Chockalingam vs Devaraj on 20 January, 2020

Equivalent citations: AIRONLINE 2020 MAD 57, (2020) 1 MAD LW 526

Author: G.K.Ilanthiraiyan

Bench: G.K.Ilanthiraiyan

S.A.No

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.01.2020

Date of Verdict : 20.01.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.2 of 2005
and C.M.P.No.6881 of 2018

1.Chockalingam
2.Adhimoolam
3.Nagan @ Nagarajan
4.Pachaiyammal ...Appellan

Vs.

1.Devaraj
2.Kalliyuran @ Chinnasamy
3.Mathan
4.Dhanapal
5.Mathu ...Respondent

Prayer :- This Second Appeal is filed under Section 100 of Civil Pro

Code against the judgment and decree dated 30.01.2004, in A.S.No.24

2002 on the file of the Principal District Court, Dharmapuri Distric

Krishnagiri reversing the decree and judgment dated 26.03.2002 in

O.S.No.218 of 2000 on the file of the District Munsif cum Judicial M

Court, Pochampalli.

For Appellants : Mr.P.Mani

For Respondents
For R1 and R2 : Mr.J.James
: R3 to R5 – No appearance

notice served

S.

JUDGMENT

This second appeal is directed as against the judgment and decree dated 30.01.2004, in A.S.No.24 of 2002 on the file of the Principal District Court, Dharmapuri District at Krishnagiri reversing the decree and judgment dated 26.03.2002 in O.S.No.218 of 2000 on the file of the District Munsif cum Judicial Magistrate Court, Pochampalli.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. The case of the plaintiffs in brief is as follows :-

> 3.1 The suit is filed for declaration and injunction. The suit property originally belonged to one, Rama Gounder, in turn he settled the property in favour of his daughter Kaveri Ammal and his son in law Mariappan by the registered settlement deed dated 05.10.1955. They are none other than the plaintiff's father and mother. In fact , the settlement deed was executed by the said Rama Gounder, since the Kaveri Ammal is the only daughter and she only maintained him. After execution of the settlement deed, the wife of the said Rama Gounder also died and the said Rama Gounder lived with the said Kaveri Ammal and Mariappan till his death. In the year 1997, he died and thereafter the 'B' schedule property in the year 1958 was leased out to one, http://www.judis.nic.in Ramaraj Chettiar by the said Kaveri Ammal and Mariappan. They received rent from the said Ramaraj Chettiar. Thereafter in the year 1999, the defendants 1 to 3 refused to pay rent to the plaintiffs in respect of 'A' schedule property since the property does not belong to the said Kaveri Ammal and Mariappan. As such, the defendants 1 to 3 were called upon to vacate the suit premises and also caused notice to them on 15.03.1995.

Therefore, the plaintiffs prayed for possession in respect of 'A' schedule property. In respect of 'B' schedule property, in the year 1999, the fourth defendant was trying to trespass into 'B' schedule property, and thereafter the fourth defendant also tried to sell the 'B' schedule property as if he is the owner of the property in favour of the fifth defendant. As such, again the plaintiff caused legal notice on 15.03.1999 to the fourth defendant. Hence, they filed the suit for possession in respect of 'A' schedule property as against the defendants 1 to 3 and declaration and injunction in respect of suit 'B' schedule property as against the fourth and fifth defendants.

4. Resisting the plaintiffs' case, the fifth defendant filed written statement, which was adopted by the fourth defendant and stated that in respect of 'A' schedule property, it belongs to the fifth defendant and in respect of 'B' schedule property, it belongs to the fifth defendant. He further stated that one, Rama Gounder executed settlement deed in favour of Kaveri Ammal and her husband on 05.10.1955

and the settlement deed is a created http://www.judis.nic.in one and not valid in the eye of law. In fact, when the said Rama Gounder was very much alive, on 12.11.1987, he executed a Will in favour of his two wives, namely Mangaiammal and Lakshmi Ammal. When he was alive, the said two wifes namely Mangaiammal and Lakshmi Ammal sold out 'B' schedule property in favour of the fourth defendant by the registered sale deed dated 12.10.1990 for the valid sale consideration. In fact, on the date of sale itself, the possession of the property was handed over in favour of the fourth defendant and all the revenue documents were mutated in the name of the fourth defendant. On 16.11.1990, the said property was sub divided by the order passed by the Tahsildar, Krishnagiri and he regularly paid revenue dues in his name in respect of 'B' schedule property. In turn, by the sale deed dated 11.02.1999, the property was sold out by the fourth defendant in favour of the fifth defendant for valid sale consideration and the possession was also handed over. They also claimed adverse possession, since from the date of sale, namely 12.10.1990, they were in possession and enjoyment of the suit property. Therefore, the plaintiffs are not entitled to seek any relief as prayed for and sought for dismissal of the suit.

5. In support of the plaintiff's case, P.W.1 was examined and seven documents were marked as Ex.A.1 to Ex.A.7. On the side of the defendants D.W.1 to D.W.7 were examined and Ex.B.1 to Ex.B.8 were marked. On considering the oral and documentary evidences adduced by the respective http://www.judis.nic.in parties and the submission made by the learned counsel, the trial Court decreed the suit in favour of the plaintiffs. Aggrieved over the judgment and decree of the trial Court, the defendants 4 and 5 alone preferred an appeal suit in A.S.No.24 of 2002 before the Principal District Court, Dharmapuri District at Krishnagiri. The first appellate Court on appreciating the materials placed on records, allowed the appeal by reversing the judgement and decree passed by the trial Court. Challenging the same, the plaintiffs have come forward with the present second appeal.

6. At the time of admission of the second appeal, the following substantial questions of law were framed :-

> a) Whether the lower appellate court erred in law in interfering with the presumption raised by the trial court under Section 90 of the Indian Evidence Act, 1872, with respect to the proof and genuineness of Ex.A-1 settlement deed, when there is no arbitrariness, capriciousness or perversity in drawing the said presumption by the trial court and when the trial court has raised the said presumption after considering the relevant facts and circumstances of the case? and
>
> b) Whether the lower appellate Court erred in law in dismissing the suit for non-joinder of all the legal representatives of the original owner of the suit properties (Rama Gounder), when the plaintiffs http://www.judis.nic.in claimed to the suit properties on the basis of Ex.A.1 settlement deed and not as the legal heirs of the deceased Rama Gounder, the original owner?

7. Thiru.P.Mani, the learned counsel appearing for the plaintiffs submitted that the first appellate court ought not to have interfered with the judgment and decree passed by the trial court, since the

trial court considered the presumption under Section 90 of the Indian Evidence Act with respect to the proof of Ex.A.1 settlement deed dated 05.10.1955 when there is no arbitrariness in trying the said presumption. When it being so, the first appellate court wrongly concluded that Ex.A.1 settlement deed was not proved in accordance with Section 68 of the Indian Evidence Act. In fact, the Ex.A.1 is an old document executed before 30 years and it was registered one and as such the trial court rightly raised the presumption under Section 90 of the Indian Evidence Act. He further submitted that according to the defendants the said Rama Gounder had two wifes and while he was very much alive he executed the Will in their favour. On the strength of the said Will, they executed sale deed in favour of the fourth defendant. Whereas the Will was executed long after the execution of settlement deed and the same was duly executed by the said Kaveri Ammal and Mariappan and it was acted upon by mutation of revenue records in favuor of the said Kaveri Ammal. Ex.A2 the rental agreement admittedly is not a registered one and it can be http://www.judis.nic.in used for collateral purpose. Since the portion of the 'A' schedule property was rented out to the defendants 1 to 3 and as such the non registration of said rental deed is not affected the case of the plaintiffs.

8. To support of his contention, the learned counsel appearing for the plaintiffs relied upon the following judgments :-

i) Irudayam Ammal and others Vs. Salayath Mary reported in AIR 1973 MADRAS 421 (V 60 C 131),

2.Probhat Chandra Kanrar and others Vs. Rani Bala Kanrar and others reported in AIR 1989 CALCUTTA 202, and

3.Kamakshi Ammal Vs. Rajalakshmi and others reported in AIR 1995 Madras 415.

9. Per contra, the learned counsel appearing for the defendants 4 and 5 submitted that they are not concerned with the 'A' schedule property and they are concerned about the 'B' schedule property alone. According to the fourth defendant, he purchased the 'B' schedule property from the wives of the said Rama Gounder by the registered sale deed dated 12.10.1990. Thereafter it was sold out in favour of the fifth defendant and all the revenue records were mutated in his name and he is paying revenue dues regularly. He further submitted that the plaintiffs failed to prove the settlement deed as http://www.judis.nic.in contemplated under Section 68 of the Indian Evidence Act. To prove the said settlement deed, no one was examined by the plaintiffs and as such it is not valid in the eye of law. Even while the said Ramasamy Gounder was very much alive, he executed the Will in favour of his two wifes and in turn they sold out the 'B' schedule property in favour of the fourth defendant. In fact, in the said Will, there is absolutely no mention about the settlement deed and as such it is a concocted and fabricated one since it is not proved by any of the legal principles.

10. He further submitted that the provisions under Section 123 of the Indian Evidence Act is also not complied with and as such the first appellate court rightly reversed the findings of the trial court and dismissed the suit filed by the plaintiffs. He further submitted that when the defendants 4 and 5 totally denied the execution of settlement deed and also stated that it is a false document and fabricated one, the plaintiffs ought to have examined any of the witnesses of settlement deed as

contemplated under Section 68 of the Indian Evidence Act and prayed for dismissal of the second appeal.

11. Heard Mr.P.Mani, learned counsel appearing for the plaintiffs and Mr.J.James, learned counsel appearing for the defendants 4 and 5. http://www.judis.nic.in

12. This Court considered the rival submissions made by the learned counsel on either side.

13. The suit property originally belonged to one Rama Gounder, who in turn executed settlement deed in respect of the suit properties in favour of his only daughter Kaveri Ammal and his son in law on 05.10.1995 and it is registered one. On the strength of the settlement deed, Kaveri Ammal and her husband Mariappan have executed rental agreement with one, Ramaraj by the deed dated 02.07.1958, which was marked as Ex.A.2. Thereafter the plaintiffs caused an advocate notice to the defendants which was marked as Ex.A.3 and the acknowledgment cards were marked as Ex.A.4 to Ex.A.6. There are two items of the suit property as A and B, in which the suit is filed for recovery of possession in respect of 'A' schedule property against the defendants 1 to 3. Though summons were received by the defendants 1 to 3, they did not appear before the trial court and they were set ex parte. Insofar as the 'B' schedule property is concerned, the suit is filed for declaration and injunction as against the defendants 4 and 5.

14. According to the defendants, they are not concerned with the 'A' schedule property and they concerned with only 'B' schedule property. The fifth defendant purchased 'B' schedule property from the fourth defendant for http://www.judis.nic.in valid consideration by the registered sale deed dated 12.02.1999, which was marked as Ex.B.1. The fourth defendant purchased the said property from the wives of Rama Gounder by the registered sale deed dated 12.10.1990, which was marked as Ex.B.2. The fifth defendant was examined as D.W.1 and the witness to the Ex.B.1 were examined as D.W.2 and D.W.3. The fourth defendant was also examined as D.W.4. The witnesses to the sale deed, Ex.B.2 was examined.

15. On perusal of Ex.A.1 and Ex.A.2, the suit property originally belonged to Rama Gounder and he executed settlement deed in favour of Kaveri Ammal and Mariappan, in turn they entered into a lease agreement with the defendants 1 to 3 and they were paying rent to them. Since they were set ex parte before the trial court, the suit was decreed in favour of the plaintiffs against the defendants 1 to 3 insofar as 'A' schedule property. They also did not prefer any appeal as against the judgment and decree passed by the trial court.

16. Insofar as the 'B' schedule property is concerned, according to the defendants 4 and 5, by the sale deed dated 12.10.1990, which was executed by Rama Gounder and his two wives in favour of the fourth defendant by the registered sale deed, in turn the said property was sold out in favour of the fifth defendant by the registered sale deed dated 12.02.1999, http://www.judis.nic.in which was marked as Ex.B.1. Whereas by Ex.A.1, dated 05.10.1955 itself, the Rama Gounder executed settlement deed in favour of his only daughter Kaveri Ammal and his son in law Mariappan by the registered settlement deed. Thereafter it was also acted upon by the settlees and executed rental agreement in favour of defendants 1 to 3 dated 02.07.1958, which was marked as Ex.A.2. In fact, the

entire property was handed over to the said Kaveri Ammal and Mariappan and they were in possession and enjoyment of the suit property. Ex.A.1, settlement deed is an old document and the same was executed before 45 years from the date of initiation of the suit. In this regard, it is relevant to extract the provisions under Section 90 of the Indian Evidence Act as below:

> "90. Presumption as to documents thirty years old:-
>
> Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested."

17. Since the Ex.A.1 is a 45 year old document, it has to be presumed by drawing the presumption under Section 90 of the Indian Evidence Act and the trial court rightly raised the presumption under Section http://www.judis.nic.in 90 of the Indian Evidence Act. So admittedly, the sale deed executed by the said Rama Gounder and his two wives subsequent to the said settlement deed only on 12.10.1990. In fact, the settlement deed was already acted upon by the father and mother of the plaintiffs by renting out the said property in favour of the defendants 1 to 3 and from the date of the settlement deed, the possession was also handed over to them by Ex.A.2 dated 02.07.1958.

18. In this regard, the learned counsel for the plaintiffs relied upon the judgment in the case of Irudayam Ammal and others Vs. Salayath Mary reported in AIR 1973 MADRAS 421 (V 60 C 131), wherein it is held as follows:

> 6. From the above, it will be seen that this is a clear case to which the well known maxim "Omnia praesumuntur contra spoliatorem" applies (vide Broom's Legal Maxims 1939, 10th Edn., pp. 637 to 640). "If a man by his tortious act, withholds the evidence by which the truth of his case would be manifested, every presumption to him disadvantage will be adopted." Irudaya Udayar and the plaintiff who is a tool in the formers hands are clearly the wrong-doers and every adverse inference will be drawn against them as they should take the responsibility for the non-production of the original will. The first defendant has also satisfactorily accounted for the non-production of the original Will and the non-

examination of the attesting witnesses as they are dead and no useful evidence could be given by the scribe. The first defendant http://www.judis.nic.in has, therefore, proved the will by other acceptable, satisfactory evidence supplemented by such presumptions as would arise under the provisions of the Regulations Act and S. 114 of the Evidence Act on the facts of this case. There is a general presumption about the execution of the will arising under Section 60 of the Indian Registration Act (vide Mullah's Indian Registration Act 7th Edn., page 256). It is true that registration, by itself, in all cases, is not proof of execution, but if no other evidence is available, the certificate of registration is prima facie evidence of its execution and the certificate of the registering

officer under Section 60 of the Registration Act is relevant for proving execution. (See discussion in Sarkar's evidence latest 12th Edn., p. 640). As observed by the Privy Council in Md. Ihtisham Ali v. Jamna Prasad, AIR 1922 PC 56, registration is a solemn act and if no other evidence is available the court can presume that the Registrar performed his duty of satisfying himself that the document presented to him for registration was duly executed by the executant and the executant was duly and properly identified before him. The same view was taken in Gopaldas v. Sri Thankurji, AIR 1943 PC 83, in which after referring to the earlier decision of the Privy Council in AIR 1922 PC 56 (referred to above) Sir George Rankin observed that the evidence of due registration is itself some evidence of execution as against the other side. There is a full discussion on this question as to the presumption arising from the fact of due registration, coupled with the presumption arising under Section 114 of the Indian Evidence Act in a Bench decision of the Mysore High Court in Hutchegowda v. Chennigegowda, AIR 1953 Mys. 49, in which it was held that the evidence that a document was duly registered is some evidence of its execution by the person by whom it purports to have been executed.

http://www.judis.nic.in There is a full discussion of the relevant case law including the decision of the Privy Council in AIR 1922 PC 56 aforesaid. In Revanna v. Dr. A. V. Ranga Rao, AIR 1952 Mys 119, it was observed that in cases where it is impossible for any person to prove execution of a document on account of the death of all the persons concerned the best and the only possible evidence that may be available is that of a certified copy of the registered document and that in such cases a presumption could arise under Section 60 of the Registration Act along with Section 114 of the Evidence Act (see also Kashibai v. Vinayak,). It will be seen that in the ultimate analysis, the problem in each case is 'has the best evidence been adduced on the facts of each case'; in the instant case we have not the slightest hesitation in holding that this essential test for arriving at the truth has been amply satisfied.

19. He also relied upon the judgment in the case of Probhat Chandra Kanrar and others Vs. Rani Bala Kanrar and others reported in AIR 1989 CALCUTTA 202, wherein it is held as follows:

> 9. One objection against the acceptance of the said deed of gift, Ext. G, was that' the document was not proved in accordance with the provision of Section 68 of the Evidence Act.

That view found favour with the learned court below. In answer, the defendants submitted that under Section 90 of the Evidence Act, the court could accept the document as authentic, notwithstanding the non-compliance of the provision of Section 68 of the Evidence Act. Indeed, it appears that there is no conflict involved in between Sections 68 and 90 of the Evidence Act. http://www.judis.nic.in Section 68 lays down the normal Rule for proof of documents, such as deeds of gift, will etc. Section 90 of the Evidence Act is regarding presumption as to document 30 years old. Under Section 90, where any document, purporting or proved to be 30 years old, is produced from any custody which the court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting. It may be noted that Section 90 gives a discretion to the court to presume about the genuineness of certain documents. Now

whether or not this presumption is to be made in favour of a particular transaction, will depend upon the facts of the case. In this case, we notice that this document, 30 years old, was acted upon all throughout and, presumably, within the knowledge of the plaintiffs. P. W. 1, coming to depose for the plaintiffs, has answered that no objection was raised against the withdrawal of compensation money by Ram Chandra alone. From Ext. C, the certified copy of the award, it appears that the award stood in the name of Ram Chandra in respect of plots 70, 71 and 71/621. Not only an award was made in favour of Ram Chandra but also the award money was withdrawn by Ram Chandra without any objection from any quarters. From Exts. B-11 and B-12, the records of right, we find that the plots covered by the deed of gift, were recorded in the names of Ram Chandra and others, Ram Chandra's ten annas share having been shown there. That is another instance that the deed of gift was acted upon. P. W. 1 has merely stated in evidence that as far as he thinks his grandfather did not execute any deed of gift, as alleged in the written statement. Then he adds that the signatures, purporting to be of Surendra Nath and appearing in the impugned deed of gift were not of Surendra Nath, http://www.judis.nic.in This' evidence that the signatures were not of Surendra Nath is not sufficient to throw overboard an ancient document and the subsequent event on the basis of that document. We feel that it is a fit case where the presumption under Section 90 should be made, notwithstanding Section 68 of the Evidence Act.

10. Mr. Dutt, appearing for the respondents, has referred to the decision reported in 31 Cal WN 215 : (AIR 1927 Cal 102) for the proposition that it was essential for the parties, claiming through the deed of gift to prove that all the processes, for compliance of the provision of Section 68 of the Evidence Act, were exhausted. It is no doubt observed that merely taking out summons and warrant is not enough to comply with the provision of Section 68, but the processes of the court, such as mentioned in Order 16, Rule 10, C.P.C. have all got to be exhausted. This decision is also cited by the learned Advocate for the appellant. It is in that very decision that regardless of the question as to whether the document in question forms the foundation of the party's right or whether it is sought to be used as a piece of evidence, the court may in a proper case rely on the presumption contained in Section 90 of the Evidence Act. Therefore, the position is fortified that notwithstanding Section 68 of the Evidence Act, the court in a proper case can make a presumption under Section 90 of the Evidence Act. The two provisions, Sections 68 and 90 of the Evidence Act, do not militate against each other. Therefore, the right of the court to presume under Section 90 is not controlled or curtailed by Section 68 of the Evidence Act. We have already observed that whether or not the presumption should be made, will depend upon the facts of the particular case. These -facts have already been discussed and on the basis of these facts, we are inclined to make the presumption. Thus, the case reported in 31 http://www.judis.nic.in Cal WN 215 : (AIR 1927 Cal 102) in no way affects the proposition that a document, 30 years old may be presumed to be genuine and authentic.

20. He also relied upon the judgment in the case of Kamakshi Ammal Vs. Rajalakshmi and others reported in AIR 1995 Madras 415, wherein it is held as follows:

"21. Further, paragraphs 3 and 4 of the plaint specifically says that Pavunambal accepted the settlement. Further, the plaint also says that the original settlement deeds are also filed along with the plaint. As against this particular allegation regarding the original settlement deeds being filed by the plaintiff, the written statement only states that the original settlement deeds were always with

the 7th defendant and they were never in the custody of Pavunambal or plaintiff or defendants 1 to 6. In other words, there was no allegation a all in the written statement that the original settlement deeds were stolen by the plaintiff's father (1st defendant) from the 7th defendant. The suggestion comes in only when PW 1 is examined. Further, DW 1, the 8th defendant does not at all depose so. We cannot accept the story of plaintiff's father or the plaintiff stealing away the original settlement deed from the 7th defendant. Once that story is not acceptable there could be the necessary inference that the original settlement deeds were given over to the donee Pavunambal at the time of the gifts. In Samrathi v. Parasuram (AIR 1975 Pat 140) also it has been held, relying on Kalyana-sundaram Pillai v. Karuppa Moopanar (AIR 1927 PC 42) and Atmaram Sakharam v. Vaman Janardhan (AIR 1925 Bom 210 (FB)), that the fact of the gift deed being handed over by the donor to the donee, was sufficient evidence of his having accepted the http://www.judis.nic.in gift. Learned counsel for the appellant was vehemently contending that despite the settlement deed, the 7th defendant alone continued to possess and enjoy the property and that there was also no mutation of names in the Municipal register pursuant to the settlements. According to him, from this, it can be inferred that there was no acceptance of the gift by the donee. But, we are unable to accept this contention. Even assuming that the 7th defendant continued to possess and enjoy the property alter the above referred to settlements, that by itself would not necessarily lead to the inference that there was no acceptance by the donee of the gifts. Even after accepting the gifts, the donee Pavun-ambal could have allowed her father, the 7th defendant to enjoy the income from the properties settled in view of the relationship of father and daughter between the donor and donee. Further, Exs.A.3 and A.4 specifically recite that possession has been handed over to the donee. When such recital is there, a presumption arises that possession has been handed over to the donee. (Vide Fatima Bibi v. Khairum Bibi (AIR 1923 Mad 52). No doubt, it may be rebuttable presumption. But, in the present case, delivery of possession of the gifted property is not absolute requirement, for the completeness or the validity of the gift as found in Muslim Law of Gifts. All that we have to find in the present case is whether there was acceptance of the gift by the donee. Even assuming that the donor continued to be in possession and enjoyment of the property gifted, from that alone, it cannot be necessarily inferred that acceptance by the donee of the gift was not there. No doubt in Venkatasubbamma v. Narayana-swami (1954) 1 Mad LJ 194: (AIR 1954 Mad 215) it was held that the facts relied on to draw an inference of acceptance must be by acts of positive conduct on the part of the donee, and not merely passive acquiescing such as http://www.judis.nic.in standing by when the deed was executed or registered. But, the facts in the present case are different as mentioned above and there are enough features as mentioned above to at least hold that there was implied acceptance of the gifts in question. Even (1954) 1 Mad LJ 194 (supra) has held that law requires acceptance, which may even be implied. Therefore, we concur with the Court below in holding that Exs.A.3 and A.4 settlements are valid."

21. The Hon'ble Supreme Court of India and the Hon'ble Division Bench of this Court have categorically held that the gift deed being handed over by the donor to the donee, was sufficient evidence of his having accepted the gift. Further the position is fortified with notwithstanding Section 68 of the Indian Evidence Act, the court in a proper case can make a presumption under Section 90 of the Evidence Act. The two provisions, Sections 68 and 90 of the Evidence Act do not militate against each other. Therefore, the right of the court to presume under Section 90 is not controlled or curtailed by Section 68 of the Evidence Act. Further held that the registration by itself,

in all cases, is not proof of execution, but if no other evidence is available, the certificate of registration is prima facie evidence of its execution and the certificate of the registering officer under Section 60 of the Registration Act is relevant for proving execution.

22. In the case on hand, admittedly, Ex.A.1 was executed on http://www.judis.nic.in 05.10.1955 and it is duly registered one. It is a 45 year old document and as such this Court necessarily raises presumption under Section 90 of the Indian Evidence Act. Though no witness was examined to prove Ex.A.1, Ex.A.1 is also registered one and it is a prima facie evidence for its execution. After execution of settlement deed, the said Rama Gounder and his wife were living with the plaintiffs' father and mother. Thereafter, the parents of the plaintiffs did not take steps to mutate the revenue records in their favour. The said Rama Gounder died in the year 1997 and the said Kaveri Ammal is the only legal heir to the said Rama Gounder. Therefore, if at all any challenge on the settlement deed, it can be done only by Rama Gounder or his other legal heirs. Till his life time, he did not cancel the settlement deed and no one challenged the settlement deed executed in favour of the parents of the plaintiffs.

23. Even assuming as that the said Rama Gounder along with his wife executed settlement deed in favour of the fourth defendant on 12.10.1990, definitely he would have mentioned about the settlement deed and also he would have cancelled the settlement deed by necessary recital in the said sale deed. On perusal of Ex.B.2, there is no recital to that effect and as such the subsequent sale deed could not have been executed by the said Rama Gownder and his wives. Insofar as the adverse possession is concerned, the fourth defendant purchased the 'B' schedule property only on http://www.judis.nic.in 12.10.1990 and thereafter he sold out the same in favour of the fifth defendant on 12.02.1999. To claim adverse possession, they should have proved their possession and enjoyment for more than 12 years. Admittedly the suit was filed in the year 2000 and according to the fifth respondent he purchased the property in the year 1999. Therefore the fourth and fifth defendants did not prove their possession and enjoyment for more than 12 years and as such they are not entitled for adverse possession in respect of 'B' schedule property. Further when the said Rama Gounder executed settlement deed in respect of the suit property in favour of the parents of the plaintiffs, he had no right or title over the suit property and as such the sale deed executed by him is not valid. Consequently, on the strength of the said sale deed, the execution of the sale deed in favour of the fifth respondent is also not valid. Therefore, the trial court rightly decreed the suit in favour of the plaintiffs. The first appellate court without considering those aspects, dismissed the suit on the ground that the plaintiffs did not prove the settlement deed executed by the said Rama Gounder in favour of their parents as contemplated under Section 68 of the Indian Evidence Act.

24. From the aforesaid discussions, the findings of the first appellate court are perverse and against the law when the Will and the sale deed executed by the Rama Gounder are subsequent to the settlement deed, these documents are not valid in the eye of law since the said Rama Gounder had no title or right over the property after execution of the settlement deed http://www.judis.nic.in in favour of his daughter and son in law.

25. In the light of the above discussions, the substantial questions of law formulated in this appeal are accordingly answered in favour of the plaintiffs and against the defendants. Accordingly, the

judgment and decree dated 30.01.2004 passed in A.S.No.24 of 2002 on the file of the Principal District Court, Dharmapuri District at Krishnagiri are set aside and the judgment and decree dated 26.03.2002 passed in O.S.No.218 of 2000 on the file of the District Munsif cum Judicial Magistrate Court, Pochampalli are restored.

26. In fine, the second appeal is allowed with costs. Consequently, connected miscellaneous petition is closed.

20.01.2020 Index : Yes/No Internet : Yes/No Speaking order/Non-speaking order lok http://www.judis.nic.in To

1. The Principal District Court, Dharmapuri District at Krishnagiri

2. The District Munsif cum Judicial Magistrate Court, Pochampalli.

3. The Section Officer, V.R. Section, Madras High Court, Chennai.

http://www.judis.nic.in G.K.ILANTHIRAIYAN, J.

lok Judgment 20.01.2020 http://www.judis.nic.in