

(1996) 07 MAD CK 0003
In the Madras High Court

E. Rajkumar

APPELLANT

Vs

P. Nirmala Cesilia and Others

RESPONDENT

Date of Decision : 31-07-1996

Acts Referred:

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 53

Citation : (1997) 1 MLJ 74

Hon'ble Judges : S.S. Subramani, J

Bench : Division Bench

Judgement

S.S. Subramani, J.—First defendant in O.S. No. 555 of 1986, on the file of District Munsif's Court, Thirumangalam, is the appellant before this Court.

2. First respondent herein, as plaintiff, filed the above suit, seeking the following reliefs:

...to pass a judgment and decree in favour of the plaintiff

(a) declaring that the plaintiff is entitled to be the Manager and Correspondent of the suit property;

(b) consequent to the passing of a decree for declaration, for a permanent injunction against the first defendant, his men, agents and persons

claiming under him from in any way interfering with the peaceful possession and enjoyment of the suit property;

(c) directing the first defendant to pay the costs of this action....

3. For the sake of convenience, parties are referred to in this second appeal, according to their rank in the suit.

4. The averments in the plaint are as follows: Plaintiff and first defendant are sister and brother, and they are the children of second defendant. The

subject-matter of the suit is a Primary School by name "Kasthuriba Gandhi Primary School, Munsif's Court Road, Tirumangalam, Madurai

District". It is said that the school was established by the second defendant about 50 years prior to the institution of the suit, and from the very

inception, she was working as Manager and Correspondent of the said school. It is further said that the second defendant worked very hard to

improve the school and also the standard of education in the said school. She was also working as Headmistress for many years till her retirement

from service in 1971. It is said that the plaintiff was also working as Headmistress in the school in question upto 1977. At that time, the first

defendant with some ulterior motive, created problems between plaintiff and 2nd defendant. Subsequently, the first defendant was able to terminate

the services of the plaintiff from the school through the second defendant. Thereafter, the second defendant found out the reality and also the real

character of the first defendant. Even though the second defendant retired from service in the year 1971, she continued as Manager and

Correspondent in the school. As days passed, her health condition also deteriorated and, therefore, she decided to settle her own properties

including the suit property where the school is situated, and the right of management over the said school, in favour of the plaintiff, a per settlement

deed dated 28.1.1985. It is said that on the date of settlement, she handed over possession of the properties. The school is now recognised by the

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. It is also said that the 2nd defendant sent a petition to the 3rd defendant, to

recognise the plaintiff as Manager-cum-Correspondent. First defendant, who was all along inimical towards the plaintiff, also sent a petition to the

same authority, stating that he has also got some right in the school on the basis of a registered will executed by the parents. It is a joint will

executed by the parents of plaintiff and first defendant. It is said that the 3rd defendant, without properly understanding the legal position,

unilaterally wanted to support the first defendant and simply dragged on the proceeding, and finally, passed an order as per Ex. A-4 on 25.1.1986,

directing the plaintiff as well as first defendant to establish their right in a civil court, and approach him again for transfer of management. Since, the

third defendant himself had submitted to the jurisdiction of civil court, plaintiff had no other option but to seek intervention of court, for the reliefs

stated above.

5. In the written statement filed by the first defendant, he has stated that the suit is not maintainable in law. According to him, the suit is premature,

and the plaintiff has no locus standi to file the suit. He said that a will was executed by the parents of plaintiff and 1st defendant on 4.8.1974. It is

said that on the basis of the will which is mutual in nature, the second defendant has no right to cancel or revoke the will, and immediately after the

death of the father, the will has come into effect and, therefore, the settlement deed executed by the second defendant in favour of the plaintiff is

invalid. It is further stated that on the basis of the will, first defendant alone is entitled to manage the school, and the plaintiff has no right. It is further

said that it is true that the plaintiff was serving in the School as Headmistress, but her services had to be terminated by 2nd defendant with the

approval or higher authorities, because, the charges framed disqualified the plaintiff from holding the post. It is further said that the settlement deed

Ex. A-1, alleged to have been executed by 2nd defendant is as a result of coercion and undue influence. It is also said that the plaintiff never acted

on the settlement deed and possession was never handed over to her. It is further said that the averment in the plaint as if the school was improved

only by the 2nd defendant is not correct. It was the result of the joint endeavour of both the parents. Therefore, the 2nd defendant was not entitled

to execute a will as if the property belonged to her. It is also said that the suit as framed is not maintainable.

6. Second defendant also filed a written statement supporting the case of the plaintiff wherein she admitted that she executed a settlement deed.

According to her, she executed the same on her own accord and free volition. She also said that the School is her absolute property, and it is not

the subject-matter of the will. According to her, the joint will executed by her and her husband cannot have any legal effect so long as she is alive,

and she is entitled to revoke the same. The allegation that it is a mutual will is denied. It is also said that even it is a mutual will, she is entitled to

revoke the same. She wanted a decree to be passed in terms of the plaint.

7. The third defendant also filed a written statement, wherein he said that he is an unnecessary party to the suit, and he has also said that he

directed the parties to seek intervention of Court to get their grievance redressed.

8. On the above pleadings, the parties joined in issue before the trial Court. Exs. A-1 to A-5 were marked on the side of the plaintiff. Exs. B-1 to

B-64. were marked on the side of the defendants. Plaintiff got herself examined as P.W. 1. The first defendant got himself examined as D.W. 1, and another independent witness was also examined as D.W.2.

9. The trial court, after evaluating the entire evidence, came to the conclusion that the settlement deed Ex. A-1 was properly executed by 2nd

defendant and the suit is also maintainable. It held that the first defendant cannot rely on the joint will Ex. B-22, dated 4.8.1974 and the second

defendant is competent revoke the same. The suit was decreed as prayed for, and an injunction was also granted against the first defendant,

restrain him from interfering with the plaintiff's right to management of the School.

10. Aggrieved by the above judgment, first defendant preferred A.S. No. 3 of 1988, on the file of the Principal District Judge, Madurai. The

appellate court also confirmed the decree of the trial Court and dismissed the appeal with costs. It is against the concurrent judgments of both the

courts below, first defendant has preferred this second appeal.

11. At the time of admission of second appeal, the following substantial questions of law were raised for consideration:

(1) Whether both the courts below erred in holding that civil court is competent to decide the matter in dispute, and

(2) Whether the jurisdiction of the civil court is barred under the Tamil Nadu Recognised Private Schools (Regulation) Act?

12. At the time of argument, learned Counsel also wanted to urge the question as to whether the second defendant is entitled to execute a

settlement deed in favour of plaintiff, after canceling the will Ex. B-22. The same is also raised as a substantial question of law. On the above

submission, the following substantial question of law is also formulated:

Whether both the courts below erred in holding that Ex. B-22 is revokable by second defendant.

13. I will first consider the validity of the settlement deed Ex. A-1. The competency of the 2nd defendant to execute the settlement deed is

challenged by the appellant (first defendant) on the ground that the parents have executed a mutual will, evidenced by Ex. B-22, and after the death

of the father, mother alone is not competent to revoke the deed.

14. I will first consider what is meant by joint and mutual will, and what are the circumstances under which it can be revoked. The question

thereafter will be whether Ex. B-22 satisfies the requirement of irrevocability. Only then the validity of Ex. A-1 settlement deed could be decided.

15. Thomas Jarman, Esq., in "A Treatise on Wills" - 6th edition (1910), at page 41 has described as to what is meant by joint will and mutual will.

The relevant portion reads thus:

Two or more persons may make a joint will, which, if properly executed by each, in, so far as his own property is concerned as much his will, and

is as well entitled to probate upon his death, as if he had made a separate will. But a joint will made by two persons, to take effect after the death

of both, will not be admitted to probate during the life of either. Joint wills are revocable at any time by either of the testators during their joint lives,

or, after the death of one of them, by the survivor. Mutual wills are recognised by the Roman Dutch law which is in force at the Cape of Good

Hope, Ceylon, & c. A mutual will is regarded as being in effect two separate wills, in which the disposition of each testator is treated as applicable

to his share of the joint property. Instruments of this nature are unknown to the testamentary law of this country, and with us the term "mutual will

is generally applied to the case of two persons making a will by which each leaves all his property to the other. A mutual compact by two persons

to make testamentary dispositions in each other's favour is apparently enforceable in equity in some cases, as where the survivor accepts the

benefits under the dispositions of the deceased testator. But such a compact must be clear and fair in its terms to make it binding.

In the Eighth Edition also, the learned Author Thomas Jarman has stated as follows at page 42, as regards the position of mutual wills:

The fact that a husband and wife have simultaneously made mutual Wills, giving each to the other a life interest with similar provisions in remainder,

is not in itself evidence of an agreement not to revoke the wills; in the absence of a definite agreement to that effect there is no implied trust

precluding the wife from making a fresh will inconsistent with her former will, even though her husband has died and she has taken the benefits

conferred by his will. Although by the mutual wills the wife expressly has

refrained from exercising a power of appointment, which her husband had only in default of her exercising it, and he has appointed, the wife can both take the benefit of her husband's will and exercise her power of appointment, unless the language of his will either puts her to her election, or places her in the position of seeking at the same time to approbate and reprobate its provisions.

16. Theobald on "The Law of Wills" - 14th Edition (1982) has stated thus at pages 27 and 28:

Persons may make joint wills, which are, however, revocable at any time by either of them or by the survivor. A joint will is looked upon as the will

of each testator, and may be proved on the death of one. But the survivor will be treated in equity as a trustee of the joint property if the equitable

doctrine of mutual wills, applies. Under this doctrine there must be an agreement for the survivor to be bound by the arrangement between them;

but the mere fact of the execution of a joint will is not sufficient to establish such an agreement of the survivor to be bound. If this doctrine applies a

legacy to a legatee who survived the first testator, but predeceased the second, does not lapse. Where a joint will is followed by a separate will

which is conditional on a condition that fails, the joint will is not revoked even though the subsequent separate will contains a revocation clause.

Mutual Wills: The term "mutual wills" is used to describe joint or separate wills made as the result of an agreement between the parties to create

irrevocable interests in favour of ascertainable beneficiaries. The revocable nature of the wills under which the interests are created is fully

recognised by a probate court, but in certain circumstances equity protects and enforces the interests created by the agreement despite the

revocation of his will by one part after the death of the other without having revoked his will. Equity does not protect the beneficiary under mutual

wills merely because they have been made in almost identical terms. There must be evidence of an agreement to create interests under the mutual

will which are intended to be irrevocable after the death of the first to die. Where there is no such evidence, the fact that the survivor takes an

absolute interest is a factor against the implication of such agreement. Where, however, the evidence is clear, as, for example, where it is contained

in recitals in the wills themselves, the fact that each testator gave the other an

absolute interest with a substantial gift in the event of the other's prior death does not prevent equity from affording its protection to the beneficiary under the mutual wills. The agreement must also be sufficiently precise to be enforced by the court. If there are joint tenants and their mutual wills, made pursuant to the agreement between them, are incompatible with the right of survivorship applicable to a joint tenancy, henceforth they hold as tenants in common.

Before the death of the first to die, the agreement is a contractual one made in consideration of mutual promises. It can, therefore, at this stage be revoked by mutual agreement and even by unilateral breach, giving rise to an action for damages, atleast where the revoking party gives such notice to the other as may enable him to alter his will also. But on general principles only the parties to the agreement can sue for damages for unilateral breach.

It is the death of the first to die without revoking his own will which renders the will of the survivor irrevocable in equity. Hence a legatee under the mutual wills, who survives the first testator but predeceases the second, does not lose his legacy on the ground of lapse. In the earlier cases the intervention of the Court of Equity is based on the ground that the survivor has taken the benefit of the arrangement, but it has not yet been held that if the survivor disclaims the benefit he is thereby released from the agreement.

It is clear that in equity a mutual will cannot be revoked by the survivor after the death of the first to die. Does the doctrine of mutual wills apply if the survivor remarries so that his mutual will is revoked by operation of law. Probably the answer depends on the terms of the agreement between the parties; the doctrine applies if they agreed that the survivor should be bound in any seen but does not apply if they merely agreed that the survivor should not revoke.

17. In Parry and Clark on "The Law of Succession" 8th Edition (1983), at pages 3 and 4, the learned author J.B. Clark, has stated the characteristics of a joint will, and has described the, same thus:

If two or more persons duly execute the same document as the will of both of them, it constitutes a joint will and is treated as the separate will of each of them. Each is therefore free to revoke or vary the joint will so far as it

applies to him at any time, whether or not the other person is still

alive. If one dies leaving the joint will unrevoked, probate will be granted of the joint will as the will of the deceased testator. If the other dies

leaving the joint will unrevoked, probate will be granted of the joint will as the will of the other deceased testator. Joint wills are rarely made; their

sole merit is that a joint will can effectively exercise a power given to two persons jointly to appoint by will.

Insofar as "mutual wills" are concerned, the learned author has dealt with the same in pages 11 to 13. The relevant passage reads thus:

The Court of Chancery created the doctrine of mutual wills in order to remedy the unconscionable revocation of a will in certain circumstances

Three requirements must be satisfied;

(1) Mutual wills made pursuant to an agreement. The first requirement of the doctrine is that two or more persons make an agreement as to the

disposal of some or all of their property on death and execute mutual will pursuant to the arrangement. Usually the persons are husband and wife.

The mutual wills may take the form of a joint will or separate wills. Each of the mutual wills makes provision for the other person in some way.

Sometimes each will gives the other person a life interest, with remainder to the same beneficiary; probably remainders to different beneficiaries in

the two wills would suffice if this was the arrangement. Sometimes each will gives the other person an absolute interest, with an alternative gift in

case the other one dies first.

(2) Agreement for survivor to be bound. The second requirement is that the parties agree that the survivor shall be bound by this arrangement. This

requirement normally takes the form of an agreement by the parties not to revoke their mutual wills. For instance, in *Re Hagger*, a husband and

wife made joint mutual will which contained a declaration by them that it should not be altered or revoked save by their mutual agreement; it was

implicit in this declaration that the parties agreed that the survivor should be bound by this arrangement. This requirement can also be satisfied by

an agreement to leave property by will. Thus in *Re Green* a husband and wife made mutual wills which recited an agreement between them that, if

the survivor had the use of the other's property for life without any liability to account, the survivor would provide by will for the carrying out of the

wishes expressed in the other's will.

The agreement by the parties that the survivor shall be bound by this agreement can be proved by declarations to this effect in the mutual wills or

by clear and satisfactory extrinsic evidence. A "mere honourable engagement" between the parties does not suffice. In order to bring this

agreement to the knowledge of any interested beneficiary and to facilitate proof of it in the future, it is advisable for the mutual wills to contain such

declarations or for the parties to hand to any interested beneficiary a written declaration of their agreement signed by them.

The fact that the parties agreed to make and did make, mutual wills in almost identical terms at the same time is not sufficient to establish that they

agreed that the survivor should be bound. In *Re Oldham* a husband and wife made mutual wills at the same time, giving the other an absolute

interest with the same alternative gift in case the other died first. The husband died first and the wife took her husband's property under his mutual

will. She later remarried and died, having made a new will which provided for her second husband and which departed entirely from her earlier

mutual will. *Astbury, J.* held that the doctrine of mutual wills was not applicable and upheld the wife's new will, saying that "the fact that the two

wills were made in identical terms does not necessarily connote any agreement beyond that of so making them.

(3) Binding event occurs: The arrangement becomes binding in equity on the survivor either (i) when the first of them dies, leaving his mutual will

unrevoked and believing the agreement that the survivor shall be bound still stands, or (ii) when this occurs and the survivor accepts the benefit

under the other's will. There are dicta in favour of both these alternatives but as yet no decision between them. In favour of the first alternative

Clauson, J. said obiter in *Re Hagger* that the arrangement became binding in equity on the survivor when the first of them dies "even though the

survivor did not signify his election to give effect to the will by taking benefits under it." The adoption of this first alternative would stop the survivor

being free to escape from the arrangement by disclaiming the benefit under the other's will and thereby to take under any consequent intestacy of

the other person. On the other hand, there are several dicta which appear to favour the second alternative and it has been argued that it is the

survivor's acceptance of the benefit under the other's will which constitutes fraud justifying equity's intervention. Perhaps the choice between the

two alternatives ought to depend on the agreement of the parties -under their agreement was the survivor to be bound by the arrangement on the

death the first to die or on the acceptance by the survivor of the benefit under the other's will?

Whichever alternative applies, this third requirement is not satisfied if the first of them dies having revoked his mutual will before his death in breach

of the arrangement. Again, it is not satisfied if the first of them dies knowing the agreement to be bound no longer stands because the other has

already repudiated it. To quote Lord Camden's eloquent words in *Dufour v. Periera* ""A mutual will is a revocable act. It may be revoked by joint

consent clearly. By one only, if he gives notice, I can admit. But to affirm that the survivor (who has deluded his partner into this will upon the faith

and persuasion that he would perform his part) may legally recall his contract, either secretly during the joint lives, or after at his pleasure, I cannot

allow.

Each is under an obligation not to revoke his will without notice to the other during the other's lifetime.

18. In Halsbury's Laws of England - 4th Edition (1984) - Volume 50, Sections 207 and 208 deal with "joint wills" and "mutual wills" respectively.

They read thus:

Joint Wills: A joint will is a will made by two or more testators contained in a single document, duly executed by each testator, and disposing either

of their separate properties or of their joint property. It is not, however, recognised in English Law as a single will. It is in effect two or more wills;

it operates on the death of each testator as his will disposing of his own separate property; on the death of the first to die it is admitted to probate

as his own will and on the death of the survivor, if no fresh will has been made, it is admitted to probate as the disposition of the property of the

survivor.

Mutual wills: Wills are mutual when the testators confer upon each other reciprocal benefits, which may be absolute benefits, in each other's

property, or life interests with the same ultimate disposition of each estate on the death of the survivor. In practice, the several wills which constitute

a joint will are mutual, but reciprocal benefits may be given by separate wills and these are known as mutual wills. Where there is an agreement not

to revoke mutual wills and one party dies having stood by the agreement, a survivor is bound by it.

19. Paruck on "The Indian Succession Act" - 8th Edition (1993), has defined "mutual will" thus:

Mutual will: A will is mutual when the two testators confer upon each other reciprocal benefits as by either of them constituting the other his

legatee, that is to say, when the executants fill the roles of both testator and legatee towards each other but where the legatees are distinct from the

testators, there can be no question of mutual will. It implies two separate wills executed on the same day containing similar provisions. Two

persons may agree to make mutual wills which remain revocable during their joint lives by either of them with notice to the other. The peculiar

characteristic of this kind of wills is, that they become irrevocable after the death of one of them, if the survivor takes advantage of the provisions

made by the other....

The learned Author defined a "joint will" thus:

Joint Will: A joint will is a will made by two or more testators contained in a single instrument duly executed by each testator disposing either of

other separate properties of their joint property (Haisbury, Vol. 39, Edn., p. 846). By a joint will is meant a single instrument by which two

persons give effect to their testamentary wishes. Such a will is not a single will and is revocable at any time by either of them or by the survivor.

20. In Sanjiva Row's "Indian Succession Act" - 6th Edition (1992), at page 21, "Mutual Wills" is defined thus:

A will is mutual when two testators confer upon each other reciprocal benefits, as by either of them constituting the other his legatee; that is to say,

when the executants fill the roles of both testator and legatee towards each other. But where the legatees are distinct from the testators, there can

be no question of a mutual will. But it is not a common thing at the present time for joint wills to be executed in England.

In the some book, at page 194, the learned Author has considered the circumstances under which a mutual will could be revoked. The relevant

passage reads thus:

...Where in a joint will by husband and wife there was a clause providing that if the testators do not agree to revoke the will its provisions shall be final, it was held that the effect of the said clause was to take away the testator's inherent power of revocation. In *Stone v. Hoskins*, a husband and wife made mutual wills in accordance with an arrangement but the wife died first after having made a fresh will departing from the arrangement but without the knowledge of the husband. The executor of the wife's will applied for probate but the husband contended that the executor should hold the property subject to the trust of the arrangement. This contention was overruled and it was held that it was open to the husband to revoke his own will. The fact that a husband and wife have simultaneously made mutual wills giving each to the other a life interest with similar provisions in remainder is not itself evidence of an agreement to revoke the wills. In the absence of definite agreement to that effect there is no implied trust precluding the wife from making a fresh will inconsistent with her former will, even though her husband has died and she has taken the benefits conferred by the will....

[Italics supplied]

21. In *Kochu Govindan Kaimal and Others Vs. Thayankoot Thekkot Lakshmi Amma and Others*, , their Lordships considered as to what is meant by joint will, and held thus:

...A joint will, though unusual, is not unknown to law. The will could not be construed as a mutual will. A will is mutual when two testators confer upon each other reciprocal benefits, as by either of them constituting the other his legatee; that is to say, when the executors fill the roles of both testator and legatee towards each other. But where the legatees are distinct from the testators, there can be no question of a mutual will.

22. In *Om Parkash Agarwal and Others Vs. Giri Raj Kishori and Others*, , their Lordships elaborately considered the scope of a mutual will and the circumstances under which the same could be revoked. In paragraph 54 (at page 721 of the Reports), their Lordships held thus:

...Whether *Namalashankar Gopalshankar* having accepted the benefit and after his wife's death, was competent to do anything contrary to the ultimate bequest. Before the death of the first of the executants, the agreement remained contractual one in consideration of mutual promises. It

could have been at that stage revoked by mutual agreement or even by unilateral breach, giving rise at the most to an action for damages. But after the death of the first one without revoking his or her own will makes the joint will irrevocable by the survivor (see Theobald (supra)). But there must be an agreement that the will would not be revoked after the death of one of the executants or disposition will not be made contrary to the Will after the death of one of the executants. Such an agreement may appear from the Will or may be proved outside the Will but that is not established by the mere fact that the Wills are in identical terms. If such an agreement is shown, each party remains bound.

(3) A different and separate agreement must be spelled out not to revoke the will after the death of one of the Executants. That agreement must be

clear though need not be by a separate writing but must follow as a necessary implication which would tantamount to an express agreement.

(4) The predominant intention of the executants at the time of the execution, after the acceptance of the benefit of the execution makes the Will in

this case irrevocable by the survivor of the executants.

(5) Judged by the principles indicated above, in the facts and circumstances of this case, we are of the opinion because of the specific clause that it

was intended that the grandsons would receive the benefit in species and there being no provision for making up the deficiency or diminution if any,

it must follow that there was mutuality and Kamalashankar Gopalshankar was not competent to dispose of the property in any manner contrary to

the ultimate disposition.

[Italics supplied]

23. In Iyer and Sinha on "Law of Wills" by Mantha Ramamurti, 2nd Edition (1969), the same principles have been enunciated. At page 26, the

learned Author has said thus:

Under the English law in order to render mutual wills irrevocable, both the conditions must be concurrently satisfied; (a) the surviving testator must

have received benefits from the deceased under the mutual will, and (b) the mutual wills should have been executed in pursuance of agreement that

the testators shall not revoke the mutual wills. Such an agreement not to revoke the wills may either appear from the wills themselves or may be

proved outside the wills.

24. On the above principles, let us consider the effect of Ex. B-22 dated 4.8.1974 executed by the parents.

25. In Ex. B-22, it is said that the executants are husband and wife, and they have two children (plaintiff and the first defendant). It also says that

the plaintiff has been given in marriage and she has been well provided and she is happily residing with her husband, with children. It is also said

that the first defendant is also married. But his wife is residing separately and that the first defendant is employed in a company at Madras, and that

he is maintaining and protecting them. It is further said that to avoid any further litigation or other dispute in family, they intended to execute a will.

They further say that all the properties which they possessed on that day and all the properties which they may acquire in future and also the right

of the second executant as Manager-cum-Correspondent over Kasthuriba Gandhi Primary School, after their lifetime, pass on to the first

defendant, and, on their death, he shall deal with all the properties belonging to them absolutely, with full power of disposition. They have also

declared that what they have done was with their full knowledge and that they were aware of the legal consequences of their bequest. They have

also declared that the will come into force after their lifetime, and that they have the right to modify or revoke the same.

26. From a reading of Ex. B-22, I do not find that any agreement was arrived at between the parties, nor have the executants taken mutual benefits

among themselves. A reading makes it clear among themselves. A reading makes it clear that the husband and wife executed two wills in one

document in respect of their separate properties. There is no express or implied contract between them that they shall not revoke the will. We find

that as between the executants, no benefit or legacy is created and, therefore, as stated in Kochu Govindan Kaimal and Others Vs. Thayankoot

Thekkot Lakshmi Amma and Others, , Ex. B-22 can never be treated as a mutual will. It is only a joint will whereby the power of revocation is

implied. So, till the second defendant is the manager and proprietor of the School and also the owner of the properties, she is competent to revoke

the same and settle the properties in favour of the plaintiff. So, the argument that Ex. B-22 is a bar for executing Ex. A-1 cannot hold good.

27. The first defendant has a case that the school as well as its assets were all acquired jointly by his parents and, therefore, second defendant

alone is not competent to execute the settlement deed in favour of plaintiff. Even the document Ex. B-22 shows that the school all along remained as an asset of the second defendant. In fact, first defendant claims the right only under the second defendant. He also relies on an alleged letter written by the second defendant for transferring the managership in his favour. In Ex. B-22, the other executant, who is none other than his father, also declares the property as belonging to his wife. The other documentary evidence also conclusively shows that the plaintiff Schedule School is founded and owned by second defendant.

28. Ex. A-1 is challenged on the ground that the same is hit by coercion and undue influence. Both the Courts below have found against the said contention, according to me, rightly. Second defendant herself has filed a written statement before court that she voluntarily executed Ex. A-1, and that at the time when she executed it, she was mentally and physically sound, and she also declared before Court that she wanted the right of management over the School be declared in favour of the plaintiff. When the executant herself has declared that she executed the document without any influence, and out of a free mind, the appellant (first defendant) has no locus standi to challenge its genuineness or validity.

29. The other question of law that is raised in this second appeal is, regarding jurisdiction of civil court in deciding this case.

30. Learned Counsel for the first defendant (appellant) brought to my notice the reliefs sought in the plaint. According to him, the plaint is drafted in such a way that the reliefs cannot be granted by a civil court.

31. In fact, that is not the contention in the written statement. But the appellant was allowed to put forward the question of jurisdiction, the same being a question of law. The reliefs sought for in the plaint have already been extracted. It is seen therefrom that the plaintiff wants a declaration that she is entitled to be the Manager and Correspondent of the School, and also prays for a permanent injunction to restrain the first defendant, his men or persons claiming under him from in any way interfering with her peaceful possession and enjoyment of the suit property. The schedule property, as stated above, is a School at Thirumangalam, in Madurai District.

32. Learned Counsel for the first defendant submitted that when the plaintiff seeks a declaration of her right as Correspondent of the School and not a

right over the scheduled property, it is beyond the jurisdiction of this Court in view of Section 53 of the Tamil Nadu Recognised Private Schools

(Regulation) Act, 1973. The said Section reads as follows:

No civil court shall have jurisdiction to decide or deal with any question which is by or under this Act required to be decided or dealt with by any

authority or officer mentioned in this Act.

He also brought to my notice the definition of "educational agency" as per the said Act. The relevant portion of Section 2 reads thus:

2. Definitions: In this Act, unless the context otherwise requires-

(1) and (2) omitted.

(3) "'educational agency'" in relation to-

(a) xxxx

(b) any other private school, means any person or body of persons permitted or deemed to be permitted under this Act to establish and maintain

such other private school....

He also wanted this Court to take note of Section 8 of the Act. Learned Counsel submitted that whenever there is transfer in the educational

agency, the agency has to approach the competent authority for approval of such change, and when the management of a private school is

proposed to be transferred, both the transferor and the transferee may apply to the competent authority for approval. Learned Counsel also

wanted this Court to take note of Sub-section (2) of Section 8 for the said purpose, where procedures of such application are detailed.

33. As against the said contention, learned Counsel for the respondent relied on Section 53-A of the said Act, which was inserted by Act 39 of

1987, in the Statute. The said Amendment came into force pending suit before trial court.

34. In this case, both the plaintiff and first defendant moved the third defendant to recognise them as Manager-cum-Correspondent of the School. It

is an inter se dispute between two individuals, regarding right of management. Both claim under the second defendant, who has admittedly

executed Ex. B-22 and Ex A-1. Title to management is claimed on the basis of these two documents. The validity of the document is the matter in

issue, and the Management is linked with the right to ownership over the

property.

35. When both parties pleaded to the third defendant, the third defendant himself referred the matter to civil court, and directed the parties to have

their grievances redressed through civil court also said that they can approach him thereafter for necessary reliefs. That is in accordance with

Section 53-A of the Act. Section 54 of the said Act states that any order passed by third defendant is final, unless the same is challenged in appeal

or revision. So, the Order passed by the third defendant asking the parties to approach civil court is also a final order so far as he is concerned. As

per the said direction, plaintiff approached the civil court, and the first defendant has also not challenged the order of the third defendant.

36. Further, learned Counsel for the appellant was also not in a position to explain how the matter could be decided otherwise than by a suit. It is

not a matter which could be decided or dealt with under the Act. The bar u/s 53 of the Act is only in regard to matters which are required to be

decided or dealt with by the Authorities under the Act. Learned Counsel further submitted that the question of approaching a civil court will apply

only when permission has already been granted to a person to establish and to maintain such school and since no permission has been given to the

plaintiff till date, it cannot come within the definition of educational agency. If such a contention is accepted, both the plaintiff and first defendant will

not be educational agency, for, none of them has obtained permission and, therefore, automatically the matter goes outside the scope of the Act.

37. Learned Counsel also wanted this Court to take note of the validity of Ex. A-1. According to learned Counsel, property scheduled is one

belonging to second defendant. But the same is not admittedly covered under Ex. A-1 and, therefore, there cannot be question of any transfer of

management on the basis of Ex. A-1. I cannot agree with the said submission. Second defendant executed a settlement deed in favour of plaintiff

transferring all her rights regarding the management of the school and also her right as Correspondent, and she has also settled the immovable

properties where the buildings of the School are situated, which belonged to her. When the right of management and Correspondent ship are

assigned, the said contention raised on the side of the first defendant cannot be sustained. At any rate, first defendant is also claiming the very same

right under second defendant, and, after having failed in his attempts, first defendant has taken the above contention before this Court without any bona fide.

38. From the above discussion, I find that the jurisdiction of the civil court is not barred, and it was on the direction of the third defendant that a

civil suit was filed by plaintiff. The matter in issue cannot be dealt with u/s 53 of the Tamil Nadu Recognized Private Schools (Regulation) Act,

1973. And, at any rate, u/s 53-A of the said Act, the civil court's competent to dealt with such issues.

39. For the reasons stated above, the substantial questions of law raised in this second appeal are found against the appellant (first defendant).

40. In the result, confirming the judgments and decrees of both the courts below, the second appeal is dismissed with costs.