

Ramachandra Reddy (Dead) Thr. LRs. & Ors.

v.

Ramulu Ammal (Dead) Thr. LRs.

(Civil Appeal No. 3034 of 2012)

14 November 2024

[C.T Ravikumar and Sanjay Karol,* JJ.]

Issue for Consideration

Whether the deed executed, which gave rise to the present property dispute, was a gift deed or a deed of settlement; Whether the High Court was justified in reversing the concurrent findings of fact while exercising jurisdiction under Section 100 of the Civil Procedure Code, 1908.

Headnotes[†]

Transfer of Property Act, 1882 – Section 122 – Indian Stamp Act, 1899 – Section 2(24) Determination of whether an instrument is Gift Deed or Deed of Settlement – Held, the instrument in the case is Deed of Settlement – The consideration need not always be in monetary terms and can be in other forms as well – Non-monetary consideration accepted for Deed of Settlement:

Held: The High Court, while considering Second Appeal of the Respondents, reversed the concurrent findings of the Trial Court as well as the First Appellate Court that the deed executed in relation to the property in favour of one Govindammal was settlement deed – The High Court found that the deed in question was a gift deed and not one of settlement as the element of ‘adequate consideration’ was missing and instead, the transfer was effected out of love and affection for Govindammal – Held, the transfer of property in favour of Govindammal was in recognition of the fact that she had been taking care of the transferors and would continue to do so while also using the same to carry out charitable work – The High Court has erred in taking a constricted view of ‘consideration’, especially taking note of the fact that the settlement was between the members of a family – As such, Govindammal (now her heirs) is indeed entitled to 2/3rd share in the property, in terms of the settlement deed. [Paras 14, 15.4, 15.5, 16.4]

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Civil Procedure Code, 1908 – Section 100 – Power to interfere in Second Appeal limited:

Held: The jurisdiction to interfere in findings where the Courts below have been *ad idem*, is limited and such limitation is well expounded – Referring to *Gurdev Kaur v. Kaki* (2007) 1 SCC 546 there is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however gross or inexcusable the error may seem to be, and they added a note of warning that no court in India has power to add to, or enlarge, the grounds specified in Section 100 – Further reference made to *V. Ramachandra Ayyar v. Ramalingam Chettiar*, 1962 SCC OnLine SC 155 & *Nazir Mohammed v. J. Kamala* (2020) 19 SCC 57 on the limitations of the High Court while exercising jurisdiction under Section 100 of the CPC. [Paras 16, 16.1]

Civil Procedure Code, 1908 – Section 100 – Meaning of substantial question of law Reiterated:

Held: Referring to *Suresh Lataruji Ramteke v. Sau. Sumanbai Pandurang Petkar*, 2023 SCC OnLine SC 1210, *Santosh Hazari v. Purushottam Tiwari* (2001) 3 SCC 179, it was held that a substantial question of law, which is *sine qua non* for the maintainability of a second appeal, shall be one which is not previously settled by law of land or a binding precedent – The said substantial question of law shall not have material bearing on the decision of case – Further, a new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter – Therefore, it will depend on facts of each case. [Paras 16.3]

Case Law Cited

CIT v. Ahmedabad Urban Development Authority [2022] 15 SCR 899 : (2023) 4 SCC 561; *Chidambara Iyer & Ors. v. P.S. Renga Iyer* [1966] 1 SCR 168 : 1965 SCC OnLine SC 293; *Gurdev Kaur v. Kaki* [2007] Supp. 1 SCR 27 : (2007) 1 SCC 546; *V. Ramachandra Ayyar v. Ramalingam Chettiar*, 1962 SCC OnLine SC 155; *Nazir Mohammed v. J. Kamala* [2020] 7 SCR 763 : (2020) 19 SCC 57; *Suresh Lataruji Ramteke v. Sau. Sumanbai Pandurang Petkar* [2023] 12 SCR 488 : 2023 SCC OnLine SC 1210; *Santosh Hazari v. Purushottam Tiwari* [2001] 1 SCR 948 : (2001) 3 SCC 179 – referred to.

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List of Acts

Transfer of Property Act, 1882; Contract Act, 1872; Stamp Act, 1899.

List of Keywords

Gift Deed; Settlement Deed; Consideration.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3034 of 2012

From the Judgment and Order dated 22.04.2009 of the High Court of Madras in SA No. 10 of 2005

Appearances for Parties

Raghenth Basant, S. Nagamuthu, Sr. Advs., Balaji Subramanian, Akash Kundu, Ms. Hima Bhardwaj, A. Lakshminarayanan, G. Balaji, Ms. Jyotika Malhotra, Advs. for the Appellants.

V. Prabhakar, R. Anand Padmanabhan, Sr. Advs., Ms. Jothy Prashar, Ms. Ruchi, Arimardhan Sharma, Ms. Vidya Vijay Singh Pawar, Shashi Bhushan Kumar, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Sanjay Karol, J.

1. This appeal is directed against the judgment and order of the High Court of Judicature at Madras dated 22nd April, 2009 passed in S.A.No.10 of 2005. The judgment impugned in turn was passed in a first appeal preferred against judgment and decree dated 3rd December, 2003 passed by the Additional District Court-cum-Chief Judicial Magistrate, Fast Track Court No.V, Chengalpattu in A.S.No.35 of 2001 which confirmed the judgment and decree dated 13th September, 2001 of the Subordinate Judge, Tiruvallur in O.S.No.89 of 1995.
2. The brief facts, putting the controversy in context are :-

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- 2.1 One Balu Reddy, was survived by his three sons viz., Venkatarama Reddy, Venkata Reddy @ Pakki Reddy¹ and Chenga Reddy.² They enjoyed the property in question as coparceners to Hindu joint family property. The *first* of the three siblings, Venkatarama Reddy died leaving behind his son Markandeya Reddy as legal heir; the *second*, Venkata Reddy @ Pakki Reddy died leaving behind his daughter Govindammal as legal heir; and the *third* brother Chenga Reddy died issueless, with each of them having 1/3rd share in the undivided property. Chenga Reddy transferred his share in favour of Govindammal in the year 1963 by way of a settlement deed dated 5th May, 1963. It is urged that thereafter, Govindammal, enjoyed uninterrupted possession of the property to the extent of 2/3rd.
- 2.2 In 1986 the original settlement deed in favour of Govindammal was given to Markandeya Reddy to bring into effect the 2/3rd share of Govindammal in the official records since at that time no partition by metes and bounds was effected and without prejudice to their rights, they had been cultivating random, separate portion(s) of the land. Such change was, allegedly never effected and neither were the documents returned to her. As such the suit for partition was filed on 30th March, 1995.

2.3 **Plaint**

In the plaint following prayers were made :-

“ ”

(9) The plaintiffs therefore pray that this Hon'ble Court may be pleased to pass a decree.

- (a) for partition and separate possession of 2/3rd share from out of the suit properties in favour of the plaintiffs and to put the plaintiffs in possession of the same.
- (b) directing the defendant to pay cost of the suit and

1 In certain places the record reflects alias of Venkata Reddy as Bachi Reddy Or Bakki Reddy

2 In certain places the record reflects alias of Chenga Reddy as Renga Reddy

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(c) such other reliefs as this Honourable court may deem fit proper in the circumstances of the case and render justice accordingly."

2.4 Written Statement

- ❖ In the written statement filed by the original defendants, it has been averred that in the year 1984 the *Panchayat* decided on a division between the parties giving one-half of the property to both. *Patta* was not separated for 48-78 acres. His right and title extend to 25½ acres.
- ❖ Survey No.201/1 was incorrectly included in the name of the defendant, and when change thereof, was applied for by Govindammal, the same was carried out without any objection. Survey Nos.201/L and 201/B were incorrectly shown against the name of Govindammal and actually belonged to the defendant.
- ❖ There is a lake on the property to which the defendant had half right.
- ❖ The plaintiff is not in joint possession of properties and is not entitled to the relief of partition.

PROCEEDINGS BEFORE THE TRIAL COURT

3. The Trial Court framed the following issues:

- "1. Whether the marking of the suit properties are correct or not?
2. Whether the suit properties are properties of the plaintiff?
3. Whether the settlement deed executed in the year 1963 have been brought into force?
4. Whether the partition made in the year 1964 is genuine?
5. Whether the plaintiff is entitled for partition as prayed?
6. What are the other relief?"

Having considered the first four issues, the Court, in answer to the fifth issue, concluded that the plaintiffs were entitled to 2/3rd share of the property. The same was awarded with costs.

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4. The learned First Appellate Court found for its consideration one solitary issue which was the correctness of the judgment and decree of the Trial Court. Having considered the evidence on record, the conclusion arrived at is as under:-

“... Therefore, for the above said facts, I finally decided that Ex.A1 registered settlement deed was executed for valuable consideration and as such the deceased Govindammal has got 2/3rd share in the suit properties on the basis of Ex.A1 registered settlement deed and as such her legal heirs, i.e. the respondents/plaintiff are entitled to get 2/3rd share in the suit properties as prayed for in the plaint. Earlier, I decided that the appellant/second defendant has miserably failed to prove that the suit properties were divided by states and bounds orally in the year 1964 and mutation of revenue records in the name of the deceased first defendants. Thiru Markandeya Reddy would not affect the rights of the respondent/plaintiff over the suit properties and also in view of the registered settlement deed dated 5.5.1963 the respondent/plaintiff are entitled to get 2/3rd share in the suit properties as prayed for in the plaint and as such there is no reason to interfere with the findings of the trial court and also no merit in this Civil appeal. In view of the above said findings, I come to the conclusion that this civil appeal is liable to be dismissed and I answered this point accordingly.”

PROCEEDINGS IN SECOND APPEAL

5. Substantial questions of law, arising in the appeal were recorded in para 6 of the impugned judgment. It reads as under :
- "1. Whether the courts below have considered the material evidence in the case and have properly applied the law relating to consideration and appreciation of family arrangement while considering the defence put forward by the defendant in this regard?

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2. Whether the courts below have properly considered the material evidence in the case namely, Ex.A1, which is a gift (settlement) deed gifting undivided share in the coparcenary property?
3. Whether the Courts below properly considered the material evidence, namely Ex.B16 and Ex.B17, which have been brought into existence by the plaintiffs pending the suit which contain the admission to lean towards the family arrangement?"
6. The High Court concluded that, **(a)** the learned Courts below correctly concluded that oral partition had indeed not taken place; **(b)** that the Courts below committed an error in holding the settlement deed to be valid and thereby awarding 2/3rd share in favour of the original plaintiffs i.e., heirs of Govindammal; **(c)** that Ex.B16 and B17, cannot be taken as sufficient evidence to prove oral partition. In view of this conclusion, the judgment and decree of the Courts below were modified to the extent that:-

"...Accordingly, the plaintiffs being the legal representatives/legal heirs of Venkata Reddy are entitled to one half share and the defendant being the sole widow of D1 Markandeya Reddy s/o Venkata Rama Reddy is entitled to another half share in all the suit properties. Accordingly, preliminary decree shall follow..."

RIVAL CONTENTIONS

7. We have heard Mr. Ragenth Basant and Mr. S. Nagamuthu, learned senior counsel for the appellants, and Mr. V. Prabhakar, learned senior counsel for the respondents. We have also perused the written submissions filed by the parties.
8. The appellants submit chiefly, as under :
 - 8.1 The Courts have correctly and concurrently rejected the defence of oral partition; thus, this issue has obtained finality;
 - 8.2 What flows from the above is that the rights under the settlement deed of 1963 have not been given up and were enforceable. However, the High Court holding that this deed was actually a gift deed and not a settlement deed, was a position being

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not open to the Court. This instrument and the rights flowing therefrom have been admitted in the written statement, wherein a specific defence has been taken stating thus :

“The right under the 1963 settlement deed were given up before the Panchayatdars in view of the family arrangements.”

- 8.3 Once such a defence of family arrangement stood rejected, the plaintiff has to necessarily succeed. This is more so in the view, that the High Court would not ordinarily disturb concurrent findings of fact.
- 8.4 The settlement deed in favour of Govindammal was executed since she had been looking after the food and shelter needs of her father and uncle and, subsequently, she would perform charitable work therewith. Such documents have been repeatedly held to be settlement deeds and not gift deeds.
- 8.5 In furtherance of the submissions made the appellants have submitted a compilation of case laws.
9. Mr. V. Prabhakar, learned senior counsel appearing on behalf of the respondents, submitted as under :-
 - 9.1 The nomenclature of the document hardly makes any difference. It is the contents of the document, that are to be taken into consideration. The document although, may be styled as a settlement deed, was, in fact, a gift deed.
 - 9.2 The intention has been manifested by both express language and necessary implication. There is no reservation of power of life estate or vesting rights.
 - 9.3 The appellants have never questioned the nomenclature of the document and that the document in question, was not a gift deed. The term ‘settlement’ is used in terms of settlement of a dispute.
 - 9.4 There is no element of consideration in Ex.A1 (settlement deed) and love and affection are not elements of ‘consideration’ under the law.
 - 9.5 Documentary evidence such as separate *pattas*, *kist*, receipts, *adangals*, drive home the point of oral partition. The exclusive

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enjoyment of properties under separate *pattas* and separate sub- divisions cannot be ‘brushed aside.’

OUR VIEW

10. In the above backdrop, the question for us to decide is whether, in the facts and circumstances of the case, the High Court was justified in overturning the concurrent findings of the Trial as well as the First Appellate Court. The second question to be considered is whether the deed executed, which gave rise to the present property dispute, was a gift deed or a deed of settlement.
11. The settlement deed executed in favour of Govindammal, which is said to have given her right over 2/3rd of the subject property, is reproduced for reference:

“DOCUMENT NO.485/1963

| | |
|--|--|
| <p>Settlement deed for Rs. 5000/- This settlement deed has been executed on 5th May 1963 in favor of Govindammal wife of Thondi Krishna Chettiar resident of Chengalpattu District, Uthukottai sub district, Katturamanathapuram panchayat board area by Pakki Reddi(1) and Chenga Reddi sons of Boyee Reddi of Ramanathapuram village that with all of our consent and good faith and bona fide execute this settlement deed that you are the only daughter of Bagi Reddi and that we do not have any wife or children or legal heirs and you happened to be the daughter of our elder brother Chenga Reddi and that since we do not have any wife or children and you happened to have looked after us very well till now ad that herein after you will look after our food and shelter needs and in the belief that you would do all the charitable work</p> | |
|--|--|

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We execute this settlement deed in respect of properties worth Rs. 5000/- in favor of you and give possession to you today itself and therefore from today onwards you have the exclusive, right, title and possession in those properties, you, your heirs, successors and assigns will have the exclusive rights, title and possession and we assure that there is no encumbrances in those properties and any encumbrances find in future, we would settle them at our own expenses. The properties given to you this settlement deed are, value of the property at Amayappanpakkam village is Rs. 500/-. Out of our inherited property of 4.32 acres of land in dry survey number 176 in Amambakkam village, Ammampakkam panchayat board area, Uthukottai sub district and Chengalpattu district we have two third share after giving one third share to Markandeyan son of our elder brother and out 4.39 acres of dry land in survey number 221 with patta number 558 in Seethanperi Amaran village in Amapakkam panchayat board area worth Rs. 4000/- we have 2/3rd share leaving 1/3rd share to Markendeyan son of our elder brother and out of 8.41 acres in survey number 201 we have a right of 2/3rd share leaving 1/3rd share to Markendeyan son of our elder brother. Out of 2.69 acres of land in dry survey number 201, we have 2/3rd right leaving 1/3rd to Markendeyan son of our elder brother and out of 9.89 acres in Ramanathapuram village in Ramanathapuram panchayat board in Uthukottai sub-district, Chengalpattu district is Rs.500 /-. 17.74 acres in survey number 163 which is in our possession and enjoyment. North of the street, east of the housing plot of Subbi Reddi and Govinda Reddy, west of the dry land of Thondhi Krishna Reddy and others west of the pattai in the middle, a house with measurement east to west about 250 feet, north to south about 200 feet in which we have 2.3rd right leaving 1/3rd to Markendeyan son of our elder brother and out of 2 acre 40 cents in survey number 160 we have 2/3rd right leaving 1/3rd to Markendeyan son of our elder brother including the standing palm trees, tamarind trees, and neem trees and other standing palm trees, and neem trees and other standing trees over which we have

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2/3rd right leaving 1/3rd to Markendeyan son of our elder brother. This settlement deed has been executed by us with all our consent and good faith and bona fide. xxxLeft hand Thumb impression of Baghi Reddy and Left hand thumb impression of Renga Reddy. Sd.

Witnesses.”

12. Although submissions have been advanced by learned senior counsel for the parties on a variety of issues, in our considered view, the scope for interference of this Court is limited only to the question as formulated in para 10.
13. The dispute, as is evident from the above, hinges on whether the deed executed granting Govindammal 2/3rd share of the property is a gift deed or a settlement deed. In making such a determination, it is imperative to examine the meaning of ‘gift’ and ‘settlement’. The Transfer of Property Act, 1882³ defines ‘gift’ as: –

122. “Gift” defined.—“Gift” is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made.—Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.

If the donee dies before acceptance, the gift is void.

The term ‘settlement’ does not find a place in the TPA. It is defined under the Indian Stamp Act, 1899. Section 2 (24) reads: –

Settlement.—“Settlement” means any non-testamentary disposition, in writing, of movable or immovable property made—

- (a) in consideration of marriage,
- (b) for the purpose of distributing property of the settlor among his family or those for whom he desires

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to provide, or for the purpose of providing for some person dependent on him, or

(c) for any religious or charitable purpose;

'disposition' for reference, means a devise "*intended to comprehend a mode by which property can pass, whether by act of parties or by an act of the law*" and "*includes transfer and charge of property*".⁴

14. Disagreeing with the Courts below, the High Court held that the deed executed was, in fact, a gift deed. The reasoning in this regard is: –

"20. From a conspectus, therefore, of the definitions contained in the dictionaries and the books regarding a gift or an adequate consideration, the inescapable conclusion that follows is that "consideration" means a reasonable equivalent or other valuable benefit passed on by the promisor to the promise or by the transferor to the transferee. Similarly, when the word "consideration" is qualified by the word adequate it makes consideration stronger so as to make it sufficient and valuable having regard to the facts, and circumstances of the case. It has also been seen from the discussions of the various authorities mentioned above that a gift is undoubtedly a transfer which does not contain any element of consideration in any shape or form. In fact, where there is any equivalent or benefit measured in terms of money in respect of a gift the transaction ceases to be a gift and acquires a different colour. ... Love, affection, spiritual benefit and many other factors may enter in the intention of the donor to make a gift but these filial considerations cannot be called or held to be legal considerations as understood by law. It is manifest, therefore, that the passing of monetary consideration is completely foreign to the concept of a gift having regard to the nature, character and the circumstances under which such a transfer takes place..."

4 Stroud's Judicial Dictionary, as referred to in Madras Refineries Ltd. v. Chief Controlling Revenue Authority, Board of Revenue, Madras (1977) 2 SCC 308

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21....In fact, the legislature has made its intention clear that gift is excluded by qualifying the word "consideration" by the adjective "adequate." Assuming that love and affection, spiritual benefit or similar other factors may amount to consideration for the gift, the word "adequate" is wholly inapplicable to and inconsistent with the concept of a gift because it is impossible to measure love and affection, the sentiments or feelings of the donor by any standard yardstick or barometer. The words "adequate consideration" clearly postulate that consideration must be capable of being measured in terms of money value having regard to the market price of the property, the value that it may fetch if sold, the value of similar lands in the vicinity , so on and so forth. In the instant case, the legislature by using the word "adequate" to qualify the word "consideration" has completely ruled out and excluded gift from the ambit of clause (b) of the proviso. In these circumstances, therefore, the argument of Mr. Kacker that by not expressly excluding gift, clause(b) of the proviso includes gift cannot be accepted particularly in the face of the clear and unambiguous language used by clause (b) of the proviso in describing the nature of transaction as one for adequate consideration."

The primary reason, as it appears from the above extract for the High Court holding that the deed in question was in fact a gift deed and not one of settlement, is that it found that the element of '*adequate consideration*' was missing and instead, the transfer was effected out of love and affection for Govindammal.

15. Since the point which the High Court in its wisdom found to be the determining factor *qua* the nature of the deed is the element of consideration and its adequateness, let us consider the same.
 - 15.1 It shall be useful to refer to certain provisions of the Indian Contract Act, 1872. The relevant part of the interpretation clause thereof says -

"2...

(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from

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doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;

(e) Every promise and every set of promises, forming the consideration for each other, is an agreement;

(f) Promises which form the consideration or part of the consideration for each other are called reciprocal promises;..."

15.2 The discussion regarding the meaning of the word '*consideration*' made in ***CIT v. Ahmedabad Urban Development Authority***,⁵ is relevant for our purposes here:

"165. The term "consideration" however is broader. The plain meaning is a monetary payment, for something obtained, in the form of goods, or services. In *CCE v. Fiat India (P) Ltd.* [CCE v. Fiat India (P) Ltd. (2012) 9 SCC 332 : (2012) 12 SCR 975] this Court explained the meaning of that term : (SCC pp. 360-61, paras 68-73)

"68. ... Consideration means something which is of value in the eye of the law, moving from the plaintiff, either of benefit to the plaintiff or of detriment to the defendant. In other words, it may consist either in some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility, given, suffered or undertaken by the other, as observed in *Currie v. Misa* [*Currie v. Misa*, (1875) LR 10 Exch 153] .

69. *Webster's Third New International Dictionary* (unabridged) defines, "consideration" thus:

'Something that is legally regarded as the equivalent or return given or suffered by one for the act or promise of another.'

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70. In Vol. 17 of *Corpus Juris Secundum* (pp. 420-21 and 425) the import of “consideration” has been described thus:

‘Various definitions of the meaning of “consideration” are to be found in the textbooks and judicial opinions. A sufficient one, as stated in *Corpus Juris* and which has been quoted and cited with approval is “a benefit to the party promising or a loss or detriment to the party to whom the promise is made....”

At common law every contract not under seal requires a consideration to support it, that is, as shown in the definition above, some benefit to the promisor, or some detriment to the promisee.’

71. In *Salmond on Jurisprudence*, the word “consideration” has been explained in the following words:

‘A consideration in its widest sense is the reason, motive or inducement, by which a man is moved to bind himself by an agreement. It is for nothing that he consents to impose an obligation upon himself, or to abandon or transfer a right. It is in consideration of such and such a fact that he agrees to bear new burdens or to forego the benefits which the law already allows him.’

xxx

xxx

xxx

73. From a conspectus of decisions and dictionary meaning, the inescapable conclusion that follows is that “consideration” means a reasonable equivalent or other valuable benefit passed on by the promisor to the promisee or by the transferor to the transferee. Similarly, when the word “consideration” is qualified by the word “sole”, it makes consideration stronger so as to make it sufficient and valuable having regard to the facts, circumstances and necessities of the case.”

(Emphasis supplied)

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15.3 ***Chidambara Iyer & Ors. v. P.S. Renga Iyer***⁶ which cites similar authorities is also important for our consideration.

15.4 What flows from the above-cited judgments as also provisions of law, is that ‘*consideration*’ need not always be in monetary terms. It can be in other forms as well. In the present case, it is seen that the transfer of property in favour of Govindammal was in recognition of the fact that she had been taking care of the transferors and would continue to do so while also using the same to carry out charitable work. Although the deed stands reproduced *supra*, for immediate recollection the relevant extract is once again reproduced hereinbelow:

“...execute this Settlement deed that you are the only daughter of Bagi Reddi and that we do not have any wife or children or legal heirs and you happened to be the daughter of our elder brother Chenga Reddi and that since we do not have any wife or children and you happened to have looked after us very well till now and that herein after you will look after our food and shelter needs and in the belief that you would do all the charitable work.”

15.5 In that view of the matter, the High Court has erred in taking such a constricted view of ‘*consideration*’, especially taking note of the fact that this settlement was between the members of a family.

16. The above conclusion apart, it was also to be demonstrated by the High Court that the reversal of concurrent findings by the Courts below was justified. The jurisdiction to interfere in findings where the Courts below have been *ad idem*, is limited and such limitation is well expounded. We may only refer to a few authorities.

16.1 Dalveer Bhandari J. in ***Gurdev Kaurv. Kaki***⁷ referred to various earlier judgments in the following manner-

“55. This Court again reminded the High Court in *Commr., HRCE v. P. Shanmugama* [(2005) 9 SCC 232] that the High Court has no jurisdiction in second appeal to interfere with the finding of facts.

6 1965 SCC OnLine SC 293

7 (2007) 1 SCC 546

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56. Again, this Court in *State of Kerala v. Mohd. Kunhi* [(2005) 10 SCC 139] has reiterated the same principle that the High Court is not justified in interfering with the concurrent findings of fact. This Court observed that, in doing so, the High Court has gone beyond the scope of Section 100 of the Code of Civil Procedure.

...

73. The Judicial Committee of the Privy Council as early as in 1890 stated that there is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however gross or inexcusable the error may seem to be, and they added a note of warning that no court in India has power to add to, or enlarge, the grounds specified in Section 100.

...

81. Despite repeated declarations of law by the judgments of this Court and the Privy Council for over a century, still the scope of Section 100 has not been correctly appreciated and applied by the High Courts in a large number of cases. In the facts and circumstances of this case the High Court interfered with the pure findings of fact even after the amendment of Section 100 CPC in 1976. The High Court would not have been justified in interfering with the concurrent findings of fact in this case even prior to the amendment of Section 100 CPC. The judgment of the High Court is clearly against the provisions of Section 100 and in no uncertain terms clearly violates the legislative intention.”

(Emphasis supplied)

16.2 A Bench of three learned Judges in ***V. Ramachandra Ayyar v. Ramalingam Chettiar***,⁸ as recently followed in ***Nazir Mohammed v. J. Kamala***,⁹ observed :-

8 1962 SCC OnLine SC 155

9 (2020) 19 SCC 57

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“11. It is well known that as early as 1890, the Privy Council had occasion to consider this aspect of the matter in *Mussummai Durga Choudhrain v. Jawahir Singh Choudhri*[17 IA 122]. In that case, it was urged before the Privy Council, relying upon the decision of the Calcutta and Allahabad High Courts in *Futtehma Begum v. Mohamed Ausur*[ILR 9 Cal 309] and *Nivath Singh v. Bhikki Singh* [ILR 7 All 649] respectively, that the High Court would be within its jurisdiction in holding that where the lower appellate court has clearly misapprehended what the evidence before it was, and has been led to discard or not give sufficient weight to other evidence to which it is not entitled, the High Court can interfere under Section 100. This contention was rejected by the Privy Council and it was observed that an erroneous finding of fact is a different thing from an error or defect in procedure, and that there is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however gross or inexcusable the error may seem to be. Their Lordships added that nothing can be clearer than the declaration in the Code of Civil Procedure that no second appeal will lie except on the grounds specified in Section 584 (corresponding to Section 100 of the present Code), and they uttered a word of warning that no court in India or elsewhere has power to add to or enlarge those grounds. Since 1890, this decision has been treated as a leading decision on the question about the jurisdiction of the High Court in dealing with questions of facts in second appeals.”

16.3 The principles regarding the exercise of jurisdiction under Section 100 of the Code of Civil Procedure, 1908 have been recently summarised by this Court in ***Suresh Lataruji Ramteke v. Sau. Sumanbai Pandurang Petkar***.¹⁰ Referring to ***Santosh Hazari v. Purushottam Tiwari***¹¹ it was held that a substantial question of

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law, which is *sine qua non* for the maintainability of a second appeal, shall be so, if:-

- "a) Not previously settled by law of land or a binding precedent.
- b) Material bearing on the decision of case; and
- (c) New point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. Therefore, it will depend on facts of each case."

- 16.4 In our considered view, none of the aspects referred to above appear to be met in this case, justifying the High Court's overturning of concurrent findings. Govindammal (now her heirs) is indeed entitled to 2/3rd share in the property.
17. In light of the above discussion, the appeal succeeds and is, accordingly, allowed. The impugned judgment of the High Court is set aside and the findings of the Court below, are restored.
- Pending applications if any, shall stand disposed of.

Result of the case: Appeal allowed.

[†]*Headnotes prepared by:* Mukund P Unny, Hon. Associate Editor
(Verified by: Liz Mathew, Sr. Adv.)