



*S.A.(MD).No.97 of 2013*

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 16.12.2024**

**CORAM:**

**THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**S.A.(MD).No.97 of 2013,**  
**M.P.(MD)No.1 of 2013 and**  
**CMP(MD)Nos.6137 of 2017, 12174 of 2018**

1.P.R.Narasiman (Died)

2.P.N.Rajalakshmi

3.P.N.Sundaresan

4.P.N.Revathi

5.P.N.Durga

... Appellants

(Appellants 2 to 6 are brought on record as LR's of the deceased sole appellant, vide Court order, dated 07.06.2018, made in CMP(MD) No.4451 of 2018)

/Vs./

1.P.B.Ramudu (Died)

2.T.Mathurakavi

3.The Sub Registrar,  
Office of Registration,  
Taluk Office Road,  
Papanasam, Papanasam Town,  
Thiruvaiyaru Munsifi.

4.P.R.Vijaya

5.S.Malini

6.P.R.Baskaran

7.P.R.Muralidharan



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8.P.R.Ravendran  
9.P.R.Babu (Died)  
10.S.Premeela  
11.Chitra  
12.Ranjith  
13.Pavithra

...Respondents

(Respondents 4 to 10 brought on record as LR's of deceased 1st respondent, vide Court order, dated 28.07.2016, made in MP(MD)No.1 of 2014 in SA(MD)No.97 of 2013)

(Respondents 11 to 13 are brought on record as LR's of deceased 9th respondent, vide Court order, dated 11.02.2020, made in CMP(MD)No.8071 of 2019 in SA(MD)No.97 of 2013)

**PRAYER:** Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 22.11.2012, made in A.S.No.26 of 2012 on the file of the Principal Sub Court, Thanjavur, reversing the Judgment and Decree, dated 21.12.2011, made in O.S.No.13 of 2009 on the file of the District Munsif Court, Thiruvaiyaru.

For Appellants : Mr.V.K.Vijaya Ragavan  
For R3 : Mr.C.Satheesh, Government Advocate  
For R2, 4 to 8 and 10 : No appearance

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### **JUDGMENT**

The present second appeal is preferred by the plaintiff in the suit challenging the judgment and decree, dated 22.11.2012 passed in A.S.No.26 of 2012 on the file of the Principal Sub Court, Thanjavur, reversing the Judgment



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and Decree, dated 21.12.2011 passed in O.S.No.13 of 2009 on the file of the District Munsif Court, Thiruvaiyaru.

2. The plaintiff in the suit is the appellant herein and defendants in the suit are the respondents herein. After the demise of the plaintiff, his legal heirs are impleaded as appellants. Likewise after the demise of the defendants, his legal heirs are impleaded as respondents. For the sake of convenience, the parties are referred as plaintiff and defendants as per the ranking in the original suit.

3. The suit is filed for declaration and consequential injunction against defendants 1 and 2 and permanent injunction restraining the 3<sup>rd</sup> defendant from registering the document in respect of the suit property presented by the defendants 1 and 2.

4. The brief facts as stated in the plaint are that plaintiff is the absolute owner of the suit property which is an Inam property under the enjoyment of plaintiff's family. During the course of Inam abolition, the Settlement Tahsildar



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conferred patta in favour of plaintiff's elder brother's son T.V.Venkatachalapathy by proceedings dated 15.10.1968. Subsequently the family properties were partitioned between the plaintiff and his brothers in an oral partition arrangement in the presence of family elders and Village Panchayathars on 01.01.1992, which was reduced into writing on 09.07.1993. All the family members signed the family Muchalickka acknowledging the oral partition took place on 01.01.1992. In that partition arrangement the suit property was allotted to the share of plaintiff and the plaintiff had approached Zonal Deputy Tahsildar for transfer of patta in his name, who vide proceedings dated 30.06.2000 had transferred the patta in the name of plaintiff, thereafter the plaintiff has been paying kist for the said property. The first defendant has no right or interest over the suit property but has filed suit for recovery of possession in O.S.No.93/1981 on the file of Sub Court, Thanjavur and was dismissed after full trial, wherein in the judgment it was held that all the properties including the present suit property was not the properties of the first defendant or his ancestors. It was further held that suit property was allotted to the family of Nagaiyan, who is the Senior Paternal Uncle of this defendant. Aggrieved over Appeal Suit was filed in A.S.No.174/1987 on the file of District Court, West



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Thanjavur and the same was dismissed. It has been already held by the court of competent jurisdiction that 1<sup>st</sup> defendant has no right title or interest over the suit property. In fact, the father of the 1<sup>st</sup> defendant and his brother partitioned all their family properties by a registered partition deed dated 16.07.1951 and the suit property was not subject matter of the said partition and the same was not included in that partition deed. While the facts are being so, the 1<sup>st</sup> defendant with ulterior objects of creating false records as if he is the owner of the property, has created a registered simple mortgage deed in the name of the 2<sup>nd</sup> defendant on 22.12.2008 borrowed a sum of Rs. 50,000/- from the 2<sup>nd</sup> defendant and the document was registered by the 3<sup>rd</sup> defendant in Document No.3397/2008. The 2<sup>nd</sup> defendant also knows very well that the 1<sup>st</sup> defendant has no right or title over the suit property. Both the defendants 1 and 2 have collusively created a false document to make a false claim over the suit property. The said mortgage deed was not supported by consideration and it is only sham and nominal and the plaintiff need not seek to set aside or cancel the same and it cannot affect the right, title and interest of the plaintiff over the suit property. The defendants 1 and 2 created a false document to make a forcible entry and on coming to know about



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the mortgage deed, the plaintiff issued a lawyer notice to defendants 1 and 2 on 25.12.2008 calling upon them to cancel the above said simple mortgage deed. The 1<sup>st</sup> defendant issued reply and the averments in the reply notice are false, but the 2<sup>nd</sup> defendant failed to issue reply. The 1<sup>st</sup> defendant has got no share in suit property and the 1<sup>st</sup> first defendant is not a member of the joint family of plaintiff's family. It is false to state that the patta was conferred in the name of P.V. Venkatachalapathi as the eldest member of Joint Family. The plaintiff and his brothers are lineal descendants of Penu Nagaiyan Chettiar son of Penu Alageri Chetti. The defendant is a lineal descendant of Penu Venkatachalapathy Chetti, the elder brother of Penu N.Nagbalyan Chetti. The above said Penu Venkatachalapathi Chetti and Penu Nagaiyan Chetti are divided brothers and the fact was admitted in O.S.No.93/1981. The defendants 1 and 2 have colluded themselves. The plaintiff understands that defendants 1 and 2 created a sale deed as if the 1<sup>st</sup> defendant sold the suit property to the 2<sup>nd</sup> defendant. If the defendants 1 and 2 were allowed to create a document, the plaintiff would be put to prejudice. Hence it is just and necessary to restrain the defendants 1 and 2 from creating any document with respect to the suit property and also to restrain the 3<sup>rd</sup> defendant



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from registering any document presented by anybody other than the plaintiffs.

Hence the suit.

5. The brief averments stated in the written statement filed by 1<sup>st</sup> defendant are that the suit is not maintainable either in law or on facts. Originally the suit property was purchased by great grandfather of the 1<sup>st</sup> defendant namely Penu Venkatachalapathy and plaintiff grandfather namely Nagaiyan Chettiar from the larger extent of 24 Acres 59 Cents which consists of nanja, punja and pond and they were holding joint patta and was enjoying jointly till their life time. The 1<sup>st</sup> defendant's great grandfather Penu Venkatachalapathy being the elder member of the family had managed the family properties. Even during the lifetime of the said Penu Venkatachalapathy his only son Ramaswamy died. Since his son Penu Balakrishnan was minor so the properties were managed by the plaintiff's father on behalf of the other members of the family. After his death his eldest son Penu Kuppusamy has managed property. During the time of his management, the Government has acquired properties for constructing hospital, high school and playground and suitable compensation was awarded. The said compensation was



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availed by Penu Kuppusamy on behalf of family. A family partition took place in the family of Penu Kuppusamy on 24.07.1951, in the partition they have divided only half extent in the total extent of 22 acres between themselves, the remaining half extent has been let to the 1<sup>st</sup> defendant's family. By suppressing the said fact Penu Venkatachalapathy son of Penu Kuppuswamy had applied patta for entire extent excluding the extent acquired by the government, but he has no right to seek patta for the entire extent which is against law. Even during the life time of 1<sup>st</sup> defendant's father Penu Balakrishnan, a dispute arose regarding the title to 57 cents situated in R.S.No.110A in O.S.No.177/1952 and the case went for appeal in A.S.No.75/1954, on the file of Sub Court Kumbakonam, then S.A.No.91/1955 on the file of High Court and then to Hon'ble Supreme Court. In all the suit the title of the 1<sup>st</sup> defendant is confirmed and it was held that it is undivided properties. It will establish that the plaintiff is not absolute owner of the property and the 1<sup>st</sup> defendant is the joint owner and co-sharer and he is entitled to have a share and possession. The title of the 1<sup>st</sup> defendant's father Penu Balakrishnan over the same is confirmed. The plaintiff's grandfather sworn in the suit that the properties are undivided. The O.S.No.93/1981 no way affects the case of the 1<sup>st</sup> defendant and



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the finding is that the plaintiff had to proceed only partition suit. Hence the judgment referred above by the plaintiff will clearly establish that the 1<sup>st</sup> defendant is the joint owner of the suit properties and further it will establish that the plaintiff has no exclusive and absolute right to the property. So the suit against the co-sharer is not maintainable and on that count the suit has to be dismissed. The alleged oral partition is self-styled document. The brothers of the 1<sup>st</sup> defendant are co-sharer and they ought to have been impleaded, hence the suit is bad for non-joinder of necessary parties. The grant of patta by the revenue official to the plaintiff will not any way give right to the plaintiff, further the same was issued without following principles of law. As a co-sharer / co-owner, the defendant had created a registered simple mortgage in favour of 3<sup>rd</sup> defendant for a sum of Rs.50,000/- which is necessary for welfare of the family. The alleged trespass is not true. The relief of permanent injunction without relief of declaration is not maintainable.

6. The brief averments stated in the written statement filed 2<sup>nd</sup> defendant are that the suit is not maintainable either in law or on facts. This defendant is a



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mortgagee. The properties comprised an extent of 2 acres 58 cents was under the management of Penu. Venkatachalapathi till his life time. After the death of Penu Venkatachalapathi his only son, Ramaswamy per-deceased his father, the son of deceased Ramaswamy Penu Balakrishnan was a minor, the son of Penu Nagaiyan, Ramudu Chettiar managed the properties. Subsequent to Ramudu his eldest son Penu Kuppuswamy managed the properties. Based on the said facts, the Mortgage deed 22.12.2002 for the sum of Rs.50,000/- is valid. As the 1<sup>st</sup> defendant issued reply to the legal notice of plaintiff, the 2<sup>nd</sup> defendant has no necessity to send reply. It is false to state that the 1<sup>st</sup> defendant is not a member of the family, since there was partition between Penu Venkatachalapathy and Penu Nagaiyan. The suit is undervalued and it cannot be valued on the basis of kist. The suit property is a plot and the market value is Rs.15 lakhs/-. The Court fee paid in the plaint is incorrect. Hence the 2<sup>nd</sup> defendant prayed to dismiss the suit.

7. The brief averments stated in the written statement filed by 3<sup>rd</sup> defendant are that the suit is not maintainable either in law or on facts. The plaintiff has to put to strict proof of the facts except those that are specifically admitted herein.



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There is no cause of action against this defendant. The suit is hit for want of notice under Sec.80(1) CPC. The suit is under-valued, Court fee paid is incorrect. The suit is bad for misjoinder of 3<sup>rd</sup> defendant in the suit and prayed to dismiss the suit.

8. The Trial Court has framed the following issues:

- i) Whether the suit is bad for non-joinder of necessary parties as alleged by the 1<sup>st</sup> defendant?
- ii) Whether the suit is bad for want of Sec.80 C.P.C. notice?
- iii) Whether the plaintiff is entitled to get the relief of declaration and consequential injunction as claimed?
- iv) Whether the plaintiff is entitled to get the relief of permanent injunction as against the 3<sup>rd</sup> defendant as claimed?
- v) To what other relief, if any. the plaintiff is entitled?

An additional issue was framed as under:

- vi) Whether the suit was properly valued and appropriate court fees paid?



9. In the suit, plaintiff examined himself as P. W.1 and Ex. A1 to Ex. A8 were marked. Ex.A9 was marked by the plaintiff's side through cross examination of D.W.1. The 1<sup>st</sup> defendant examined himself as D.W.1 and Ex.B1 to Ex.B14 were marked. The 2<sup>nd</sup> defendant was examined as D.W.2 and Ex.B15 was marked. The summoned witness, T.M.Anusiya was examined as D.W.4 and R.Saravanamoorthy was examined as D.W.3 and Ex.B16 was marked through him. The 3<sup>rd</sup> defendant did not adduce evidence. After perusing the documents, evidence and after considering the rival contentions, the suit was allowed.

10. Aggrieved over the same, the defendants preferred Appeal Suit and the points for consideration were framed as under:

- i)Whether the plaintiff has established title to the suit property?
- ii)Whether the suit property is an ancestral property of the plaintiff's forefathers and 1st defendant's forefathers?
- iii)Whether this appeal deserves to be allowed or not?



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After considering the issues, the Appellate Court has allowed the appeal and the judgment and decree passed by the Trial Court was set aside. Aggrieved over the same, the present second appeal is preferred by the plaintiff.

11. The second appeal was admitted on the following substantial questions of law:

*"(1) When a settlement patta Ex. A1 was granted under Section 9(3) read with Section 11(1) of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act 30/1963 in favour of the plaintiff's family with respect to the suit schedule property after due enquiry and subsequently the same had been allotted to the plaintiff in family partition Ex A2. Is the learned Sub Judge right in disputing the settlement patta which has been remained unchallenged to dismiss the suit?*

*(2) Whether the finding of the learned Sub Judge for dismissing the suit as Ex. A1, settlement patta is not document of title, whereas the settled position of law is that the patta granted under Act 30/1963, conveys title to the property to the holder of the said patta, is not perverse?"*

The learned Counsel appearing for the appellant submitted additional substantial questions of law and the same is accepted and extracted hereunder:



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*(3). Is the Appellate Court right in dismissing the suit for want of title of plaintiff, when the patta was given under Ex.A1 during settlement to plaintiff's family?*

*(4). Whether the decision of appellate court suffers legal infirmity due to non-consideration of relevant evidence available on record?*

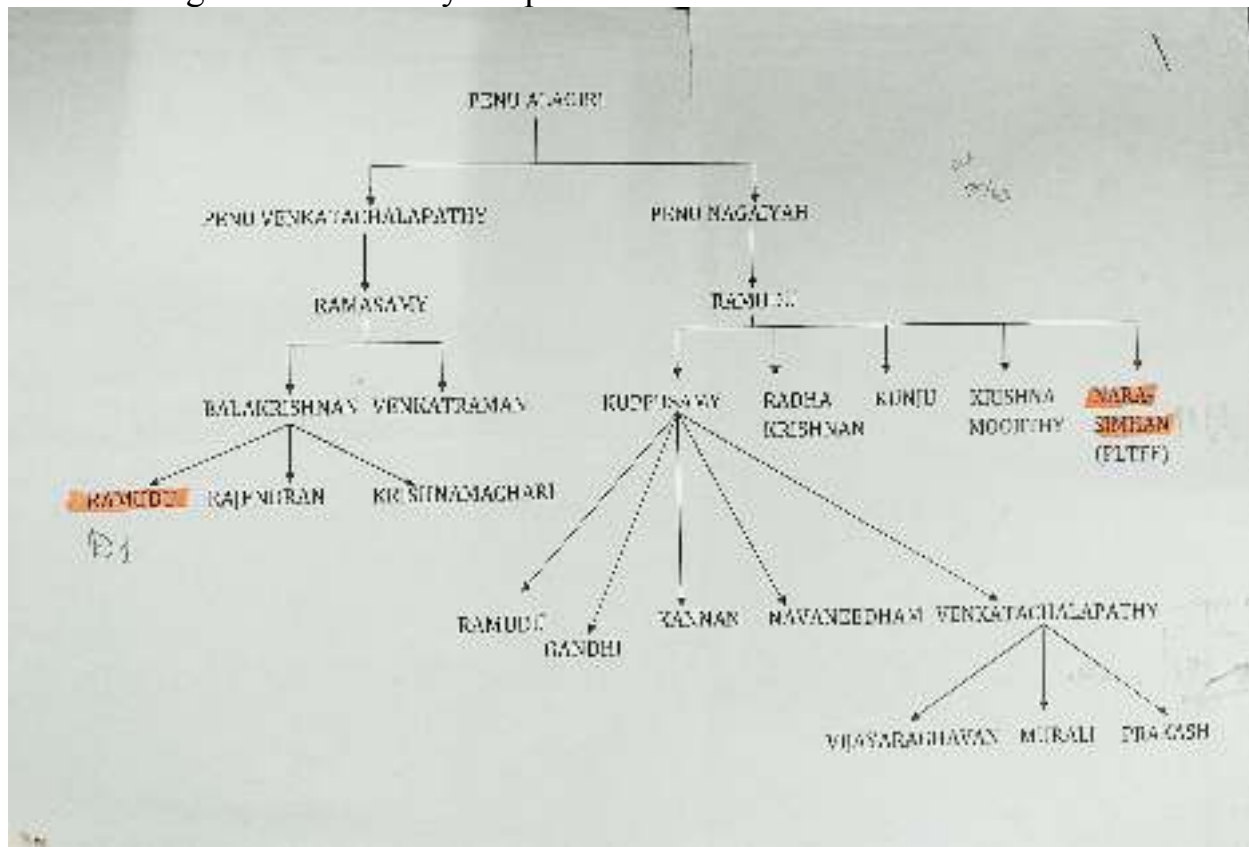
12. Heard Mr.V.K.Vijaya Ragavan, the Learned Counsel appearing for the appellants / plaintiff and Mr.C.Satheesh, the Learned Government Advocate appearing for 3<sup>rd</sup> respondent. The Learned Counsel appearing for the respondents submitted that there is no instruction. It is seen from the records that after demise of the 1<sup>st</sup> defendant, his wife had filed a memo, the same is taken on file.

13. Pending the second appeal, the plaintiff had filed CMP(MD)No.6137 of 2017 and CMP(MD)No.12174 of 2018 to accept additional documents and the same was allowed vide order dated 16.12.2024. The document registered partition deed dated 24.07.1951 is marked as Ex.A10, the rough patta dated 08.12.1968 and judgment in A.S.No.174 of 1987 on the file of the District Court West Thanjavur are marked as Ex.A11 and Ex.A12 respectively.



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14. It is an admitted fact that originally, the property belongs to Penu Alagiri and he has two sons namely, Penu Venkatachalapathy and Penu Nagaiyah. After the acquisition of land, from the remaining larger extent of 22 acres, both divided the property and 11 acres was allotted to each. The following family tree of Penu Alagiri is admitted by the parties:





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The plaintiff namely P.R.Narasiman is coming under Penu Nagaiyah clan and the 1<sup>st</sup> defendant Ramudu is coming under Penu Venkatachalapathy clan. The suit property is situated in Papanasam Taluk, 38 Soolamangalam, 2<sup>nd</sup> Sethi Village in R.S.No.112/15 admeasuring 08.5 Ares which is equivalent to 21 cents. The said property was allotted to Penu Nagaiyah clan and devolved to his son Ramudu. Then the said Ramudu's sons namely Kuppusamy, Radhakrishnan, Kunju, Krishnamoorthy and Narasiman along with the 2<sup>nd</sup> wife of Ramudu have inherited the property. Subsequently, they entered into partition in Doc.No.1042 of 1951, dated 24.07.1951, which is admitted as additional evidence by this Court in C.M.P.(MD)No.6137 of 2017 and the said document is marked as Ex.A10. Infact the Appellate Court has rejected the case of the plaintiff since the plaintiff had not produced this document dated 24.07.1951 before the Trial Court, hence the said observation of the Appellate Court has lost its ground. In the said document, under "E" schedule several properties were retained as common property by Penu Nagaiyah clan. In which the S.No.112/6, 112/7A, 112/7C, 112/10, 112/11, 112/12, 112/13C are found under "E" schedule. Especially the S.No.112/13C is having an extent of 2.64 acres. Subsequently, the plaintiff's clan again divided the common



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property and divided into housing plots through oral partition and subsequently, reduced into writing as Karaivollai (i.e. venilai pathiram) on 09.07.1993. Especially the property in S.Nos.12/6, 112/7C1, 112/13C and 112/15 was subdivided into housing plots. Further it is clarified by the plaintiff that the S.No. 112/13C was given a new S.No.112/15 for which the plaintiff had produced the additional document of Rough Patta dated 08.12.1968 issued by Assistant Settlement Officer marked as Ex.A11, wherein it is stated that the Old S.No. 112/13C is assigned with new number as S.No.112/15. The property situated in 112/15 was subdivided into housing plots and plot No.26 admeasuring 16,896 square feet was allotted to the plaintiff P.R.Narasiman. The plaintiff is tracing his titled through two partition deeds dated 24.07.1951 and 09.07.1993 as stated supra.

15. On the other hand, the defendant Ramudu is claiming right over the property based on the oral partition and reduced into writing on 16.07.1951 marked as Exhibit A9. In the said document the said Balakrishnan and Venkatraman who are sons of Ramasamy (the said Ramasamy is the son of Penu



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Venkatachalapathy in short, the Penu Venkatachalapathy clan) had divided the property wherein Door No.142 was allotted to Balakrishnan and Door No.143 was allotted to Venkatraman. In the said partition deed, it has been specifically stated that apart from the above two properties, no other property belongs to the said Penu Venkatachalapathy's clan i.e. the defendants' great grandfather's clan and the same is extracted hereunder:

"நாம் இந்த பாகபத்திரத்திற்கு முந்தியே விவஸ்தை செய்துகொண்டாய்விட்டது. நம் குடும்ப பாகபிரிவினைக்கு லாயக்கான கீழே கண்ட சொத்துக்களை தவிர வேறு யாதொரு குடும்ப சொத்துக்களும் கிடையாது."

16. Therefore, it is evident from the defendants' documents as well as the documents submitted by the plaintiff that this property was allotted to the plaintiff clan and not to the defendant clan. The same is proved through Ex.A2 Karavolai Deed dated 09.07.1993, Ex.A9 partition deed of the defendants dated 16.07.1951 and partition deed of the plaintiff's clan dated 24.07.1951. The same is corroborated by the earlier litigation between the parties where the said Ramudu



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has filed a suit in A.S.No.93 of 1981. In that case, the said Ramudu was the plaintiff representing the Penu Venkatachalapathy Trust and the said Ramudu is the trustee. The said suit was contested by the parties. In the said suit, it has been clearly stated that the plaintiff has not proved that his ancestors have started the said trust and the property belongs to trust. The said finding is extracted hereunder:

"எழுதுவினா 6: வாதி இந்த வழக்கை பிரதிவாதிகளுக்கு எதிராக உள்நோக்கத்துடன் கொடுத்து செயல்பட்டு வருவதாக தெரிகிறது. வழக்கில் தெரிவிக்கப்படுகின்ற சொத்துக்கள் அனைத்திலும் வாதியின் முன்னோர்களுக்கு உரிமையில்லாத சொத்துக்கள் என வாதிக்குத் தெரிந்தே, பிரதிவாதிகளை இந்நீதிமன்றத்தில் இழுத்தடிக்க வேண்டி ஒரு பொய் வழக்கு தாக்கல் செய்த காரணத்தினால் வாதிக்கு இவ்வழக்கில் காரிய பரிகாரங்கள் எதுவும் தரப்பட இயலாது எனவும், ஆகவே வழக்கை பிரதிவாதிகளின் செலவுத்தொகையுடன் தள்ளுபடி செய்யப்படல் வேண்டுமென இந்த எழு வினாவிற்கு விடைக் காணப்படுகிறது."

The Court further held that the property is only joint family property. Further the 1<sup>st</sup> defendant who was the plaintiff in the said suit had admitted that the property



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which was allotted to them were sold to various persons. After selling their share of property, now the 1<sup>st</sup> defendant cannot claim any property which was allotted to the plaintiff herein.

17. Further in the said judgment, while narrating the list of documents, the suit properties is also mentioned as item No.3. Aggrieved over the same, the said Ramudu has preferred an appeal. In that appeal also, the Appellate Court confirmed the judgment and decree and the observations stated in the appeal is extracted hereunder:

"ஆனால் வழக்குச் சொத்தும் வா.சா.ஆ.1இல் சொத்தும் அறக்கட்டளைக்கு சம்மந்தப்பட்ட சொத்தும் ஒன்றக்கு ஒன்று வித்தியாசம் காணப்படுகிற நிலையில் தான் விசாரணை நீதிமன்றம் தன் தீர்ப்பில் இறுதியில் வாதி இந்த வழக்கை பிரதிவாதிகளுக்கு எதிராக உள்நோக்கத்துடன் தொடுத்திருக்கிறார் என்றும், வழக்கில் தெரிவிக்கப்படுகின்ற சொத்துக்கள் அனைத்திலும் வாதியின் முன்னோர்களுக்கு உரிமையில்லாத சொத்துக்கள் என வாதிக்கு தெரிந்தே. பிரதிவாதிகளை இந்த நீதிமன்றத்தில் இழுத்தடிக்கவேண்டி ஒரு பொய் வழக்கு தாக்கல் செய்திருக்கிறார் என்றும், எனவே பிரதிவாதிகளின் செலவுத்தொகையுடன் வழக்கை தள்ளுபடி செய்திருப்பதாகவும் கூறியிருக்கிறது. இது முற்றிலும்



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உண்மையேயாகும் என்பதில் எள்ளளவும் ஐயமில்லை. இரு தரப்பினர்களின் அறிவார்ந்த வழக்கறிஞர்கள் வேறு சில சட்ட நுணுக்கங்களை குறித்து வாதிட்டிருக்கிறார்கள். வாதி கோரிய பிரகாரம் வா.சா.ஆ.1 அறக்கட்டளை சொத்துக்களை பொறுத்து தான் கிட்டுமேயொழிய அறக்கட்டளைக்கில்லாத வழக்குச் சொத்துக்களை பொறுத்து கிட்டாது என்று முடிவு செய்திருக்கிற நிலையில் மற்ற ஆதாரங்களை ஆராய்ந்து தீர்வு காணப்பட வேண்டிய அவசியம் இல்லாமல் போய்விடுகிறது. எனவே, வாதியாகிய மேல்முறையீட்டாளரின் வழக்கை தள்ளுபடி செய்து விசாரணை நீதிமன்றம் அளித்த தீர்ப்பு முறையானதே என்று தீர்மானிக்கிறேன்.”

18. Therefore, the plaintiff in the present case has clearly proved that the said property does not belong to Penu Venkatachalapathy clan. Consequently, Ramudu will not have any claim in the suit and the same entirely belongs to Penu Nagaiyah clan. Subsequently that was divided into housing plots and the descendants of the Penu Nagaiyah has divided the plots among themselves. It is pertinent to state that there is no dispute among the descendants of Penu Nagaiyah clan. Therefore, the findings rendered by the Appellate Court that there is no



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document to prove the Ramudu's claim is erroneous. Therefore, the 4<sup>th</sup> substantial question of law is answered in favour of the plaintiff.

19. As far as the 1 to 3 substantial question of law the plaintiff submitted that the Settlement Patta issued by Special Tahsildar under Inam Abolition Act is a valid document and had relied on the judgment rendered by Hon'ble Division Bench in Original Side Appeal No.334 of 2017 in the case of Arulmigu Marundeeswarar Thirukoil through its Executive Officer Vs. the Chief Engineer Highway Department and another wherein it is held that patta issued under Abolition Act is an evidence of title and the relevant portion is extracted hereunder:

*“11. It was also pointed out that a similar view expressed in Arulandu Udayar Vs. Palaniappa Ambalam reported in 1982 (1) MLJ 257 was affirmed by the Hon'ble Supreme Court in SLP No.7871 of 1981 by order dated 14.02.1983. Therefore, if the question is only as to the effect of grant of patta under the Abolition Act, the answer has to be that it will be evidence of title. We hastened to add that such grant will by itself will not preclude any other person claiming a rival title from establishing such title before the Civil Court.”*



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The plaintiff also relied on the judgment dated 17.06.2022 rendered in S.A.No. 403 of 2016 in the case of Arulmigu Swami Nellaiyappar's case. In the present case the plaintiff's elder brother namely Kuppusamy's son P.K.Venkatachalapathy was issued with settlement patta since the said Kuppusamy died. Thereafter the said five brothers along with the 2<sup>nd</sup> wife of Ramudu had entered into partition dated 24.07.1951. Therefore, the Settlement Patta issued under Abolition Act would be title document as held in the judgments stated supra. The finding of the Appellate Court that the Settlement Patta under Abolition Act would not prove the title is against the judgment cited supra and the same ought to be rejected and accordingly rejected. Consequently the 1 to 3 substantial question of law is answered in favour of the plaintiff and against the defendants.

20. Pending the second appeal, the first defendant died and all the legal heirs were impleaded and the wife of the deceased Ramudu has filed a memo wherein it is stated as under:

*"The appeal has been settled out of court between the parties. The respondents admit that the appellants have right title and possession of suit property.*



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*The respondents pray that the decree and judgment passed in A.S.No.26/2012 on the file of Principal Sub Court, at Thanjavur dated 22.11.2012 be set aside and the decree and judgment passed in O.S.No. 13/2009 on the file of District Munsif Court, Thiruvaiyaru dated 21.12.2011 be confirmed."*

This Court has already held that the plaintiff is having title over the property. Now based on the memo also it is confirmed that the property belongs to the plaintiff. Therefore, the said Ramudu, when he is not having any right over the suit property, he cannot lay any claim over the suit property, since the same belongs to Penu Nagaiyah clan. Therefore, the plaintiff has proved his title.

21. Therefore, this Court is confirming the judgment and decree granted by the Trial Court and setting aside the judgment and decree granted by the Appellate Court.

22. With the above said observations, the second appeal is allowed. No costs. Consequently, connected miscellaneous petition in M.P.(MD)No.1 of 2013



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is closed and CMP(MD)No.6137 of 2017 and CMP(MD)No.12174 of 2018 are allowed.

**16.12.2024**

Index : Yes / No

NCC : Yes / No

Tmg

**TO:**

1. Principal Sub Court, Thanjavur.
2. District Munsif Court, Thiruvaiyaru.
3. The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



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*S.A.(MD).No.97 of 2013*

**S.SRIMATHY, J.**

Tmg

Judgment made in  
**S.A.(MD)No.97 of 2013**

Dated:  
**16.12.2024**