

S.A.(MD)No.361 of 2006

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.04.2026

CORAM

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

S.A.(MD)No.361 of 2006

K.Ravikumar

... Appellant

Vs.

1.K.Kanagaraj(died)
2Beulah Martin
3.K.Vasanth Kumar
4.Mr.K.Raja Kumar
5.Mrs.Angela Sing
6.Mr.K.Nithianantharaj

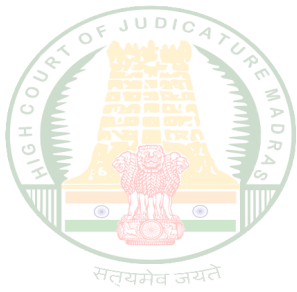
... Respondents

(R2 to R6 are B/R as LR's of the deceased R1 as per order dated 02.12.2016 in MP.No.1 of 2007 in SA.(MD)No.361 of 2006)

PRAYER : Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 06.01.2004 passed in A.S.No.9 of 2003 on the file of the Sub Court, Thoothukudi confirming the judgment and decree dated 05.07.2002 in O.S.No.116 of 2001 on the file of the District Munsif, Sri Vaikundam.

For Appellants : Mr.K.Govindarajan

For Respondents : Mr.V.Meenakshi Sundaram



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JUDGMENT

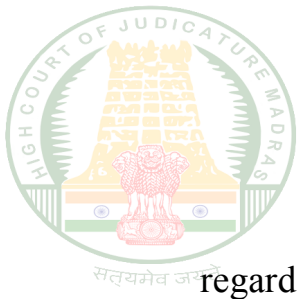
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Unsuccessful plaintiff has preferred the second appeal. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

2.The plaintiff has filed the suit in O.S.No.116 of 2001 on the file of the District Munsif Court, Srivaikundam seeking permanent injunction against his father, namely K.Kanagaraj/defendant. The suit was dismissed on 05.07.2002. Aggrieved over the same, the plaintiff has preferred an appeal in A.S.No.9 of 2003 on the file of the Sub Court, Thoothukudi. The first appellate Court confirmed the decree and judgment of the trial Court and dismissed the appeal on 06.01.2004. Challenging the concurrent degree and judgment of the Courts below, the present second appeal has been filed.

3.The brief case of the plaintiff is as follows:-

The plaintiff is the son of the defendant. The defendant executed settlement deed dated 22.06.2001 in favour of the plaintiff and handed over the possession of the suit scheduled property. The plaintiff also applied for the change of property tax before the town panchayat with



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regard to the suit scheduled property. On 04.10.2001, the defendant tried to vacate the plaintiff from the suit scheduled property through tenants, at the instant of someone, who are against the plaintiff. Hence, the suit has been filed for the relief of permanent injunction.

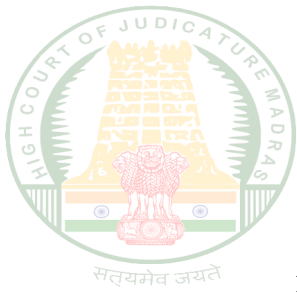
4.The brief case of the defendant is as follows:-

The defendant has four sons and two daughters. The plaintiff is the youngest son. He executed the settlement deed in favour of the plaintiff on 22.06.2001. But the settlement deed was executed under compulsion and by physically harassing the defendant. As it was under threat, he cancelled the same, on 19.09.2001. The settlement deed was not acted upon and the property tax also stands in the name of the defendant. The possession was not handed over to the plaintiff. Hence, he prayed to dismiss the suit.

4.Based on the above pleadings, the trial Court framed the following issues:-

i)Whether the defendant handed over the possession over the property to the plaintiff by executing settlement deed?

ii)Whether gift settlement deed is valid in law?



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iii)Whether plaintiff is entitled to the relief or permanent injunction?

Additional Issues:-

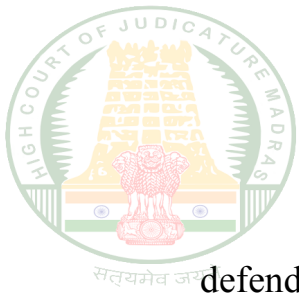
iv)Whether the contention that plaintiff obtained settlement deed by harassing defendant has been proved?

v)Whether the defendant entitled to cancel the settlement deed executed by him?

5.Finding of Trial Court:-

The plaintiff has been residing in the suit property only in the capacity of the son and he did not prove the possession was handed over to him pursuant to Ex.A1. The plaintiff failed to prove the execution Ex.A1, voluntarily out of love and affection by examining witnesses. Aggrieved over the same, the plaintiff has preferred the appeal in A.S.No.9 of 2003 on the file of the Sub Court, Thoothukudi, on the following grounds:-

The trial Court has failed to appreciate the fact that Ex.A1 gift deed was executed in favour of the plaintiff is absolute one and cannot be revoked under any circumstances. The trial Court erred in coming to conclusion that the Ex.A1 possession of the property has not handed over the plaintiff. The defendant has no right to cancel the gift deed and



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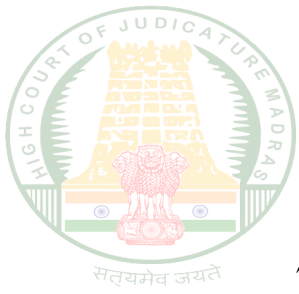
defendant has not imposed any condition in the gift deed. The trial Court failed to appreciate the fact that the defendant executed cancel deed after three months from the date of its execution also failed to consider legal principles. The trial Court ought not to have given not importance to the oral and evidence on P.W.2 & 3 and who are interested witnesses. The first Appellate Court had been re appreciate of the entire facts and confirmed the decree and judgment of the Court below. Aggrieved over the concurrent findings of the Court below, present second appeal has been filed.

6.During the admission of the Second Appeal, this Court has framed the following substantial questions of law:-

i)Whether the Courts below are correct in considering the oral evidence contrary to the recital in Exhibit-A?

ii)Whether the Courts below are correct in law in applying the provisions of Section 126 of Transfer of Property Act to the present case?

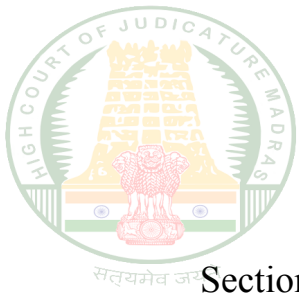
iii)Have not the Courts below committed an error in placing the burden on the plaintiff in respect of Ex.A.1 document is sustainable especially when execution of Ex.A.1 was admitted?



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7.The learned counsel appearing for the appellant/plaintiff would submit that Ex.A.1 recitals states that it was executed out of love and affection. Possession of the property has handed over on the date of execution. Further also states that it is irrevocable. In such circumstances, cancellation deed executed on 19.09.2001 and reasons for cancellation is mentioned that plaintiff is continuously acting against the wishes of the defendant, not taking care of the defendant, which is contrary to the recitals mentioned in Ex.A1 and the same is un-sustainable in law. The defendant in his written statement has come up with more and new reasons such as bodily harm and cruelty. The Courts below have heavily relied on Ex.B1, a complaint regarding incident happened in the year 2000 prior to execution of Ex.A1 for holding Ex.A1 was not executed out of love and affection. In fact, the defendant has not denied execution of Ex.A1. But, it was contended that it was not valid for certain circumstances arise after execution. The finding of the trial Court that the plaintiff ought to have examined attestors in Ex.A1 to prove that the defendant executed the same out of love and affection is un-sustainable. Ex.A1 is duly registered settlement deed and the defendant has admitted its execution. Therefore, requirement to examine the witness is not required as per proviso to

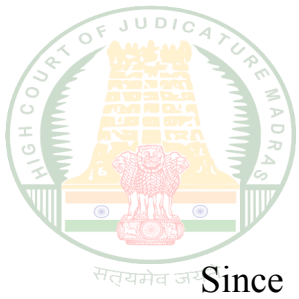


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Section 68 of the Indian Evidence Act. Ex.A1 being registered document carries presumption it is validly executed and the party challenging its genuineness has to dislodge the initial presumption by letting in evidence. Ex.A1 was executed purely out of love and affection and possession of property was immediately handed over to the plaintiff. The defendant admits in his evidence that Ex.B2 was prepared on the advise of another son and with aide of Advocate, proves it was scripted to nullify of Ex.A.1. The learned counsel would further submit that when the registered settlement deed is irrevocable, no right vest with settlor to unilaterally cancel the same and any such cancellation is void. The plaintiff is in possession of the property and and it is not the case of the defendant that plaintiff has forcibly taken possession. When Ex.A1 itself the conclusion reached by the Courts that the plaintiff has been residing in the suit property only in the capacity of son is legally un-sustainable.

8.Per contra, the learned counsel for the respondents would submit that the suit for bare injunction, Court has to consider whether the plaintiff is in possession and enjoyment of the suit property. Here, admittedly, the plaintiff is in possession of the suit property only in the capacity of the son and based on the settlement executed by the defendant.



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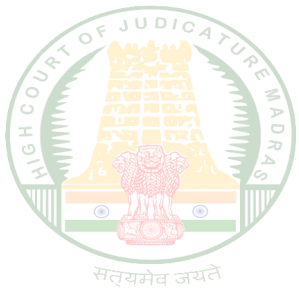
Since the settlement deed came to be executed under threat and within four months the defendant cancelled the same. The concurrent findings recorded by the Courts below does not suffer any infirmity.

9.This Court has considered the submissions made on either side and perused the records carefully.

10.It is seen from records, the sole respondent/defendant died during pendency of the appeal and thereafter, his legal representatives have been impleaded as respondent Nos.2 to 6 in this second appeal.

11.It is to be noted that seeking the relief of injunction is a personal remedy and it does not run with a land. Originally a decree for an injunction can be executed only against the person against whom the injunction is issued and it cannot be executed against any other person in the absence of a statutory provision.

12.Applying the principles of “action personalis mortui cum persona”, the injunction is a personal remedy against a person, particularly against the defendant. It is a restriction against the person i.e., the defendant.



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13.In the present case, the respondent is a sole defendant and he dies before the final adjudication of the dispute. Once a man dies, the cause of action dies with him and it does not pass on to the legal representatives. In a suit for permanent injunction simpliciter, when the defendant dies before final adjudication of the dispute, the right to sue does not survive, the cause of action dies. The relief granted by way of an injunction is purely personal. The injunction ceases to operate the moment defendant dies. In such circumstances, nothing survives in this appeal.

14.In the result, this second appeal is closed. There shall be no order as to costs.

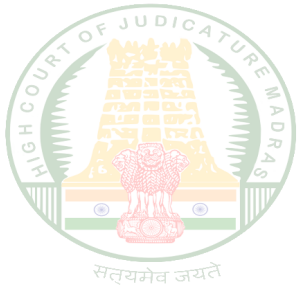
17.04.2026

NCC : Yes / No
Index : Yes / No
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To

1.The District Munsif, Sri Vaikundam.

2.The Sub Court, Thoothukudi.



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M.JOTHIRAMAN, J.

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