2026:MHC:3279

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.07.2026

Pronounced on : 07.08.2026

CORAM :

The Hon'ble Mr.Justice N.SATHISH KUMAR
and
The Hon'ble Mr.Justice M.JOTHIRAMAN

A.S.No.550 of 2023
and
C.M.P.Nos.18748 and 18751 of 2023

David Arul
S/o.Mr.Michael Arul,
Presently residing at
749, Second Avenue,
San Francisco, California 94118

Come down to Chennai and
residing at
348, Pantheon Road,
Egmore, Chennai 600 008. .. Appellant

Vs.

1.Michael Arul

2.M/s.Temple Financial Consultants Private Limited,
rep by its Managing Director
having office at
New No.121, Old No.347, Pantheon Road,
Egmore, Chennai-600 008.
[Amended and substituted as per memo
dated 08.04.2026 vide court order dt.02.06.2026
in A.S.No.550 of 2023]

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3.Advent Computer Services Ltd.,
rep by its Managing Director,
Michael Arul,
having office at Swathi Towers,
K22, 7th Floor, 5&7, Durgabai Deshmukh Road,
R.A.Puram, Chennai-600 028.

4.Tecways India Pvt. Ltd.,
rep by its Chief Executive Officer,
Suzanne Gerl,
having office at
No.46, LDG Road, Little Mount,
Nandanam, Chennai 600 015.
[RR3 and 4 address amended vide order
dated 18.12.2024 in CMP No.16602 of 2024]

5.G.Thyagarajan .. Respondents

This appeal suit has been filed under Section 96 of the Civil Procedure Code, 1908 seeking to set aside the judgment and decree passed by the learned XVIII Additional Judge, City Civil Court, Chennai on 06.07.2023 in O.S.No.4633 of 2019 and pass such further or other orders as this Hon'ble Court may deem fit and proper in the lights of the facts and circumstances of the case and thus render justice.

For Appellant : Mr.R.Parthasarathy, Senior Advocate
assisted by Ms.S.Rekha
for Mr.Rahul Balaji

For Respondents : Mr.AR.L.Sundaresan, Senior Advocate
for Mr.W.Thobias Arul for R-1

Mr.A.Palaniappan for R-5
No appearance for RR3 and 4
R2 - given up

- - - -

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JUDGMENT

N.SATHISH KUMAR, J.

Challenging the judgment and decree of the trial court, namely, XVIII Additional Sessions Judge, City Civil Court, Chennai made in O.S.No.4633 of 2019 dated 06.07.2023, dismissing the suit, the plaintiff therein has filed the present appeal suit.

2.The parties in this judgment are hereinafter referred to as per their rankings before the trial court.

3.The facts in the present case are as follows:

3.1.The suit was originally filed by the plaintiff seeking for the following reliefs:

> (a)declaring that the purported Deed of Cancellation dated 28.10.2008, registered as document No.2140 of 2008, with the SRO, Periamet, Chennai, executed by Mrs.Mabel Arul, cancelling the earlier deed of Settlement dated 22.10.2008 registered as Doc.No.2108 of 2008 with SRO Periamet, executed by her, is non-est, illegal and void and not binding on the plaintiff and consequently grant an order of Permanent Injunction restraining the 1st Defendant from in any manner dealing with the 'Suit Property' contrary to the terms and conditions of the Settlement Deed dated 22.10.2008;
>
> (b)declaring that the restrictive conditions in the Settlement Deed dated 22.10.2008 on the 1st Defendant to the effect 'that the 1st Defendant shall not in any manner alienate or encumber the 'Suit

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Property' or put any third party in possession of the 'Suit Property' during his lifetime and that the 1st Defendant shall use the 'Suit Property' only for the purpose of his private residence and shall also permit the Plaintiff to live in the 'Suit Property' if he so desires' are conditions binding upon the 1st Defendant;

c)declaring that the purported Lease Agreement dated 01.04.2011 entered into between the 1st Defendant and the 2nd Defendant and other purported arrangements between the 1st Defendant and /or the 3rd & 4th Defendants creating third party rights in the 'Suit Property' are illegal, void and not binding on the Plaintiff.

d)declaring that the occupation of the 'Suit Property' by defendants 2, 3 and 4 is illegal.

e)Permanent Injunction restraining the 1st Defendant, his men, agents, servants or anybody claiming through the 1st Defendant from in any manner obstructing or hindering the Plaintiff's right to reside in the 'Suit Property' during the lifetime of the 1st Defendant.

f)Permanent Injunction restraining the 1st Defendant from in any manner dealing with the 'Suit Property' thereby affecting the Plaintiff's right to own the 'Suit Property' absolutely free of all encumbrances after the lifetime of the 1st Defendant.

g)Mandatory Injunction forbearing the 1st Defendant from using the 'Suit Property' other than for the purpose of his private residence as per the conditions of the Settlement Deed dated 22.10.2008

h)To pass such further or other orders as this Hon'ble Court be deem fit in the circumstances of the case;

i)To Award costs of the above suit to the Plaintiffs and thus render justice.'

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3.2.The plaintiff is the only son of the first defendant and his mother Jennifer Arul and also the only grand child of late Mr.F.V.Arul and late Mrs.Mabel Arul, who are the parents of the fist defendant and paternal grand parents of the plaintiff. The plaintiff's grand father late Mr.F.V.Arul was the former Inspector General of police, Tamil Nadu and the plaintiff's grand mother late Mrs.Mabel Arul hails from a well known family of industrialists and was the eldest daughter of the well known industrialist late Mr.A.V.Thomas. The suit property was the absolute property of his grand mother by virtue of the gift deed dated 12.07.1956. The plaintiff along with his father-first defendant and his mother was residing adjacent to the suit property situated in No.348, Pantheon Road, Egmore, Chennai. Eversince the plaintiff was about 13 years, the first defendant hardly stayed at home apparently since the business started by him did not go well and the first defendant wanted to avoid creditors. Later, the first defendant has been independently living with a foreign lady named Suzanne Gerl in Chennai and was not residing in the family residential home at No.348, Pantheon Road, Egmore, Chennai. The plaintiff is living in the United States of America since 17.04.2000 on employment and is still continuing his employment in the USA. Further,

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he used to make frequent visits to Chennai to meet his parents and grand parents.

3.3.The plaintiff's grand father Mr.F.V.Arul died on 15.06.2006 and after his death, the plaintiff's grand mother continued to reside in the suit property till her death on 29.12.2008. The plaintiff being the only grand child, his grand mother was very fond of him and attached to the plaintiff and they were fully aware of the insecurity of the plaintiff owing to the unstable business dealings of the first defendant and the related financial problems, besides the involvement of the first defendant with the foreign lady while the marriage with the plaintiff's mother was still subsisting. The grand mother was an educated lady and she was always worried and concerned that the first defendant did not make any provision for the security of his family and also did not have a permanent residential home. The plaintiff's grand mother was very unhappy with the relationship of the first defendant with the foreign lady and the influence the foreign lady on the first defendant. The plaintiff's grand mother always would state her desire to the plaintiff that she wanted to provide for the plaintiff out of her estate, particularly the suit property but was frightened of the first defendant's reaction to the same and when the plaintiff came to Chennai on 11.10.2008, he visited his grand mother and she informed that she was

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resolute about going ahead and providing for the plaintiff. Therefore, in order to secure the interest of the plaintiff against the first defendant alienating or encumbering the suit property, all the inherited assets and also at the same time ensuring that the first defendant had a roof over his head for his personal residence, the plaintiff's grand mother voluntarily out of natural love and affection for the plaintiff and first defendant had executed the deed of settlement on 22.10.2008 registered as document no.2108 of 2008 with Sub Registrar's office at Periamet in respect of the suit property. The intention of the grand mother was very clear that the suit property is to vest in absolutely with the plaintiff subject to a life interest reserved for herself and right to residence for the first defendant. Even in the settlement deed, there is a provision that the beneficiaries can at any time jointly decide and turn the suit property to gain by developing, selling or otherwise dealing with the suit property in any manner and on such terms they jointly deem fit. In the settlement deed, the plaintiff's grand mother has not made any provision to revoke or cancel the settlement deed in any manner. The settlement deed was accepted by the plaintiff who was present at the time of execution of the settlement deed. The plaintiff has also received the original settlement deed after registration and he entered into constructive possession of the

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suit property in terms of the settlement deed.

3.4. Further, due to the anxiety expressed by the plaintiff's grand mother against the first defendant's reaction to the settlement deed made, the plaintiff had also registered a protest letter with the Sub Registrar, Periamet, dated 24.10.2008 which was also acknowledged by the Sub Registrar. Later, the plaintiff went to the USA and since the plaintiff's grand mother has unexpectedly become seriously ill in early December 2008, the plaintiff came down to India to visit his ailing grandmother on 18.12.2008. At that time, the plaintiff was shocked to notice the presence of increased security and every time when the plaintiff and his wife were present with the grand mother, the first defendant and Suzanne Gerl, the foreign lady, with whom the first defendant was living would attempt to make sure that they would be present. Evidently, the security guards in the suit property were instructed by the first defendant to inform the first defendant whenever the plaintiff or his wife came to the suit property to visit the plaintiff's grand mother. Even if the first defendant and the foreign lady were not in the suit property at those times, they would come back. The plaintiff learnt from one of the witnesses to the settlement deed that the first defendant had threatened her with dire consequence for having witnessed the settlement deed. Subsequently, the plaintiff also

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learnt after the death of his grand mother that the plaintiff's grand mother had executed a purported cancellation deed dated 28.10.2008 registered at document no.2140 of 2008 with the Sub Registrar Office at Periamet cancelling the settlement deed dated 22.10.2008. Even in the cancellation deed, the plaintiff's grand mother accepted the execution of the settlement deed dated 22.10.2008. The only reason given for cancellation was that the settlement deed has not been put into operation and she is in continuous possession and enjoyment of the suit property. It is averred that the purported cancellation deed was subsequently executed by the plaintiff's grand mother due to coercion, undue influence of the first defendant on the plaintiff's grand mother and the same is not valid in the eye of law.

3.5.The plaintiff on several occasions came to Chennai from the United States of America [USA] to try and resolve the issue relating to the suit property since there was a clause in the settlement deed which provided that the beneficiaries can at any time jointly decide and turn the suit property to gain by developing, selling or otherwise dealing with the suit property in any manner and on such terms they jointly deem fit. However, the first defendant on one pretext or the other evaded any discussion on the suit property and if the topic was discussed, his

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response was evasive and vague and never definite. On few occasions, the first defendant would make it appear that he wanted to sort out the issues relating to the suit property but when the matter was brought, the first defendant's only refrain would be that the plaintiff should trust him. Meanwhile, belying the trust the plaintiff had reposed on the first defendant, the first defendant has blatantly gone about creating purported third party interest in the suit property for his own selfish interest. The lease agreements entered into between the defendants 2,3 and 4 are not genuine, the same has been done only to create encumbrance over the suit property.

3.6.There was domestic violence proceedings also initiated against the first defendant by the plaintiff's mother. In the said proceedings, her mother was permitted to reside in the suit property along with the first defendant till the alternate accommodation was provided by the first defendant. However, the second defendant claiming to be the purported tenant under the first defendant, managed to get ex parte order and thereby evicted the plaintiff's mother from the suit property. It is further stated that the cancellation of settlement deed is not valid in the eye of law, since absolute transfer has already happened and settlement deed has been acted upon. The plaintiff, therefore, has filed the suit with the reliefs

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as stated above.

3.7.The first defendant, as father of the plaintiff, has admitted the relationship. It is stated by the first defendant that his mother had executed a Will dated 19.02.2002 bequeathing all her properties in favour of the first defendant with the right of residence to her husband till his life time. It is denied by the first defendant that the first defendant was in financial crisis and was living with a foreign lady. According to the first defendant, his mother was an independent lady and wife of a very senior and respectful police officer and therefore, there was no question of being afraid and frightened of the first defendant. On the other hand, there was close and loving relationship between them and as a result, his mother has left her last will and testament leaving all her assets movable and immovable to the first defendant. According to the first defendant, her mother has clearly stated in a letter to the first defendant that the plaintiff had misled, misrepresented and coerced her to sign the settlement deed in his favour without giving her chance to even read it and did not even leave a copy of which he had forced her to sign. Hence, it is stated that the plaintiff with the help of his relatives and friends, by coercive and undue influence, misrepresentation, deceit and fraud had obtained the settlement deed. Further, it is stated in the written statement that the

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document styled as settlement deed dated 22.10.2008 has not come into effect and therefore, the plaintiff cannot put forth his claim on the basis of the same and the settlement deed has not been acted upon by the plaintiff in any manner by way of possession or change of patta in his name. It is further stated that the plaintiff and his relatives forced the first defendant's mother to sign on dotted lines in the document, namely settlement deed which was prepared by the plaintiff's lawyer. This first defendant's mother had no liberty to consult her lawyer or even to consult the first defendant since the plaintiff and his relatives did not make available to her land phone which she used normally. They even went to the extent of removing all mobile phones from the domestic servants and the security guards in the house to ensure that the fraudulent act of the plaintiff in getting her to sign the settlement deed would not be discovered by the first defendant or by her brother, who was the chairman of A.V.Thomas Group of companies.

3.8.The first defendant's mother expressed her desire that she wanted to know the nature of the document and also wanted herself to read the document but the same was avoided by the plaintiff by not providing her spectacles that she demanded. The plaintiff appears to have hustled her to have the illegal documentation completed as the Registrar

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and others could not stay longer. The entire document was prepared by the plaintiff and hurriedly got signed by his mother and had it registered with the help of relatives and friends under extreme pressure and secrecy since it did not reflect the wishes of Mrs.Mabel Arul as evidenced by her letter she wrote to the first defendant. Further, it is averred that it was late in the evening with fading lights and his mother was denied spectacles to read the document and therefore, the document was brought secretly by coercion, undue influence, misrepresentation and by playing fraud on the aged mother. The plaintiff appears to have represented to the first defendant's mother that the first defendant had approved the document and as though the first defendant wanted the document completed hurriedly and thus, the document is vitiated by fraud. As soon as the first defendant's mother got a chance to read the certified copy of the settlement deed, she found that it did not reflect her wishes and on realizing that a fraud was being perpetrated on her, she immediately cancelled it by means of cancellation deed dated 28.10.2008.

3.9.It was further stated in the written statement that though the document was styled as 'settlement deed', it is only a Will as the life interest was reserved for the settlor and the first defendant in the dispositive clause. The said document has not become operative or

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effective on execution or registration but only can come into effect after the demise of the executant even if it is held to be duly executed and neither has the plaintiff in any way acted upon the settlement deed since possession was not given nor was there any change of patta in his name or any other action. Hence, according to the first defendant, all rights are to be enjoyed only 'in futuro' which is clearly a Will and not a settlement deed. The settlement deed has been cancelled by the mother and therefore, the Will dated 19.02.2002 is the last will and testament of Mrs.Mabel Arul and the said Will has become effective on the demise of the mother Mrs.Mabel Arul on 29.12.2008. The presence of the plaintiff during the execution of the settlement deed is sufficient to conclude the coercion, undue influence that the plaintiff has exerted in preparation of the document. It is also denied that the plaintiff has contacted the first defendant to resolve the issues and the first defendant gave evasive answers. It is further stated by the first defendant that only the plaintiff has evaded all the attempts to contact him. Only when his grand mother was seriously ill in December 2008, the plaintiff had responded to his voice mail and at that time, the first defendant met him and again, later, the plaintiff went back to the USA and was not in regular contact with the first defendant. Therefore, it is submitted that the settlement deed has not

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been acted upon and was obtained by undue influence, fraud and coercion and hence, he disputed the claim made by the plaintiff.

3.10.The 4th defendant claiming to be one of the tenants has filed written statement. According to her, on 22.10.2008, when Mrs.Mabel Arul was alone in the suit property, several staff members were present during the evening time and at that time, Mrs.Mabel Arul was compelled to execute certain documents. Thereafter, the 4th defendant came to know that the said document is the settlement deed. Later, Mrs.Mabel Arul also complained to staff members that she had been compelled to sign the papers and she was not even permitted to read the contents of the document as her spectacles was also taken away. The same was informed to the first defendant by staff members. Later the first defendant informed this 4th defendant that the document executed on 22.10.2008 was cancelled subsequently by his mother. According to the fourth defendant, the entire suit property was in possession of the first defendant.

3.11.The fifth defendant was a lis pendens purchaser and he has been impleaded in the pending suit by A.No.3958 of 2017. He has filed the written statement reiterating the allegations of the first defendant. Therefore, the same need not be repeated. The entire written statement of the lis pendens purchaser is just a replica of the first defendant's case.

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3.12.Originally, the suit was filed before the High Court and issues were also framed and during trial, on the point of pecuniary jurisdiction, the case was transferred to the City Civil Court, Chennai and was assigned number and trial continued.

3.13.Based on the pleadings, the following issues were framed:

(a)Whether the settlement deed dated 22.10.2008 executed in favour of the plaintiff is true and valid?

(b)Whether the settlement deed dated 22.10.2008 is executed without undue influence and coercion?

(c)Whether the cancellation of the settlement deed dated 28.10.2008 is valid in the eye of law?

(d)Whether the Will of grandmother of the first defendant dated 19.02.2002 is cancelled by execution of the settlement deed?

(e)Whether the settlement deed dated 22.10.2008 was acted upon by parties?

(f)To what other relief the plaintiff is entitled to?

3.14.On the side of the plaintiff, P.Ws.1 and 2 were examined and Exs.P.1 to P.15 documents were marked. On the side of the defendants, D.W.1 to D.W.4 were examined and Exs.B.1 to B.22 documents were

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marked. The Commissioner was examined as C.W.1 and Exs.C.1 and C.2 were marked. On appreciation of the evidence, the trial court dismissed the suit. Though the trial court did not agree with the contention of the first defendant that the document was executed by force or undue influence or by coercion, however dismissed the suit on the ground that the settlement deed has not been acted upon, possession was not taken and the revenue records has not been mutated and the original settlement deed has not been filed. Further, the trial court has come to the conclusion that since the life interest has been reserved, it should be treated as Will and therefore, the trial court dismissed the suit.

4. Challenging the dismissal of the suit, the present appeal has been filed by the plaintiff.

5.Learned senior counsel Mr.R.Parthasarathy, assisted by Ms.S.Rekha, learned counsel for Mr.Rahul Balaji, counsel on record for the appellant would submit that the execution of the settlement deed dated 22.10.2008 is not disputed. The executrix is an independent lady and the wife of the former Inspector General of Police, Mr.F.V.Arul, besides she was also a homeopathy doctor and she was the daughter of a well known industrialist Mr.A.V.Thomas. The very written statement filed by the first defendant clearly proves the fact that she is an

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independent and educated lady. It is not the case of the first defendant that the executrix at the relevant point of time was not in sound state of mind to take any rational decision. When the execution of the settlement deed itself is admitted and when the first defendant has taken the plea of undue influence, coercion and fraud, etc., the burden lies on him to establish the same. It is further contended that the fifth defendant in the suit is a lis pendens purchaser. He had purchased the property for Rs.10 crores, though the guideline for the said property was more than Rs.26 Crores. This by itself clearly indicates that it was only a speculative transfer to defeat the right of the plaintiff.

6.According to the learned senior counsel, the settlement deed has been acted upon and the plaintiff has asserted in many places of his pleadings that the original settlement deed has been handed over to the plaintiff which is not even disputed. Further, Ex.P.1 duplicate copy of the settlement deed registered at the same time has been filed. Therefore, the finding of the trial court that original has not been filed and therefore, the settlement deed was not acted upon has no legs to stand. Admittedly, the executrix reserved the life interest to herself and also has given the right of residence to the first defendant being her son and vested remainder to her grand son absolutely. Therefore, it is contended that merely because

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the life interest is reserved, the document at no stretch of imagination could be treated as Will. Further, in the settlement deed, the settlor has not reserved the right to revoke the document. Therefore, the unilateral cancellation of the settlement deed is void ab initio and is not permissible under law. The first defendant has forced her mother to execute the cancellation deed. It is contended that even in the cancellation deed, the executrix has never alleged about any undue influence, coercion or fraud, etc., for executing the settlement deed. The reason assigned for cancellation deed was only on the ground that since possession continued with her and revenue records has not been mutated and therefore, she is cancelling the document. This fact clearly belie the stand of the first defendant that the settlement deed is the result of undue influence, fraud or coercion.

7.The learned senior counsel further contended that the first defendant has also come to know about the settlement deed on the same day. Since he was given only the right of residence, the first defendant some how or the other saw that the cancellation deed was registered by the mother later. The plaintiff being employed in the USA, before leaving to the USA, anticipating some action by the first defendant, he has also filed the protest petition before the Sub Registrar seeking right over the

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immovable property under Ex.P.2. Therefore, it is contended that the settlement deed was acted upon and the document was also handed over to the plaintiff which was asserted by himself in many ways. Therefore, the finding of the trial court that settlement deed was not acted upon cannot be countenanced. Further, it is contended that the transfer had taken immediately and vesting also has taken place immediately when the document was registered. Though the suit has been filed with delay even after the plaintiff came to know about the cancellation in the month of December, 2008, the plaintiff has clearly explained the reasons for such delay. He has clearly spoken that there was discussion between him and the first defendant to resolve the issues and as the first defendant was evading, in order to safeguard his rights, the plaintiff had to file the suit within a period of limitation.

8.According to the learned senior counsel, alleged letter purported to have been given by the settlor to the first defendant on 08.11.2008 is an afterthought. Hence according to him, if that letter was given by his mother, there was no reason for the first defendant to not to refer the date of the letter in the written statement. Though the letter shows as if the plaintiff has removed all the relevant documents including passport, while cancelling the document, the identity of the settlor was verified

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only with the passport. Therefore, the reason of the first respondent is illogical. It is further contended by the learned senior counsel that Ex.B.5 letter dated 08.11.2008 has seen the light of the day only on 7th day of February 2020. This fact clearly indicates that Ex.B.5 is an afterthought and created only for the purpose of the case. Further, it is contended that merely the settlor reserved the life interest, the document cannot be treated as Will. Further, handing over the possession to validate the settlement is not sine qua non. Therefore, the trial court has not properly appreciated the evidence. In support of his submissions, the learned senior counsel has relied on a judgment of Hon'ble Supreme Court in ***N.P.Saseendran Vs. N.P.Ponnamma*** reported in ***(2025) 7 SCC 502*** for the proposition that delivery of possession is not sine quo non to validate the gift or settlement. The learned senior counsel has also relied on ***Gopal Krishnaji Ketkar Vs. Mohamed Haji Latif and others*** reported in ***AIR 1968 SC 1413*** to say that it is not the sound practice of those desiring to rely upon certain state of facts to withhold from the court the best evidence which is in their possession which could throw light upon the issue in controversy and to rely upon the abstract doctrine of onus of proof. The learned senior counsel relied on ***Union of India Vs. Ibrahim Uddin and another*** reported in ***(2012) 8 SCC 148***, to contend that it is

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open to a litigant to refrain from producing any document that he considers irrelevant; if the other litigant is dissatisfied, it is for him to apply for interrogatories or inspection and production of document. The learned senior counsel has relied on ***T.Ravi Vs. B.Chinna Narasimha*** reported in ***(2017) 7 SCC 342*** for the proposition that mutation is only for fiscal purposes and is not decisive of right, title or interest in the property which is within the domain of the civil court. Further, the learned senior counsel relied on ***K.N.Aswathnarayana Setty Vs. State of Karnataka*** reported in ***(2014) 15 SCC 394*** to say that a transferee pendente lite is bound by the decree just as much as he was a party to the suit. A transferee cannot deprive the successful plaintiff of the fruits of the decree if he purchases the property pendente lite.

9.The learned senior counsel Mr.AR.L.Sundaresan for Mr.W.Thobias Arul, learned counsel for the first respondent and Mr.A.Palaniappan, learned counsel for the fifth respondent would submit that the plaintiff was residing in the USA and has come to India on 11.10.2008. Later, Ex.P.1 settlement deed was executed on 22.10.2008 at 6.00 pm on special attendance. The settlement deed was prepared by one Siva Sangarane, Advocate. The executor all along used to consult her own lawyer, whereas in this case, a different lawyer has come and

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prepared the document. Immediately after the execution of the settlement deed, a protest petition was filed by the plaintiff within two days before the Sub Registrar Office. Therefore, that itself clearly shows that the settlement deed was not executed voluntarily. This fact also clearly shows that the settlement deed has not been executed voluntarily out of love and affection but was executed due to coercion, undue influence with interested witness, namely P.W.2. In the settlement deed, the life interest was reserved and the right of residence was also given for the son. Therefore, the above would clearly show that the document is only a Will. Further, it is contended that even assuming that it is a settlement deed, the settlement will complete only when the settlement is accepted. There is no evidence to show that the settlement was accepted by the plaintiff and was acted upon. Further, it the contention of the learned senior counsel that for changing the revenue records, no application whatsoever was filed by the plaintiff. Therefore, it is clear that the settlement deed has not been acted upon. Except filing the protest petition within two days, the plaintiff has not taken any steps even to change the patta. This clearly shows that the settlement was not acted upon. Till 2011, the plaintiff has not taken any action and further, the original settlement deed was not produced before the court.

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10.Further, it is contended that the evidence of P.W.2 is artificial in nature and she is an interested witness. Her evidence also clearly shows that the lawyer who prepared the settlement deed is her lawyer and the suit has been filed by his senior. Therefore, it is contended that the entire transaction creates serious doubt about the document. When the protest petition is filed, the only inference could be drawn is that the settlement deed was not acted upon. Further, it is contended that the mother had all along an intention to give the property to her son, namely first defendant. There was no necessity for her to cancel the earlier Will and for executing the settlement deed in favour of her grand child. The other allegation that the father had relationship with other lady was not established. Hence, it is contended that at the most, the document in question should be considered only as a Will. The evidence of P.W.1 itself somewhat substantiate the stand of the first defendant that the document Ex.P.1 was brought out by undue influence, coercion and fraud. There was no necessity to execute such document in the evening hours. This fact itself clearly shows that the document is not true and valid. In any event, the settlement deed has not been acted upon. The first respondent being the legatee under the Will which was executed at an earlier point of time by his mother, dealt with the property. Therefore, the trial court has rightly

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appreciated the entire evidence and rejected the case of the plaintiff/appellant.

11.In support of his contention, the learned senior counsel for the first respondent has also relied on ***N.P.Saseendran*** case and contended that there must be a transfer of interest in praesenti for a gift or a settlement and in case of postponement of such transfer until the death of the testator, the document is to be treated as a will. The fact that a document is registered, cannot be the sole ground to discard the contents and to treat the document as a gift, just because the law does not require a will to be registered. The act and effect of registration depends upon the nature of the document, which is to be ascertained from a wholesome reading of the recitals. When there is any ambiguity in understanding the nature of the documents from its contents, the subsequent conduct of the executant must also be considered to take a decision.

12.In the light of the above submissions, now the points that arise for consideration in this appeal are as follows:

(i)Whether the settlement deed dated 22.10.2008 is as a result of fraud, undue influence and coercion, etc.?

(ii)Whether the document dated 22.10.2008 is not a settlement deed, but it is a Will of the executor?

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(iii)Whether the settlement deed dated 22.10.2008 has been accepted and acted upon?

(iv)Whether the unilateral cancellation of the settlement deed is permissible under law?

(v)To what other relief, the parties are entitled to?

Point no.(i) :

13.The relationship between the parties are not in dispute. The Plaintiff / appellant is the son of the first defendant / first respondent. The properties originally owned by Mrs.Mabel Arul, wife of Mr.F.V.Arul, Former Inspector General of Police, State of Tamil Nadu. Mrs.Mabel Arul is also the daughter of well known industrialist Mr.A.V.Thomas. These facts are not in dispute. Similarly, Mrs.Mabel Arul was also an educated lady and a homeopathy doctor by profession. These aspects were clearly established on record. From the pleadings of the first defendant son and his written statement prove the fact that she was an independent lady and is not afraid of first defendant and is capable of taking decisions. These facts are pleaded in paragraph 9 of the written statement. Further, it is an undisputed fact that the first defendant and his wife were residing separately and there was matrimonial issues between the parties. The specific case of the plaintiff is that since he was employed in the USA and

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the first defendant suffered a set back in finance due to his business and he also had relationship with one lady Suzanne Gerl, the plaintiff's grand mother had decided to make some provisions for the plaintiff, who being the only grand child. She was concerned about the fact that the first defendant had not made any provision for the security of his family and also the fact that the plaintiff and his mother did not have any permanent residential home. As the first defendant was having relationship with a foreign lady Suzanne Gerl, the plaintiff's grand mother wanted to make some provision in favour of her grand child. Therefore, she had executed the settlement deed Ex.P.1. The specific pleading of the plaintiff with regard to the first defendant's relationship with other lady was not denied specifically, except evasive denial in the written statement in paragraph no.8, no specific denial was made, be that as it may. Even in the cross examination when a specific question was put to first defendant about the matrimonial matters, wherein the High Court has recorded a finding that he was living in adultery with Suzanne Gerl, the first defendant feigned ignorance. Further, for the question that a special leave petition filed by him against the order of the High Court before the Hon'ble Supreme Court was dismissed, he had not denied the same. However, he had stated that he has to check and he did not remember. These facts though appear

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to be irrelevant, but assumes significance to assess the circumstances under which Ex.P.1 came into existence.

14.It is not the case of any of the parties that the executor, namely Mrs.Mabel Arul has not possessed mental faculty or she was not in sound state of mind to take any decision at the relevant point of time. It is admitted case that Ex.P.1 registered settlement deed came into existence and it was registered on special attendance in the house of Mrs.Mabel Arul. P.W.2, one of the attesting witness, has spoken about the execution of the document and attestation made by her. P.W.2 is the relative of both the plaintiff and the first defendant and in fact, P.W.2, as per the admission of D.W.1, is none other than his own cousin's daughter. Though it is alleged by the first defendant that the document was created by the plaintiff with the help of relatives and friends, the fact remains that P.W.2 is also closely related to the first defendant. P.W.2 in her evidence has clearly narrated the manner under which the execution and attestation of the document completed on the same day. P.W.2 has clearly stated that even during the life time of Mr.F.V.Arul and Mrs.Mabel Arul, she stayed in their house and pursuing the college while studying in Stella Maris college during 1983-85 and she was treated as their grand daughter and even her marriage was arranged by Mr.F.V.Arul and Mrs.Mabel Arul.

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P.W.2 has further stated that after her marriage, she went to London, Mr.F.V.Arul and Mrs.Mabel Arul visited her family in England and blessed them. According to P.W.2, Mr.Michael Arul and plaintiff's mother are god parents of her eldest son and they visited the UK and attended the Christening ceremony at U.K. Her evidence has not been disputed in the entire cross examination.

15.The first defendant has projected the case as if P.W.2 was only related to the plaintiff. But the evidence of P.W.2 is to the effect that even after the marriage, she continued to have close contact with Mr.F.V.Arul and Mrs.Mabel Arul and further around August 2008, P.W.2's father-in-law informed her that her mother-in-law had prepared a Will and the same has been handed over to Mrs.Mabel Arul during their visits to Chennai and asked her to collect the same from Mrs.Mabel Arul in Chennai. Only for that purpose, she has come to Chennai and met Mrs.Mabel Arul to collect the Will left by P.W.2's mother-in-law. Again in the first week of October, 2008 she met her and during the course of discussion about the arrangement for registration of the properties in favour of P.W.2's son as per the Will, Mrs.Mabel Arul expressed her concern over her son Michael Arul's financial issues and also informed P.W.2 that she was unhappy with the first defendant since he had

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relationship with one Suzanne Gerl. Therefore, she has expressed her concern over those issues and P.W.2 informed Mrs.Mabel Arul to discuss the same with her son. Mrs.Mabel Arul also discussed the same with his son and expressed her desire to settle the properties in favour of the plaintiff with a life interest for Michael Arul. However, he was not happy and he did not agree for the same. Since Mrs.Mabel Arul's son did not agree, she had requested the P.W.2 for consulting a lawyer to help her. Therefore, she gave contact information of one Mr.Siva, Advocate who was working in the office of Mr.George Cherian. Thereafter, Mrs.Mabel Arul engaged the lawyer and decided to execute the settlement in favour of her grand child. P.W.2 and her mother were called to be the witnesses in the settlement deed. Accordingly, on 22.10.2008, P.W.2 and her mother went to the settlor's house at around 3.30 p.m. to 04.00 p.m. Thereafter, Mrs.Mabel Arul told P.W.2 that she had already instructed the lawyer to make arrangement for signing and registration of the settlement deed. Accordingly, around 05.30 p.m. to 06.00 p.m., the plaintiff also came to the house and the lawyer and the Registrar have also arrived. In their presence, Mrs.Mabel Arul read the settlement deed that was finalised by her with Advocate Mr.Siva. P.W.2 has clearly spoken that while reading the settlement deed, Mrs.Mabel Arul appeared to have understood the

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what was contained therein and signed the settlement deed in her presence. Thereafter, the first defendant stormed into the property and upon hearing that Mrs.Mabel Arul had executed the settlement, he abused P.W.2 and her mother and shouted that he will put them into jail. Therefore, P.W.2 and others left immediately. The entire evidence of P.W.2 with regard to the close contact with the family and she came to collect the Will left by her mother-in-law and at that time, when she discussed about her family life, Mrs.Mabel Arul has also expressed concern over her son's relationship with other lady and his financial crisis were not even disputed in the cross examination though it was elaborate on various other aspects.

16.The evidence of P.W.2 clearly shows that Mrs.Mabel Arul was hale and healthy and mentally sound during the execution of the settlement deed in the presence of Registrar and witnesses and later, the first defendant barged into the house and was unhappy and he abused P.W.2 and her mother. It is to be noted that Ex.P.1 is the registered document. Further, it is not the case of the first defendant that his mother Mrs.Mabel Arul was not mentally sound and she was not capable of understanding anything and to take any rational decision. But the only defence was that his mother was forced to sign the document and there

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was fraud and undue influence and coercion. She was not even given her spectacles. It is relevant to note that the very same settlor had executed the cancellation deed later which was marked as Ex.B.1. The cancellation deed Ex.B.1 dated 28.10.2008 clearly shows that the settlor while cancelling the earlier document, namely Ex.B.2 has affirmed that she had executed the settlement deed dated 22.10.2008 and registered the same as document no.2108 of 2008 on the file of the Sub Registrar Office, Periamet retaining the life interest for her and absolute right in favour of her grand son with right to residence to her son, namely the first defendant. In the registered cancellation deed, she had never whispered anything about the alleged undue influence, coercion, fraud and misrepresentation, etc. during the execution of settlement deed dated 22.10.2008. It is relevant to note that the settlement deed has been cancelled only on the ground that since the earlier settlement deed has not been put into operation as on date and the revenue records continue to remain in her name and therefore, she is cancelling the said document. If really the settlement deed was obtained by any other means fraudulently or by using force or coercion and undue influence, while cancelling the said document, namely the settlement deed, the settlor being an educated lady and she has knowledge of things, certainly would have disclosed the

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same during the execution of the cancellation deed. Whereas there is no whisper about anything with regard to the so-called coercion, undue influence or force, etc. as projected by the first defendant. The settlor has cancelled the settlement deed only on the ground that the settlement deed was not put into operation as on date and the revenue records was also not changed and only on that ground, the document was cancelled. Therefore, the very contention in the written statement as to the alleged undue influence, fraud, coercion, etc. in our view cannot be countenanced.

17.It is further to be noted that the plea of undue influence and coercion is overlapped and cannot go together and both should be pleaded separately. But except stating that there was coercion and undue influence, the full particulars about the same were not set forth in the written statement except the casual allegation of undue influence, fraud, etc. The only allegation that has been put forth by the first defendant is to the effect that the settlor has not been given an opportunity to read the document and she was not given spectacles, whereas the very settlor herself has not stated the same while registering the cancellation deed and that too when cancellation deed was registered by a different lawyer. If the allegations of the first defendant as pleaded in the written statement that the settlor was denied spectacles and there was force,

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misrepresentation, etc., the settlor being an independent and educated lady and Doctor by profession, would have certainly disclosed the same in the cancellation deed, wherein she had categorically admitted the execution of the settlement deed. In this regard, it is useful to refer to the decision of the Hon'ble Supreme Court in ***Gujarat Urja Vikas Nigam Ltd. v. Renew Wind Energy (Rajkot) (P) Ltd., (2024) 11 SCC 516***, wherein the Hon'ble Supreme Court in paragraph 72 has held as follows:

> '**72.** In *Shanti Budhiya Vesta Patel* v. *Nirmala Jayprakash Tiwari* [*Shanti Budhiya Vesta Patel* v. *Nirmala Jayprakash Tiwari*, (2010) 5 SCC 104 : (2010) 2 SCC (Civ) 299] , this Court held (SCC p. 112, para 32) that to establish fraud or coercion, there should be
>
> > "(*a*) *an express allegation of coercion or fraud, and (b) all the material facts in support of such allegations must be laid out in full and with a high degree of precision. In other words, if coercion or fraud is alleged, it must be set out with full particulars*."
>
> The Court had cited and applied the principle enunciated in *Bishundeo Narain* v. *Seogeni Rai* [*Bishundeo Narain* v. *Seogeni Rai*, 1951 SCC 447 : (1951) 1 SCR 548 : AIR 1951 SC 280] where it was held that: (SCC p. 454, para 22)
>
> > "*22*. … Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them

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in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice, however strong the language in which they are couched may be, and the same applies to undue influence and coercion. See Order 6 Rule 4 of the Civil Procedure Code."'

Though the plea of undue influence was taken by the first defendant, there is no evidence whatsoever on record. But the evidence of P.W.2 clearly indicates that the first defendant was present on the same day and abused the witnesses. According to the first defendant, her mother has given a letter dated 08.11.2008 Ex.B.5 indicating that she has been forced and coerced to sign the settlement by the plaintiff along with some relatives. Further she has also informed that some important documents, such as Will, details of assets and passport have been removed from the cupboard. It is relevant to note that the very writings in Ex.B.5 appears to be illogical. It is stated as if the plaintiff along with some relatives coerced her to sign the settlement, whereas P.W.2 who is all along treated as part of the family members and who was very close to Mrs.Mabel Arul, her name was found missing. Further, it is stated as if the passport and other documents, etc., were removed from the cupboard. But the fact remains that while registering the cancellation deed, her identify itself

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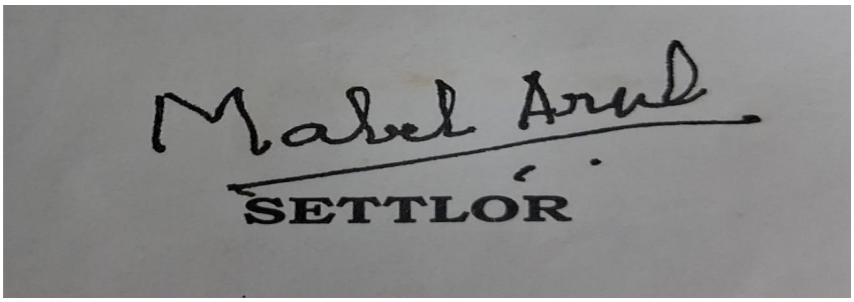
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was established by the passport. Further, it is relevant to note that though this letter dated 08.11.2008 said to have been given by her mother and it is stated in the written statement as if his mother has given the letter informing him that she was forced to sign the document, the date of the letter has not been mentioned anywhere in the entire written statement. If really the letter dated 08.11.2008 came into possession of the first defendant, the normal prudence demands that the date of the letter with particulars ought to have been pleaded in the written statement. Whereas the particulars of the letter has never been disclosed in the written statement and this letter has seen the light of the day only during the year 2020 when D.W.1 was examined for the first time in the court on 07.02.2020, after 12 years. This fact creates serious doubt about the very letter said to have been given by the mother to the first defendant. Though elaborate cross examination on both sides have been done, minute details about the letter have not been taken note at the time of trial. On a careful perusal of the letter, we entertain a doubt about the very signature said to have been made by the executant of the letter, namely the mother of the first defendant. Though the court cannot normally assume the role of expert, but at the same time, even with a bare eye, one could see a lot of difference in the admitted signature of the mother of the first defendant in

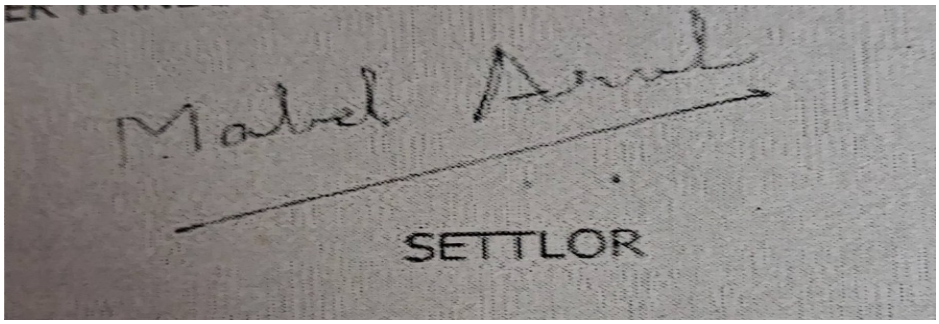
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Ex.P.1 and Ex.B.2, settlement deed. The admitted signature of Mrs.Mabel Arul in Ex.P.1 is scanned and reproduced below:



Similarly, the admitted signature of Mrs.Mabel Arul in Ex.D.1 cancellation deed is as follows:

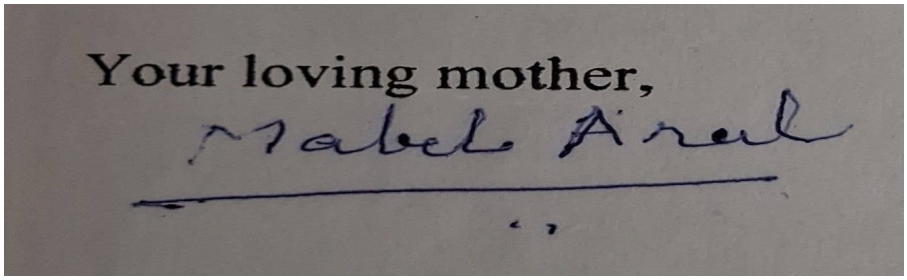


The signature of Mrs.Mabel Arul found in Ex.B.5 is also scanned and the same is as follows:

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18.A perusal of the above scanned signatures, it is seen that in letters 'M', 'L' and 'A', there are lots of dissimilarities and further there is difference in the line below the signature which is admittedly slanting and also in between the two dots, in the admitted signature, there is reasonable gap in Ex.P.1 and Ex.B.1, whereas in the line below the signature in Ex.B.5, it is horizontal and further, the two dots are also close to each other. Therefore, it also creates a serious doubt. Be that as it may, when the executor herself while registering the document never whispered anything about the alleged threat or undue influence or fraud, but she has clearly admitted the execution of the settlement deed, therefore, the contention put forth by the defendants that there was undue influence or fraud or coercion, etc. has to fall to ground.

19.It is relevant to note that though the defendants are entitled to take any number of inconsistent pleas, but during the trial they will have to elect any one of the pleadings. Without electing, the defendants cannot as a matter or right put forth his case on mutually destructive pleas.

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Having taken plea of undue influence, fraud or coercion, etc., the other plea was also taken as if the document was not the settlement deed but it was a Will. Even though he has taken a plea that his mother was not given spectacles and she was forced to sign the document, in his evidence, the first defendant has categorically stated that the same has been informed only by permanent staff Mr.Mani, who was present in the house at the time when the document was executed. However, he has not made any attempts whatsoever to examine the said staff or the security guard through whom such information said to have been received. Further, the settlor herself has clearly admitted the execution of the document without any undue influence or fraud, coercion and further, the execution of the document has also been clearly proved by the evidence of P.W.2, who is the close relative of both plaintiff and the first defendant. There was no motive whatsoever was established against P.W.2. Therefore, we are of the view that Ex.P.1 being the registered document and executed by an independent and educated lady, its execution has to be accepted. In this regard, it is useful to refer to a decision of the Hon'ble Supreme Court in ***Vimal Chand Ghervachand Jain and others Vs. Ramakant Eknath Jadoo*** reported in ***(2009) 5 SCC 713*** and in paragraph 25, it has been held as follows:

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'25. Pleadings of the parties, it is trite, are required to be read as a whole. The defendants, although are entitled to raise alternative and inconsistent plea but should not be permitted to raise pleas which are mutually destructive of each other. It is also a cardinal principle of appreciation of evidence that the court in considering as to whether the deposition of a witness and/or a party is truthful or not may consider his conduct. Equally well settled is the principle of law that an admission made by a party in his pleadings is admissible against him *proprio vigore*. (See *Ranganayakamma* v. *K.S. Prakash* [(2008) 15 SCC 673 : (2008) 9 Scale 144] .) ...'

20.Therefore, the plea of undue influence and coercion or fraud or misrepresentation also has to fall to ground. Without setting forth the nature of fraud or undue influence or coercion, merely on general allegations, the first defendant cannot establish such a plea. Hence, we are of the view that Ex.P.1 settlement deed is validly executed by the executor. The reason for executing such document, giving right of residence to her son and vested remainder to her grand child, namely the plaintiff, considering the other circumstances, particularly the relationship of the first defendant with other woman which is also established on record, is more probable.

21.Further, merely because the beneficiary also was present at the time of execution, the undue influence cannot be inferred. Admittedly, the

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plaintiff has come from the USA and therefore, he has no apparent control over his grand mother. Further, the plaintiff visits her grand mother whenever he came from the USA and further evidence also clearly indicates that the settlor was an independent and educated lady and she was not even afraid of the first defendant. Therefore, if really the document has been brought out in secrecy, there is no necessity for granting right of residence to the first defendant. This fact also indicates that Ex.P.1 document has been executed properly without there being any influence. Further, the nature of the threat, coercion and fraud has not been pleaded and the general allegations are not sufficient. The settlor has never disclosed anything about such acts either by the plaintiff or any of the witnesses in her subsequent document. Further, the plaintiff being the grand son of the settlor, it is natural for him to visit his grand mother whenever he came from the USA and therefore, the same cannot be taken as undue influence, thereby vitiates the document. Such being the position, the plea of the first defendant with regard to undue influence, fraud or coercion, etc. cannot be countenanced. Hence, the first point is answered accordingly.

Point No.(ii):

22.Ex.P.1 settlement when carefully perused, it is seen that it is a

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document registered, reserving the life interest and also giving right of residence to her son during his life time and also both the father and son were also permitted to jointly develop or sell the same and that the absolute right is given to the plaintiff herein. The clauses found in the Ex.P.1 document is relevant and the same reads as follows:

> a)a life interest for the FIRST BENEFICARY to reside in the 'Said Property' after the lifetime of the SETTLOR.
>
> b)after the lifetime of the FIRST BENEFICIARY the 'Said Property' absolutely to and in favour of the SECOND BENEFICIARY herein for his absolute use and enjoyment.'

23.It is to be noted that the first beneficiary is the son of the settlor and the second beneficiary is the grandson of the settlor. A very close reading of the settlement deed make it clear that the settlor has reserved life interest during her life time and has also provided right of residence to her son and absolute right to her grand child. It is relevant to note that the right of residence is given during the life time of the first defendant herein and therefore, the intention of the settlor can be seen from the above document, wherein the right of residence alone was given to the

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first defendant during his life time and the vested remainder to the grand child. There is specific condition incorporated by the settlor that the first beneficiary, namely the first defendant herein shall not in any manner alienate or encumber the said property or put any third party in possession of the said property during his life time and he shall use the property only for the purpose of his private residence and shall also permit the second beneficiary, namely the plaintiff to live in the said property if he so desires and it was further stated that if both the beneficiaries jointly decides for developing or selling the same, they can do so. Further, the clause 3 clearly shows that after the lifetime of the first beneficiary, the second beneficiary, namely the plaintiff shall absolutely own, possess and enjoy the property with full rights to alienate or otherwise deal with the said property in any manner as he deems fit. Further, clause no.5 makes it clear that the beneficiaries are at liberty to apply to the revenue and other authorities for securing patta in the beneficiaries name in respect of the said property. Therefore, the clauses in the settlement deed makes it very clear that the transfer of property was in praesenti and what was deferred was only the possession and the title was already vested. Therefore, the recitals in the settlement deed clearly shows that what was deferred was only the possession of the property in favour of the settlee and not the

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vesting of interest. Admittedly, only the right of residence is given to the first defendant, whereas the absolute right is given to her grand child, namely the plaintiff. Therefore, the interest in the property is vested on the settlee, the plaintiff and he has acquired vested right in the property immediately on the date of registration of the document. Merely because life interest was reserved in the document and possession was deferred, such document cannot be construed as Will. In this regard, it is useful to refer to a decision of the three Judges Bench of the Hon'ble Supreme Court in ***Renikuntla Rajamma Vs. K.Sarwanamma*** reported in ***(2014) 9 SCC 445***. The relevant paragraphs are paragraphs 9 to 16, which are as follows:

> '9. Chapter VII of the Transfer of Property Act, 1882 deals with gifts generally and, inter alia, provides for the mode of making gifts. Section 122 of the Act defines "gift" as a transfer of certain existing movable or immovable 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. In order to constitute a valid gift, acceptance must, according to this provision, be made during the lifetime of the donor and while he is still capable of giving. It stipulates that a gift is void if the donee dies before acceptance.
>
> **10.** Section 123 regulates the mode of making a gift and, inter alia, provides that a gift of immovable property must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. In the case of movable property, transfer either by a registered instrument signed as aforesaid or by delivery is valid under Section 123.

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Section 123 may at this stage be gainfully extracted:

> "**123.** ***Transfer how effected***.—For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.
>
> For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.
>
> Such delivery may be made in the same way as goods sold may be delivered."

11. Sections 124 to 129 which are the remaining provisions that comprise Chapter VII deal with matters like gift of existing and future property, gift made to several persons of whom one does not accept, suspension and revocation of a gift, and onerous gifts including effect of non-acceptance by the donee of any obligation arising thereunder. These provisions do not concern us for the present. All that is important for the disposal of the case at hand is a careful reading of Section 123 (supra) which leaves no manner of doubt that a gift of immovable property can be made by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. When read with Section 122 of the Act, a gift made by a registered instrument duly signed by or on behalf of the donor and attested by at least two witnesses is valid, if the same is accepted by or on behalf of the donee. That such acceptance must be given during the lifetime of the donor and while he is still capable of giving is evident from a plain reading of Section 122 of the Act. A conjoint reading of Sections 122 and 123 of the Act makes it abundantly clear that "transfer of possession" of the property covered by the registered instrument of the gift duly signed by the donor and attested as required is not a sine qua non for the making of a valid gift under the provisions of the Transfer of Property Act, 1882.

12. Judicial pronouncements as to the true and correct interpretation of Section 123 of the TP Act have for a fairly long period held that Section 123 of the Act

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supersedes the rule of Hindu law if there was any making delivery of possession an essential condition for the completion of a valid gift.

13. A Full Bench comprising five Hon'ble Judges of the High Court of Allahabad has in *Lallu Singh* v. *Gur Narain* [AIR 1922 All 467] referred to several such decisions in which the provisions of Section 123 have been interpreted to be overruling the Hindu law requirement of delivery of possession as a condition for making of a valid gift. This is evident from the following passage from the above decision where the High Court repelled in no uncertain terms the contention that Section 123 of the TP Act merely added one more requirement of law, namely, attestation and registration of a gift deed to what was already enjoined by the Hindu law and that Section 123 did not mean that where there was a registered instrument duly signed and attested, other requirements of the Hindu law stood dispensed with:

> "7. Dr Katju, on behalf of the appellant, has strongly contended that by Section 123 it was merely intended to add one more requirement of law, namely, that of attestation and registration, to those enjoined by the Hindu law, and that the section did not mean that where there was a registered document duly signed and attested, all the other requirements of the Hindu law were dispensed with. Section 123 has, however, been interpreted by all the High Courts continuously for a very long period in the way first indicated, and there is now a uniform consensus of opinion that the effect of Section 123 is to supersede the rule of Hindu law, if there was any, for making the delivery of possession absolutely essential for the completion of the gift. We may only refer to a few cases for the sake of reference, *Dharmodas Das* v. *Nistarini Dasi* [ILR (1887) 14 Cal 446] , *Balbhadra* v. *Bhowani* [ILR (1907) 34 Cal 853] , *Alabi Koya* v. *Mussa Koya* [ILR (1901) 24 Mad 513] , *Madhavrao Moreshvar Pant Amatya* v. *Kashibai Kom Dattubhai* [ILR (1910) 34 Bom 287] , *Man Bhari* v. *Naunidh* [ILR (1882) 4 All 40] , *Balmakund* v. *Bhagwan Das* [ILR (1894) 16 All 185] and *Phul*

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Chand v. *Lakkhu* [ILR (1903) 25 All 358] . Where the terms of a statute or ordinance are clear, then even a long and uniform course of judicial interpretation of it may be overruled, if it is contrary to the clear meaning of the enactment but where such is not the case, then it is our duty to accept the interpretation so often and so long put upon the statute by the courts, and not to disturb those decisions, vide the remarks of Their Lordships decisions, of the Privy Council in *Tricomdas Cooverji Bhoja* v. *Gopinath Jiu Thakur* [(1916-17) 44 IA 65 : (1917) 5 LW 654 : AIR 1916 PC 182] . We are, therefore, clearly of opinion that it must now be accepted that the provisions of Section 123 do away with the necessity for the delivery of possession, even if it was required by the strict Hindu law."

14. The logic for the above view in *Lallu Singh case* [AIR 1922 All 467] flowed from the language of Section 129 of the TP Act which as on the date of the decision rendered by the High Court of Allahabad used the words "*save as provided by Section 123 of the Act*". Section 129 of the TP Act was, before its amendment in the year 1929, as under:

> "**129. *Saving of donations mortis causa and Muhammadan law*.**—Nothing in this Chapter relates to gifts of movable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law or, save as provided by Section 123, any rule of Hindu or Buddhist law."

A plain reading of the above made it manifest that the "*rules of Hindu law*" and "*Buddhist law*" were to remain unaffected by Chapter VII except to the extent such rules were in conflict with Section 123 of the Transfer of Property Act. This clearly implied that Section 123 had an overriding effect on the rules of Hindu law pertaining to gift including the rule that required possession of the property gifted to be given to the donee. The decisions of the High Courts referred to in the passage extracted above from *Lallu Singh case* [AIR 1922 All 467] have consistently taken the view that Section 123 supersedes the rules of Hindu law which may have required delivery of

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possession as an essential condition for the completion of a gift. The correctness of that statement of law cannot be questioned. The language employed in Section 129 before its amendment was clear enough to give Section 123 an overriding effect vis-à-vis rules of Hindu law.

15. Section 129 was amended by Act 20 of 1929 whereby the words "*or, save as provided by Section 123, any rule of Hindu or Buddhist law*" have been deleted. Section 129 of the TP Act today reads as under:

> "**129.** ***Saving of donations mortis causa and Muhammadan law***.—Nothing in this Chapter relates to gifts of movable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law."

The above leaves no doubt that the law today protects only the rules of Muhammadan law from the rigours of Chapter VII relating to gifts. This implies that the provisions of Hindu law and Buddhist law saved under Section 129 (*which saving did not extend to saving such rules from the provisions of Section 123 of the TP Act*) prior to its amendment are no longer saved from the overriding effect of Chapter VII. The amendment has made the position more explicit by bringing all other rules of Hindu and Buddhist law also under the Chapter VII and removing the protection earlier available to such rules from the operation of Chapter VII. Decisions of the High Court of Mysore in *Revappa* v. *Madhava Rao* [AIR 1960 Mys 97] and the High Court of Punjab and Haryana in *Tirath* v. *Manmohan Singh* [AIR 1981 P&H 174] , in our opinion, correctly take the view that Section 123 supersedes the rules of Hindu law insofar as such rules required delivery of possession to the donee.

16. The matter can be viewed from yet another angle. Section 123 of the TP Act is in two parts. The first part deals with gifts of immovable property while the second part deals with gifts of movable property. Insofar as the gifts of immovable property are concerned, Section 123 makes transfer by a registered instrument mandatory. This is evident from the use of word "transfer must be effected" used by Parliament insofar as immovable

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property is concerned. In contradiction to that requirement the second part of Section 123 dealing with gifts of movable property, simply requires that gift of movable property may be effected either by a registered instrument signed as aforesaid or "by delivery". The difference in the two provisions lies in the fact that insofar as the transfer of movable property by way of gift is concerned the same can be effected by a registered instrument or by delivery. Such transfer in the case of immovable property no doubt requires a registered instrument but the provision does not make delivery of possession of the immovable property gifted as an additional requirement for the gift to be valid and effective. If the intention of the legislature was to make delivery of possession of the property gifted also as a condition precedent for a valid gift, the provision could and indeed would have specifically said so. Absence of any such requirement can only lead us to the conclusion that delivery of possession is not an essential prerequisite for the making of a valid gift in the case of immovable property. '

24.In ***N.P.Saseendran Vs. N.P.Ponnamma*** reported in ***(2025) 7 SCC 502***, the Hon'ble Supreme Court also followed the decision in ***Renikuntla Rajamma*** case. The relevant paragraphs are paragraphs 24, 27, 31 and 33 and the same are as follows:

'24. Further, in both the cases, unilateral revocation is not permitted as evident from Section 126 of the Transfer of Property Act, 1882. There can be a clause permitting such revocation in the deed. Similarly, the creation of a life interest would not affect the grant and change the character of the document. Similarly, the delivery of possession is not mandatory as in both cases. In case of a gift or settlement, it is sufficient if the donee/settlee had accepted the same during the lifetime of the executor of the document and such acceptance can be either express or

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implied, but must be visible from the conduct of the parties. Putting the donee/settlee into possession or handing over the document to the recipient can also be recognised as valid acceptance. The registration of the gift by the donee and the possession of such document will also amount to valid acceptance.

Interplay between gift, settlement and will

27. The element of voluntary disposition is common to all the three deeds. The element of gift is traceable to both "settlement" and "will". As settled in law, the nomenclature of an instrument is immaterial and the nature of the document is to be derived from its contents. While so, a voluntary disposition can transfer the interest in praesenti and in future, in the same document. In such a case, the document would have the elements of both the settlement and will. Such document, then has to be registered and by operation of the doctrine of severability, becomes a composite document and has to be treated as both, a settlement and will and the respective rights will flow with regard to each disposition from the same document. It is pertinent to mention here that the reservation of life interest or any condition in the instrument, even if it postpones the physical delivery of possession to the donee/settlee, cannot be treated as a will, as the property had already been vested with the donee/settlee.

31. Thus, the legal position is well settled. There must be a transfer of interest in praesenti for a gift or a settlement and in case of postponement of such transfer until the death of the testator, the document is to be treated as a will. The fact that a document is registered, cannot be the sole ground to discard the contents and to treat the document as a gift, just because the law does not require a will to be registered. The act and effect of registration depends upon the nature of the document, which is to be ascertained from a wholesome reading of the recitals. The nomenclature given to the document is irrelevant. The contents of the document have to be read as a whole and understood, while keeping in mind the object and intent of the testator. What is not

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to be forgotten is that in case of a gift, it is a gratuitous grant by the owner to another person; in case of a settlement, the consideration is the mutual love, care, affection and satisfaction, independent and resulting out of the preceding factors; in case of a will, it is declaration of the intention of the testator in disposition of his property in a particular manner. Therefore, even when there is any ambiguity in understanding the nature of the documents from its contents, we are of the view that the subsequent conduct of the executant must also be considered to take a decision. It is possible that in a single document, there could be multiple directions in different clauses though seemingly repugnant but in reality, it could only be ancillary or a qualification of the earlier clause. Therefore, the document must be harmoniously read to not only understand the true intent and purport, but also to give effect to each and every word and direction.

33. The above contents of the document would clearly reveal that there is consideration, conveyance, imposition of conditions and reservation of life interest by the executant, Defendant 1 father satisfying the requirements to classify the document as a “settlement”. The conditions to construct a house, to reside in the house, retention of life interest, the right of mortgage up to a sum of Rs 2000 and avail loan on that basis, cannot alter the gift, by which in unequivocal terms, the property stood vested in the plaintiff by earlier part. The condition, creating a life interest in favour of father and mother and the restriction regarding mortgage, would further imply that Defendant 1 had ceased to be the absolute owner. The postponement of delivery by creation of life interest is not an anathema to absolute conveyance in praesenti. It is pertinent to mention here that Defendant 1 has not only expressed that the property is being conveyed on account of love and affection, by vesting the rights in the property in praesenti in favour of the plaintiff, but also enabled the plaintiff to construct the house from then on and no outer time has been fixed for the construction of the house. Since the life interest was reserved in favour of Defendant 1 and his wife,

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Defendant 1 was only holding an ostensible possession and ownership as contemplated under Section 41, while the true owner being the plaintiff, after the clear conveyance by earlier clause. ‘

25.In the case on hand, life interest is reserved and only delivery of possession is postponed and transfer is immediate and vesting has taken place and hence, Ex.P.1 is held to be a settlement deed. Further, it is relevant to note that the pleadings in the entire written statement of the defendants clearly show that it is only the settlement deed. Except the one plea that it is a Will, in fact, the parties understood that it is only the settlement and not the Will. At any event, even the terms of the document clearly show that it is the transfer of property that has taken place immediately and what was postponed is only the delivery of possession. As per section 8 of the Transfer of Property Act, 1882, unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof. Therefore, it is mere reservation of life interest and only possession was deferred for the present. In such view of the matter, we hold that this document namely Ex.P.1 is the settlement deed and this point is answered accordingly.

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Point No.(iii):

26.Admittedly, P.W.1 donee was also present when the document Ex.P.1 came into existence and the original document was also handed over to him. In paragraph 14 of the plaint, it has been specifically pleaded that the original settlement deed after registration was also handed over to him and he has also accepted the same. Admittedly P.W.1 was present even during the period of registration. The fact that the original settlement deed was handed over to the plaintiff and he has also received the same is specifically pleaded in the plaint. Such plea has not been denied specifically. Therefore, the same is deemed admission under Order VIII Rule 4 of CPC. Further, duplicate copy of the said document registered at the same time was also filed by the plaintiff. Further, on the side of the defendants also, the said settlement deed was filed as Ex.B.2. When Ex.P.1 and Ex.B.2 carefully perused, it is seen that in fact the duplicate copy was also registered. Therefore, a perusal of Ex.B.2 also probablize the fact that only to hand over copies to both the settlees, several copies, namely original and duplicate copies were also registered. The plaintiff has also filed Ex.P.1. That apart, the specific pleading is that the original registered document was handed over to the plaintiff and he has received the same. In the evidence, more than once, the plaintiff has asserted that

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the original copy is with him. Despite his assertion in many places in the evidence that the original copy is with him, no attempt whatsoever was made by the defendants to show that the original copy was not with the plaintiff. Once the plaintiff has asserted that the original is with him, we are of the view that merely because the original has not been produced before the court, it cannot be said that the settlement has not been accepted and it has not been acted upon. Therefore, once the plaintiff has admittedly given the original duplicate copy registered and filed in court and he has also asserted in evidence that the original copy is always with him, for mere non production of the original in the court, the trial court's finding that the settlement is not acted upon cannot be countenanced. Since the delivery of possession is postponed, the delivery of possession is not possible, but at the same time, the copy of the document came into possession of the parties immediately and therefore, it has to be held that the settlement has been accepted by the plaintiff.

27.It is relevant to note that on the same day after the registration, the first defendant also has barged into the property and created problem with his mother. Later, after a few days, the settlement deed was cancelled and in the meanwhile, sensing some document may be registered at the instance of the first defendant, P.W.1, the plaintiff has

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asserted his right and gave a protest petition before the Sub Registrar which was also marked as Ex.P.2. All the facts clearly show that the plaintiff has asserted his right and accepted the settlement deed. Therefore, once the settlement has been validly executed and settlor herself has not stated anything about the undue influence, fraud or coercion in her subsequent document, it has to be held that the settlement deed has been accepted upon and accepted during her life time. Further, it is to be noted that the finding of the trial court that the revenue records has not been mutated and therefore, the settlement has not been acted upon also has no basis. The settlement deed was executed on 22.10.2008 and has been cancelled within a very few days under Ex.B.1 dated 28.10.2008, i.e., within six days. Therefore, when there are some issues with the first defendant father, the plaintiff has filed the protest petition and left immediately later to the USA. Therefore, expecting the plaintiff to apply for mutation of the records at the very short period is highly improbable. Therefore, we are of the view that for the mere fact that mutation is not effected, the same cannot be a ground to hold that the settlement was not acted upon. Hence, we are of the view that the settlement has been accepted during the life time of the settlor and accordingly, this point is also answered.

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Point No.(iv):

28.Further, in respect of the point regarding whether the unilateral cancellation of the settlement is permissible in law, it is well settled that once the settlement is executed and transfer is complete, the settlor is divested with the title except retaining possession, therefore the question of cancelling the document unilaterally is impermissible. It has been held by the Apex Court in ***N.P.Saseendran*** case supra that unilateral revocation is not permitted as evident from section 126 of the Transfer of Property Act, 1882 and there can be a clause permitting such revocation in the deed. Admittedly, there is no reservation made in the settlement deed but it was revoked by the settlor. Therefore, the unilateral cancellation of the document is not permissible under law. That apart, a Full Bench of this Court in ***Sasikala Vs. Revenue Divisional Officer*** reported in ***(2022) 7 Mad LJ 1*** has held that unilateral cancellation of settlement deed is impermissible under law. The Full Bench has reiterated the dictum laid down by the Hon'ble Supreme Court in ***Thota Ganga Laxmi Vs. Government of Andhra Pradesh*** reported in ***(2010) 15 SCC 207*** and the Full Bench decision of this Court in ***Latif Estate Line India Ltd., case*** reported in ***AIR 2011 Mad 66***. In ***Sasikala*** case, it has even

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been held that unilateral cancellation of sale deed or a deed of conveyance is wholly void and non est. Accordingly, this point is answered.

29.The 5th defendant is the lis pendens purchaser. The property has been purchased for the value of Rs.10 Crores. The evidence of the parties clearly show that even at the time of purchase, the guidelines value is more than Rs.26 Crores. The lis pendens purchaser was examined as D.W.4. Though he claims that he is the bona fide purchaser, the plea of bonafide purchaser is not available for him. Since he is the lis pendens purchaser, his right is always subject to the result of the suit. His evidence also clearly indicates that he has not verified the encumbrance certificate. Admittedly, entries relating to the settlement deed and the cancellation deed are very much available and they are registered documents. That apart, the property has been registered for the lower value and his evidence would also indicate that after the purchase, he was subjected to income tax raid and some 25 kgs of gold and Rs.50 lakhs were seized from him. That apart, he was also involved in several criminal cases and convicted by the trial court and now the appeals are pending before the appellate forum. Be that as it may, the purchase of the property just based

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on some opinion is nothing but a speculative purchase during the pendency of the suit. Though it does not annul the conveyance by the parties to the suit, but renders it subservient to the rights of the other parties to the litigation and render the transfer inoperative insofar as the other party to the suit and his right is always subject to the decision of the suit. Therefore, once we hold that the settlement deed is validly executed by the grand mother of the plaintiff and the vesting has taken place immediately, any transfer by the first defendant in favour of the 5th defendant will not convey any title and such a sale becomes inoperative and the same is not binding on the plaintiff since he has the vested remainder. Therefore, any sale is void as far as the plaintiff is concerned since the settlement deed is found to be valid in favour of the plaintiff. Therefore, the lis pendens purchaser cannot have any right whatsoever in the suit property.

30.Further, since the subsequent settlement deed Ex.P.1 executed by the settlor during her life time is held to be valid, the earlier Will relied on by the first defendant becomes insignificant as the Will is automatically revoked by the subsequent transfer of property by way of settlement. Therefore, the first defendant cannot claim any right on the basis of the Ex.B.4 Will.

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31.It is also established on record that the possession of the property is not with any of the defendants and already an Advocate Commissioner, a retired District Judge was appointed pending suit and the property was put in possession by him. Even while at the time of admission of the appeal, this court vide order dated 23.08.2023 recorded as follows:

> '2.It is seen from the records that the Trial Court had arrived at a conclusion that the settlement deed was not acted upon and therefore, it was open to the Settlor to cancel the same. There is also a finding to the effect that the settlement deed is in nature of a Will. These issues will have to be decided after hearing the appeal. We are *prima facie* of the opinion that dismissal of the suit for a declaration that the cancellation of settlement is invalid cannot be sustained. It is also brought to our notice that pending suit, the property was put in possession of an Advocate Commissioner, a retired District Judge by name, Mr.G.Saravanan.'

32.In such view of the matter, merely based on the purchase, the lis pendens purchaser cannot have any right to take possession of the property and at the most, the first defendant can reside in the suit property as per the settlement deed till his life time without creating any further alienation or encumbrance and he can use the property only for his residence alone and not for any other purpose.

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33.In the result, the appeal suit is allowed with costs and the judgment and decree of the trial court, dated 06.07.2023 made in O.S.No.4633 of 2019 is set aside and it is declared that the cancellation deed dated 28.10.2008 registered as document no.2140 of 2008 is non est, void, illegal and not binding on the plaintiff and the suit is decreed as prayed for with costs. Consequently, connected miscellaneous petitions are closed.

(N.S.K., J.) (M.J.R., J.)
07.08.2026

Index : Yes
Speaking Order /Non speaking order
Neutral Citation : Yes
vvk

To

1.XVIII Additional Judge,
City Civil Court, Chennai.

2.Section Officer,
VR Section,
Madras High Court,
Chennai.

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N.SATHISH KUMAR, J.
and
M.JOTHIRAMAN, J.

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Pre delivery judgment in
A.S.No.550 of 2023

07.08.2026

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