BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of reserved : 26/03/2026

Date of Pronounced : 01/06/2026

CORAM

THE HON'BLE MS.JUSTICE R.POORNIMA

S.A.Nos.1649 of 2003 and 237 of 2004
and
C.M.P.Nos.1448 & 7508 of 2004

(1)SA No.1649 of 2003:-

1.Edwin David :1st Appellant/appellant/ 1st Defendant

2.Ben David @ Irwin
3.Florence :

4.A.Suresh
(Appellants 3 & 4 impleaded
vide Common order, dated 21/02/2013
made in MP(MD)No.1 and 1 of 2012
in SA Nos.1649 of 2003 and 237 of 2004)

5.K.Srinivasan : Appellant/2nd Respondent/ 2nd Defendant

Vs.

1.Lawrence
2.Raj Mohan Singh : Respondents/Respondents/ Defendants 2 and 3
(Respondents 3 and 4 are transposed as
appellants 2 and 3, vide Court order,
dated 21/02/2013 and made in MP(MD)No.2 of 2012
in SA No.1649 of 2003)

PRAYER : Second Appeal filed under Section 100 C.P.C., as against the judgment and decree passed in AS No.208 of 1997, dated 07/03/2003 by the Sub Court, Padmanabhapuram, confirming the judgment and decree, dated 22/07/1997 in OS No.673 of 1995 by the Additional District Munsif, Eraniel.

For Appellant : Mr.M.P.Senthil

For Respondents : Mr.S.Meenakshi Sundaram

(2)SA No.237 of 2004:-

Lawrence : Appellant/Respondent/ Defendant

Vs.

1.Edwin David (Died) :1st Appellant/Appellant/ Plaintiff

2.Florence
3.Ben David
(Respondents 2 and 3 are brought on record as Lrs. Of the deceased sole respondent, vide Court order, dated 13/10/2011 and made in MP(MD)Nos.1 of 2008 in SA No.237 of 2004)

4.A.Suresh : Respondents 2 to 4

(4th Respondent impleaded, vide
Order, dated 21/02/2013 and
made in MP(MD)Nos.1 and 1 of 2012
in SA Nos.1649 of 2003 and 237 of 2004)

PRAYER : Second Appeal filed under Section 100 C.P.C., as against the judgment and decree passed in AS No.140 of 2002, dated 22/09/2003 by the District Judge, Kannniyakumar at Nagercoil, reversing the judgment and decree, dated 19/10/2001 passed in OS No.78 of 1997 by the Subordinate Judge, Padmanabapuram.

For Appellant : Mr.S.Meenakshi Sundaram
for Mr.M.Senguvijay

For 1st Respondent : Died
For R2 & R3 : Mr.M.P.Senthil
For 4th Respondent : Mr.V.M.Balamohanshanisi

COMMON JUDGMENT

S.A.No.1649 of 2003 has been filed against the judgment and decree passed in A.S.No.208 of 1997, dated 07/03/2003 by the

Subordinate Court, Padmanabhapuram, confirming the judgment and decree, dated 22/07/1997 passed in O.S.No.673 of 1995 by the Additional District Munsif, Eraniel, whereas S.A.No.237 of 2004 has been filed against the judgment and decree passed in A.S.No.140 of 2002, dated 22/09/2003 by the District Judge, Kannniyakumari at Nagercoil, reversing the judgment and decree, dated 19/10/2001 passed in O.S.No.78 of 1997 by the Subordinate Judge, Padmanabapuram.

2.O.S.No.673 of 1995 was filed by one Lawrence and another, for permanent injunction against the defendants 1 to 3. The first defendant is her father, the second defendant is the brother and the third defendant is another sister of the 1st plaintiff. The suit was decreed as prayed for by the plaintiffs. Against which, the defendants filed appeal in A.S.No.208 of 1997 before the Subordinate Court, Padmanabhapuram, but the same was dismissed on 07/03/2003 by confirming the judgment and decree, dated 22/07/1997 passed in O.S.No.673 of 1995 by the Additional District Munsif, Eraniel. Against which, S.A No.1649 of 2003 was filed by first defendant as appellant.

3.O.S.No.78 of 1997 was filed by Edwin David, the father of the 1st plaintiff in OS No.673 of 1995 with a prayer to cancel the gift deeds, dated 17/02/1987 executed in favour of Smt.Lawrence and to declare his title and to deliver the possession and also sought for permanent injunction. The suit was dismissed by the Trial court, dated 19/10/2001. Against which, the plaintiff filed an appeal in AS No.140 of 2002, before the District Judge, Kanyakumari @ Nagercoil, which was allowed by the first appellate court, dated 22/09/2003 thereby setting aside the judgment and decree of the trial court. Against which, SA No. 237 of 2004 was filed by the defendant in OS No.78 of 1997.

4.Since both the second appeals arising out of the same transaction and the parties also same, this Court is inclined to render a common judgment.

5.The case of the plaintiff in O. S.No.673 of 1995 and O.S .No.78 of 1997 in brief:-

Based on the facts narrated, the submissions available to Lawrence, settlee, summarised below:

Exs.A2 to A4 gift deeds were executed in 1987 by her father Tr.Edwin David and were accepted by the donee. The recitals themselves disclose delivery of possession. Further Exs.A21 to A29 letters allegedly written by Edwin David acknowledge the execution of the settlements in favour of Lawrence for her maintenance, thereby supporting the genuineness of the transactions. In the revocation deed, Edwin David did not plead that the settlements were obtained by undue influence or that he was mentally unsound. But the stated reason was alleged failure of maintenance and want of alternative property. No medical records or independent evidence were produced to establish his mental incapacity at the time of execution.

6. On the very same day, Edwin David executed other transactions (Exs.A6 and A7), indicating that he was capable of understanding and executing documents.

7. A completed gift cannot ordinarily be revoked unilaterally except in circumstances recognized by Section 126 of the Transfer of Property Act. If Edwin David had knowledge of the deeds from the date

of execution, a challenge raised several years later may attract Article 59 of the Limitation Act. The burden to prove undue influence, fraud or incapacity lies upon the person alleging it.

8. The respondents, on the other hand, contends that:

Edwin David was not in a fit state of mind when the documents viz., gift deeds were executed and Lawrence exercised undue influence over him. Lawrence failed to examine an attesting witness despite challenge to the execution of the deeds. Possession was never handed over to Lawrence and Edwin David continued in possession and enjoyment of the property. Lawrence admittedly resided elsewhere and therefore could not establish actual possession. The findings on limitation having gone in favour of Edwin David before the trial court cannot be reopened in the absence of a cross-appeal or cross-objection, relying upon the decision in Suresh Kumar Kankariya v. K. Jigibai @ Pushpammal.

9. The learned counsel appearing for the subsequent purchaser contended that he had purchased the suit property for valuable

consideration with bonafide intention and without notice of the earlier settlement deeds alleged to have been executed in favour of the appellant. According to him, no encumbrance relating to the said settlement deeds was reflected in the Encumbrance Certificate obtained prior to the purchase and, therefore, he had no reason to suspect the title of his vendor. It was further contended that the settlement deeds in favour of the appellant were obtained when the settlor, Edwin David, was not in a fit state of mind and under the undue influence of the settlee. Hence, the said documents are invalid and do not confer any right or title upon the appellant. The subsequent purchaser having paid the entire sale consideration and having been put in possession of the property pursuant to the sale transaction, his possession is lawful and protected. Therefore, it was argued that his title and possession deserve to be confirmed and ought not to be disturbed at the instance of the appellant.

10. At the time of admitting S.A.No.1649 of 2003, the following substantial questions of law were framed for consideration of this appeal:-

(a)When Exs.A2 to A4 having registered in the office

of the Sub-Registrar at Parasala (Kerala State) and no part of the property comprised in those documents is situated within the jurisdiction of that registration Office or even in the Kerala State, are they not void ab initio ?

(b)If they are void ab-initio, would the party to the document get any legal title?

11.The following additional substantial questions of law were framed on 17/08/2023:

(i)Whether Exs.A2 to A4 (gift deeds) are hit by Section 16 of the Indian Contract Act?

(ii)Whether Late David is entitled to Exs.A2 to A4/gift deeds in respect of plaint schedule property, which was purchased out of his funds and sale proceeds of ancestral properties in favour of R1/daughter excluding himself and other legal heirs, other daughter and minor son?

12.The following substantial questions of law were framed in SA No.237 of 2004:-

(i)Whether the lower appellate court failed to consider that the suit in OS No.78 of 1997 is barred by res judicata, in view of the judgment and decree in OS No.673 of 1995 on the file of the Additional District Munsif Court, Eraniel, which is confirmed in AS N.208 of 1997, on the file of the Sub-Court,

Padmanabhapuram?

(ii)Whether the lower appellate Court erred in holding that the gift deeds were obtained by using undue influence and coercion, since there was no legal and substantial evidence to prove this contention, as except P.W.1, no other corroborative evidence was let in?

(iii)Whether the lower appellate Court failed to consider that the suit is barred by limitation? and

(iv)Whether the suit as framed is not maintainable in law, since the respondent has not asked for recovery of possession of the suit property?

13. Answers to substantial question of law:

Admittedly, three registered gift settlement deeds were executed by one Edwin David, the father of Ms.Lawrence, the appellant in S.A.No.237 of 2004 herein 17/02/1987 under documents Nos.Ex.A2 to Ex.A4. On Perusal of the recitals of the gift settlement deed reveals that Edwin David, the original owner purchased the properties in the year 1984. The donor mentioned the following reason for execution of the gift deeds in favour of his second daughter Ms.Lawrence :-

"..ஷையான் என்னுடைய மகள் ஆகும். ஷையான் என்னை ஆசிரயித்து ஜீவித்து வருவதனால்

ஷையானோடு எனக்கு தோன்றிய சினேக பாசத்தையும், புத்திர பாசத்தையும் ஆசிரித வால்சல்லியத்தினுடையமும் அடிப்படையில் ஷை யானுடைய வருங்கால நலனை கருதியும் காலட்சேபத்துக்குமாக அடியில் விவரிப்பதான பட்டிகை சொத்துக்களை ஷையாளுக்கு இஷ்டதானமாக கொடுத்திருபதனால் பட்டிகை சொத்துகளை நீ இன்று முதல் சர்வ சுவாதந்திரிய பரிபூரன பாத்தியதைகளுடன் ஆணடு அனுபவித்து தீருவையும் செலுத்தி கீழ் குறிப்பிடும் பட்டாவிலிருந்து பெயர் மாற்றி உன்னுடைய பெயரில் போக்குவரத்து செய்வித்து புது பட்டா வாங்கி என்றென்றும் சர்வ சுதந்திர பரிபூரண பாத்தியதையுடன் ஆண்டு அனுபவித்து கொள்ள வேண்டியதும் ஆகம் பட்டிகை சொத்துக்களின் மேல் எனக்குள்ள உடமஸ்ததை, சுவாதந்திரியம், ஈஸ்மென்று முதலிய சகல வித அவகாசங்களும் பாத்தியதைகளும் கைவசமும் இதனால் நான் உனக்காக விட்டு தந்திருப்பதும் ஆகம் பட்டிகை 1—ம் நம்பர் சொத்தை சம்பந்தித்து என்னுடைய பெயருக்கு 1984—ம் பாறச்சாலை சப் ரெஜிஸ்டார் ஆப்பிசு வாயிலாக 1—ம் புஸ்தகம் 733—ம் வால்யம் 419 முதல் 426 வரை பக்கங்கில் 7071—ம் நம்பராக பதிவு செய்து வாங்கின கிரையப்பத்திரப்படியும் பட்டிகை 2—ம் நம்பர் சொத்து என்னுடைய பெயருக்கு 1987—ல் பாறச்சாலை சப் ரெஜஸ்டார் ஆப்பீஸ் முகேன 487—ம் நம்பராக பதிவு செய்து வாங்கின கிரையப் பத்திரப்படியும் எனக்கு சர்வ சுதந்திர பரிபூரண பாத்தியதைகளுடன் கிடைத்திட்டுள்ளது ஆகும் பட்டிகை சொத்தில் ஸ்தாபிதமாக என்னிதமாக கட பாத்தியதைகளும் இல்லாததும் ஆகும்.

15. Subsequent to the execution of the gift settlement deeds, the name of the donee, Ms. Lawrence, was mutated in the revenue records and a Patta Passbook was issued in her favour by the then Deputy Headquarters Tahsildar, Kalkulam, which was marked as Ex.A5 in O.S. No.673 of 1995. Exs.A8 to A14 are kist receipts standing in the name of the appellant Lawrence. Exs.A15 to A20 are house tax receipts paid by the appellant for the period from 1988 to 1992. These documents clearly establish that the revenue records as well as the municipal records had been transferred in the name of the appellant pursuant to the execution of the gift deeds. Though the respondents produced certain kist receipts, those receipts pertain only to the period after 1997, subsequent to the institution of the suit by Edwin David, and therefore they do not dislodge the earlier documentary evidence produced by the appellant.

16. The principal contention of the settlor, Edwin David, is that the gift settlement deeds were obtained when he was not in a fit state of mind. Ex.B2 (in O.S.No.673 of 1995) is the deed of cancellation executed by him on 09.06.1994. In the said document, he expressly

admitted the execution of the gift deeds in favour of the appellant. However, the reasons assigned for cancellation were only that : (i) the appellant had failed to maintain him; (ii) she was acting against his wishes; (iii) he had no other property for his maintenance; and (iv) possession of the property had not been handed over to her.

17. Significantly, nowhere in Ex.B2 did the settlor allege that the gift deeds had been obtained by undue influence, fraud, coercion, or by taking advantage of his alleged mental incapacity. The averments subsequently made in the plaint filed by him are therefore contrary to the recitals contained in Ex.B2.

18. In the suit filed by the settlor seeking declaration of title, recovery of possession and injunction, he pleaded that he had become mentally disturbed on account of the marriage of his elder daughter against his wishes and was taking continuous medicines. According to him, taking advantage of such mental depression, the appellant forcibly took him to the Sub-Registrar's Office on 17.02.1987 and obtained the gift deeds. He further claimed that due to his illness he was unable to

understand the contents of the documents and had signed them without comprehending their nature and effect.

19. To substantiate the plea of mental incapacity, the settlor examined a witness D.W.2 (in O.S.No.673 of 1995) who deposed that Edwin David was mentally unsound. However, no medical records, prescriptions, treatment records or other independent evidence were produced to establish that he was suffering from any mental illness or that he was under continuous treatment at or around the time of execution of the gift deeds.

20. On the contrary, the recitals contained in the gift deeds specifically record that the possession of the property was delivered to the donee. The appellant has also produced documentary evidence establishing mutation of revenue and municipal records in her favour. Further, Exs.A21 to A29 and Exs.B24 and B25, being letters written by Edwin David, clearly acknowledge that he had executed the gift deeds in favour of the appellant for securing her future and welfare. In those communications, he never alleged that the documents had been obtained

by undue influence or when he was not in a sound state of mind.

21. It is only after disputes arose between father and daughter and after the appellant instituted legal proceedings that, for the first time, the plea of coercion, undue influence and mental incapacity was raised. The cumulative effect of the documentary evidence demonstrates that the cancellation was the result of subsequent misunderstanding between the parties rather than any infirmity existing at the time of execution. Consequently, the allegation that the gift deeds were executed when the settlor was not in a fit state of mind which has not been established.

22. The appellant further contended that O.S. No.78 of 1997 filed by the settlor for declaration, recovery of possession and consequential reliefs was barred by limitation. Article 59 of the Limitation Act prescribes a period of three years for cancellation or setting aside of an instrument, commencing from the date when the facts entitling the plaintiff to seek such relief first become known to him.The plea of Edwin David that he became aware of the gift deeds only on

25.05.1994 cannot be accepted in view of the various communications marked as Exs.A21 to A29, wherein he expressly acknowledged the execution of the gift deeds much earlier. The evidence clearly indicates that he had full knowledge of the transactions and subsequently sought to revoke them only because of differences that arose between him and the appellant.

23. Under settled principles of law, a completed gift cannot ordinarily be revoked by a unilateral deed of cancellation after it has been validly executed, accepted by the donee and acted upon. Under Section 126 of the Transfer of Property Act, a gift can be revoked only where the donor and donee have agreed, at the time of the gift itself, that it shall be suspended or revoked on the happening of a specified event not dependent solely upon the donor's will, or where grounds exist that would justify rescission of a contract, such as fraud, coercion, undue influence or misrepresentation. The revocation deed dated 09.06.1994 does not satisfy any of the requirements contemplated under Section 126 of the Transfer of Property Act. Therefore, the unilateral cancellation effected by Edwin David is legally ineffective. In view of Article 59 of

the Limitation Act, the suit filed by the settlor challenging the gift deeds was clearly barred by limitation and liable to be dismissed on that ground alone.

24. The respondents contended that the appellant had not preferred any cross-appeal against the finding on limitation and therefore could not canvass the issue in the present proceedings. This contention cannot be accepted. A plea of limitation, where it arises from admitted or undisputed facts, is a pure question of law and can be raised at any stage of the proceedings, including in appeal or second appeal. Further, Section 3 of the Limitation Act mandates that every suit instituted beyond the prescribed period shall be dismissed even if limitation has not been specifically pleaded. Hence, the objection raised by the respondents is unsustainable.

25. Insofar as possession is concerned, the appellant has produced revenue records, municipal records, tax receipts and other contemporaneous documents demonstrating that she was recognized as the holder of the property after execution of the gift deeds. The mere fact

that her father continued to reside in the property does not necessarily establish that possession had not been delivered to her. The appellant's explanation that she permitted her father to continue residing in the property appears probable in the circumstances of the case. Accordingly, the contention that possession was never handed over to the appellant cannot be accepted.

26. The respondents further contended that the appellant ought to have examined one of the attesting witnesses to prove the gift deeds. Under Section 123 of the Transfer of Property Act, a gift of immovable property is required to be signed by or on behalf of the donor, and attested by at least two witnesses and Section 68 of the Indian Evidence Act, provides that where a document is required by law to be attested, at least one attesting witness must ordinarily be called to prove its execution. However, the proviso to Section 68 specifically states that it shall not be necessary to call an attesting witness in proof of the execution of a registered document, other than a Will, unless its execution by the executant is specifically denied.

27. In the present case, the executant himself admitted execution of the gift deeds in his letters and in the cancellation deed dated 09.06.1994. His case was not that the signatures found in the documents were forged or fabricated. On the contrary, he admitted execution but sought to avoid the limitation, in the suit by alleging that they were executed when he was mentally depressed and under undue influence. Such a plea does not amount to a specific denial of execution within the meaning of the proviso to Section 68 of the Evidence Act. Mere allegations in the plaint that the documents were obtained by undue influence cannot be equated with a categorical denial of execution. Consequently, examination of an attesting witness was not mandatory in the facts of the present case. The evidence on record establishes that Edwin David executed the gift deeds voluntarily and while in a fit state of mind. His admissions contained in the correspondence exchanged between the parties and in the deed of cancellation itself clearly support the appellant's case. It is also significant that the original title deeds were handed over to the appellant and produced by her before the Court, whereas the settlor relied only upon certified copies.

28. The subsequent purchaser was impleaded as a party to the proceedings. Though he claimed to be a bona fide purchaser for value without notice, the materials on record reveal that the purchase was effected during the pendency of the litigation. A purchaser *lis pendens* takes the property subject to the result of the litigation and cannot acquire rights superior to those of his vendor. Therefore, the transfer is not binding upon the appellant Ms.Lawrence and the subsequent purchaser, if so advised, is at liberty to work out his remedies against his vendor.

29. The respondents lastly contended that the documents were registered at Parasala in the State of Kerala in order to conceal the transaction from the other family members. This contention is devoid of merit. There is no evidence whatsoever to establish that the registration was fraudulent or intended to deceive any person. The records further disclose that on the very same day Edwin David purchased another property from Selvaraj under Ex.B13 and that document was also registered in the same Sub-Registrar Office at Parasala. Although the respondents attempted to characterize that transaction as sham and

nominal, no evidence was adduced in support of such allegation. It is also relevant that Edwin David himself relied upon Ex.A1, the parent title deed relating to the suit property, which had likewise been registered before the very same Sub-Registrar Office at Parasala. Having relied upon that document as genuine, the respondents cannot now contend that registration of Exs.A2 to A4 at the same office was intended to conceal the transaction or render it suspicious.

30. Accordingly, this Court holds that the gift deeds executed by Edwin David in favour of the appellant Ms.Lawrence were genuine, validly executed and accepted, and were not obtained by fraud, coercion or undue influence. The unilateral deed of cancellation is ineffective in law and the subsequent alienations do not affect the appellant's rights. Consequently, the second appeal preferred by Lawrence is allowed. The second appeal preferred by the contesting respondents legal heirs of Mr.Edwin David stands dismissed, there being no merit in the same.

31. In the result, S.A.No.1649 of 2003 is dismissed,

confirming the judgment and decree passed by the Courts below. Whereas S.A.No.237 of 2004 is allowed and the judgment and decree dated 22.09.2002 passed in A.S.No.140 of 2002 on the file of the District Court, Kanniyakumari at Nagercoil are set aside and the judgment and decree dated 19.10.2001 passed in O.S.No.78 of 1997 on the file of the Subordinate Court, Padmanabapuram are restored. No costs. Consequently, connected miscellaneous petitions are closed.

01**.06.2026**

Index : Yes / No
Internet : Yes / No

er

To

1.The District Judge, Kanyakunari @ Nagercoi.

2.The Sub Court, Padmanabhapuram

3.The Additional District Munsif, Eraniel.

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

R.POORNIMA, J.

er

SA Nos.1649 of 2003 and 237 of 2004

01.06.2026