
(2003) 07 MAD CK 0218

In the Madras High Court

Case No : Letters Patent Appeal No. 116 of 2000

Parvathi Ammal (died) and C. Loganathan

APPELLANT

Vs

Kamalammal and Others

RESPONDENT

Date of Decision : 09-07-2003

Acts Referred:

Mental Health Act, 1987 — Section 2(1)

Citation : (2003) 3 CTC 404 : (2003) 3 LW 425 : (2003) 3 MLJ 131

Hon'ble Judges : R. Jayasimha Babu, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : Fr. Xavier Arulraj, for Muthumani Doraisamy, for the Appellant; S.V. Jayaraman for S. Rajasekar, for the Respondent

Final Decision : Allowed

Judgement

N.V. Balasubramanian, J.—This Letters Patent Appeal is directed against the judgment of the learned Judge of this Court rendered in A.S.No. 403 of 1985 dated 20.08.1999 reversing the judgement and decree made in O.S.No. 756 of 1973 dated 23.03.1985 on the file of the Ist Additional Subordinate Judge, Salem.

2. The first appellant-Parvathi Ammal is the second plaintiff in the suit and the first plaintiff-Munusami Naicker in the suit is her husband. The suit was instituted by the first plaintiff represented by his wife and next friend the second plaintiff, and as the first plaintiff died during the pendency of the suit, the suit was prosecuted by the second plaintiff and the suit was filed against the first plaintiff's brother Muthuswamy Naicker, who died on 6.11.1971. The suit was decreed by the learned trial Judge and on appeal before this Court, the learned Judge of this Court reversed the judgment and decree of the learned trial Judge. During the pendency of the Letters Patent Appeal, the second plaintiff, the sole appellant, also died and the second appellant was brought on record as the legal representative of the deceased appellant.

3. The suit was filed by Munusami Naicker (hereinafter referred to as the first

plaintiff) for recovery of possession of the suit property, for accounting and for recovery of past and future mesne profits and costs.

4. The averments in the plaint briefly are that the first plaintiff had three brothers, by name, Muthusamy Naicker, Krishna Naicker and Narayana Naicker and all of them constituted a Hindu undivided family. They possessed extensive joint family properties and on 5.6.1951, the four brothers and one Chinna Pillai Ammal @ Nagammal partitioned the joint family properties by a deed of partition dated 5.6.1951, and in that family partition, "A" schedule properties were allotted to the share of the first plaintiff. According to the averments in the plaint, the first plaintiff was a man of weaker intellect and of poor understanding power even at the time of partition and his next younger brother Muthusamy Naicker was very capable and a subtle person and the first plaintiff allowed his younger brother Muthusamy Naicker to manage his properties and the income from the properties allotted to the first plaintiff was considerable. Both the first plaintiff and the said Muthusamy Naicker had no children. It is stated that Muthusamy Naicker had an invalid wife, whose limbs were paralysed and therefore unable to move and the first plaintiff and the said Muthusamy Naicker lived together in the same house and Muthusamy Naicker was managing the properties of the first plaintiff, which were his separate properties and he had no issues.

5. Muthusamy Naicker sent his wife to her parents house about thirteen years prior to the institution of the suit, and married the first defendant, who belonged to a different caste and the defendants 2 to 4 are the children of Muthusamy Naicker through the first defendant. While Muthusamy Naicker was in possession of the share of the first plaintiff and was managing the properties, substantial buildings in the vacant plot near "Shanmugha Talkies" were constructed and a rice mill was also built out of the income derived from the properties of the first plaintiff. It is stated that a sum of Rs. 24,000/- would be the income from the properties of the first plaintiff. Since the first plaintiff had no issues, he and his wife brought up one Loganathan, the brother's son of the second plaintiff, and the first plaintiff also desired to give his properties to the said Loganathan.

6. It is stated that out of the income from the properties of the first plaintiff, Muthusamy Naicker put up several buildings on the properties belonging to the first plaintiff Munusami Naicker. It is stated that some misunderstanding arose between Muthusamy Naicker and the second plaintiff and Muthusamy Naicker hatched a scheme to get the entire properties of the first plaintiff by taking advantage of the weak intellect and weak understanding of the first plaintiff.

7. It is stated in the plaint that the first plaintiff has been of unsound mind and incapable of understanding anything and the second plaintiff has taken the responsibility to look after his affairs with the assistance of Loganathan. It is stated that due to enmity developed between Muthusamy Naicker and the second plaintiff, Muthusamy Naicker abducted his elder brother the first plaintiff when the second plaintiff was away and the second plaintiff attempted to search

for the first plaintiff but could not find him. It is stated that the second plaintiff gave a publication in the Tamil News Paper "Malai Murasu" dated 4.1.1971 which was published in the said paper on 5.1.1971, about the abduction of the first plaintiff. It is stated that she also sent a registered notice through her lawyer to all the first plaintiff's younger brothers, as she apprehended some fraudulent documents might be obtained from the first plaintiff by Muthusamy Naicker, while the first plaintiff was not in a sound state of mind.

8. It is stated that Muthusamy Naicker sent a reply stating that the first plaintiff had executed a settlement deed in favour of himself and his sons and he has not even mentioned the date of settlement in the reply notice. On obtaining a copy of the document from the Sub Registrar Office, she came to know that a settlement deed was executed on 5.1.1971 and only after obtaining the execution and getting the document registered, Muthusamy Naicker released his elder brother the first plaintiff from his custody. It is stated that the first plaintiff was not a willing party to the settlement and he was in unsound state of mind and was unable to understand anything and therefore the settlement deed is a void document.

9. It is stated that Muthusamy Naicker and his sons would not derive any interest in the property of the first plaintiff and the second plaintiff was not given any share in the properties by the first plaintiff. The second plaintiff also filed a petition in O.P.No. 10/1971 on the file of the District Judge, Salem under the Indian Lunacy Act, 1938, for appointment of guardian for the properties of the first plaintiff as he was of unsound mind and incapable to manage the properties.

10. It is also stated in the plaint that Muthusamy Naicker filed a suit in O.S.No. 211/1971 on the file of the Subordinate Judge, Salem with reference to a sale deed dated 3.4.1954 in favour of the next friend of the first plaintiff as a nominal one and he also prayed for injunction against the second plaintiff on the ground that the land on which the buildings constructed belonged to him and we are not concerned with the result of the said suit as the result of the said suit has no bearing for the determination of the issues that arise in the appeal and no argument was also addressed by the counsel for both the parties on the result of the said suit. It is stated that after the death of Muthusamy Naicker on 6.11.1971 the defendants 1 to 4 are in possession of the suit properties and the other defendants are the tenants and the lessees under Muthusamy Naicker. Hence the suit has been filed for recovery of possession and past and future mesne profits.

11. The defendants have filed their written statement denying the averments made in the plaint. It is stated that the first plaintiff was not a person of unsound mind and the suit filed by the alleged next friend is untenable. It is stated that the first plaintiff has not signed or verified the plaint or the vakalat. It is stated that the properties allotted to both the first plaintiff and Muthusamy Naicker are residential houses and some vacant sites. It is further stated that the first plaintiff was a person of easy going type and he had no issues and he was

attached to Muthusamy Naicker. It is stated that Muthusamy Naicker has constructed the shops and buildings and also rice mill partly in his own share and partly in the share of the first plaintiff and the first plaintiff never objected to such construction. Muthusamy Naicker executed a sale deed in respect of 35 cents of land in favour of the first plaintiff's wife and constructed a modern building in that area by spending a considerable sum of money and Muthusamy Naicker continued to be in possession of the said building and allowed the first plaintiff and his wife to reside therein.

12. It is their further case that the building and the rice mill were constructed out of the income from Muthusamy Naicker's land and the first plaintiff was taking the income from the agricultural land for himself, which was just enough to support himself. It is their case that Muthusamy Naicker has constructed the building with the consent of the first plaintiff and enjoyed the property for over a statutory period of time and prescribed title by adverse possession. It is their case that after the divorce of the first wife by Muthusamy Naicker one Sellamuthu, the brother-in-law of the first plaintiff entered into the field and he had a design to knock off all the properties. It is stated that Sellamuthu brought his son Loganathan and introduced him in the family on the pretext that he was to be educated. Muthusamy Naicker showered his affection on him and made him a graduate. Muthusamy Naicker married the first defendant and had children through her and Chellamuthu found that their scheme could not be materialised. It is stated that the second plaintiff was persuading the first plaintiff to execute the settlement deed settling his property in favour of Chellamuthu and his children. The first plaintiff knew that the building and the rice mill were constructed by Muthusamy Naicker and he had a desire that the properties should be retained in the family and therefore he executed a deed of settlement on 5.1.1971, giving his properties to Muthusamy Naicker and defendants 1 to 4.

13. It is their case that the first plaintiff was not having any idea to give the properties to Loganathan and Chellamuthu. Chellamuthu issued a notice through his lawyer saying that the first plaintiff was a lunatic and also filed O.P.No. 10 of 1971 on the file of the District Court, Salem through the second plaintiff. It is their case that the first plaintiff was in the clutches of the second plaintiff and who in turn was in the clutches of Chellamuthu Naicker and his son Loganathan. The defendants have stated that only when the second plaintiff began to pressurise the first plaintiff to execute a settlement deed, the first plaintiff felt that her wife and his brother-in-law illegally may play a trick on him and hence he executed the settlement deed on 5.1.1971 in favour of Muthusamy Naicker and defendants 1 to 4.

14. It is their case that on 5.1.1971 and on subsequent dates the first plaintiff was in a perfect state of mind and the settlement deed is a perfectly valid one. It is stated that the settlees have taken possession of the properties. It is also stated that in January 1971 the second plaintiff and Chellamuthu were raising hue and cry that the first plaintiff was a person of unsound mind and the first

plaintiff just to satisfy himself got himself thoroughly examined by a leading Doctor of the Mental Hospital at Madras and had obtained a certificate to the effect that he was not having any kind of mental illness and he was mentally sound.

15. The defendants have referred to the proceedings in O.P.No. 10 of 1971 on the file of the District Court, Salem and his case is that the first plaintiff was not at all insane and it is their further case that the first plaintiff was always affectionately disposed towards Muthusamy Naicker and his children and he was of the view that the property should not go out of the family and therefore he has settled the property in their favour.

16. It is their case that the shops near the Shanmugha Talkies and the rice mill in the Pallapatty land were constructed with the permission of the first plaintiff and he never objected to the same. They have also narrated the events prior to the proceedings of the suit and they have stated that Chellamuthu and his son Loganathan got the first plaintiff admitted in a mental hospital and he was discharged after a Board of Surgeons of the Mental Hospital opined that he was quite sane. They denied all the averments contained in the plaint and stated that the settlement deed has been voluntarily executed by the first plaintiff without any fear or favour and he was well aware of the results of his actions and he was satisfied with the same and therefore prayed that the suit may be dismissed.

17. Learned First Additional Subordinate Judge, on the basis of the above pleadings, has framed nine issues for consideration and held that the first plaintiff was a person of unsound mind on 5.1.1971 and before the execution of the settlement deed dated 5.1.1971 and hence the settlement deed was void ab initio and the second plaintiff was not estopped from contending that the first plaintiff was a person of unsound mind. He also held that the suit filed by the second plaintiff was maintainable as the settlement deed was held to be a void document and it is not necessary to set aside the settlement deed. He also held that the suit has been filed within three years from the date of the settlement deed and the adverse possession pleaded was not acceptable. The learned trial Judge also found that the plaintiffs are entitled to the recovery of possession of the suit properties and the defendants are bound to render accounts and pay mesne profits both past and future to the plaintiff and decreed the suit as prayed for with costs.

18. As against the judgment and decree of the trial Court an appeal was preferred before this Court by the defendants 1 to 4 and the appeal was taken on file as A.S.No. 403 of 1985.

19. The learned Judge of this Court on analysis of the evidence held that the doctors examined on the side of the plaintiffs, namely, P.Ws.3 and 4 are not specialist in psychiatry, whereas D.W.5, the doctor examined on the side of the defendants is a specialist in psychiatry and working in Kilpauk Mental Hospital, Chennai and considerable weight should be attached to his evidence. Learned

Judge has held that D.W.5 in his evidence has stated that the first plaintiff was capable of managing himself and the evidence of D.W.5 shows that the first plaintiff was a sane person at the time of execution of the deed of settlement and accepting the evidence of D.W.5, the learned Judge held that the first plaintiff was capable of understanding things and he was in a position to execute the document.

20. Learned Judge was of the view that the first plaintiff was not a person of undeveloped mind. Learned Judge also referred to the evidence of D.Ws.3 and 4. D.W.4 was working as a District Registrar of Assurance. She held that the Officer who registered the document has stated that he put question to the person executing the document and the District Registrar of Assurance has spoken that the first plaintiff was capable of understanding things and he was in a sound state of mind when he presented the document for registration. Learned Single Judge therefore held that the settlement deed Ex.B.4 was validly executed. In short, the learned Judge held that the first plaintiff was in a sound state of mind at the time of execution of the settlement deed as he wanted to give the properties to his brother and brother's sons with the intention that the property being the joint family property should not go out of his family and the settlement was a valid settlement.

21. In this view of the matter, the learned Judge set aside the judgment and decree of the trial Judge and allowed the appeal. It is against the said judgment and decree of the learned Single Judge, the above Letters Patent Appeal has been preferred.

22. During the pendency of the appeal, the sole appellant, the second plaintiff, who is the wife of Munusami Naicker, died and she had executed a registered Will bequeathing all her properties in favour of the second appellant and the second appellant has been brought on record by order of this Court dated 4.3.2003.

23. Respondents 5 to 14, 16 and 17 were given up as they remained *exparte* before the trial Court.

24. Heard Mr. Fr. Xavier Arulraj appearing for the appellant and Mr. S.V. Jayaraman, learned senior counsel appearing for the respondents.

25. The point that arises in this appeal is whether the second plaintiff in the suit has proved that her husband the first plaintiff was a person of unsound mind on the date of execution of the deed of settlement Ex.B.4 and whether the same is valid and it is not liable to be set aside.

26. We have already set out the facts in detail. Learned trial Judge on the basis of appreciation of evidence of the second plaintiff held that her husband the first plaintiff was the person of unsound mind and was not in a position to take any decision on the date of execution of the settlement deed dated 5.1.1971. It is true that the plaint was filed by the first plaintiff represented by his next friend Parvathi Ammal when the first plaintiff was alive and he died during the

pendency of the suit on 28.06.1982.

27. Parvathi Ammal, the second plaintiff in support of her plea that the first plaintiff was not in a sound and disposing state of mind has examined herself as P.W.1 and she has stated that on the date of execution of the settlement deed, her husband was a person of unsound mind and the first plaintiff was examined by Dr. Kailasam in Salem and one Dr. Mariyappan. She has deposed that her husband was also examined by Dr. R. Ramadoss of Chennai and she also referred to the proceedings in O.P.No. 10 of 1971 filed by her, wherein investigation was undertaken for the purpose of ascertaining whether the first plaintiff was a person of sound mental condition and capable of maintaining himself and his affairs. Annamalai-P.W.2 has spoken about the behavioural aspect of the first plaintiff. Dr. Mariyappan, whose name was referred to by the second plaintiff, was examined as P.W.3. According to Dr. Mariyappan, he has treated the first plaintiff and gave certificate Ex.A.8 and he has stated that the first plaintiff was suffering from schizophrenia as his behaviour was violent. His evidence clearly shows that the first plaintiff was behaving in an abnormal manner and he was taking his own excreta and he tried to attack him without any reason and he has stated that on examining the first plaintiff he found that the patient was not in a good mental condition and he issued Ex.A.8 certificate. He also produced Ex.A.9 and it is stated that the first plaintiff was getting angry without reason and attacking anybody without sense and he was suffering from schizophrenia and his behaviour was violent and used to get maniacal symptoms frequently. P.W.3 was the Assistant Surgeon in the Government Headquarters Hospital, Salem. Dr. Mariyappan-P.W.3 was cross-examined and nothing was elicited in the cross-examination to show that his evidence was not acceptable.

28. The second plaintiff has also examined P.W.4--Dr. K. Kailasam, and he has stated in his evidence that he was working in Rasipuram Government Hospital during the period between 1965 and 1977 and the first plaintiff was referred to him by Dr. Vaiyapuri and he has also stated that Dr. Vaiyapuri was passed away and the certificate issued by him is Ex.A.10. The medical certificate given by Dr. Kailasam shows that he knew the first plaintiff for more than ten years and he has also stated that he was not in his normal sense for nearly ten years prior to the date of issuance of the certificate viz., 14.03.1972 and also certified that he was violent at times. The second plaintiff apart from examining P.Ws.3 and 4 also produced before the Court Exs.P.11 and P.12 the certified copies of deposition of Dr. N. Cornelio and one Dr. R. Ramadoss, who were examined in O.P.No. 10 of 1971 in the District Court, Salem. The second plaintiff filed an Application I.A.No. 724 of 1984 and 781 of 1984 in the suit to mark the certified copies of deposition copy of Dr. R. Ramadoss, who was examined in the same Court in O.P.No. 10 of 1971 as exhibit in the present suit. The District Court allowed the applications as the whereabouts of the the said doctor was not known in spite of service of summon for examining them as witnesses, and their deposition were marked as exhibits.

29. Dr. N. Cornelio, is a Medical Officer attached to the Government Mental Hospital, Madras-10 and his deposition is marked as Ex.A.11. He has deposed before the same Court in O.P.No. 10 of 1971 and he has stated that he examined the first plaintiff on the basis of summons sent by the Magistrate. He has identified the patient and it is relevant to notice that during the pendency of O.P.No. 10 of 1971, the first plaintiff was alive and he was also produced before the Court and Dr. N. Cornelio identified him and he has produced the case sheets. He deposed regarding the mental examination conducted by him in detail and produced the observations made by him on examining the first plaintiff. He has also stated that the first plaintiff was examined radiologically and he opined that he had disturbance in thinking, feeling and behaviour which was not organically determined and there was no structural damage to the brain. He was also cross examined in O.P. No. 10 of 1971 and he has stated that he was in the Government mental hospital and on the basis of the symptoms he found that there was no organic damage to the brain of the first plaintiff but diagnostically it was based and during his cross-examination he has produced all the records from the hospital.

30. The evidence of Dr. R. Ramadoss in the said O.P.No. 10 of 1971 was taken as Ex.A.12 in the suit. He has stated that he was the tutor in Mental diseases Kilpauk Medical College Hospital, Madras and he was having private practice. He has referred to Ex.P.12, the certificate given by him and stated that he gave treatment from 20.12.1970 to 19.01.1971. It is relevant to mention here that on 5.1.1971 the settlement deed was executed. The certificate given by Dr. R. Ramadoss, is marked as Ex.A.24 and the case sheet is marked as Ex.A.25. In Ex.A.25, it is stated that the first plaintiff was mentally retarded and during the whole interview he was preoccupied and his response to questions was not cohesive and vary at different times to the same questions and at times he did not understand the question and his judgment was poor judgment and was unable to manage himself his affairs.

31. The first plaintiff was sent to the Government Mental Hospital, Madras-10 and the medical opinion given by the Superintendent is Ex.A.26. It is stated in Ex.A.26 that the first plaintiff was mentally and physically retarded and was incapable of managing himself his affairs. His case sheet was marked as Exs.A.20 to A.23 and on the basis of the examination, the Government Mental Hospital has given a medical certificate issued by the Medical Officer to show that the first plaintiff was mentally and physically retarded and was incapable of managing himself.

32. It is relevant to mention that the first plaintiff, during the life time, appeared before the learned District Judge, Salem in the proceedings in O.P.No. 10 of 1971, which was filed by the second plaintiff herein under the relevant provision of the Indian Lunacy Act, 1938 for her appointment as guardian of the person and property of the first plaintiff. The learned District Judge examined the first plaintiff and referred him as an inpatient to the mental hospital, Kilpauk for

examination by a Psychiatric. The doctors who examined the first plaintiff were also questioned by the learned District Judge On commission and after evidence was over, the first plaintiff was examined by the learned District Judge. The learned District Judge came to the conclusion on the basis of the evidence available on record that the first plaintiff was a person of unsound mind and incapable of managing himself. The order passed in the O.P.No. 10 of 1971, was the subject matter of appeal before this Court in A.A.O.No. 116 of 1975 and this Court by judgment dated 24.06.1977 confirmed the order, but at the same time observed that the Court trying the suit will have to decide the question as to whether the first plaintiff was in a sound state of mind at the time of execution of the settlement on the basis of the materials that may be adduced by the parties before the Court and without being bound by the judgment in that case and accordingly, the Civil Miscellaneous Appeal was dismissed.

33. We have referred to the order passed in O.P.No. 10 of 1971, in which first plaintiff was examined in the District Court, Salem and the learned District Judge, Salem had the occasion to see him more than once and questioned him more than once and on the impression gained by him, he recorded a finding that the first plaintiff was a person of unsound mind and incapable of managing his affairs.

34. Before advertng to the evidence let in by the defendants, we want to clarify certain aspects of the matter. We have noted that in I.A.No. 781 of 1984 the plaintiff has filed a petition to mark the deposition of Dr. R. Ramadoss and the relevant documents have been marked in the court as Exs.A.12 and A.13. Exs.A.12 and A.13 are the certificates issued by Dr. R. Ramadoss in respect of the first plaintiff on 18.03.1974. We have already noticed that the trial Court has allowed the application, but it is seen that along with the deposition of Dr. R. Ramadoss, certified copy of the deposition of Dr. N. Cornelio was marked as Ex.A.11. The observation made by Dr. N. Cornelio in Ex.A.13 was marked as Exs.A.14 to A.23. The defendants have not raised any objection for the marking of the deposition of Dr. N. Cornelio and other documents referred to earlier and no objection has also been taken before this Court also.

35. Another document about which mention must be made is Ex.A. 24, which is the certificate given by Dr. Ramadoss dated 19.01.1971, wherein he has stated that he treated the first plaintiff from 17th December 1970 to 19th January, 1971. We are not able to place any reliance on this document as the case of the second plaintiff is that the first plaintiff was abducted by Muthusamy Naicker and his men on 2.1.1971 and that he was away from his house and the second plaintiff made a paper publication on 4.1.1971 and the publication was effected on 5.1.1971 and also sent a registered notice on 5.1.1971. If it is the case of the plaintiffs that the first plaintiff was abducted from his house at Salem by Muthusamy Naicker on 2.1.1971, we are of the view that no reliance can be placed on the document Ex.A.24, the certificate given by Dr.R. Ramadoss, as it shows that he examined the patient from 17.12.1970 to 19.1.1971. The result is,

the certificate given by Dr. R. Ramadoss in Ex.A.24 is not reliable and that document has to be excluded from consideration.

36. The other evidence available in support of the case of the plaintiff is that the certificate given by Dr. N. Cornelio and his deposition in Ex.A.11 and Case sheet maintained in the Government Mental Hospital, Madras and the observations made in Ex.A.14, A.23 and A.25.

37. In the clinical record maintained by the Government Mental Hospital, Madras (Ex.A.13) the certificate of Dr. R. Ramadoss dated 19.1.1971 was referred to and it is also seen from the report that first plaintiff was examined closely and on that basis he certified that he was unable to manage himself his affairs. The clinical record of the first plaintiff in Ex.A.13 shows the various tests conducted on the first plaintiff on several days. This exhibit clearly shows that several tests were conducted namely, physical examination, mental examination, special tests like X-ray of skull, Biochemical examination, psychological examination and serological examination and after diagnosis, the doctors have opined that there was a rudeness in his speech and behaviour which is not organically determined and it is also stated in the evidence of Dr. N. Cornelio that the first plaintiff suffering from mental illness. A summary of the examination is also found in Ex.A.13 and it is stated that the mental symptoms have commenced about 15 years ago and lasted for two years. The examination conducted by Dr. R. Ramadoss on 27.07.1972 is also part of Ex.A.13 and he has reported that Munusami Naicker was mentally and physically retarded and his motion was inadequate and the certificate of Dr. R. Ramadoss was countersigned by the Superintendent of the Government Mental Hospital, Madras-10 and it is also stated in that certificate that he is incapable of managing himself and his affairs. Though the certificate of Dr. R. Ramadoss in Ex.A.24 is not reliable, we are of the view that his entire evidence cannot be ignored. Though the 1st plaintiff was discharged from the mental hospital, it is seen from the evidence of Dr. N. Cornelio that the first plaintiff was retrieved of the symptoms as was found by the Hospital Discharge Committee. As against these evidence on the side of the plaintiff the defendants have relied upon the evidence of Dr. Somasundaram, who was examined as D.W.5 and his report has been marked as Ex.B.8.

38. We have carefully gone through the evidence of Dr. Somasundaram and it is his evidence that he was working in Government Mental Hospital, Kilpauk, Chennai, but he has not produced the original notes of inspection conducted for examining the first plaintiff. He has not produced the original Ex.B.7 and admitted that Ex.B.7 is the true copy of the original, but the original notes were not produced. He has also admitted in the cross examination that as regards the particulars found in Ex.B.7 he obtained the particulars from Muthusamy Naicker and not from the first plaintiff, as the first plaintiff was not in a position to furnish particulars. Further, he has admitted that there was no radiological examination conducted on the first plaintiff and the trial Court has found that the evidence of Dr. Somasundaram was not reliable.

39. Learned Judge has chosen to ignore the evidence of P.Ws.3 and 4 only on the ground that they are not specialist in psychiatry but Dr. Somasundaram, who was examined as D.W.5 is a specialist in Psychiatry and hence his evidence should be accepted. We are of the view that the learned Judge was not correct in relying on the evidence of D.W.5 and a careful reading of his evidence as a whole shows that he has not produced the original notes paper and he has not conducted many tests which were required to be done. It is, no doubt, true that an expert opinion is needed to find out the cause for the mental illness and to prescribe the proper treatment and the mental illness is not a momentary insanity and the cause and reason for the abnormal behaviour would require careful study for the purpose of giving proper treatment. However, learned Judge has overlooked the evidence of the Dr. N. Cornelio and Dr. R. Ramadoss who are also Specialists in Psychiatry and the certificate given by Government Mental Hospital, Kilpauk. The medical reports clearly indicate that several tests have been conducted on the first plaintiff on the basis of the directions of the District Court to find out the mental capacity of the first plaintiff and the report was accepted by the District Court, Salem in O.P.No. 10 of 1971. Learned Judge has rejected the evidence of P.Ws.3 and 4 on the ground that the doctors are not specialists in Psychiatry, even though they have examined the first plaintiff for more than ten years and hence their evidence cannot be rejected lightly. It is no doubt true that the Learned Judge has the necessary power to depreciate the entire evidence, but she came to a different conclusion on examining the evidence of Dr. Somasundaram, without considering the evidence of Dr. R. Ramadoss and Dr. N. Cornelio. Further, their evidence is also cogent to show that the first plaintiff was a person of unsound mind. We are of the view that the rejection of the evidence of P.Ws.3 and 4 is also not justified as the first plaintiff was under their treatment for a sufficiently long period. Moreover, the Sub Registrar, who registered the document, has no capacity to judge the mental illness of the person and hence not much weight can be attached to his evidence.

40. As we have already observed, the evidence of Dr. N. Cornelio and Dr. R. Ramadoss and their deposition in the earlier proceedings have force and should not have been ignored by the Learned Judge. The evidence shows that there was a disorder of thought, disorderly behaviour and disorderly state of mind of the first plaintiff to come to the conclusion that he was of unsound mind. It is no doubt true that the medical testimony is not conclusive proof but it is of great help and assistance for the Court to determine the mental condition of the first plaintiff. In this connection, it is relevant to notice a recent decision of the Supreme Court in SHARDA VS. DHARMPAL (2003) 2 L.W. 657) wherein, the Supreme Court held as under:

"13. The decisions rendered by various courts of this country including this Court lead to a conclusion that a decree for divorce in terms of Section 13(1)(iii) of the Act can be granted in the event the unsoundness of mind is held to be not curable. A party may behave strangely or oddly inappropriate and progressive in deterioration in the level of work may lead to a conclusion that he or she suffers

from an illness of slow growing developing over years. The disease, however, must be of such a kind that the other spouse cannot reasonably be expected to live with him or her. A few strong instances indicating a short temper and somewhat erratic behaviour on the part of the spouse may not amount to his/her suffering continuously or intermittently from mental disorder.

14. It may be noticed that Section 2(1) of the Mental Health Act, 1987 defines "mentally ill person" to mean a person who is in need of treatment by reason of any mental disorder other than mental retardation. Mental disorder may further be of varying degree.

15. This Court in Ram Narain Gupta Vs. Rameshwari Gupta, while considering a question as to whether a party to the marriage was suffering from schizophrenia observed:

"14. Indeed the caution of a learned author against too readily giving a name to a thing is worth recalling:

"Giving something a name seems to have a deadening influence upon all our relations to it. It brings matters to a finality. Nothing further seems to need to be done. The disease has been identified. The necessity for further understanding of it has ceased to exist."

It is precisely for this reason that a learned authority on mental health saw wisdom in eschewing the mere choice of words and the hollowness they would bring with them. He said:

"I do not use the word "schizophrenia" because I do not think any such disease exists.... I know it means widely different things to different people. With a number of other psychiatrists, I hold that the words "neurosis", psychoneurosis", psychopathic personality, and the like, are similarly valueless. I do not use them, and I try to prevent my students from using them, although the latter effort is almost futile once the psychiatrist discovers how conveniently ambiguous these terms really are...."

"In general, we hold that mental illness should be thought and spoken of less in terms of disease entities than in terms of personality disorganization. We can precisely define organization and disorganization; we cannot precisely define disease..."

"Of course, one can describe a maniac or a "depressed" or a "schizophrenic" constellation of symptoms, but what is most important about this constellation in each case? Not we think, its curious external form, but rather what it indicates in regard to the process of disorganization and reorganization of a personality which is in fluctuant state of attempted adjustment to environmental reality. Is the imbalance increasing or decreasing? To what is the stress related? What psychological factors are accessible to external modification? What latent capacities for satisfaction in work, play, love, creativity, are discoverable for therapeutic planning? And this is language that can be understood. It is practical

language and not language of incantation and exorcism."

15. This medical concern against too readily reducing a human being into a functional nonentity and as a negative unit in family or society is law's concern also is reflected, at least partially, in the requirements of Section 13(1)(iii). In the last analysis, the mere branding of a person as schizophrenic will not suffice. For purposes of Section 13(1)(iii) "schizophrenia" is what schizophrenia does."

16. Having regard to the complexity of the situation, the doctor's opinion may be of utmost importance for granting or rejecting a prayer for a decree of divorce. The question is as to whether a mental disorder is curable can be subject matter of determination of by a Court of Law having regard to the expert medical opinion and particularly the ongoing development in the scientific and medical research in this direction."

We therefore hold on the basis of the evidence available on record that the plaintiff has established that the first plaintiff was a person of unsound mind and incapable of managing himself and the evidence of P.Ws.3 and 4 show that even from the year 1970 Munusami Naicker was a person of unsound mind and incapable of maintaining himself. Though the evidence of Dr. N. Cornelio and Dr. R. Ramadoss came subsequent to the settlement deed, their reports have to be read in conjunction with the earlier reports given by P.Ws.3 and 4 and if so read it must be held that Munusami Naicker was a person of unsound mind from the year 1970. The mental illness, unlike the physical illness, does not make its appearance on a single day and disappear next day. It was found from evidence that Munusami Naicker was not mentally sound and he was taking treatment from 1970 onwards and it must be held that he was a person of unsound mind when he executed the deed of settlement on 5.1.1971.

41. It is therefore clear that the first plaintiff's younger brother Muthusamy Naicker has taken advantage of the mental incapacity of Munusami Naicker, took him to Madras and got the deed executed in his favour and in favour of his sons in respect of the entire properties and registered the same at Madras. There are no acceptable reasons for Muthuswamy Naicker to take the first plaintiff from Salem to Chennai for the purpose of executing the deed of settlement. We therefore hold that the learned Judge was not correct in holding that Munusami Naicker was a person of sound state of mind on the date of execution of the settlement deed Ex.B.4. Once we hold that Munusami Naicker was a person of unsound mind and incapable of managing himself, there is no difficulty in holding that the settlement deed executed by him is a void document.

42. We therefore hold that the judgment and decree of the learned Judge is liable to be set aside and accordingly it is set aside and the judgment and decree of the trial court are set restored. The Letters Patent Appeal stands allowed. There will be no order as to costs. Consequently, C.M.P.No. 8842 of 2000 is closed.