

(2014) 07 MAD CK 0242

In the Madras High Court

Case No : S.A. Nos. 398 to 400 of 2009 and M.P. Nos. 1 to 1 of 2009

Saroja

APPELLANT

Vs

R.P. Matheswaran

RESPONDENT

Date of Decision : 03-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 2, Order 6 Rule 4
Transfer of Property Act, 1882 — Section 122, 126

Citation : (2014) 3 LW 726 : (2014) 6 MLJ 53

Hon'ble Judges : M. Duraiswamy, J

Bench : Single Bench

Judgement

M. Duraiswamy, J.—The above Second Appeals arise against the common judgment and decrees passed in O.S. No. 919 of 2003, I.A. No. 264 of 2007 in O.S. No. 899 of 2003 and O.S. No. 899 of 2003 on the file of the II Additional District Munsif Court, Salem, reversed by the common judgment and decrees of the Additional Sub Court, Salem passed in A.S. Nos. 224, 226 of 2007 and 10 of 2008 respectively.

2. S.A. No. 398 of 2009 arises against the judgment and decree passed in A.S. No. 224 of 2007 on the file of the Additional Sub Court, Salem, reversing the judgment and decree passed in O.S. No. 919 of 2003 on the file of the II Additional District Munsif Court, Salem. The plaintiffs and second defendant are the appellants and the respondent was the first defendant in the suit. The fourth appellant had died during the pendency of the appeal and his legal representatives were brought on record in the appeal. The plaintiffs filed the suit in O.S. No. 919 of 2003 for declaration, injunction and to declare the Settlement Deed dated 07.04.2003 as not binding on them.

3. S.A. No. 399 of 2009 arises against the judgment and decree passed in A.S. No. 226 of 2007 on the file of the Additional Sub Court, Salem, reversing the judgment and decree passed in I.A. No. 264 of 2007 in O.S. No. 899 of 2003 on the file of the II Additional District Munsif Court, Salem. The appellants 2 to 5,

who were the defendants 2 to 5, are the legal representatives of the deceased first appellant, who died pending appeal and who was the first defendant in the suit and the respondent was the plaintiff. The first appellant filed counter claim in I.A. No. 264 of 2007 to declare that the three Gift Deeds as null and void, except for 12 cents in Survey No. 927 and for injunction.

4. S.A. No. 400 of 2009 arises against the judgment and decree passed in A.S. No. 10 of 2008 on the file of the Additional Sub Court, Salem reversing the judgment and decree passed in O.S. No. 899 of 2003 on the file of the II Additional District Munsif Court, Salem. The defendants are the appellants and the respondent was the plaintiff in the suit. The plaintiff filed the suit in O.S. No. 899 of 2003 for declaration and injunction.

5. The Courts below disposed of all the three matters by a common judgment. Since the issues involved in all the three Second Appeals are common, they are disposed of by this common judgment.

6. The brief case of the plaintiff in O.S. No. 899 of 2003 is as follows:

(i) According to the plaintiff, he is the son of the first defendant, the second defendant is his brother and the defendants 3 to 5 are his sisters. On 07.04.2003, the first defendant executed a registered Settlement Deed in respect of the suit properties. In fact, the first defendant executed three separate Settlement Deeds in respect of the suit properties. The plaintiff was given full and absolute right in respect of the A and B Schedule properties by the first defendant. In respect of the C Schedule property, the plaintiff and the second defendant were given equal rights, after the life time of the first defendant. The plaintiff is residing in a part of the C Schedule property. There are other house portions in the C Schedule property, which were let out by the first defendant to various tenants and the first defendant is enjoying the benefits therefrom.

(ii) The first defendant is having another 94 cents of land in the same Survey Number, adjacent to the suit property, which is yet to be divided by the first defendant. At the instigation of the defendants 2 to 5, the first defendant had written cancellation of the Settlement Deeds in respect of the properties on 19.05.2003. The first defendant has no right to cancel the Settlement Deeds after having been acted upon the Settlement Deeds. On 25.09.2003, the first defendant issued a notice to the plaintiff. On 06.10.2003, the plaintiff sent a reply notice. The plaintiff did not accept the demands of the defendants 2 to 5 to partition the properties. The plaintiff alone is in exclusive possession and enjoyment of A and B Schedule properties. A patta was also issued in his favour in respect of A and B Schedule properties. Chitta also stands in the name of the plaintiff. The plaintiff also put up a basement in the A Schedule property. The defendants also tried to trespass into the suit property on 08.12.2003, which was prevented by the plaintiff.

(iii) The first defendant, after appearing in the suit, filed a counter claim seeking to declare the Settlement Deeds dated 07.04.2003 as null and void. The first

defendant has no right to cancel the Settlement Deeds. The counter claim is not maintainable as per law. The defendants 3 to 5 are not in possession and enjoyment of the 12 cents of land that were alleged to have been given by the first defendant. The alleged Settlement Deed executed by the first defendant in favour of the defendants 3 to 5 is not sustainable in law. Since the first defendant had already executed a registered Settlement Deed in favour of the plaintiff, the first defendant has lost all the rights in respect of the A and B Schedule properties. The 12 cents of land is covered under the A Schedule property, which is in the absolute possession and enjoyment of the plaintiff.

(iv) The plaintiff denied that he pressurized the first defendant to execute the Settlement Deeds in his favour for the reason of increase in stamp duty in future. The third defendant is estopped from questioning the Settlement Deeds, since she had attested the documents executed in favour of the plaintiff. The plaintiff was never informed about the Cancellation Deed. The plaintiff is also seriously contesting the suit in O.S. No. 919 of 2003 filed by the defendants 3 to 5 in collusion with the defendants 1 & 2. In these circumstances, the plaintiff prayed for a decree in O.S. No. 899 of 2003 and dismissal of the counter claim filed by the first defendant in I.A. No. 264 of 2007.

7. The brief case of the first defendant in O.S. No. 899 of 2003 is as follows:

(i) According to the defendant, he did not execute the Settlement Deeds on 07.04.2003 in respect of the suit properties. The properties were purchased by him under a registered Sale Deed dated 04.02.1958 out of his own income. The first defendant is the absolute owner of all the properties including the suit properties. The first defendant wanted to make an arrangement, whereby his sons and himself divide the properties, each taking a share, intending that his share would be taken after his life time by his daughters. The first defendant had been expressing this wish of his and the plaintiff volunteered that he will make all arrangements for the preparation of the documents through a scribe known to him. He was 92 years and taking advantage of his old age and resorting to coercion and undue influence, the plaintiff got the Settlement Deeds signed by him.

(ii) To achieve this dishonest object, the plaintiff, on 07.04.2003 suddenly and without any pre-arrangement took the first defendant in a car representing that they are going to see the Surveyor for taking the measurement of the lands to make it convenient to prepare the Deeds with the measurement of the lands and on the way, he took the third defendant with them to induce confidence in the first defendant and representing to her also that they are going to see the Surveyor. But he took them directly to the Office of the Sub Registrar and he represented to the first defendant that he has prepared three separate Deeds as he had told and wanted the first defendant to sign them without loss of time. But the first defendant told him that he will do so after consulting with his elder son about this. But the plaintiff without allowing him to think over any longer told him that he has done all the things correctly and that his brother will not have

any objection and hurried and pressurized him telling that unless the documents are registered that day itself, the stamp duty payable for the Deeds is likely to be increased.

(iii) The plaintiff also asked him to sign the documents without disclosing the contents. The plaintiff had led the aged man to a situation where he was unable to take a firm decision either to put off the registration until his elder son was informed about it or to sign the documents and avoid paying excess stamp duty that is likely to be increased as represented by the plaintiff. The plaintiff had assured the first defendant that he will collect the Deeds and bring them to him. But even after two weeks and despite repeated demands, the plaintiff avoided producing them on one excuse or other. Therefore, the first defendant arranged to get the copies of the Deeds he had signed and he was read over the contents of the three documents styled as Gift Settlement Deeds and he was put to shock and great disappointment and mental pain. Realizing that he had been duped by his own son, the first defendant executed a registered Cancellation Deed, cancelling all the three Settlement Deeds dated 07.04.2003 obtained by the plaintiff fraudulently.

(iv) The first defendant never intended to give the plaintiff two properties to himself and in one item, half share to him and the other half share to the second defendant. He had already expressed his intention to give each of his two sons one property and to have the third one for himself by three separate Deeds. The first defendant executed a Cancellation Deed on 19.05.2003 (i.e.) within about six weeks from the date of the Settlement Deeds. He also settled, on his daughters jointly, 12 cents of land under a registered Settlement Deed dated 01.12.2003. The plaintiff also committed several fraudulent transactions. The defendant has every right to cancel the Settlement Deeds obtained fraudulently by the plaintiff. The Gift Settlement Deeds never came into force and were not at all acted upon and were not intended to be acted upon.

(v) The plaintiff is not in exclusive possession of A and B Schedule properties and is not residing in the house in the C Schedule property. The plaintiff is residing with his family in the house with Door No. 54 on the Cuddalore Main Road and his house is a terraced building. The issuance of patta in respect of the properties are with ulterior motive of creating evidence of possession. The plaintiff has no manner of right or title in respect of the properties. The defendant had never delivered possession of the suit properties or any portion thereof to the plaintiff. The mutation of records are without any enquiry and without following the mandatory procedures. The suit C Schedule property is mistakenly described. In these circumstances, the first defendant prayed for the dismissal of the suit in O.S. No. 899 of 2003 and for passing a decree in the counter claim in I.A. No. 264 of 2007.

8. The brief case of the defendants 2 to 5 in O.S. No. 899 of 2003 are as follows:

(i) According to the defendants, the first defendant was in possession and

enjoyment of the house portion in "C" Schedule property measuring 12 cents of land, which is now given to the defendants 3 to 5 and they are in possession and enjoyment thereof. The first defendant is in possession and enjoyment of the properties except the portion, which is the subject matter in O.S. No. 919 of 2003. The plaintiff was never in possession and enjoyment of the land measuring 12 cents or the house portion thereon. The first defendant was duped and cheated by the plaintiff, hence, the Settlement Deeds were duly cancelled and the defendants 3 to 5 have been lawfully given the portion of his property measuring 12 cents by the first defendant by virtue of the registered Settlement Deed dated 01.12.2003. The defendants never called for any panchayat and they never made any demand for partition. Only to show as though possession of the piece of land given to the defendants 3 to 5 was delivered to the plaintiff, he illegally trespassed into their property and started construction, despite their legitimate objection and so they lodged a complaint to the police, where the plaintiff undertook to stop the construction work.

(ii) The alleged transfer of patta, adangal or possession certificate are all concocted documents and cooked up for the occasion illegally and behind the back of the defendants. The entire property is enclosed by old foundation to a length of 3 = feet from the ground level as the entire property belongs to the defendants 3 to 5. The defendants have the entrances facing East and the access to them is from the main road into their property. The plaintiff in his scheme of fraud took the third defendant along with the first defendant in a car unexpectedly and representing that they are going to see the Surveyor and he went straight to the Sub Registrar's Office and got the documents executed in his favour. The plaintiff had created the Gift Settlement Deeds fraudulently and due to misrepresentation, resorting to coerce and undue influence over the first defendant. The first defendant has long back executed a Gift Deed in respect of some of his properties in favour of the second defendant and the plaintiff.

(iii) In the Gift executed in favour of the second defendant, the first defendant has given him a right of way over the 20 feet width North to South pathway lying on the East of his properties. The plaintiff has suppressed this fact and has illegally denied the existence of this pathway and the right of the second defendant. The suit, as laid, without a prayer for setting aside the Cancellation Deed executed by the first defendant, is not sustainable in law and therefore, the suit is liable to be dismissed. The plaintiff has not furnished the value of each of the items in the suit property. The plaintiff had obtained the signature of the third defendant as attester by false representation and fraud. Therefore, the same is not binding on the defendants. The plaintiff has illegally attempted to grab the properties from the first defendant. In these circumstances, the defendants prayed for dismissal of the suit.

9. The brief case of the plaintiffs in O.S. No. 919 of 2003 are as follows:

(i) According to the plaintiffs, the second defendant is the father of the plaintiffs and the first defendant is their brother. The second defendant is the absolute

owner of all his properties, except the portion of the property set out in the suit schedule. This portion of the land with a tiled house consisting of three portions is the suit property. The first defendant fraudulently obtained certain Deeds of Transfer, touching the second defendant's properties. One such Deed happens to be the Settlement Deed dated 07.04.2003. The second defendant has not delivered possession of the suit property to the first defendant. Realising that the first defendant had cheated him, the second defendant cancelled the Settlement Deed dated 07.04.2003 on 19.05.2003. The possession of the remaining property continues to be with the second defendant till date.

(ii) On 01.12.2003, the second defendant executed a Settlement Deed in favour of the plaintiffs to an extent of 12 cents together with the tiled house consisting of three portions bearing Door Nos. 6/412, 6/413 and 6/414 respectively. The second defendant delivered vacant possession to the plaintiffs together with the original Settlement Deed and Parent documents, etc relating to the suit property. The plaintiffs accepted the Settlement Deed and now they are in absolute possession and enjoyment of the same. The entire property belongs to the plaintiffs. The vacant land on the North-East has been given to the first defendant by a registered Will. The Settlement Deed dated 07.04.2003 is not binding on the plaintiffs, as they are not parties to it and therefore, it is to be declared as not binding on the plaintiffs.

(iii) On the strength of the said Settlement Deed, the first defendant is denying the plaintiffs' title to the suit property. He is attempting to grab the suit property. The first defendant has no manner of right or title to trespass into the suit property and to interfere with the plaintiffs' possession and enjoyment. The defendant's men came to the suit property and tried to remove the old foundation for the purpose of laying a fresh one. In these circumstances, the plaintiffs filed the suit.

10. The brief case of the first defendant in O.S. No. 919 of 2003 is as follows:

(i) According to the first defendant, he did not swindle the entire portions, including cash, from the second defendant. The Settlement Deed dated 07.04.2003 was acted upon. The second defendant also handed over possession of the properties to the first defendant, pursuant to the Settlement Deed dated 07.04.2003. The second defendant, out of own free will and affection, executed three Settlement Deeds in favour of the first defendant. The Cancellation Deed is not binding on the first defendant. The first defendant has been in continuous possession and enjoyment of the entire properties that were settled by the second defendant since the date of the Settlement Deed. The alleged Gift Settlement Deed dated 01.12.2003 executed in favour of the plaintiffs would not bind the first defendant. The subsequent settlement is a document void ab initio. The house portions are not in the possession and enjoyment of the plaintiffs. The same are in possession of the first defendant. The defendant is not aware of any Will as alleged in the plaint.

(ii) The physical possession and title is still remaining with the first defendant. The defendant had started construction on the Southern side of the suit properties in the last week of November 2003. The second defendant issued a false notice to the first defendant on 25.09.2003. The first defendant sent a suitable reply on 06.10.2003 to the second defendant. The Tahsildar, Salem Taluk, issued a separate patta in favour of the first defendant. The house tax assessment also stands in the name of the first defendant. The plaintiffs trespassed into the suit property and prevented the Mason from constructing the building. The first defendant filed a suit in O.S. No. 899 of 2003 against the plaintiffs, the second defendant and his elder brother. The plaintiffs are not entitled for the reliefs sought for in the suit. The second defendant and the plaintiffs are estopped from denying the title to the first defendant. In these circumstances, the first defendant prayed for dismissal of the suit.

11. Before the trial Court, on the side of the respondent, two witnesses were examined and 28 documents, Exs. A1 to A28 were marked and on the side of the appellants, two witnesses were examined and 29 documents, Exs. B1 to B29 were marked. The Advocate Commissioners report and plan were marked as Exs. C1 and C2.

12. The trial Court, after taking into consideration the oral and documentary evidences of both sides, dismissed the suit filed by the respondent in O.S. No. 899 of 2003; decreed the counter claim filed by the deceased first appellant in S.A. No. 399 of 2009 and decreed the suit in O.S. No. 919 of 2003. Aggrieved over the same, the judgment and decrees of the trial Court, the respondent filed appeals in A.S. Nos. 224 of 2007, 226 of 2007 and 10 of 2008 on the file of the Additional Sub Court, Salem and the lower Appellate Court reversed the judgment and decrees of the Courts below and allowed the appeal in A.S. No. 10 of 2008, thereby decreed the suit in O.S. No. 899 of 2003; allowed the appeal in A.S. No. 226 of 2007, thereby dismissed the counter claim in I.A. No. 264 of 2007 in O.S. No. 899 of 2003 and allowed the appeal in A.S. No. 224 of 2007, thereby dismissed the suit in O.S. No. 919 of 2003.

13. Heard Mrs. Hema Sampath, learned senior counsel appearing for the appellants and Mr. V. Sekar, learned counsel appearing for the respondent in all the three Second Appeals.

14. At the time of admission of the Second Appeals, the following substantial questions of law arose for consideration:

(i) Whether in law the lower Appellate Court was right in failing to see that the appellants had pleaded fraud as contemplated in Order VI Rule 4 of Civil Procedure Code and that the Settlement Deeds Exs. A13 to A15 were not binding on the appellants?

(ii) Whether in law the lower Appellate Court was right in holding that Exs. A13 to A15 were accepted and acted up as mandated under Section 122 of the Transfer of Property Act without any evidence?

(iii) Whether in law the lower Appellate Court is wrong in omitting to see that fraud vitiates any transaction and that the cancellation of the Settlement Deeds was only by way of abundant caution though the right of revocation was not reserved as provided under Section 126 of Transfer of Property Act?

(iv) Whether in law the lower Appellate Court erred in failing to see that under Ex. B18 Settlement the daughters became entitled to a property and that Matheswaran had no right or title in the same?

15. Mrs. Hema Sampath, learned senior counsel appearing on behalf of the appellants submitted that the respondent played fraud on their father Perumal and obtained the Settlement Deeds, Exs. A13 to A15, therefore, the lower Appellate Court ought not to have reversed the judgment and decrees of the trial Court, which set aside the Settlement Deeds as null and void. Further, the learned senior counsel submitted that the lower Appellate Court, erroneously, failed to see that fraud vitiates any transaction and that the cancellation of the Settlement Deeds was only by way of abundant caution, though the right of revocation was not reserved as provided under Section 126 of the Transfer of Property Act. The learned senior counsel contended that the lower Appellate Court failed to see that under Ex. B18 Settlement Deed, the daughters became entitled to 12 cents of land and that the respondent has no right or title in the said extent of land. The learned senior counsel further submitted that the lower Appellate Court ought not to have reversed the judgment and decrees of the trial Court.

16. In support of her contentions, the learned senior counsel for the appellants relied upon the following judgments:

(i) Chennupati Venkatasubbamma Vs. Nelluri Narayanaswami, wherein this Court held that the fact that the Deed was executed and registered would not make it irrevocable, if in fact there was no acceptance by the donee either before registration but after execution or even after registration. If there was no delivery of the deed and possession of the property to the donee, it may be open to the donee to prove by cogent evidence that there were other modes of acceptance. For example, a letter written immediately after the execution of the document. Further, this Court held that acceptance may be implied, but the facts relied on to draw an inference of acceptance must be acts of positive conduct on the part of the donee or persons acting on his behalf and not merely passive acquiescence such as standing by when the Deed was executed or was registered.

(ii) Manavalan Vs. Chennammal and 3 others wherein this Court held that it would be clear that the execution of a registered Gift Deed, acceptance of the Gift and delivery of the property together make the Gift complete. Only thereafter, the donor is divested of his title and the donee becomes the absolute owner of the property.

(iii) Selvaraju Kounder Vs. Sahadeva Kounder, wherein this Court held as follows:

23. An illiterate father, who is now running 80 years of age, believed his only son. He has knocked away all the properties, and the father is also subsequently driven out of the house. In his old age, the father believed his son. But he was betrayed by him. The close relationship between the father and son also makes me to confirm the judgment of the lower Appellate Court. The father did not have any free legal advice, and it is the case of the defendant himself that he did consult others before executing the document. But, treating the property as family property itself was wrong. Even according to the defendant, if the properties are treated as joint family properties, he (defendant) will be entitled to only half share. But, under the document, the entire property has been taken away by the son, leaving only 27 cents to the father. How this happened, the defendant has no case. Even he did not have the intention to take such a document. That shows how the document was drafted, and the defendant got it signed by the plaintiff before the Sub Registrar. Learned counsel for the appellant also submitted that quite unusually there are seven or eight witnesses to that document, and one such witness is none other than his own grandson. The very attestation by more than two witnesses itself creates a doubt. The further fact that a grandson is also an attester also will not make the document void, if we take into consideration the fact that the grandson is the son-in-law of the defendant. The son-in-law also will be a beneficiary if such a document is executed. Nothing turns on such statements. The lower Appellate Court has further found that even most of the witnesses have not seen the plaintiff signing the document, and even utter strangers who are not known to both the parties have signed it. A fictitious document is brought into existence by the defendant, is clear from the above facts.

(iv) Ramaswami Jadaya Gounder (Died) and Another Vs. V.T. Elaiya Pillai and Another, wherein this Court held that onus to prove that the document was properly explained and interpreted to the illiterate person affixing his mark so as to make him understand its true import is on the party relying on the document.

(v) Chidambaram Pillai and Others Vs. Muthammal and Others, wherein a Division Bench of this Court held that the Court trying a case of undue influence must consider two things to start with, viz., (i) are the relations between the donor and donee such that the donee is in a position to dominate the will of the donor and (ii) has the donee used that position to obtain an unfair advantage over the donor. Upon the determination of these issues, a third point emerges, which is that of the onus probandi. If the transaction appears to be unconscionable, then, the burden of proof that the contract was not induced by undue influence, is to lie upon the person, who was in a position to dominate the will of the other. If a person alleges that he was ignorant of the character and the contents of the document, for the reason of illiteracy or she being a pardanashin woman. It has to be presumed in such a case that she could have transferred her rights to the other only for the reason of fraud or undue influence. In the latter case, the burden shall be upon the person alleging undue influence and fraud. The onus will shift only when there is a clear pleading in this behalf with

necessary particulars and the initial onus is discharged.

(vi) A. Anthony Pushpam Ammal Vs. Rev. Mother Superior and Another, wherein this Court held that when a plea of non-est factum is taken by the plaintiff, entire burden lies on the defendant to prove that there is no misrepresentation or fraud and in the case of illiterate person, entire burden lies on the person who relies upon particular document to prove that the same has been read and explained to such illiterate person.

(vii) K. Varadhan Vs. Pattammal (dead) and Others, wherein a Division Bench of this Court held that the Single Judge on the original side was right in holding that the Court will not ask the plaintiff to prove the allegation, but demand from the defendant to disprove the allegation of misrepresentation and fraud. The learned Single Judge, has taken the correct view of the law on the fact that the first plaintiff is an illiterate woman, who merely affixed her thumb impression. She is a woman, who possibly could not act without help. One could easily, since the plaintiff alleged representation and fraud, ask her to prove the misrepresentation and fraud. But not in a case where she being an illiterate and unaware of the contents signed the document. Unless fully and faithfully informed about the contents, she cannot be asked to bring evidence to prove her case.

17. Countering the submissions made by the learned senior counsel for the appellants, Mr. V. Sekar, learned counsel for the respondent submitted that the respondent has not played any fraud or misrepresentation at the time of execution of Exs. A13 to A15 Settlement Deeds in his favour. Therefore, the lower Appellate Court was right in reversing the judgment and decrees of the Courts below.

18. In support of his contentions, the learned counsel for the respondent relied upon the following judgments:

(i) Afsar Sheikh and Another Vs. Soleman Bibi and Others, wherein the Apex Court held as follows:

15. While it is true that undue influence, fraud, misrepresentation are cognate vices and may, in part, overlap in some cases, they are in law distinct categories, and are, in view of Order 6, Rule 4, read with Order 6, Rule 2 of the Code of Civil Procedure, required to be separately pleaded, with specificity, particularity and precision. A general allegation in the plaint, that the plaintiff was a simple old man of ninety who had reposed great confidence in the defendant, was much too insufficient to amount to an averment of undue influence of which the High Court could take notice, particularly when no issue was claimed and no contention was raised on that point at any stage in the trial court, or, in the first round, even before the first appellate Court.

16. The High Court has tried to spell out a plea of undue influence by referring to para 7 of the written statement in which the defendant inter alia stated that he was looked after and brought up by the plaintiff as his son and he became very

much attached to the plaintiff and since his infancy till the middle of this year this defendant always lived with the plaintiff and used to treat him as his father, helped him and looked after all his affairs.

This paragraph, according to the learned Judge, contains a clear admission of the intimate relationship between the two indicative of the position of dominating the will of the plaintiff by defendant No. 1.

17. We are, with due respect, unable to appreciate this antic construction put on the defendant's pleading. All that has been said in the written statement is that the relationship subsisting between the plaintiff and the defendant was marked by love and affection, and was akin to that of father and son. Normally, in such paternal relationship, the father, and not the son, is in a position of dominating influence. The defendants pleading could not be reasonably construed as an admission, direct or inferential, of the fact that he was in a position to dominate the will of the plaintiff. In spelling out a plea of undue influence for the plaintiff by an inverted construction of the defendants pleading, the High Court overlooked the principle conveyed by the maxim *secundum allegata et probata*, that the plaintiff could succeed only by what he had alleged and proved. He could not be allowed to travel beyond what was pleaded by him and put in issue. On his failure to prove his case as alleged, the court could not conjure up a new case for him by stretching his pleading and reading into it something which was not there, nor in issue, with the aid of an extraneous document. Thus considered, the High Court was in error when by its judgment, dated October 16, 1963, it remanded the case to the first appellate Court with a direction to determine the question of undue influence on material, already on record.

(ii) *Arukkani, Jayalakshmi, Merappan and Jeangammal Vs. Subramaniam*, wherein this Court held that when power of revocation is not reserved, the Settlement Deed cannot be cancelled on the ground that the executant had executed the Settlement Deed on the misrepresentation that it was only a Will.

(iii) *Perumal Vs. Rajamanickam and Srinivasan*, wherein this Court held that a Gift cannot be revoked by mere will of the donor. A Gift once made cannot be capriciously recalled by the donor, for a transfer by Gift is as complete and binding on the parties when once completed, as any other form of transfer, the donor cannot set aside the Gift once made on the plea that he had made a mistake.

(iv) *Santharaju and Paulraj Vs. Chinnamma*, wherein this Court held that since no right is available to the father to undo what is already legally done, the validity of the settlements and the legal right accrued to the daughter is in no manner affected by the subsequent revocation deeds, if any. Further, this Court held that the father, who conveyed his right in the property, is not entitled to execute any Will bequeathing the same property in favour of others.

(v) 2012(1) MWN (Civil) 617 [*Rayar Naidu (Died) and others Vs. Kartheepan (Died) and others*]. In this judgment, this Court held that once the Settlement

Deed is accepted by the settle, it is completed and in the absence of power of revocation reserved for the settlor, the Gift Deed cannot be revoked. Merely because there was no formal parting with the property, which is the subject matter of Gift, it cannot be said that is a factor to be counted against the acceptance of the settlement.

(vi) Kamalammal (dead) Annapoornammal (dead), Kalyani and K. Ravi Vs. Girija and 2 Others, wherein this Court held that in the absence of any evidence with regard to fraud, misrepresentation, undue influence or coercion, the Settlement Deed cannot be cancelled.

(vii) Bishundeo Narain and Another Vs. Seogeni Rai and Jagernath, wherein the Apex Court held that in case of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. Further, the Apex Court held that general allegations are insufficient even to amount to an averment of fraud of which any Court ought to take notice, however strong the language in which they are couched may be and the same applies to undue influence and coercion.

19. On a careful consideration of the materials available on record, the submissions made by the learned counsel on either side and also taking into consideration the judgments relied upon by the learned counsel on either side, it could be seen that the relationship between the parties are not in dispute. It is also not in dispute that the suit properties belonged to Perumal, who is the father of the appellants and respondent. Under Exs. A13 to A15 Settlement Deeds dated 07.04.2003, Perumal had settled all his self-acquired properties in favour of the respondent, his younger son. Perumal had three daughters and two sons. While, Saroja, Pappathi and Pushpa are his daughters, R.P. Muthukrishnan and R.P. Matheswaran are his sons. After the execution of Exs. A13 to A15 Settlement Deeds on 07.04.2003, on 19.05.2003, Perumal executed Exs. B8, B9 and B17 Cancellation Deeds, cancelling Exs. A13, A14 and A15 Settlement Deeds executed in favour of the respondent. Under Ex. B18 Settlement Deed dated 01.02.2008 executed by Perumal in favour of his daughters viz., the appellants 1 to 3 in S.A. No. 398 of 2009/appellants 3 to 5 in S.A. Nos. 399 & 400 of 2009, settling an extent of 12 cents jointly in their favour.

20. According to Perumal, who is the fourth appellant in S.A. No. 398 of 2009/ first appellant in S.A. Nos. 399 & 400 of 2009, who died during the pendency of the above Second Appeals, his legal heirs viz., the appellants and respondent were recorded as his legal representatives in the above Second Appeals. The said Perumal contended that the respondent, by misrepresentation and playing fraud, had got the Exs. A13 to A15 Settlement Deeds executed in his favour. Therefore, he had executed Exs. B8, B9 and B17 Cancellation Deeds to cancel Exs. A13 to A15 Settlement Deeds. The respondent filed the suit in O.S. No. 899 of 2003 to declare that he is the absolute owner of the suit properties by virtue of Exs. A13 to A15 Settlement Deeds and for injunction. In the said suit, Perumal filed counter claim in I.A. No. 264 of 2007 to declare Exs. A13 to A15 Settlement

Deeds as null and void and for injunction. Based on Ex. B18 Settlement Deed executed by Perumal in favour of his daughters, the daughters filed a suit in O.S. No. 919 of 2003 to declare that they are the absolute owners of an extent of 12 cents of land by virtue of Ex. B18 Settlement Deed, to declare the Settlement Deeds dated 07.04.2003 as not binding on them and for permanent injunction.

21. It is pertinent to note that at the time of execution of Exs. A13 to A15 Settlement Deeds on 07.04.2003, Perumal was aged about 92 years. The case of the appellants was that on 07.04.2003, the respondent by misrepresenting took Perumal to the Sub Registrar's Office and got the Settlement Deeds executed in his favour. Perumal, who was examined as D.W. 1, also deposed that by misrepresentation and force, he was made to sign Exs. A13 to A15 documents by the respondent. It is an admitted fact that Perumal is an illiterate person. Even P.W. 1 himself has stated that Perumal did not know to read and write and he knew only to affix his signature. Further, P.W. 1 had deposed that he did not know, who purchased the stamp papers for the execution of Exs. A13 to A15 Settlement Deeds and he did not know directly about the execution of the said documents.

22. The attester of Exs. A13 to A15 documents was examined as P.W. 2. P.W. 2 had deposed that he did not know that Perumal did not know to read and write. Further, he had deposed that when they went to Sub Registrar's Office, the Settlement Deeds were kept ready. P.W. 1 had admitted in his evidence that Perumal did not know the details of the Settlement Deeds. D.W. 1, Perumal, in his evidence has stated that he was not willing to give his properties to the respondent. Further, he has stated that he does not know to read and write and further, he has stated that he could not read the contents of the documents and only the Schedule of properties was read over to him at the time of registration of the documents. Further, he has stated that he was taken to the Sub Registrar's Office stating that only a Partition Deed is to be executed by him. The elder daughter of Perumal viz., Saroja was examined as D.W. 2. D.W. 2 in her evidence has also stated that they did not give any particulars to the typist for preparing the Settlement Deeds.

23. It is pertinent to note that the originals of the Settlement Deeds dated 07.04.2003 were not produced before the trial Court. On a perusal of the evidence of D.W. 1, it could be seen that he was totally ignorant about the execution of the Settlement Deeds and he was not in a position to explain why three documents were executed in respect of the lands in one Survey Number. It would be sufficient to execute one Settlement Deed in respect of the suit properties. Probably, the execution of the three documents might be to give an impression to the said Perumal that the Partition Deeds are being executed in favour of his daughters. Within a period of six weeks from the date of execution of Exs. A13 to A15 Settlement Deeds, Perumal executed Exs. B8, B9 and B17 Cancellation Deeds dated 19.05.2003 cancelling Exs. A13 to A15 Settlement Deeds.

24. P.W. 1 in his chief examination has stated that Perumal has no right to cancel the Settlement Deeds executed in his favour. However, in his cross examination, he has stated that he was not aware of the execution of the Cancellation Deeds by Perumal. A complaint was also made as against the respondent by Perumal and Exs. B13 and B15 documents would establish that the relationship between Perumal and the respondent was not conducive and smooth. Though the respondent had stated that he did not know about the execution of the Settlement Deeds in his favour, he has not explained when he came to know about the execution of the said Settlement Deeds and further he was not in a position to say when he took possession of the properties pursuant to the Settlement Deeds.

25. Though the respondent contended that Patta and Chitta were transferred in his name, on a perusal of Exs. A1 and A2 documents, it is clear that the authorities had recommended for issuing joint Patta in respect of the properties. Similarly, as per Ex. A3 also, it is clear that Chitta was issued jointly. Therefore, the contention of the respondent that Exs. A13 to A15 documents were acted upon and Patta and Chitta were issued in his favour, cannot be accepted. Similarly, house tax receipts marked as Exs. A9 & A10 also stood in the name of Perumal. From the documents produced on the side of the respondent, it is clear that the respondent failed to establish that Exs. A13 to A15 documents were acted upon and that he was put in possession of the properties by virtue of the said documents.

26. The contention of the learned counsel for the respondent that after the execution of Exs. A13 to A15 Settlement Deeds, Perumal had no right to revoke the Settlement Deeds, since he had not reserved any right for the revocation in the Deed, cannot stand for the reason that not only Perumal had cancelled the Settlement Deeds by executing Exs. B8, B9 and B17 Cancellation Deeds dated 19.05.2003, but also he filed counter claim in I.A. No. 264 of 2007 in O.S. No. 899 of 2003 to declare Exs. A13 to A15 Settlement Deeds as null and void. As already stated, since the respondent failed to prove that Exs. A13 to A15 documents were acted upon and pursuant to the said documents, he was put in possession of the properties, the finding of the lower Appellate Court that Exs. A13 to A15 Settlement Deeds were acted upon and that the respondent was put in possession of the properties cannot stand and is liable to be set aside. Accordingly, the same is set aside.

27. Applying the principles laid down in the judgments relied upon by the learned senior counsel for the appellants, since admittedly, the settlor viz., Perumal was an illiterate person, there was nothing on record to establish that the contents of the documents were read over and explained to him. Further, that it was clearly established that the respondent had got the Settlement Deeds executed in his favour by misrepresentation and fraud. Exs. A13 to A15 Settlement Deeds are liable to be declared as null and void. Similarly, by executing Exs. B8, B9 and B17 Cancellation Deeds, Perumal had rightly cancelled the Exs. A13 to A15

Settlement Deeds.

28. After the execution of Exs. B8, B9 and B17 Cancellation Deeds, Perumal executed Ex. B18 Gift Settlement Deed dated 01.12.2003 in favour of his daughters settling an extent of 12 cents of land. D.W. 1 in his evidence has stated that pursuant to Ex. B18 Settlement Deed, his daughters were put in possession of the property, which was settled in their favour. The trial Court has rightly found that after the execution of Exs. B8, B9 and B17 Cancellation Deeds, the execution of Ex. B18 Settlement Deed in favour of the daughters by Perumal is legally valid. The lower Appellate Court should not have reversed the said finding. It is also pertinent to note that the respondent was duly informed about the execution of Exs. B8, B9 and B17 Cancellation Deeds and about the cancellation of Exs. A13 to A15 Settlement Deeds. Therefore, the lower Appellate Court ought not to have reversed the judgment and decrees of the trial Court.

29. In these circumstances, the substantial questions of law are decided in favour of the appellants. The judgment and decrees of the lower Appellate Court are set aside. The judgment and decrees of the trial Court are restored. All the three Second Appeals are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.