

(2009) 09 MAD CK 0277

In the Madras High Court

Case No : S.A. No. 1237 of 2006 and M.P. No"s. 1 of 2006 and 1 and 2 of 2007,
S.A. No"s. 1238 and 1239 of 2006 and M.P. No"s. 1 and 2 of 2007,
S.A. No. 1274 of 2006 and M.P. No"s. 1 of 2006 and 1 and 2 of 2007
and S.A. No"s. 1275 and 1276 of 2006 and M.P. No"

G. Panneerselvam

APPELLANT

Vs

Ayyannan and 3 Others

RESPONDENT

Date of Decision : 18-09-2009

Acts Referred:

Citation : (2009) 5 CTC 844

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : R. Viduthalai, for Mr. L.N. Pragasam in all S.As, for the Appellant;
K.M. Vijayan and Mr. S.V. Jayaraman, for Mr. V. Srinivasan, Advocates for
Respondents in all S.As., for the Respondent

Final Decision : Dismissed

Judgement

S. Palanivelu, J.—The following are the gist of the pleadings of the plaintiff in O.S. No. 792 of 1993 who is defendant in all other Suits: 1(a). The properties covered by the Suits are coffee estate lands sprawling to an extent of 48.76 Acres situated in Mundagambadi village in Yercaud Taluk, a house and Rice mill with godown in Kannankurichi, Salem. They originally belonged to one Rengayya Chettiar, who is elder brother of Venkatarama Chettiar who is paternal grandfather of the plaintiff. At the time of filing of the Suit the plaintiff Krishnan was 14 years of age. He was declared as major on 3.7.2000 by order passed in I.A. No. 381 of 2000.

1(b). Rengayya Chettiar had two wives. First wife is one Janaki Ammal through whom he had one daughter by name Amsaveni who was insane from birth. After the death of Janaki Ammal, he married the first defendant Padmavathi @ Padamalochani (hereinafter referred to as Padmalochini). She had no issues. She did not live with her husband and she filed Suit for maintenance and got decree

in her favour. Rengayya Chettiar preferred two Appeals in A.S. No. 684 of 1992 and A.S. No. 718 of 1981. Pending hearing of the Appeals, he died on 28.12.1982. While he was hale and healthy, he executed a Registered Will on 14.01.1980, bequeathing all his properties to the plaintiff by appointing one V. Sekar, father of the plaintiff as testamentary guardian to administer the estates till the minor attained majority. On 28.1.1980, he also settled the properties in favour of the plaintiff by means of a registered settlement deed. Since he was very old aged 82 years, having no male issues, he adopted the plaintiff on 30.1.1980 by performing "Dathahomam" for adoption in the presence of elders. At that time Padmalochani was also present. Subsequently an adoption deed was also written and registered.

1(c). After the demise of Rengayya Chettiar, plaintiff Krishnan filed Applications in the Appeals to implead him as party before the High Court Madras and the High Court directed the Court below to hold an enquiry as to whether the plaintiff alone was legal representative to the deceased. Padmalochani received two lakhs from the next friend of the minor plaintiff then and gave it in writing that she did not have any interest in his properties. She has also accepted therein that the deeds in favour of minor plaintiff were valid. Because of her voluntary statement, the Court also decided that the plaintiff is the legal representative of the deceased. After the settlement, the plaintiff got the properties and had been enjoying through his father and next friend V. Sekar. Patta was changed to his name and he has been paying the land revenue also.

1(d). As regards the settlement executed by Rengayya Chettiar, he paid a sum of Rs. 72,000/- as gift tax to the Income Tax Department. It was paid through his auditor one Sundaram. During second week of October 1993, it was given out that Padmalochani sold the properties to 3 to 16 defendants with the assistance of the second defendant. The said sales do not affect the rights of the plaintiff. The plaintiff alone has been in possession and enjoyment of the properties, defendants could not get any patta from the Revenue Department. Hence, Suit has been filed for declaration and permanent injunction.

The following are succinct allegations of defence contained in the written statement and the complaints filed by Padmalochani:

1(e). It is false to state that on 14.1.1980, Rengayya Chettiar executed a will in favour of the plaintiff. It is equally incorrect to state that on 28.1.1980 he settled the properties in favour of the plaintiff. It is not admitted that on 30.1.1990 Rengayya Chettiar adopted plaintiff and she was also present at the time of adoption. She was not informed by her advocate Mr. P.T. Duraisamy while the enquiry was held and the plaintiff was declared as legal representative of the deceased Rengayya Chettiar. Only after the receipt of summons in O.S. No. 792 of 1993 she came to know that a full satisfaction memo was filed on her behalf after receipt of Rs. 2,00,000/-. Immediately she sent a registered notice to the Advocate P.T. Duraisamy cancelling her vakalat and also sent Complaint to Tamil Nadu Bar Council against the Advocate and the same is pending. Above said full

satisfaction memo is not binding on her. She had never received Rs. 2 lakhs and not signed the documents. She is the sole representative for the deceased. It is denied that in pursuance of the settlement, the plaintiff took possession on 28.01.1980. Rengayya Chettiar enjoyed the property and after his death this defendant is in possession.

1(f). In O.S. No. 133 of 1980, she has not admitted the Will and Settlement. On 21.12.1982, Rengayya Chettiar executed a Will in her favour which was attested by advocate P.T. Duraisamy. She executed sale deeds in favour of defendants 3 to 16 and one Paneerselvam. She had to sell the property for medical expenses and funeral expenses of her husband Rengayya Chettiar and for like expenses for Amsaveni. Since the plaintiff was not a party to the earlier suits, he need not pay Rs. 2 lakhs to her. By virtue of the Will dated 21.12.1982, the earlier Will and Settlement Deed were cancelled. As per the plaintiff, when he is adopted son of Rengayya Chettiar, the Suit is not maintainable, as Sekar, his natural father acts as his next friend. Hence the Suit has to be dismissed.

2. In the written statement filed by the 13th defendant adopted by 3 to 12 and 16th defendants, the following are found:

It is false to state that during the life time of Rengayya Chettiar, the first defendant did not live with him. Padmalochani Ammal filed maintenance suits since certain persons attempted to grab the properties of Rengayya Chettiar taking advantage of his ill health. The Will, Settlement and Adoption deeds projected by the plaintiff are created ones and they had not been given effect to. From the first defendant Padmalochani, these defendants have purchased the properties for valuable consideration. There is no cause of action for the suit. The Court fee paid is not correct. The plaintiff could not challenge the sale deeds executed by her. Hence, the Suit may be dismissed.

3. The written statement filed by 17th defendant contain the following contentions:

3(a). This defendant has purchased 11 Acres of land in S. No. 71 on 13.8.1993 from Padmalochani, got possession and is enjoying by paying land revenues. Father of plaintiff is one Sekar who is son of Venkatarama Chettiar, who is step brother of Rengayya Chettiar. Both the step brothers were not in talking terms. The Will, Settlement and Adoption deeds are not admitted. They are falsely fabricated by the plaintiff and his father. In 1970, Rengayya Chettiar fell down and his pelvic bone got fractured. At that time Venkatarama Chettiar took him to Salem town house and managed to get three documents from him taking advantage of his invalidity. On 20.12.1982 Rengayya Chettiar executed the Will in favour of Pamalochani and one Muniyammal, his concubine by which he has cancelled the above said three documents. Will dated 20.12.1982 is his last Will.

3(b). The plaintiff filed C.M.P. No. 1663 of 1983 to implead him as party and the same was allowed, against which Padmalochani preferred L.P. No. 15 of 1986 and 176 of 1986 before the High Court in which the orders of the Lower Court were

set aside and the Trial Court was directed to ascertain who was the legal representative for Rengayya Chettiar. The Principal Sub-Judge, Salem, rendered finding after enquiry that the plaintiff Krishnan is the legal representative of the deceased. Holding of enquiry was not intimated to Padmalochani by her advocate. She did not receive Rs. 2 lakhs. She also filed O.S. No. 469 of 1994 for declaration that the full satisfaction memo is not true.

3(c). Padmalochani preferred C.R.P. No. 160 of 1995 before the High Court against the Order of the Sub-Judge, Salem, deciding that the plaintiff is legal representative. The said Civil Revision Petition was dismissed. She carried the matter before the Supreme Court in SLP No. 23257 of 1995. The Supreme Court decided that Padmalochani cannot prevent the Court from impleading the plaintiff as legal representative since she has filed O.S. No. 472 of 1996 before the District Munsif Court, Salem for declaration that the plaintiff is not legal representative of Rengayya Chettiar. The Order of the Sub-Court is not conclusive. Plaintiff is not adopted son of Rengayya Chettiar. Neither the plaintiff nor his father participated in the funeral ceremony of Rengayya Chettiar. This defendant and his brother's sons performed the obsequies. Acceptance of Padmalochani was not obtained for adoption. By getting an interim injunction in I.A. No. 10 of 1983 in O.S. No. 9 of 1983 the plaintiff managed to get patta by persuading revenue authorities. Thereafter he allowed the Suit to be dismissed for default. By possessing patta, he cannot claim right over the properties. For the family necessities Padmalochani sold the properties to the defendants 3 to 16. The defendants are enjoying specific portions which were purchased by them. Hence, the Suit may be dismissed.

As To other Suits:

4(i). O.S. No. 62 of 1996 was filed by one Panneer Selvam who is a purchaser from Padmalochani Ammal, in which he has stated that on 13.8.1993 the properties covered by the sale deed were purchased by him from Padmalochani Ammal. The other allegations in the plaintiff are as found in the written statement filed by Padmalochani Ammal.

4(ii). 5th defendant krishnan is plaintiff in O.S. No. 792 of 1993. He filed written statement which was filed by 4th defendant his father and next friend which was adopted by 3rd respondent. In this written statement, identical allegations are contained as stated in the plaintiff in O.S. No. 792 of 1993.

4(iii). O.S. No. 374 of 2002, O.S. No. 376 of 2002, O.S. No. 400 of 2002 and O.S. No. 640 of 2002 have been filed by Padmalochani and the then minor Arun Chakravarthi Gupta, against the plaintiff Krishnan and his father Sekar. In all the plaints, her pleadings are similar as found in the written statement filed by her in O.S. No. 792 of 1993.

5. In all the cases, the plaintiff Krishnan and his father Sekar filed written statements with the allegations as stated in the plaint in O.S. No. 792 of 1993.

6. The Trial Court framed issues on the strength of pleadings in all the Suits and answered in favour of the plaintiff Krishnan. The declaration and permanent injunction prayed for by him were granted in O.S. No. 792 of 1993 and other 5 Suits, where he is defendant, were dismissed by the Trial Court viz., the Principal Sub-Court. In Appeals, the Principal District Judge confirmed the common judgment and decrees passed by the Trial Court and hence the appellants are before this Court.

7. At the time of hearing the Appeals for admission, by consent of both sides, the main Appeals were taken up for final hearing and arguments were also advanced by them. The arguments of all the learned counsel on both sides were focussed on the substantial questions of law suggested by the appellants in the memorandum of Appeals under ground No. 31 in S.A. No. 1275 of 2006, among the proposed substantial questions of law, No. (a), (e) and (g) were concentrated by counsel for both sides and since the entire factual scenario is attracted to them, this Court framed substantial questions of law as follows:

(i) Whether the adoption dated 30.01.1980 under Ex. A-34 is valid ? Whether Padmalochani offered consent for the adoption and if it is not so, whether the adoption is hit by Section 7 of the Hindu Adoption and Maintenance Act, 1956 ?

(ii) Whether the settlement dated 28.1.1980 under Ex. A-33 in favour of Krishnan is valid and whether it was given effect to ?

(iii) Whether the Will dated 14.1.1980 under Ex. A-35 was executed by Rengayya Chettiar in sound disposing state of mind and it is valid ? What is the effect of later Will Ex. B. 27 dated 20.12.1982 ?

Facts in Terse:

8(i). The suit properties originally belonged to one Subramania Chettiar. He had two wives. Rengayya Chettiar is his son through first wife and Venkataraman Chettiar is son of second wife. On 16.05.1955, Subramania Chettiar effected a partition among the sons and both the sons got their properties separately. Janaki Ammal was first wife of Rengaiyya Chettiar. They had a daughter by name Amsaveni who was insane since birth. The second wife is Padmalochani. She had no issues. Muniammal was servant maid in the house of Rengayya Chettiar with whom he developed intimacy and were living as husband and wife. Hence there was friction in the relationship of Rengayya Chettiar and Padmalochani which led her to file cases in O.S. No. 133 of 1980 and O.S. No. 139 of 1980, Suits for maintenance for herself and Amsaveni respectively. A.B. Gopalan is brother of Padmalochani, who was managing the properties of Rengayya Chettiar. Venkatarama Chettiar was residing in Salem, Dr. Ramanathan Street. His son is V. Sekar and grandson is Krishnan the plaintiff.

8(ii). In the maintenance Suits, decree were passed directing Rengayya Chettiar to pay Rs. 1,000/- each to Padmalochani and Amsaveni. There upon he preferred Appeals in A.S. No. 718 of 1981 and 684 of 1982 before the High Court. Pending

Appeals, Rengayya Chettiar died on 28.12.1982. Hence Krishnan through his father filed C.M.P. Nos. 1663 of 1983 and 1665 of 1983 to implead him as legal representative of Rengayya Chettiar on the strength of the Will, Settlement Deed and Adoption Deed. Those Petitions were allowed, against which Padmalochani filed L.P.A. No. 175 of 1986 before the High Court, in which the High Court directed the Sub-Judge, Salem to ascertain who is actual legal heir for Rengayya Chettiar. Pursuant to the said direction, the Sub-Judge held an elaborate enquiry and recorded finding that Krishnan is legal heir for Rengayya Chettiar and submitted the same to the High Court.

8(iii). In order to bring the disputes to an end, Padmalochani received a sum of Rs. 2 lakhs as full quit and filed full satisfaction memo through her Advocate Mr. P.T. Duraisamy, besides executing a separate agreement. The said Advocate also represented that no further proceedings need to be taken in the above said Appeals and hence those appeals were dismissed.

8(iv). Padmalochani Ammal filed SLP No. 2625 of 1995 before the Supreme Court contending that she was not intimated as to the enquiry for ascertaining the legal heir of Rengayya Chettiar, that she did not receive Rs. 2 lakhs and full satisfaction memo was filed without her knowledge. The SLP was disposed of by the Honourable Supreme Court by holding that the respondent (Krishnan) was impleaded as legal representative after detailed enquiry as per Order 22, Rules 5 and 151, C.P.C., which does not prevent the petitioner if so advised, from questioning the order by way of subsequent Suit or the amendment to Suit, according to law.

8(v). The entire circumstances of this case revolve around the following three events:

(a) On 14.1.1980 Rengayya Chettiar executed a registered Will, Ex. A-35 bequeathing his properties to Krishnan.

(b) On 28.1.1980 he also executed a registered Gift Settlement Deed, Ex. A-33 in favour of Krishnan with respect to his properties.

(c) On 30.01.1980 Rengayya Chettiar adopted Krishnan son of V. Sekar and his wife Aravindalakshmi by means of a registered Adoption Deed, Ex. A-34.

Adoption:

9(i). In the Adoption Deed, Ex. A. 34 Rengayya Chettiar has stated that he had no male issues; that he is aged 82 years; that he had executed a gift settlement deed in favour of Krishnan on 28.1.1980 and in order to attain mukthi and for performing obsequies he entertained intention to adopt Krishnan for which on the same date i.e., on 30.1.1980 he performed homam between 9.30 a.m. to 11.30 a.m. during "Punarpoosam Natchathiram" and as per the "Sastra", he adopted him and that the said adoption ceremony was celebrated in Salem Vasavi Mahal in which the parents of Krishnan and other elders participated.

9(ii). In Ex. A-24, certified copy of the deposition of Rengayya Chettiar in O.S. No. 133 of 1980, he has stated that he executed settlement in favour of grandson of his brother and Ex. A-3 is copy of the settlement deed. As far as execution of Ex. A. 33 is concerned, he himself admitted consciously the execution in earlier proceedings in which Padmalochani Ammal was plaintiff. There is no allegation that during the said period, Rengayya Chettiar was suffering from any physical or mental illness. Though he was an octogenarian, he commanded good health at the time of adoption and the recitals in the adoption deed would indicate that all his mental and physical faculties were functioning well. The execution of adoption deed and the factum of adoption have been established.

9(iii). As to the validity of the adoption, the same receives scathing attack from the appellants that Padmalochani did not offer her consent for adoption and hence it is invalid in view of Section 7 of Hindu Maintenance and Adoption Act. The said provision goes thus:

7. Capacity of a male Hindu to take in adoption.-- Any male Hindu who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption:

Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a Court of competent jurisdiction to be of unsound mind.

9(iv). Padmalochani Ammal has pleaded that she was not present at the time of adoption and without her the adoption took place. But the fact of her presence during adoption was discussed by the Court in earlier proceedings. Ex. A. 25 is deposition of Padmalochani Ammal in Guardian Original Petition No. 1309 of 1984 in which she has stated that if the Court arrives at a conclusion that the adoption is true, she may be appointed as guardian for minor Krishnan and that his father Sekar should not be appointed as guardian. In the proceedings in O.S. No. 133 of 1980 and G.O.P. No. 39 of 1994 the factum of adoption was pleaded and deposed by the parties. But Padmalochani did not project her contention that she was not consenting party to the adoption.

9(v). Ex. A-50 is judgment delivered by the Principal Sub-Judge Salem in O.S. No. 613 of 1986 filed by minor Krishnan through his next friend and father Sekar against M/s. Nalli Textiles, Chennai, for declaration and permanent injunction restraining the defendant from proceeding with the decree in C.S. No. 104 of 1966 on the file of the High Court and to set aside the order passed in E.A. No. 744 of 1990 and 2929 of 1970 dated 10.11.1986. Of course, Padmalochani was not a party to the Suit. In the judgment, the learned judge has observed that as per the decision in Ganga Bayee and Another Vs. P.G. Krishna Rao, , when the wife is present at the time of adoption, it must be presumed that she has given her consent for adoption and that it is decided that since Padmalochani was

present in the photographs taken by P.W. 2 Murugesan on 30.1.1988 at the time of adoption, it must be presumed that she gave her consent.

9(vi). Padmalochani filed the Suit in O.S. No. 663 of 1995 on the file of the District Munsif Court, Salem, for declaration that the adoption deed dated 30.1.1980 is not true and valid document and not binding on her. The Suit was subsequently transferred to Sub-Court Salem and re-numbered as O.S. No. 640 of 2002. The suit was filed after 15 years from the date of adoption. In the earlier proceedings, she has participated and made herself acquainted with the fatum of adoption. But she did not plead adverse to adoption nor had she moved her little finger to challenge the same. In the said Complaint she has alleged that she has knowledge of the adoption deed in 1993 when received Complaint copy and summons in O.S. No. 792 of 1993. But she was already put to knowledge about adoption as early as on 25.6.1981 itself, when oral evidence was recorded in O.S. No. 133 of 1980.

9(vii). O.P. No. 5 of 1983 is the Petition filed by Muniammal under Order 32, Rule 3 of C.P.C. to permit her to institute a Suit for partition against Krishnan and Padmalochani, in *informa pauperis*. The certified copy of the said O.P. is Ex. A. 20. The learned Sub-Judge, Salem, dismissed her petition directing her to pay Court fee and in Appeal before this Court in C.M.A. No. 138 of 1987, the Trial Court order was confirmed. But even afterwards she did not pay Court fee and hence the Complaint was rejected by the Trial Court on 23.9.1993. In the said Complaint Muniammal has stated that the alleged adoption is not true and legal. In the said proceedings, Padmalochani was also a party and hence she was aware of the fact of adoption even in the year 1983.

9(viii). The other proceedings also show that she had been conscious about the adoption, however, only in the year 1995 she had come forward to file a Suit challenging the adoption. Hence it is not correct to say that only in the year 1993 she came to know about the adoption. Having knowledge of adoption and remaining quiet without questioning it, she has allowed the period of limitation to expire and it is too late today for her to challenge the adoption. The preponderance of probabilities would go a long way to show that she was a consenting party to the adoption and O.S. No. 663 of 1995 is her after thought. Pending of trial of the Suit, she died on 8.4.1996 and Amsaveni also breathed her last on 18.12.1991.

9(ix). The facts of the present case would amply amplify that Padmalochani Ammal was having knowledge of the fact of adoption right from inception and she did not have any intention to question the same and hence the irresistible conclusion would be that she was present during adoption and gave her consent. Consent of wife may either be oral or in writing, express or implied, and has to be proved by the person supporting the adoption. It need not be directly proved but can be inferred from circumstances (Mayne's Treatise on Hindu Law & Usage - Sixteenth Edition - page 579). In the light of abovestated observations it is held that the adoption under Ex. A-34 is not at all hit by Section 7 of the Hindu

Maintenance and Guardianship Act and it is valid. In the order passed by the Principal Sub-Judge, Salem on 21.2.1990, a copy of which is Ex. A-5, where an enquiry was held in obedience to the direction of the High Court to ascertain who is legal heir to the deceased Rengayya Chettiar, the events of adoption and execution of adoption deed were put forth by the plaintiff Krishnan, which were discussed and the Court reached a conclusion that the said Krishnan is sole legal heir to the deceased Rengayya Chettiar. It was affirmed by superior Courts also. The substantial question of law is answered that implied consent was there on the part of Padmalochani Ammal, though not in express terms, which is valid and that it is not in contravention of any provision of law.

Settlement.

10(i). Ex. A-33 is registered gift settlement deed executed by Rengayya Chettiar in favour of plaintiff Krishnan while he was minor, aged one year. In the said deed, he has stated that one A.B. Gopalan who is brother of Padmalochani was managing his business and he made loss to the business and hence bad-blood existed between them and after sacking him, he (Rengaiah Chettiar) has been looking after his business, that on condition that till his lifetime he should enjoy the income from the properties without power of alienation and after his life-time the minor has to take the property and that he has applied for mutation of name in patta and Panchayat tax. Another condition is that Sekar had to pay Rs. 250/- per month to Padmalochani for her maintenance and also to maintain Amsaveni. P.W. 3 is auditor of Rengayya Chettiar. He says that Rengayya Chettiar read the settlement deed and put his signature in every page which was seen by him and other witnesses and afterwards he and other witnesses put their signatures in the presence of Rengayya Chettiar, that he paid Rs. 5,720/- through him.

10(ii). In the cross-examination, his evidence in the chief examination has not been shattered in any way. No motive was attributed to him to depose against the defendants. There is no room to smell-rat on his oral testimony. By his examination, execution of Ex. A-33 has been established.

10(iii). Learned Senior Counsel Mr. R. Viduthalai appearing for the appellants would assail the settlement by stating that the evidence adduced by D.W. 4, one of the attestors to the settlement, depicts suspicious circumstances shrouded the execution of the settlement deed and the Court may place reliance upon his evidence and reject the said deed. D.W. 4-M.V. Rathnam is attesting witness to the settlement deed as well as the Will. His mother-in-law is younger sister of Muniammal. He is auto driver by profession. He would say that on both the occasions viz., at the time of execution of the settlement deed and the Will, sedative injection was administered to Rengayya Chettiar and while he was unconscious, his signatures were obtained. He would say that while Rengayya Chettiar was bed ridden after his pelvis fracture, one Dr. Lavakumar was brought by Sekar who asked him to administer sedative injection and it was done, that to his query, Sekar told that there was no necessity to explain to him, that Rengayya Chettiar caught hold of his (D.W. 4) hands and told him that Sekar and

his father planned to grab his properties, that he (D.W. 4) thought that he might leave the place without putting signature, however, he made up his mind to be there, since even if he were not there, Sekar would arrange some other persons for attestation and Rengayya Chettiar could not be safe-guarded and hence after signing the deeds he might explain the actual situation either before the Court or to the police, that Sekar obtained signatures of Rengayya Chettiar in every page, that he did not make him know the contents of the deed and purpose for which the signatures were obtained nor had he read out the recitals, that Sekar took him (D.W. 4) and other witnesses to Registrar's office and signatures and thumb impressions of Rengayya Chettiar were obtained in the car itself and while Rengayya Chettiar quizzed, Sekar got angry and threatened him, and that he (D.W. 4) and husband of Sekar's sister attested to the document and put their thumb impressions also.

10(iv). On the date of execution of settlement deed on 28.1.1980 also sedative injection was administered to Rengayya Chettiar as stated above, as per D.W. 4. He further adds that Sekar took the settlement deed and left the place by stating that he would obtain signature of auditor Sundaram and after obtaining the same he got signatures from other witnesses and that he (D.W. 4) and Elayaperumal attested after signatures and thumb impressions were received from Rengayya Chettiar while he was in the car by the office peon. He comes forward with identical story while he says about the execution of the adoption dated 30.1.1980. Even though he had not attested to it, he claims that he was present at the time of execution of the adoption deed and the signatures were obtained from Rengayya Chettiar by Sekar by administering sedative injection and that Padmalochani ammal did not say that she accepted the adoption.

10(v). While this Court carefully scans the oral testimony of D.W. 4, it could be concluded unhesitatingly that it does not bear the ring of truth. All the three deeds were executed in January 1980 but only on 18.4.2004, after a quite long period of 24 years, he came forward to say that signatures and thumb impressions were obtained from Rengayya Chettiar when he was in sedation. It is interesting to note that on all the occasions as per his oral account, Sekar arranged to administer sedative injection to him which is quite unbelievable for the reason that he had been keeping quiet for a very long time without divulging the same to anybody else or in any earlier proceedings.

10(vi). While accepting the fact of attestation to the settlement deed and Will, he wants to support the claim of appellants by portraying a false picture before the Court. His evidence is bristled with improbabilities. He has not stated anything as to why he submitted himself to the threat of Sekar. He might have left the place when unwarranted things happened. He tried to justify his presence there. As per his evidence, he should have informed the alleged illegal activities within a reasonable time to the police or before the Court in any of the proceedings since he is closely related to Muniammal, who is connected to the family of Rengayya Chettiar. In these circumstances, no reliance could be placed upon the testimony

of D.W. 4 which is rejected as regards incredible stories stated by him. The substantial question of law is answered that there were no suspicious circumstances surrounding the execution of the settlement deed. The execution has been duly established by the evidence of P.W. 3.

Will:

11(i). Ex. A. 35 is the registered Will executed by Rengayya Chettiar on 14.1.1980 bequeathing his properties to Krishnan, the contents of which are as mentioned in the settlement deed. He has further mentioned therein that since his brothers, in his opinion, were not competent to perform obsequies to him after his death, he intended to give away his properties to Krishnan, nominating Sekar, his father as guardian. Earlier, he had executed a Will on 8.10.1973, which was kept in Salem District Registrar's office in a sealed cover and the same was withdrawn by him and that he has cancelled the said Will. As far as the proof of execution of the Will is concerned, the evidence of D.W. 4 is available. He says that he attested the Will on the date of execution, came to Sub-Registrar's Office and the same was registered. This Court has rejected his part of evidence as to the other circumstances which allegedly led Rengayya Chettiar to sign. However, insofar as the remaining portion is concerned, viz., the attestation of the Will, he has clearly mentioned that Rengayya chettiar put his signature in the Will.

11(ii). As adverted to supra, D.W. 4 had not revealed about the circumstances in which the Will and settlement were executed at any earlier point of time and a strong presumption has to be drawn that Rengayya Chettiar executed the Will in a sound disposing state of mind. In the earlier litigations between the parties, the existence of Will was mentioned.

11(iii). Ex. B. 27 is xerox copy of an unregistered Will reportedly executed by Rengayya Chettiar on 20.12.1982 in favour of Padmalochani and Muniammal. The appellants have not taken any steps to produce the original before any of the three Courts. They have not also examined any witness connected with Ex. B. 27. Rengayya Chettiar died on 28.12.1982, one week after the date of Will (20.12.1982). This Will has not been proved in accordance with law.

11(iv). A telling circumstance to find out the proof of Ex. A-35-Will is very much available in Ex. A-33-Settlement Deed itself. It has been already observed that the execution of settlement has been duly proved by examination of P.W. 3. In the settlement deed, Rengayya Chettiar has categorically mentioned that on 14.1.1980, he has executed a Will bequeathing his immovable properties and business to one Krishnan and the same was registered in Salem Sub-Registrar's office on the even date, that he reiterated that the contents of the Will are correct, that he had mentioned the reasons for excluding Padmalochani and that with the intention of avoiding future problems he had decided to give absolute interest in the property, he executed the gift settlement deed. Even though any attesting witness to the Will was not brought to box by the plaintiff, the evidence of D.W. 4 with reference to putting of signature by Rengayya Chettiar in the Will

and the proof of execution of settlement deed through the examination of P.W. 3 would clearly indicate that the Will was executed by Rengayya Chettiar who had real intention that the plaintiff should get all his properties.

11(v). Even if the Will Ex. A-35 is not taken into consideration, still the contents of settlement would clearly indicate the intention of the testator that after his lifetime, the plaintiff should take all his properties. With the cost of repetition it is stated that even if certain conditions were imposed in the settlement, viz., maintaining Padmalochani by paying Rs. 250/- per month and to maintain Amsaveni also forever, he desired that the properties should devolve upon the plaintiff. It is profitable to extract the relevant portions in the settlement deed which would demonstrate the intention of the testator:

English translation of abovesaid recitals is as under:

I have executed a Will on 14.1.1980, bequeathing all my immovable properties and business to you, minor Krishnan, making you absolute owner therefor, registered the same in Salem Registrar's office in Document No. 5 of 1980, on 14.1.1980, registration completed on 19.1.1980 in Book No. 3, Volume 121 from page 117 to 120. I agree that all the recitals and contents contained in the said Will are true.

The condition goes to the effect that I am entitled to enjoy the income alone from the undermentioned properties as per my wish. But I am not to encumber the properties by mortgaging or selling, even if I do so, it is not valid; if I encumbered so, it would not bind you. Till my life time, I have the right to enjoy the properties alone. After my life time, you shall possess the properties.

11(vi). The above said recitals in settlement would clearly show that Rengayya Chettiar had confirmed the execution of the Will and the disposition of the properties under the same. He was alive for about two years after the execution of the Will.

11(vii). Ordinarily, the burden of proving the due execution of the Will is discharged if the propounder leads evidence to show that the Will bears signature or mark of the testator and that the Will is duly attested. For proving attestation, the best evidence would naturally of an attesting witness depending on availability has been called for proving its execution as required by Section 68 of Evidence Act. But a peculiar circumstance available in this case is that the testator himself asserted that he had already executed a Will in favour of Krishnan. His categorical and definite assertion of execution of Will in the settlement, which has been duly proved as required by law, is a clinching proof to conclude that the Will is genuine.

11(viii). In view of the unambiguous intention of the testator in the settlement deed, it could also be construed as Will. In P. Venkatachalam Chetty Vs. P.S. Govindaswami Naicker, a Division Bench of this Court dealt with an identical circumstance on construction of a deed of gift. The following are the contents of

the deed and observations of this Court:

You shall yourself after my lifetime use and enjoy the two rooms built on the ground of the house Municipal No. 11 I shall myself enjoy the rent in respect of those two rooms as long as I may be alive. You shall yourself use and enjoy after my lifetime and that rent and that ground and the two rooms from son to grandson and so on in succession with power to gift, mortgage, exchange and sale. No one has any right to or interest in those rooms. To this effect is the gift deed document executed and given in respect of the aforesaid two rooms and their grounds.

In form it is a deed of gift and not a Will, but in fact it is a declaration of the intentions of the donor with respect to her property which she desires to be carried into effect after her death, because there is no disposal of any immediate rights of possession or any immediate interest in the property.

In view of the above proposition, there is no embargo for this Court to reach a conclusion that the real intention of the testator was to give his properties to Krishnan and in this regard it is observed that on the strength of the settlement and Will-Ex. A-33 and Ex. A-35 respectively, Krishnan has become absolute owner of properties which belonged to Rengayya Chettiar. Since the Will dated 28.12.1982 marked as Ex. B-27 has not been proved, it is also observed that the recitals in Ex. A-33 and Ex. A-35 would prevail over Ex. B. 27-Will and that Ex. A-33 and Ex. A-35 are his last Wills demonstrating his desire as to the disposition of his properties.

11(ix). The following are the well settled principles and guiding factors for the Court, to follow while placing reliance on a will. The onus probandi lies on the person who propounds the Will and this onus is in general discharged by proof of capacity and the fact of execution from which the knowledge and the assent to its contents by the testator will be assumed. But where a Will is prepared and executed under circumstances which excite the suspicion of the Court, it is for those who propound the Will to remove them and to prove affirmatively that the testator knew and approved the contents of the document. Where once it has been proved that the Will has been executed with due solemnities by a person of competent understanding and apparently a free agent, that is, when the propounder of the Will has discharged the onus, the burden of proving that it was executed under undue influence is on the party who alleges it. Influence in order to be undue within the meaning of any rule of law which would make it sufficient to vitiate a Will must be an influence exercised either by coercion or by fraud. Undue influence, in order to invalidate a Will, must amount to coercion or fraud. Its existence must be established as a fact and it must also appear that it was actually exercised on the testator.

12. In Gurdev Kaur and Others Vs. Kaki and Others, the Supreme Court has dealt with the principles with regard to the appreciation of intention of the testator and the duty cast upon the Court. The operative portion of the judgment

goes thus:

The High Court has clearly deviated from the settled principle of interpretation of a Will. The Court does not sit in appeal over the right or wrong of the testator's decision. The Court's role is limited to examining whether the instrument propounded as the last Will of the deceased is or is not that by the testator whether it is the product of the free and sound disposing mind. It is only for the purpose of examining the authenticity or otherwise of the instrument propounded as the last will that the Court looks into the nature of the bequest.

The contents of the Will have to be appreciated in the context of his circumstances, and not vis-a-vis the rules for intestate succession. It is only for this limited purpose that the Court examines the nature of bequest. The Court does not substitute its own opinion for what was the testator's Will or intention as manifested from a reading of the written instrument. After all, a Will is meant to be an expression of his desire and therefore, may result in disinheritance of some and grant to another.

13. The learned counsel appearing for both sides have also argued as to the powers of the High Court exercisable u/s 100, C.P.C. and cited the authorities of the Supreme Court.

14. Powers of High Court u/s 100, C.P.C.:

Section 100. Second Appeal.--

(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An Appeal may lie under this Section from an Appellate decree passed ex parte.

(3) In an Appeal under this section, the memorandum of Appeal shall precisely state the substantial question of law involved in the Appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The Appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the Appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the Appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.]

Section 100-A was substituted by Act No. 46 of 1999, Section 10 and now further has been substituted by Act No. 22 of 2002, Section 4 (w.e.f. 1.7.2002).

[100-A. No further Appeal in certain cases.-- Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force, where any Appeal from an original or Appellate decree or order is heard and decided by a Single Judge of a High Court, no further Appeal shall lie from the judgment and decree of such Single Judge.]

15(i). The learned Senior Counsel for the Appellant would place reliance upon a decision of the Supreme Court in U.R. Virupakshaiah Vs. Sarvamma and Another, wherein it is held that when the Courts below had arrived at a decision of finding of fact, taking into consideration inadmissible evidence and was based on presumptions wrongly raised, the High Court can interfere though its jurisdiction is limited u/s 100, C.P.C.

15(ii). The same principle has been reiterated in the subsequent decision of the Supreme Court reported in Narendra Gopal Vidyarthi Vs. Rajat Vidyarthi, wherein it is observed that the finding of fact may give rise to a substantial question of law, inter alia, in the event, the findings are based on no evidence and/or while arriving at the said finding, relevant admissible evidence have not been taken into consideration or inadmissible evidence have been taken into consideration. Elaborating this preposition, the Apex Court has referred to earlier judgments of the Court which are as follows:

In Krishnan Vs. Backiam and Another,

10. Under the amended Section 100, CPC the High Court has to frame substantial questions of law and can decide the Second Appeal only on those questions framed. A perusal of the questions framed shows that no question of law was framed as to whether the finding of fact of the First Appellate Court that Lakshmi and Ramayee are one and the same person, is based on no evidence or is perverse.

It may be mentioned that the First Appellate Court u/s 96, CPC is the last Court of facts. The High Court in Second Appeal u/s 100, CPC cannot interfere with the findings of fact recorded by the First Appellate Court u/s 96, CPC. No doubt the findings of fact of the First Appellate Court can be challenged in Second Appeal on the ground that the said finding are based on no evidence or are perverse, but even in that case a question of law has to be formulated and framed by the High Court to that effect. In the present case no question was framed by the High Court as to whether the findings of the First Appellate Court that Ramayee and Lakshmi are one and the same person, is a finding based on no evidence or is perverse. Hence the findings of the First Appellate Court that Ramayee and Lakshmi are one and the same person, could not have been interfered with by the High Court. (See also Subramaniaswamy Temple, Ratnagiri Vs. V. Kanna Gounder (Dead) by LR.,

In Boodireddy Chandraiah and Others Vs. Arigela Laxmi and Another, the Apex Court held thus:

4. 21. The phrase "substantial question of law", as occurring in the amended section 100, C.P.C. is not defined in the Code. The word substantial, as qualifying "question of law", means - of having substance, essential, real of sound worth, important or considerable. It is to be understood as something in contradiction with - technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of "substantial question of law" by suffixing the words "of general importance" as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a Second Appeal shall be heard need not necessarily be a substantial question of law of general importance. In AIR 1928 172 (Privy Council) , the phrase "substantial question of law" as it was employed in the last clause of the then existing Section 100, CPC (since omitted by the Amendment Act 1973) came up for consideration and Their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case. In *Sir Chunilal V. Mehta and Sons, Ltd. Vs. The Century Spinning and Manufacturing Co., Ltd.*, the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in *Rimmalapudi Subba Rao Vs. Noony Veeraju and Others*, *Sir Chunilal V. Mehta and Sons, Ltd. Vs. The Century Spinning and Manufacturing Co., Ltd.*,

5. ... When a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest Court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the peculiar facts of the case it would not be a substantial question law.

15(iii). As far as the facts of the present cases are concerned, in the considered view of this Court, the findings recorded by the Court below are not perverse and they do not suffer from any infirmity either factually or legally. On due consideration of the materials, evidence and exhibits on record, the Courts below, bestowing their diligent consideration over the matter in issue, came out with proper conclusion. This Court does not find any misinterpretation of any documents on the part of the Courts below.

15(iv). In *Rimmalapudi Subba Rao's* case (supra), the following principles have been laid down for observance of the High Court in dealing with concurrent findings of the Courts below. The said judgment has been referred by the Supreme Court in *Narendra Gopal Vidyarthi's* case (supra). The following is the relevant portion of the Full Bench judgment of this Court in *Rimmalapudi Subba Rao's* case:

24.(iii) The general rule is that the High Court will not interfere with the concurrent findings of the Courts below. But it is not an absolute rule. Some of

the well-recognised exceptions are where (i) the Courts below have ignored material evidence or acted on no evidence; (ii) the Courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the Court have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the findings.

Applying the above said principles to the facts of the present case, it is held that the Courts below have not ignored any material evidence nor acted on no evidence; there was no wrong or infirmity from the proved facts by applying the law earnestly and they have not wrongly cast the burden of proof.

15(v). Mr. K.M. Vijayan, the learned Senior Counsel for the respondent/plaintiff would garner support from a decision of the Supreme Court in *Narayanan Rajendran and Another Vs. Lekshmy Sarojini and Others*, wherein it is held that the jurisdiction of the High Court u/s 100, C.P.C. is strictly involving substantial questions of law and the High Court would not be justified in dealing with any Second Appeal without first formulating substantial question of law and the High Court should keep in mind the legal position before interfering in a case of concurrent findings of facts and will refrain from interfering with the concurrent findings of fact without formulating substantial question of law.

15(vi). In *Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Others*, , it is held that concurrent findings of fact, however erroneous, cannot be disturbed under the section. In *Gurdev Kaur and Others Vs. Kaki and Others*, it is observed that now the High Courts can interfere only where substantial questions of law are involved and have been formulated in the memorandum of Appeal. Moreover, High Court must first formulate the questions of law and only thereafter it can proceed to decide them and that the amendment introduced in 1976 clearly indicates that legislature never intended the Second Appeal to become a third trial on facts. It is further held that where, by the Will, the testator bequeathed the entire estate to only one of several heirs and the Courts below recorded a concurrent finding that the Will was a genuine and valid document and the High Court erred in setting aside the same on the ground that in normal circumstances a prudent man would have bequeathed a property in favour of his legal heirs.

16. Documents have been produced showing that pursuant to the execution of the above said three documents by Rengayya Chettiar, Krishnan got his name entered in revenue records and that the properties covered by those documents came to his possession, of course, of his father Sekar as his natural guardian as evident from Ex. A-37 property tax receipts from 1980-81 to 2003-2004, Ex. A-52 dated 10.1.1983 issued by the Superintendent of Central Excise in Form L-1, Licence to cure unmanufactured products liable to a Central Duty of Excise, as regards the products from coffee estates, Ex. A-53-Proceedings of the Agricultural Income Tax Officer, Yercaud dated 14.3.1996, granting permission to

compound the assessment, Ex. A-54 issued by the District Revenue Officer/ Assistant Commissioner (Agricultural Income Tax), Coimbatore dated 4.2.1999 on assessing the agricultural income tax towards coffee yield and Ex. A-55, property tax receipts from 1982 to 2003. In the presence of ample evidence in this regard, it is observed that the gift settlement deed was given effect to.

17. On 2.5.1994, Arun Chakravarthi Gupta was taken in adoption by Padmalochani by means of registered Adoption Deed, Ex. B-19. In view of the proof and enforceability of the documents Ex. A-33, 35 and Ex. B-27, Krishnan alone would be the sole surviving legal representative to get title to the estate of the deceased Rengayya Chettiar. Hence Ex. B-19 has no consequence at all.

18. The Substantial questions of law formulated by this Court have been answered as indicated above.

19. In the light of the observations, findings and conclusions of this Court contained in this judgment, interference with the common judgments and decrees passed by the Courts below is not at all warranted. There is no need to upset the findings and decisions of the Court below. No valid ground nor circumstance has been made out to disturb the concurrent findings of the Court below, they are confirmed. These Appeals suffer dismissal. In fine, all six Second Appeals are dismissed. No costs. All connected M.Ps. are also dismissed.