit for partition. He stated that the first defendant had looked after the said Pushpa and out of love and affection, she had executed a settlement deed in his favour. He also claimed that suit should be dismissed.

8. On the basis of the above pleadings, the Trial Court had framed the following issues and the additional issues.



(i) Whether the settlement deed dated 23.05.2013 alleged to have been executed by late Pushpa in favour of the 1st defendant is valid in law and binding on the plaintiff?

(ii) Whether the alleged settlement deed dated 23.05.2013 was obtained by the 1st defendant exercising misrepresentation, fraud, coercion and taking advantage of the old age, illiteracy, health condition and other attending circumstances in active collusion of the 2nd defendant?

(iii) Whether the 1st defendant had taken active part in obtaining the alleged settlement deed in his favour in order to disinherit the plaintiff?

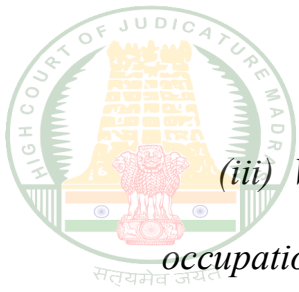
(iv) Whether the alleged settlement deed dated 23.05.2013 was executed by late Pushpa voluntarily after having understood the contents of the deed?

(v) Whether the provisions of the Registration Act would give legitimacy and presumption in favour of the settlement deed dated 23.05.2013?

9. Additional Issues:

(i) Whether the plaintiff is entitled for declaration that the sale deed dated 10.02.2016 executed by the 1st defendant in favour of the 2nd defendant is fabricated, fraudulent, void, sham and illegal document and not binding on the plaintiff?

(ii) Whether the plaintiff is entitled for declaration and recovery of possession?

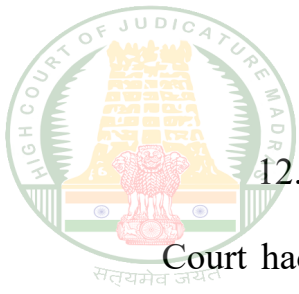


(iii) *Whether the plaintiff is entitled for damages for wrongful use and occupation? If so what is the amount?*

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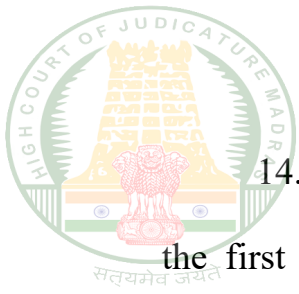
10. During trial, the plaintiff examined herself as PW1 and marked Exs.P1 to P23. Among the said documents, the pension payment order and the statement of the bank account of Pushpa were marked as Exs.P4 and P5. Her death certificate was marked as Ex.P6. The death certificate of the mother of the plaintiff, Sulochana was marked as Ex.P7. The death certificate of her father was marked as Ex.P8. The certified copies of the settlement deed and the sale deed which were sought to be set aside were marked as Exs.P10 and P11. The notices exchanged between the parties were marked as Exs.P12, P14 & P15. The judgment in OS No.5816 of 1986 and the decree were marked as Exs.P21 and P22 and the final decree was marked as Ex.P23.

11. On the side of the defendants, the first and second defendants examined themselves as DW1 and DW3. One of the attesting witnesses to the settlement deed was examined as DW2. The defendants marked Exs.D1 to D5. The settlement deed in favour of the first defendant was marked as Ex.D1 and the Will executed by Pushpa was marked as Ex.D5.



12. On the basis of the evidence adduced and the pleadings, the Trial Court had decreed the suit with costs. The trace of title of the property was recorded by the Trial Court. It was found that the claim of the plaintiff was that the property had been allotted to her grandmother Pushpa under a final decree in OS No.5816 of 1986. It was further noted that the daughter and the son in law of Pushpa had died intestate and thereafter, the plaintiff was the only lineal descendent who had succeeded to the suit property. The claim that the plaintiff had kept the property under lock and seal and moved over to Bangalore was also noted. The claim that after the death of Pushpa, the plaintiff came back and was prevented from performing the funeral ceremony was also noted.

13. Thereafter, the learned Trial Judge had examined the settlement deed and the sale deed executed first in favour of the first defendant and next in favour of the second defendant. The evidence of the first defendant was also noted, wherein he had stated that he did not know the brothers and sisters of Navaneedham and did not know the original owner of the property and did not know whether the property belonged to Thulasingam and did not know that Pushpa had issued notice claiming partition and did not know that his paternal uncle Parthiban had issued a reply and did not know about the filing of the suit in O.S.No.5816 of 1986 and did not know when the Will was executed in his favour.



14. The learned Trial Judge further noted the statement in the evidence of the first defendant that when he was informed about the Will, he had told Pushpa that it would be safe to execute a settlement deed and therefore, he took her to his counsel and prepared a settlement deed and got it registered. He had purchased non judicial stamp papers and had taken her to the Sub Registrar's office in an Auto and the attestors came separately. The attestors were his close relatives. He had also stated that the second defendant was a prospective purchaser who met out the expenses of the settlement deed.

15. On analysis of the evidence, it was held by the learned Trial Judge that the settlement deed had been executed with sole intention to disinherit the plaintiff. The learned Trial Judge thereafter stated that one of the attestors to the settlement deed V. Sivakumar was the second defendant.

16. After the execution of the settlement deed, the first defendant had sold the property to the second defendant. The brother of the second defendant was another attesor to the settlement deed. He was examined as DW2.

17. The evidence of DW2 and DW3 were examined by the learned Trial Judge. It was observed that the evidence did not inspire confidence. They did not see the executant signing all the pages. The signature of the executant was



absent in the fourth page of the settlement deed. In their evidence they stated that they saw Pushpa signing the settlement deed in all the pages. It was also noted that the scribe was one of the counsel for the defendants.

18. The learned Trial Judge had examined the report of the handwriting expert who had compared the signatures of Pushpa in the settlement deed with her admitted signature on the back of the first page which had been affixed in the presence of the Sub Registrar at the Sub Registrar's Office. The opinion of the handwriting expert was that the signature on the backside of the first page of the settlement deed did not tally with the other 10 signatures in the settlement deed was noted by the learned Trial Judge. It was therefore stated that the settlement deed had been signed by someone else at some other place. It was further noted that the executant Pushpa had signed in the Sub Registrar's office only on the backside of the first page. Noting all these facts, which according to the learned Trial Judge raised a cloud of suspicion over the execution of the settlement deed, the learned Trial Judge had held that the settlement deed should be declared as null and void and not binding on the plaintiff and consequently, the sale deed would also not be binding on the plaintiff and therefore decreed the suit as prayed for. Challenging the said judgment and decree, the defendants have filed the present appeal.

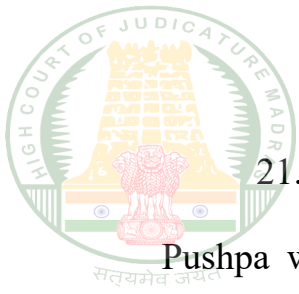


19.AS.No.405 of 2023:

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Before this Court, a Co-ordinate Division Bench, while hearing arguments had noted that the Trial Judge had placed relied on the opinion of the handwriting expert without examining the handwriting expert and therefore, recorded the evidence of the handwriting expert G.Gnanasambandan. He was examined as CW1. He was Assistant Director, Forensic Sciences Department, Mylapore. He was also cross examined by the counsel for the appellants/defendants. The appellants had also filed CMP No.2905 of 2026 seeking to forward the settlement deed dated 23.05.2013, the Will dated 17.03.2010, both said to have been executed by Pushpa and other related documents to the Forensic Department for examination of the signature. But however, since the handwriting expert had been examined in Court as CW1 by the Co-ordinate Division Bench and since the handwriting expert had already given an opinion on the signatures found in the settlement deed, the said petition in CMP No.2905 of 2026 is declared to be superfluous and no separate orders are required in the same. The said CMP No.2905 of 2026 stands closed.

20.Heard arguments advanced on behalf of the appellants and on behalf of the respondent. Written arguments had also been filed by both sides.



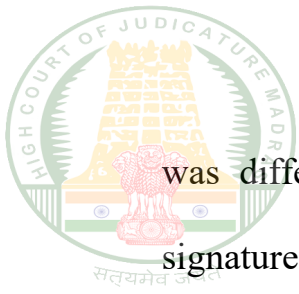
21. It is the contention of the learned counsel for the appellants that late Pushpa was taken care only by the first appellant herein who was the first defendant. The plaintiff was a stranger who had left the house immediately after marriage and had not come back to take care of the said Pushpa. It had been further contended that Pushpa had wanted to settle the property to avoid any litigation and initially, she executed a Will in favour of the first appellant. Subsequently to avoid further complications and to ensure that the property is immediately transferred in the name of the first appellant, she had voluntarily executed a settlement deed. It was contended by the learned counsel that the settlement deed was signed by her in the office of the Advocate and thereafter, she was taken over to the Sub Registrar's office where she affixed her signature in the presence of the Sub Registrar on the back side of the first page of the settlement deed. It was contended that any act performed by an official should be presumed to have been performed in the normal course of duty and the Sub Registrar is presumed to have exercised caution and obtained the view and opinion of the executant to verify whether she had voluntarily executed the settlement deed.

22. It had been contended that the learned Trial Judge was swayed by the opinion of the handwriting expert and the circumstances in the Sub Registrar office were completely overlooked by the learned Trial Judge. It was contended



on behalf of the appellants that Pushpa had executed a Will and later the settlement deed in favour of the first appellant herein. It was contended that the Trial Court had misdirected itself in rejecting the genuinity of the settlement deed. It was further contended that the witness to the settlement deed was also examined as DW2. It was therefore contended that it should be held that the settlement deed had been proved in the manner known to law. It was therefore urged that the contrary finding rendered regarding the said document should be set aside by this Court.

23.Per contra, the learned counsel for the respondent contended that the respondent was the only surviving legal heir of Pushpa. She was the daughter of the deceased daughter of Pushpa. There is no reason to disinherit her from the property. The respondent had gone over to Bangalore after her marriage. She had locked the house. She came back after the death of Pushpa. When she came back, she was prevented from performing the funeral ceremony. She then came to know that documents were alleged to have been executed by the said Pushpa purportedly settling the property in favour of the first appellant. It was contended by the learned counsel that the document had been fraudulently prepared by the appellants, taking advantage of the age of the executant and by the absence of the respondent. The learned counsel contended that even to the naked eye, the signature on the back side of the first page of the settlement deed



was different to the signatures in the other pages. Further, there was no signature in the fourth page of the settlement deed.

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24. The learned counsel assailed the evidence of DW2, the witness who stated that the executant had signed in all the pages when the executant had not signed in the fourth page. It was also contended that DW3 who was the subsequent purchaser was also one of the witnesses to the settlement deed and was an interested party. The other witness DW2 was his own brother. It was therefore contended that the document had been created only to disinherit the respondent. The learned counsel contended that the learned Trial Judge had appreciated the evidence in entirety.

25. With respect to the evidence of CW1 who was examined in this Court, the learned counsel contended that even CW1 had asserted that the signatures in the settlement deed differed from each other and had also given cogent reasons for the same. It was therefore contended that the learned Trial Judge had correctly decreed the suit. The learned counsel therefore urged that the appeal should be dismissed.

26. We have carefully considered the arguments advanced and perused the records.



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27.The following points arise for consideration under Order 41 Rule 30

(i)Whether the Trial Court had come to a proper conclusion that the signature in the back side of the first page of the settlement deed, differed from the signatures of the executant in the other pages?

(ii)Whether the absence of the signature of the executant in the fourth page is a factor to be considered?

(iii)Whether the fact that the witnesses to the settlement deed were interested parties is a factor to be considered?

28.Since the evidence on all the three questions overlap, we would take up for consideration all the points together. The parties are referred in their litigative status. The respondent herein was the plaintiff before Trial Court and the appellants were the defendants before Trial Court.

29.The plaintiff claimed that Pushpa who was the executant of the settlement deed which was sought to be set aside in her plaint was her maternal grandmother. The property had been allotted to Pushpa consequent to a preliminary decree in OS No.5816 of 1986, granting partition of her undivided $\frac{1}{4}^{\text{th}}$ share in a larger area of land and building. That undivided $\frac{1}{4}^{\text{th}}$ share was crystallized as land measuring 403 sq.ft. with building of about 150 sq.ft. in the



final decree proceedings. The said property had been allotted to Pushpa, the maternal grandmother of the plaintiff. This fact cannot be denied or disputed.

The judgment and preliminary decree and the final decree had been marked as Exs.P21, P22, P23 during the course of trial. They had attained finality.

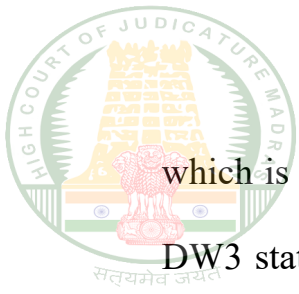
30.The fact that Pushpa was the absolute owner of the suit property is not disputed by the defendants since they also claim title through Pushpa. The plaintiff was the only lineal descendant of the said Pushpa. The daughter of Pushpa/mother of the plaintiff, Sulochana had died intestate. The father of the plaintiff Natarajan also died. The plaintiff was their only daughter. Pushpa had no other children except Sulochana. Therefore, the plaintiff was the only legal heir of Pushpa entitled to inherit the suit schedule property.

31.It is to be noted that the first defendant claimed right and title owing to a settlement deed said to have been executed by Pushpa on 23.05.2013 and registered in the office of the Sub Registrar, Mylapore, bequeathing the very same property to him. We have carefully examined that document. The certified copy had been marked as Ex.P10 and the document itself had been marked as Ex.D1. It is a registered document. Naturally a presumption would arise that it had been registered after following due procedure. The executant had signed on the back side of the first page before the Sub Registrar. That



signature is admitted. But however, a perusal of the document shows that in the fourth page, the executant's signature is not present. This itself shows that there has been some laxity on the part of the Sub Registrar while registering the settlement deed. The presumption therefore gets shattered to that extent. If it is to be presumed that an official act had been done in a proper manner then such official act also includes ensuring that the executant signs each and every page. The absence of the signature in the fourth page is therefore very significant.

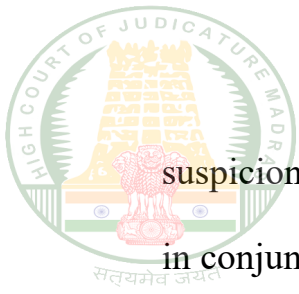
32. Every settlement deed will have to be proved in accordance with Section 68 of the Evidence Act, 1872. The attestors will have to speak about the attestation of the settlement deed. Here DW2 and incidentally DW3 who was the subsequent purchaser of the property and the second defendant were the two attestors to the settlement deed. Even in the plaint, it had been stated that at the time of the execution of settlement deed itself, it had been identified that the second defendant would subsequently purchase the property. The second defendant had borne the expenses and paid the required amounts towards the preparation and registration of the settlement deed amounting to Rs.2,00,000/-. It is thus seen that the defendants had benefited by the settlement deed. The subsequent purchaser who borne the expenses and his brother were the attestors to the settlement deed. Naturally, they are interested witnesses. The examination of a scribe before the Court is not mandatory. It is attestation



which is important. When the attestors to the document, in this case DW2 and DW3 state that they had witnessed the executant signing the document in each and every page and subsequently it is found that the executant had not signed one of the pages, then the credibility of their evidence necessarily has to be called into question. To that extent, their evidence has to be considered as being unreliable in nature.

33. Moreover, the differences in the signature as found in the back side of the first page, which was signed before the Sub Registrar and the other signatures in the other pages of the settlement deed which are affixed elsewhere are obvious. The explanation given is that the signatures were appended in a different place. But the signatures whether executed at different places or at the same place should atleast be similar. There cannot be marked differences in the signatures. In this connection, the handwriting expert, CW1 had been examined before this Court. He had given reasons as to why he gave an opinion that the signatures are different. We accept that the opinion of a handwriting expert cannot be deemed to be conclusive and has to be corroborated by other evidence.

34. In this case, it is seen that the two attestors are two brothers. One of them had been identified as the subsequent purchaser of the property and had also financed the execution of the settlement deed. This provides a very strong



suspicion about the free consent for execution of the settlement deed. That fact, in conjunction with the opinion of CW1 who had given cogent reason as to why that the signatures differ make it conclusive that the signatures in each page of the settlement deed had not been appended by the executant. The reasoning had been given as follows:

Reasons being (i) skill of writing of R.Pushpa (ii) alignment between the letters in the signature of R.Pushpa (iii) relative sizing between the letters 'pu', 'sh', 'pa' and 'thunaikaal eluthu' (iv) the manner of terminating the letters 'R'. 'pu', 'sh', 'pa', 'thunaikaal eluthu' and (v) the details and beginning and formation of loops and curves of the letters 'R', 'pu', 'sh', 'pa', 'thunaikaal eluthu'.

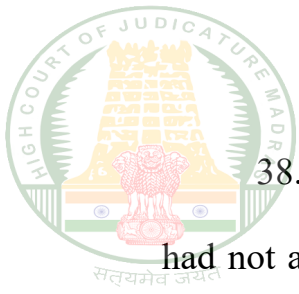
35.It is to be further noted that the evidence of CW1 is not a stand alone evidence. To a substantial extent, it is also corroborated by the circumstances surrounding the execution of the settlement deed. There is no reason advanced as to why the executant had not signed in one of the pages. The difference in the signatures is glaring. It could not be so marked even if the executant had signed at two different places, one in the office of the Advocate and the other in the office of the Sub Registrar.

36.We hold that the Sub Registrar had failed in his duty to ensure that the executant had executed the settlement deed out of free will and favour. We



draw our conclusion on the facts and on analysis of evidence. DW3 is certainly an interested witness. He had subsequently purchased the property. He had signed as a witness in the settlement deed. He had financed the execution of the settlement deed by purchasing the stamp papers and paying the registration charges to an extent of Rs.2,00,000/-. He would naturally speak only about the genuinity of the execution of the settlement deed. He cannot be termed as an independent witness who would speak as to what had actually happened at the time of the execution of the settlement deed. The other witness is his own brother who was examined as DW2.

37.It is also seen that the first defendant, the beneficiary under the settlement deed who was examined as DW1 had faltered during his cross examination. In his cross examination, he stated that he did not know who was the original owner of the property. He had given answers which exposed his ignorance about the trace of title of the property and about how the property devolved to Pushpa, the executant of the settlement deed. He also disclaimed knowledge about the partition suit which had been filed by Pushpa under which the property had been allotted to Pushpa. All these facts would show that the settlement deed had not been executed with free and fair consent. We hold that the learned Trial Judge had come to a correct conclusion that the settlement deed has to be set aside. We confirm that finding of the Trial Court.



38. It had also been contended on behalf of the appellants that the plaintiff had not approached the Court with clean hands since she had known about the settlement deed even three months earlier to the date when she claimed knowledge. That fact would not make the settlement deed a genuine document. The fourth page of the settlement deed had not been signed by the executant. The signature on the backside of the first page of the settlement deed differs from the signature of the executant in the other pages. The Trial Court had held that the suit had been filed within the period of limitation. Therefore, this argument does not hold water and we reject the same.

39. In the result, the Appeal Suit fails and is dismissed with costs. Consequently, connected miscellaneous petitions are also closed.

(C.V.K.,J.) (K.R.S.,J.)
15-06-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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To

The IV Additional Judge,

City Civil Court, Chennai.



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**C.V.KARTHIKEYAN, J.
AND
K.RAJASEKAR, J.**

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