
(1999) 04 MAD CK 0084

In the Madras High Court

Case No : A.S.No. 231 of 1981 and C.M.P.No. 2618 of 1981

Thirumalai Vadivu Ammal (died) and 4 others

APPELLANT

Vs

Muthammal and another

RESPONDENT

Date of Decision : 26-04-1999

Acts Referred:

Contract Act, 1872 — Section 18

Citation : (1999) 2 CTC 275 : (1999) 2 LW 459 : (1999) 2 MLJ 666

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

Bench : Single Bench

Advocate : Mr. Peppin Fernando, for the Appellant; Mr. T.R. Mani, for Mr. T.M. Hariharan, for the Respondent

Judgement

1. Plaintiff in O.S.No.447 of 1979 on the file of II Additional Sub Judge, Tirunelveli is the appellant in this appeal. Subsequent to the filing of

appeal, she died and appellants 2 to, 4 have been brought on record as legal heirs of deceased appellant.

2. Suit filed by plaintiff was to set aside the settlement deed dated 23.1.1975 and consequently to restrain the defendants from interfering with the

possession of plaintiff. The material averments in the plaint could be summarised thus: The property originally belonged to one Veerabagu Pillai,

husband of plaintiff. He died on 16.11.1973. The couple had no issues. It was the case of plaintiff that plaint property was leased out to one

Arumugham (PW4) and due to her old age, she was not in a position to administer and manage the property. It is her further case that she has no

good vision and also illiterate. Except she knows how to sign, she has no education. It is said that lessee Arumugham committed default in paying

rent and therefore to initiate steps to protect her and the property, she wanted a

power of attorney to be executed. First defendant is none other than her brother's daughter and second defendant is her husband. With her brother plaintiff is not retaining any good relationship and he is living with another woman belonging to another caste. So far as first defendant is concerned, she was moving very closely with plaintiff and it was even before marriage plaintiff had absolute confidence on defendants and both defendants were very closely moving towards plaintiff. At that time, defendants requested plaintiff that if a power of attorney is executed in their favour, they can take necessary action for recovery of rent and they can also take necessary steps to administer and manage the property and also to protect the interest of plaintiff.

3. In view of the confidence which plaintiff had over them, plaintiff was also prepared to sign any document that is brought by defendants. Second

defendant represented plaintiff that power of attorney has been prepared and wanted plaintiff to go to Sub- Registrar's Office to sign the same.

When plaintiff went to Sub- Registrar's officer, the document is already prepared and plaintiff was asked to sign the same. The document was not

read over to plaintiff nor Sub-Registrar asked her about the contents of the deed.

4. In fact, at the time, when plaintiff was taken to Sub-Registrar's office, second respondent informed plaintiff that if Sub-Registrar ask any

question, she was asked to answer that since she has no issues, only defendants should manage the same and such answer was directed to be

given to sub-Registrar. In fact, sub-Registrar also did not question the plaintiff about the document and plaintiff also did not spend any amount for

executing or registering the deed. Plaintiff also did not spend any amount for stamp paper nor for registration expenses. The document was taken

back from the sub-Registrar's office.

5. After two years, defendants came and resided with plaintiff for some time and even at that time, they moved with plaintiff very closely. Even

after execution of deed, plaintiff continued to take the income and even the rent was being collected by her and defendants did not collect any rent

though she had informed Arumugham about the fact that she has executed power of attorney in favour of defendants. Defendants resided with

plaintiff for six and half months in the year 1977, from January to July. Later defendants also left the house of plaintiff and plaintiff also did not get

any information whether arrears of rent have been collected from Arumugham. Plaintiff was also not informed whether the property was managed properly. Since plaintiff was not given any information about the management of the lease, plaintiff wanted the power of attorney back, which defendants refused to part with. At that time, it was informed to plaintiff that what she has written is a settlement of deed and not power of attorney. Plaintiff after coming to know about the document immediately asked her neighbours, who was then retired Sub-Registrar to enquire about the document and to get copy of the document. Only after that plaintiff came to know about the document which she executed. It is her case that she never intended to sign settlement deed and what she wanted was only power of attorney. It was due to the fraud committed by defendants, she signed such documents. She had no intention of executing such deed. It is for the above reasons, plaintiff filed the above suit.

6. Detailed written statement has been filed by defendants. Denying the allegations that plaintiff has no vision or she is deaf, they also denied the allegation that she is incapable of attending to her needs. The allegation that plaintiff was compelled to execute power of attorney in favour of defendants is also denied. They denied that they played any fraud and committed breach of trust on plaintiff. According to them they did not take any initiative for the execution of deed. According to them plaintiff herself took initiative, prepared draft deed, got it executed and handed over the original subsequently to first defendant. There was no room for any dissatisfaction about the document.

7. It is also said that subsequent to the deed, gift tax authorities have initiated proceedings and plaintiff also given statement confirming the validity of the document. It is their case that the attesting witnesses were aware of the document and as a matter of fact, defendants learnt that document was read over and approved by plaintiff. There is no inducement as alleged by plaintiff, They prayed for dismissal of the suit.

8. The trial court took oral and documentary evidence. Exs.A1 to A4 were marked on the side of plaintiff and Exs.B1 and B2 were marked on the side of defendants. Oral Evidence consist of PWs.1 to 4 and D.Ws.1 to 3.P.W. 1 is plaintiff and PW2 is the neighbours of PW1. who obtained registration copy of settlement deed Ex.A3. PW4 Arumugham is the lessee of PW.1. Ex.B2 is the original settlement deed executed by plaintiff

and Ex.B1 is the registration copy of mortgage deed executed by plaintiff a few days prior to the institution of the suit. Oral evidence of defendants

consist of DWs.1 to 3 of which DW.1 is the second defendant. DW.2 is one of the attesting witness and DW.3 is the document writer.

9. On evaluating entire evidence, trial court came to the conclusion that the case of plaintiff cannot be believed. Lower Court was of the view that

plaintiff has miserably failed to prove fraud and undue influence. It took the view that plaintiff having contended that the document of settlement

deed is fabricated, the onus is upon her to prove the same. It also held that plaintiff had mental capacity to execute the deed. All findings was

against the plaintiff. It also came to the conclusion that registration being a solemn act, that is also a piece of evidence which can be taken into

consideration by court to prove the genuineness. It also came to the conclusion that plaintiff knows to read and write. So holding the suit was

dismissed.

10. After filing appeal, appellant died and legal representatives were impleaded. Appeal was heard by Justice Abdul Hadi. Learned Judge

dismissed the appeal as per judgment dated 21.1.1990. Against the dismissal, plaintiff preferred LPA.No. 43 of 1991 and the Judgment therein is

reported in 1993 (1) LW 466. The Division Bench held that the approach of trial Court as well as single Judge of the Court are against law and the

entire burden is on defendants to prove the validity of the transaction. Ofcourse, the case of influence pleaded by plaintiff did not find favour by

Division Bench. In Paragraph 20 of the Judgment, the Division Bench held thus;

Adverting to the facts of this case, we notice that the plaintiff after the death of her husband needed a male or female helper to collect paddy from

the lessee and to look after her other affairs and that in the plaint she has alleged she had no other relative except her brother who was not in fact

on good terms with her and the 1st defendant, the daughter of her brother who had no connection with her father, was close to her (plaintiff) from

1974-75 onwards and helping her. The defendants told her to give her a registered power of attorney to collect the arrears of paddy from

Arumugham. She suspected nothing foul and agreed to execute the power of attorney. The plaint also contains a statement that the second

defendant took her signature in the document which was made ready, the

contents of the document were not read over to her, the 2nd defendant/respondent had taken her to the office of the sub-Registrar and instructed her that she need not talk before the sub-Registrar and asked her to state that she had no heir other than the 1st defendant. The plaintiff, it is said in the plaint, then put her thumb impression in the presence of the sub-Registrar. The sub- Registrar did not ask anything from her. She did not purchase any stamp paper or pay any money for the registration charges. The 2nd defendant undertook to get the said document from the sub-Register's office and the plaintiff believed the same. Two years after the registration of the said document, that is to say somewhere in January, 1977, the defendants came and lived with the plaintiff. Even at that time, the plaintiff did not suspect the defendants. The plaintiff informed the lessee Arumugham that she had executed a power of attorney in favour of the defendants and that the lease hold paddy in question could be given to the defendants in future. The defendants stayed with the plaintiff about 6 1/2 months. The plaintiff did not suspect anything at that time. Later on, the defendants went and lived in some other house. The defendants stopped visiting the plaintiff after some time. The plaintiff came to know that the defendants did not collect the lease paddy from the said Arumugham and they did not supervise the land in question. She for the said reason went and asked the defendants to handover the power of attorney stating that they would collect the lease paddy directly. The defendants at that stage only informed that she had executed a settlement deed in their favour on 23.1.75 and that they had got the power to drive her out of the house. It is a case, in our opinion, of an illiterate woman moving the court alleging that she acted only on the basis of the representations of the defendants when she put her thumb impression on the document in the impugned settlement deed in the presence of the sub-Registrar. It is a case of an illiterate woman thus seeking the protection of law as she executed the document without knowing its true character and contents. Learned single Judge has fallen in error in seeking any further pleadings and/or proof of undue influence and fraud from her. The burden in this behalf is upon the defendants. The impugned judgment for the said reason has to be set aside. Since both the courts below have fallen in error in this behalf and have not approached the case in the light of the correct law on the subject,

unless evidence of the case is analysed afresh, it will not be possible to give any final verdict. It is a fit case, in our opinion, although the

proceedings have taken quite a few years for remand to the court of appeal below for a hearing and adjudication in accordance with law on the

basis of the evidence already on the record."" (Italics supplied)

11. The Division Bench has held that the plea of the plaintiff is non est factor, and plaintiff being an illiterate woman, the good faith and the

genuineness of the transaction should be proved only by the defendants. The entire appeal was directed to be reconsidered on the basis of above

direction. That is why the appeal was reported for rehearing.

12. The only question that requires consideration in this appeal is whether the document dated 23.1.1975 is liable to be set aside on the ground

that the mind of plaintiff did not accompany her signature?

13. I do not find that the decisions reported in *Bismillah v. Janeshwar Prasad*, 1990 (1) 207 and *Dularia Devi v. Jaiardan Singh*, 1990 SCC 216

were placed before Division Bench, considering the same question.

14. In *Bismillah v. Janeshwar Prasad*, 1990 (1) SCC 207, the question that came for consideration was jurisdiction of Civil Court for cancelling

Sale Deeds respecting agricultural lands governed by U.P.Zamindari Abolition and Land Reforms Act, 1951. In the case, the case that is put forth

was that she being pardash lady on the representation of respondents 1 to 3 appointed them as her agents to manage the property. The said

document was in the language of Hindi, not known to her but later discovered to be a sale deed. Various questions were raised including questions

of jurisdiction. In paragraphs 12 to 16 of the Judgment, their Lordships considered this question and held thus.

12. The common law defence of non est factum to actions on specialties in its origin was available where an illiterate person, to whom the contents

of a deed had been wrongly read, executed it under a mistake as to its nature and contents, he could say that it was not his deed at all. In its

modern application, the doctrine has been extended to cases other than those of illiteracy and to other contracts in writing. In most of the cases in

which this defence was pleaded the mistake was induced by fraud, but that was not, perhaps, a necessary factor, as the transaction is ""invalid not

merely on the ground of fraud, where fraud exists, but on the ground that the

mind of the signor did not accompany the signature, in other words, that he never intended to sign, and therefore, in contemplation of law never did sign, the contract to which his name is appended.

13. Authorities drew a distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to

the contents thereof. It was held that the defence was available only if the mistake was as to the very nature or character of the transaction.

14. In *Foster v. Mackinnon*, Mackinnon, the defendant was induced to endorse a bill of exchange on the false representation that it was a

guarantee similar to one he had signed on a previous occasion. He was held not liable when sued even by an innocent endorsee of the bill. Byles, J.

said:

.... The defendant never intended to sign that contract or any such contract. He never intended to put his name to any instrument that then was or

thereafter might become negotiable. He was deceived, not merely as to the legal effect, but as to the "actual contents" of the instruments.

15. This decision was refereed to with approval by this Court in *Ningawwa Vs. Byrappa and Others*,

It is well established that a contract or other transaction induced or tainted by fraud is not void, but only voidable at the option of the party

defrauded. Until it is avoided, the transaction is valid, so that third parties without notice of the fraud may in the meantime acquire rights and

interests in the matter which they may enforce against the party defrauded.

This would be a voidable transaction. But the position was held to be different if the fraud of misrepresentation related to the character of the

document. This Court held: (SCR p.801)

The legal position will be different if there is a fraudulent misrepresentation not merely as to the contents of the document but as to its character.

The authorities make a clear distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation

as to the contents thereof. With reference to the former, it has been held that the transaction is void, while in the case of the latter, it is merely

voidable.

However the House of Lords in *Sauders v. Anglia Building Society*, 1970 (3) All. ER 961 reviewed the law and held that the essential features of

the doctrine, as expressed by Byles, J. in *Foster v. Mackinnon*, had been correctly stated. Lord Reid, however, observed: (AC headnote at p.1005)

The plea of non est factum could not be available to anyone who signed without taking the trouble to find out at least the general effect of the document. Nor could it be available to a person whose mistake was really a mistake as to the legal effect of the document. There must be a radical or fundamental difference between what he signed and what he thought he was signing.

16. However the distinction based on the character of the document and the contents of the document was considered unsatisfactory. The

distinction based on the character and contents of a document is not without its difficulties in its practical application; for, in conceivable cases the

"character" of the document may itself depend on its contents. The difficulty is to be resolved on a case by case basis on the facts of each case and

not by appealing to any principle of general validity applicable to all cases. Chitty on Contracts ("General Principles" 25th edn, para 343, page 194)

has this observation to make on *Sauders* decision:

..... It was stressed that the defence of non est factum was not lightly to be allowed where a person of full age and capacity had signed a written

document embodying contractual terms. But it was nevertheless held that in exceptional circumstances the plea was available so long as the person

signing the document had made a fundamental mistake as to the character or effect of the document. Their Lordships appear to have concentrated

on the disparity between the effect of the document actually signed, and the document as it was believed to be (rather than on the nature of the

mistake) stressing that the disparity must be "radical" . "essential" . "fundamental", or "very substantial".

In the instant case, prima facie appellant seems to proceed on the premises that she cannot ignore the sales but that the sales require to be set

aside before she is entitled to possession and other consequential reliefs.

Finally, their Lordships approved the passage of Chitty on Contracts and the applicability of the principle of non est factum was made applicable

only to those documents where the disparity is a radical, essential, fundamental and very substantial.

15. *Dularia Devi v. Janardan Singh*, 1990 SCC 216, is also a case concerning U.P. Consolidation of Holdings Act, 1953 where their lordships

considered whether such document is void or voidable. In that case, plaintiff wanted to execute a gift deed in favour of her daughter. But without

her knowledge, two documents came to be executed. One gift deed and other is sale deed in favour of some of the defendants. Their Lordships

held that such a transaction is void since there is difference between what she intended to sign and what she did sign.

In paragraphs 3 to 7, their Lordships held thus.

3. The facts are not in dispute. It is not disputed that the documents in question came to be executed in the manner alleged by the plaintiff. The

appellant, however, contends that since it was a case of the document having been vitiated by fraud, the transaction was voidable, but not void,

and therefore the suit to set aside the sale was rightly instituted by her and the bar of Section 49 was not attracted. The appellant contends that the

suit is perfectly maintainable and the High Court was wrong in holding to the contrary.

4. Mr. Satish Chandra, appearing for the respondents, rightly, in our view., submits that two principles enunciated by this Court in *Gorakh Nath*

Dube Vs. Hari Narain Singh and Others, and *Ningawwa Vs. Byrappa and Others*, squarely apply to the facts of this case and the document in

question evidenced a void transaction, and not a mere voidable transaction, and no suit was, therefore, maintainable in view of the bar contained in

Section 49 of the Act.

5. In *Gorakh Nath Dube*, this Court held that the object of the relevant provision of the Act was to remove from the jurisdiction of any civil court

or revenue court all disputes which could be decided by the competent authority under the Act during the consolidation proceedings. Questions

relating to the validity of a sale deed or a gift deed and the like had to be examined in proceedings before the statutory authorities. The Court,

however, drew a distinction between void and voidable documents and said a voidable document was one which remained in force until set aside,

and such a document could be set aside only by a competent civil court, and a suit for that purpose would, therefore, be maintainable. On the other

hand, a claim that a transaction was void was a matter which could be

adjudicated upon by the consolidation courts. This is what this Court stated:

(SCC p.538, para 5)

We think that a distinction can be made between cases where a document is wholly or partially invalid or that it can be disregarded by any court

or authority and one where it has to be actually set aside before it can cease to have legal effect. An alienation made in excess of power to transfer

would be, to the extent of the excess of power, invalid. An adjudication on the effect of such a purported alienation would be necessarily implied in

the decision of a dispute involving conflicting claims to rights or interests in land which are the subject matter of consolidation proceedings. The

existence and quantum of rights claimed or denied will have to be declared by the consolidation authorities which would be deemed to be invested

with jurisdiction, by the necessary implication of their statutory powers to adjudicate upon such rights and interests in land, to declare such

documents effective or ineffective, but, where there is a document the legal effect of which can only be taken away by setting it aside or its

cancellation, it could be urged that the consolidation authorities have no power to cancel the deed, and, therefore, it must be held to be binding on

them so long as it is not cancelled by a court having the power to cancel it. In the case before us, the plaintiff's claim is that the sale of his half share

by his uncle was invalid, inoperative, and void. Such a claim could be adjudicated upon by consolidation courts.

6. In *Ningawwa v. Byrappa*, this Court referred to the well established principle that a contract or other transaction induced or tendered by fraud

is not void, but only voidable at the option of the party defrauded. The transaction remains valid until it was avoided. This Court then said: (SCR

p.801)

The legal position will be different if there is a fraudulent misrepresentation not merely as to the contents of the document but as to its character.

The authorities make a clear distinction between fraudulent misrepresentation as to the contents thereof. With reference to the former, it has been

held that the transaction is void, while in the case of the latter, it is merely voidable. In *Foster v. Mackinnon*, the action was by the endorsee of a bill

of exchange. The defendant pleaded that he endorsed the bill on a fraudulent representation by the acceptor that he was signing a guarantee. In

holding that such a plea was admissible, the court observed:

It (signature) is invalid not merely on the ground of fraud, where fraud exists, but on the ground that the mind of the sign did not accompany the

signature; in other words, that he never intended to sign, and therefore in contemplation of law never did sign, the contract to which his name is

appended... The defendant never intended to sign that contract or any such contract. He never intended to put his name to any instrument that then

was or thereafter might become negotiable. He was deceived, not merely as to the legal effect, but as to the "actual contents" of the instrument.

7. From the facts narrated above, about which, as stated earlier, there is no dispute, it is clear that this is a case where the plaintiff appellant was

totally ignorant of the mischief played upon her. She honestly believed that the instrument which she executed and got registered was a gift deed in

favour of her daughter. She believed that the thumb impressions taken from her were in respect of that single document. She did not know that she

executed two documents, one of which alone was the gift deed, but the other was a sale of the property in favour of all the defendants. This was,

therefore, a case of fraudulent misrepresentation as to the character of the document executed by her and not merely as to its contents or as to its

legal effect. The plaintiff appellant never intended to sign what she did sign. She never intended to enter into the contract to which she unknowingly

became a party. Her mind did not accompany her thumb impressions. This is a case that falls within the principle enunciated in *Ningawwa v.*

Byrappa and it was, therefore, a totally void transaction. Accordingly, as stated in *gorakh Nath Dube*, the suit is not maintainable by reason of the

bar contained in the Act." (Italics supplied)

16. It is the case of plaintiff that even though she seems to be party to the document she never intended to sign such a deed and her mind did not

accompany her thumb impression or signature. That is why Division Bench held that it is for defendants to prove the real nature of transaction and

was taken in good faith.

17. Before going into the evidence of the case, I need take reference to one decision of Honourable Supreme court reported in *Mst. Kharbuja*

Kuer Vs. Jangbahadur Rai, wherein their Lordships considered how to discharge the burden of proof. That is the case of document executed by

a pardanashin lady. That principle also applicable to document executed by an illiterate person. In paragraph 6 of the Judgment, their Lordships said thus.

6. The next question is what is the scope and extent of the protection. In *Geresh Chunder Lahoree v. Mst. Bhuggobutty Debia*, 13 Moor Ind.

App. 419 the Privy Council held that as regards documents taken from pardanashin women the court has to ascertain that the party executing them

has been a free agent and duly informed of what she was about. The reason for the rule is that the ordinary presumption that a person understands

the document to which he has affixed his name does not apply in the case of a pardahnashi women. In *Kali Baskh v. Ram Gopal* 43 Ind. App. 23,

the Privy Council defined the scope of the burden of a person who seeks to sustain a document to which a pardahnashin lady was a party in the

following words:

In the first place, the lady was a pardahnashin lady, and the law throws round her a special cloak of protection. It demands that the burden of

proof shall in such a case rest, not with those who attack but with those who found upon the deed, and the proof must go so far as to show

affirmatively and conclusively that the deed was not only executed by, but was explained to, and was really understood by the grantor. In such

case it must also, of course, be established that the deed was not signed under duress, but arose from the free and independent will of the grantor.

The view so broadly expressed, though affirmed in essence in subsequent decision, was modified, to some extent, in regard to the nature of the

mode of discharging the said burden. In 89 Ind. Cas. 649 (Privy Council) it was stated:

The mere declaration by the settlor, subsequently made, that she had not understood what she was doing, obviously is not in itself conclusive. It

must be a question whether, having regard to the proved personality of the settlor, the nature of the settlement the circumstances under which it

was executed, and the whole history of the parties, it is reasonably established that the deed executed was the free and intelligent act of the settlor

or not. If the answer is in the affirmative, those relying on the deed have discharged the onus which rests upon them.

While affirming the principles that the burden is upon the person who seeks to

sustain a document executed by a pardahnashin lady that she executed it with a true understanding mind, it has been held that the proof of the fact that it has been explained to her is not the only mode of discharging the said burden, but the fact whether she voluntarily executed the document or not could be ascertained from other evidence and circumstances in the case. The same view was again reiterated by the Judicial Committee, through Sir George Rankin, in AIR 1940 134 (Privy Council) . Further citation is unnecessary. The legal position has been very well settled. Shortly it may be stated thus. The burden of proof shall always rest upon the person who seeks to sustain a transaction entered into with a pardahnashin lady to establish that the said document was executed by her after clearly understanding the nature of the transaction. It should be established that it was not only her physical act but also her mental act. The burden can be discharged not only by proving that the document was explained to her and that she understood it. but also by other evidence, direct and circumstantial." (Italics supplied)

18. Now, I will take the evidence in the case.

19. DW1 is the second defendant. According to him, plaintiff is not illiterate. She is also not blind and she has got proper vision and her hearing capacity is also not impaired. He also knows to read and write and she used to read Dina Thandhi daily. She also said in chief examination that plaintiff is in a position to manage her own affairs. He also denied the allegation of plaintiff that plaintiff informed about the default committed by Arumugam in regard to leased properties and they never demanded execution of power of attorney. He said that Ex.A2 was written by plaintiff and he received it from sub-Registrar's Officer. Neither he nor first defendant took plaintiff to sub- Registrar's officer. He said that neither himself nor first defendant were present when plaintiff officially signed the document. He went on the evening of 24.1.1975 only as suggested by plaintiff. At that time, he saw PW1 before sub-Registrar and he also signed the document before him. In the presence of sub- Registrar he questioned the plaintiff and according to him, PW1 stated that she executed a settlement deed in favour of defendants. According to DW1, PW1 wanted him to arrange for document writer. He arranged DW3 for the said purpose and took him to PW1's house.

20. In cross examination, DW1 said that PW1 has only one brother who is now living with a woman of another caste. Of course, he denied the suggestion that plaintiff is not in good terms with her brother. He also pleaded ignorance whether PW4 is cultivating the property as lessee and he has never enquired about him. He admitted that PW1 got agricultural land and till date he has not enquired as to who is cultivating the same. He admitted that PW1 is residing alone in her house and whenever she took ill, he enquired about her. Before executing Ex.A2, PW1 did not say anything about the execution of settlement deed and he came to know about it only when he went to sub-Registrar's office only on 24.1.1975. Even though he has gone to PW1's house before 23.1.1975, on none of the occasions, he was informed about the intention to executed such deed and he also never demanded for a deed. He said, because the document is written in his name, he had to go to sub-Registrar's office. Even though plaintiff said that she wanted to take a decision regarding the properties on 23.1.1975, he never asked what is the nature of document to be executed. Document writer and also DW2 are also acquainted for him for the last ten years. He also admitted that DW2 is his neighbours. He also did not enquire with the Document Writer whether the document has been written. He also said that he has no acquaintance with document writer. He also pleaded ignorance from where Stamp Papers were purchased. He denied the suggestion that he paid the expenses for purchasing Stamp paper. He denied the suggestion that the purchased the stamp paper in the name of his wife. He said that himself and plaintiff were in good terms while they mere residing together.

21. The other witness Damodaran is a tailor employed by DW1. According to him, it was PW1 who took Damodaran also to attest the deed. He said that he has no enmity either with PW2 and PW3.

22. DW2 is one of the attesor. According to him, when he went to attest the deed, the document was already written, PW1 was there and in their presence the document writer read over the document to PW1. The other attesting witness Damodaran was also present. Even though in the Chief examination he said that he attested the document at the request of PW1, in the cross examination he said that he was taken to the sub-Registrar's office only by DW1 and only because he invited, he became an attesor. He also

admitted that he is acquainted with DW1 for more than 15 years and he is his neighbour. He also said thus:

He said that he signed as attestors in the document before sub- Registrar on the same day.

23. DW3 is the document writer who was originally an advocate clerk. From his chief examination it is clear that he is a Court bird and it is also

clear that he has got four or five litigations. In the Chief examination he has said that D2 took him to PW1's house for writing some document and

after introducing to plaintiff, DW1 left the house. He further stated that at that time plaintiff told him to prepare document in favour of her niece

(brother's daughter - D1) and wanted to enquire as to the nature of document whether it is a Will or settlement. According to him, he gave an

advice, that if the document is to come into effect after death, Will is to be executed, otherwise Settlement is to be executed. He also informed the

approximate expenses for executing a settlement. He said that stamp is not available in Treasury and the same is to be purchased privately.

According to him he prepared a draft and read over to plaintiff. Plaintiff approved the draft. Plaintiff also informed how the property is to be given

i.e., during her lifetime, she must be in joint enjoyment with defendants and after her death, the properties should be absolute property of DW1 and

his children. He demanded Rs.800 as expenses and Rs.750 was paid. He went to sub-Registrar's Office to verify the valuation and made

arrangements for purchasing stamps. Plaintiff was asked to be present before sub-Registrar on the next day i.e., 24.1.1975. It is further said that

DW3 went to sub- Registrar's office next day and plaintiff and one of the witnesses Damodaran was also present in the office. Finally, document

prepared was read over to plaintiff. One Sivananaintha Perumal came and DW3 again re-read the entire matter. Thereafter, plaintiff signed all the

documents in the presence of witnesses. In the cross-examination, he admitted that he knew plaintiff only at the time when she was introduced by

DW1. He said that he read over the document to plaintiff in the presence of witnesses.

24. As against the said evidence, we have the evidence of plaintiff as PW1. She says that she is an illiterate and she is also not having proper

vision. She signed the document only under the impression that she was signing

power of attorney. She also says about the confidence which she had in her niece and her husband. PW2 is the neighbour through who copy of the document was obtained. PW3 is one Kalia Pillai. He only said that plaintiff has told him about the fraud committed by defendants. PW4 is the lessee Arumugam.

25. It may not be out of place to say at this stage that before filing the suit, plaintiff executed a deed cancelling the settlement deed. The reason stated therein is also the same as pleaded in the plaint. A few days before filing of the suit, she also executed EX.B1 a Mortgage Deed and borrowed Rs.6,000 from the tenant occupying the building. It is seen that mortgage is executed for fighting the litigation.

26. As held in *Mst. Kharbuja Kuer Vs. Jangbahadur Rai*, , the entire burden is on the defendants to prove that plaintiff signed the document after knowing the contents.

27. After having considered the evidence, I feel that the defendants have miserably failed in discharging their burden.

28. The case as spoken by DW1 is that it was only on 23.1.1975 plaintiff informed him that she wanted to do something about her property and wanted a document writer to be arranged. PW3 says that on 23.1.1975 after knowing the nature of the document and after preparing draft, he received Rs.750 from plaintiff. One big circumstance against defendants is that the stamp papers were purchased long before 23.1.1975. It is seen that the documents were written on various stamp papers purchased from various sources and some of the stamp papers were purchased even in the name of third parties. It is seen that stamp papers have been purchased on 16.1.1975, 18.1.1975, 20.1.1975 and 21.1.1975. What was the necessity for purchasing stamp papers from a place miles away in the name of first defendant and what was the necessity of getting stamp papers in the name of third parties for preparing the document if only the idea of executing the settlement deed arose only on 23.1.1975 or afterwards.

29. The definite case of plaintiff in the plaint is that she has not spent a paisa for stamp paper and as registration fee. This fact is not denied in the written statement. In paragraph 7 of the plaint, plaintiff categorically stated that she had not paid single paisa for purchasing stamp papers. Even if we believe the statement that on 23.1.1975 a suggestion came from plaintiff to

write the document and if we believe the case of DW3 that he received the stamp value from plaintiff, it can only be on 23.1.1975. But the stamp papers are purchased long before that date on which date there was not even discussion regarding execution of the document. There is no explanation from any of the witnesses as to explain this inconsistency. Thus circumstances are made out to get a document from plaintiff long before 23.1.1975.

30. DW3 admitted that it is the usual practice to purchase the stamp paper in the name of person who spends the amount. In this case, stamp papers are purchased in the name of first defendant. Under what circumstance first defendant became the purchaser of stamp papers is not explained when plaintiff paid the amount.?

31. According to DW1, he came to know about the nature of the document only when he went to sub-Registrar's Office at the instance of plaintiff, only on 23.1.1975, after the document was registered. It is belied by the evidence of DW2. According to him DW1 wanted him to be the attester to the document and it is on his request he went to sub-Registrar's Office. If this case is believed, they were well aware that a document is being prepared or already prepared. DW2 is a close friend of DW1. Even though in the chief examination he said that he went at the request of PW1., he reailed from the statement in his cross examination and admitted that it is at the request of first defendant he attested the deed. It is also admitted by him, by the time he went to sub- Registrar's office, the document is already prepared. Even though in chief examination he stated that in his presence DW3 read over the document, in the cross examination he pleaded ignorance whether document writer read over the document to plaintiff?

32. The state of DW3 that he demanded Rs.800 and received Rs.750 from plaintiff and it was thereafter he purchased the stamp papers in belayed by the circumstances. If the Stamp papers are already purchased long before 23.1.1975, further statement that there was discussion between plaintiff and DW3 regarding the nature of the document and how it was to be prepared are also false. Both DW2 and 3 were also present before Sub-Registrar. When plaintiff says that no question was put to her about the nature of the document, these witnesses would have stated as

to what transpired before sub-Registrar. They did not speak anything about the procedure before the sub-Registrar.

33. It is true that DW1 says.

A peculiar procedure is stated by DW1. It is clear therefrom that sub-Registrar did not question about the nature of the document. This statement

is also against the pleadings of the case. In the written statement paragraph 7, it is stated thus,

....As a matter of fact, there is a statutory requirement to put certain questions with reference to the nature of the document and the capacity to

execute the document in cases when a gift or settlement deed is presented. The attesting witnesses were aware of the document and as a matter of

fact the defendants learn that the document was read over and approved by the plaintiff.

It is clear from this statement that the defendants have also heard the procedures have been complied with. When there is absolutely no evidence

that sub-Registrar read over the contents of the document to be executed and when the executant pleads that she is ignorant about the contents,

registration by itself will have no legal validity.

34. In Rani Purnima Devi and Another Vs. Kumar Khagendra Narayan Dev and Another, was a case of Will wherein also the effect of registration

came for consideration. In paragraph 23 of the Judgment their Lordships held thus.

.... the mere fact that a will is registered will not by itself be sufficient to dispel all suspicion regarding it where suspicion exists, without submitting

the evidence of registration to a close examination. If the evidence as to registration on a close examination reveals that the registration was made in

such a manner that it was brought home to the testator that the document of which he was admitting execution was a Will disposing of his property

and thereafter he admitted its execution and signed it in token thereof, the registration will dispel the doubt as to the genuineness of the Will. But if

the evidence as to registration shows that it was done in a perfunctory manner, that the office registering the Will did not read it over to the testator

or did not bring home to him that he was admitting the execution of a Will or did not satisfy himself in some other way (as, for example, by seeing

the testator reading the Will) that the testator knew that it was a Will the

execution of which he was admitting, the fact that the Will was registered would not be of much value. It is not unknown that registration may take place without the executant really knowing what he was registering.

(Italics supplied)

35. What was the necessity to DW1 asking a plaintiff about the nature of document and that too in the sub-Registrar's office? If we are to believe

DW1, we have to assume that DW1 was an alias to sub-Registrar. When we go by the evidence of DW1, I feel that he is suppressing various

facts and his answers are also not honest and he is also not speaking truth. To say that he is not aware of Arumugham, the lessee and by whom

property is cultivated are something which could never be believed. It is admitted that D1 and D2 got married only at the instances of plaintiff and

her husband and she was brought up in that house years before the marriage. Such a person pleading ignorance of everything is a matter which can

never be believed by the Court.

36. Taking into consideration these evidence, I feel the defendants have miserably failed in discharging their burden. A document already prepared

was got signed.

37. An argument was taken by the learned Senior counsel that the case put forward by plaintiff that she wanted a power of attorney to be

executed is a story invented only for the purpose of the case and if that case cannot be believed, the entire edifice of plaintiff's allegation also

collapses. I do not find any merit in the said contention. On going by the evidence of PW1, I do not find any inconsistencies in what she pleads. It

is only natural on the part of an old lady to seek the assistance of her own kith and kin when no other persons are there to help her. It has come

out in evidence that her income is very meagre. Even when that income, which she is not getting, it is nothing strange in asking her own niece and

her husband to help her to collect the lease amount and also to take management of the property. From the evidence of DW1, it is also clear that

plaintiff had absolute faith in them and she believed them to the maximum. Basing on the absolute faith, if she sought their help, there is nothing

improper in believing her case. In the circumstances, I also believe the case of plaintiff that she has no proper vision and her hearing is also

impaired.

38. It is further argued by the learned senior counsel that the very litigation was only because one of the brothers of first defendant now wants to

get some benefit from the property and it is only at his instance the suit itself is filed. Counsel argued that one Chidambaram who is the person now

looking after the affairs of plaintiff and but for him, the litigation would not have been initiated. I do not find any merit in the said contention though I

find the name of Chidambaram in many of the places, during giving evidence, in the cancellation deed and also in Ex.A4 and Ex.B1.

39. In the result, I hold that the Judgment and Decree of the trial Court is liable to be set aside. It is declared that plaintiff has unknowingly put her

signature in Ex.B2 (registration copy of Settlement Deed). I also find that the mind of plaintiff did not accompany her signature and she never

intended to sign Ex.B2. Really it is a void transaction. Since plaintiff sought to set aside the document, I grant a decree setting aside the document

Ex.B.2. Pending appeal, appellant died and her legal heirs are appellants 2 to 4. Fifth appellant is only agreement holder. Even though appellants 2

to 4 alone have been impleaded first defendant is also legal heir under Hindu Succession Act. All of them are children of her brother and are

equally related. Therefore, decree for permanent injunction cannot be granted because parties have become co-owners. Hence, it is declared that

additional appellants 2 to 4 and first defendant are jointly entitled to plaint schedule property.

40. The appeal is allowed as above with costs throughout. Consequently, C.M.P. No.2618 of 1981 is closed.