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S.A. No. 775 of 2005

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 25 / 03 / 2026

JUDGMENT DELIVERED ON : 28 / 07 / 2026

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A. NO.775 OF 2005

AND

C.M.P. Nos.15967 OF 2005 & 13920 OF 2021

1.S.Vinayagam,
S/o.Late. Subramanya Naicker

2. Deivanayaki Ammal
W/o.Erusappan

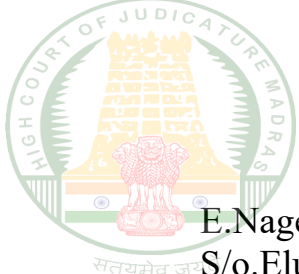
3. E.Ramakrishnan,
S/o.Erusappan

4. E.Balachandran,
S/o.Erusappan

... Appellants / Appellants
Plaintiffs

All residing at
No.6/105, Bajanai Koil Street,
Vijayanagaram, Saidapet Taluk,
Chengalpattu District.

Versus



S.A. No. 775 of 2005

E.Nagendiran,
S/o.Elumalai Naicker
Residing near Jayalakshmi Nagar,
Santhosapuram, Gowrivakkam Post,
Chennai.

... Respondent / Respondent /
Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated June 19, 2003 made in A.S. No.42 of 2002 on the file of the Principal Sub Judge, Chengalpattu confirming the Judgment and Decree dated April 30, 2002 made in O.S. No.517 of 1997 on the file of the District Munsif Court at Tambaram.

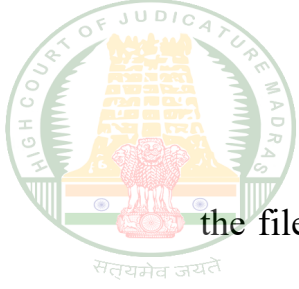
For Appellants : Mr.S.Baskaran

For Respondent : M/s.R.V.Gayathri
for
M/s.P.B.Ramanujam

* * * * *

J U D G M E N T

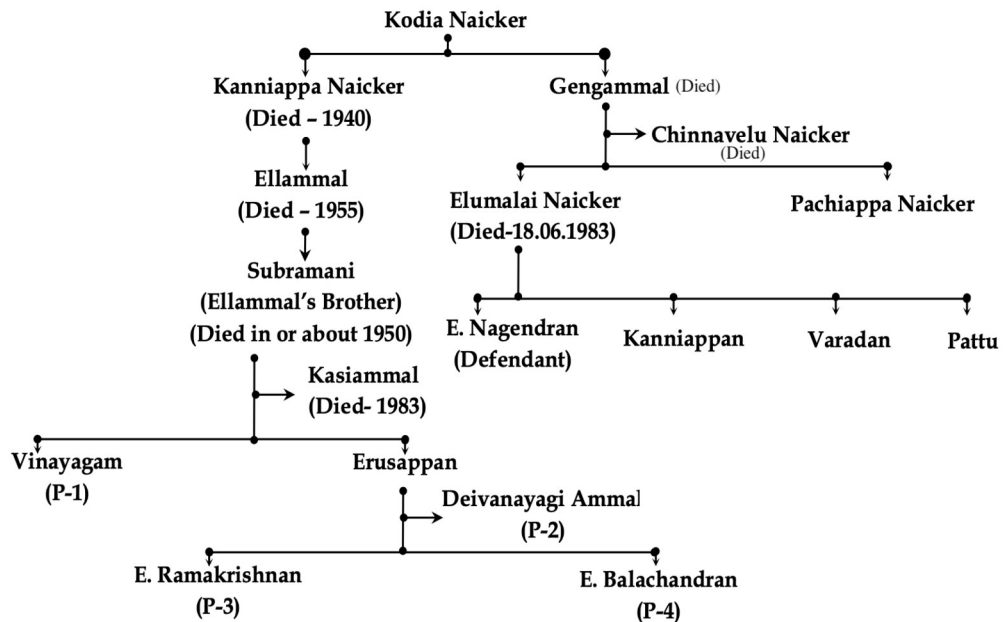
This Second Appeal is filed by the unsuccessful appellants in the Appeal Suit, who are the plaintiffs in the Original Suit. Challenge is to the Judgment and Decree dated June 19, 2003 passed in A.S. No.42 of 2002 on

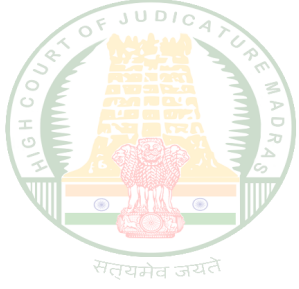


the file of 'the Principal Sub Court, Chengalpattu' ['First Appellate Court' for short], wherein and whereby the Judgment and Decree dated April 30, 2002 passed in O.S. No.517 of 1997 by 'the District Munsif Court, Tambaram' ['Trial Court' for short] was confirmed.

2.For the sake of convenience, the parties will hereinafter be referred to as per their array before the Trial Court.

3.For ease of appreciation, undisputed relationship between the parties is set out in the following genealogy chart:



**CASE OF THE PLAINTIFFS**

4. Case of the plaintiffs is that the suit properties originally belonged to Kanniappa Naicker, whose wife is Ellammal. The couple had no issues. Upon Kanniappa Naicker's demise in the Year 1940, Ellammal became the absolute owner of the suit properties and she later passed away in 1955. Ellammal during her lifetime settled the suit properties in favour of her brother - Subramania Naicker *vide* registered Settlement Deed dated October 7, 1940. Whereafter Subramania Naicker was cultivating the suit properties as its absolute owner and after his demise in 1950, the plaintiffs being the legal heirs of Subramania Naicker acquired the suit properties by succession. Revenue records were also mutated in favour of the plaintiffs. While so, the defendant without any authority or right, attempted to interfere with the plaintiffs' possession and enjoyment of the suit properties. Even if the defendant had any right over the suit properties, the same has been lost in view of the fact that the plaintiffs' have perfected title by adverse possession as well. Stating so, the plaintiffs have filed the Suit for permanent injunction

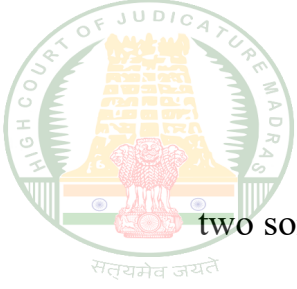


restraining the defendant from interfering with the plaintiffs' possession and enjoyment of the suit properties.

CASE OF THE DEFENDANT

5. Case of the defendant is that the alleged Settlement Deed dated October 7, 1940 executed by Ellammal in favour of Subramania Naicker is not valid in law. The defendant further contends that Gengammal is the sister of Kanniappa Naicker and upon the demise of Kanniappa Naicker and Ellammal, Gengammal's two sons namely Elumalai Naicker (father of defendant) and Pachiappa Naicker succeeded all the properties of Kanniappa Naicker including the suit properties.

5.1. One Kannappa Naicker son of Velayudha Naicker, claiming to be the nearest reversioner to Kanniappa Naicker's estate, filed the Suit in O.S. No. 51 of 1958 on the file of District Munsif Court, Poonamallee, seeking recovery of possession against Elumalai Naicker and Pachiappa Naicker, the

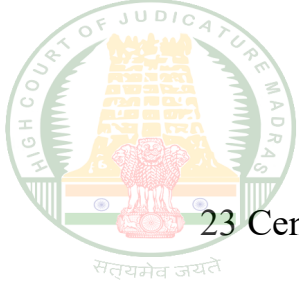


two sons of Gengammal. The said Suit was subsequently withdrawn giving up his claim.

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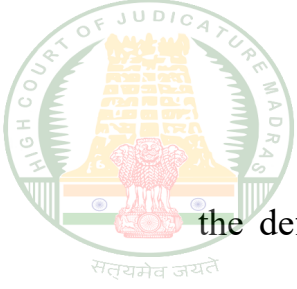
5.2.Further, one Navaneethammal, wife of Kannappa Reddy and her son - Manavalan, claimed an extent of 40 Cents in Survey No.33/2 and 1/3 share in the well thereof under registered Settlement Deed dated September 5, 1944 allegedly executed by Ellammal. Elumalai Naicker and Pachiappa Naicker, sons of Gengammal, filed the Suit in O.S. No.337 of 1958 on the file of District Munsif Court, Poonamallee seeking declaration that the said Settlement Deed is invalid. The said Suit was decreed.

5.3.Later Kasiammal, who is the first plaintiff's mother, made a claim on the foot of Ellammal's alleged Settlement Deed dated October 7, 1940. Hence, Elumalai Naicker and Pachiappa Naicker filed the Suit in O.S. No.662 of 1962 on the file of District Munsif Court, Poonamallee against Kasiammal and her two sons - Erusappan and first plaintiff (then minor represented by his Court appointed guardian / brother - Erusappan). The suit properties therein had five items totally. Suit Item No.1 therein is an extent of



23 Cents in Survey No.313/2A of Medvakkam Village. Suit Item No.2 therein is an extent of 12 Cents in Survey No.331/3 of Medvakkam Village. Suit Item No.3 therein is an extent of 8 Cents in Survey No.304/5 of Medvakkam Village. Suit Item No.4 therein is an extent of 22 X 100 feet *Grama Natham* Site of Thulukkanchoolai hamlet, Medvakkam Village. Survey No.5 therein is an extent of 1 Acre 99 Cents in Vengivasal Village. The Suit ended in a compromise on January 21, 1964, wherein Suit Item Nos.1 and 4 were given up to the defendants therein while retaining Suit Item Nos.2,3 & 5 therein. Suit Item No.5 therein is Suit Item No.1 herein. Suit Item Nos.2 and 3 therein are described as Suit Item Nos.2 and 3 here as well.

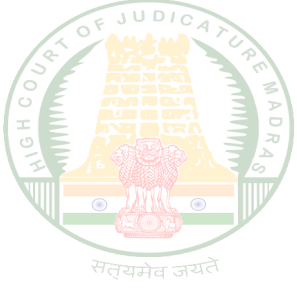
5.4.Elumalai Naicker sold Suit Item No.3 herein to one Devaraj. Likewise, Pachiappa Naicker and Elumalai Naicker together sold Suit Item No.2 herein in favour of one Ramachandran. Further, on July 17, 1982, Pachiappa Naicker executed registered Sale Deed in favour of the defendant in respect of his $\frac{1}{2}$ share in the Suit Item No.1 herein. Furthermore, on June 18, 1983, Elumalai Naicker passed away leaving behind his four sons namely



the defendant, Kanniappan, Varadan and Pattu as his legal heirs. Suit Item Nos.2 and 3 herein are not available with the defendant's family (nor with the plaintiffs' family) as they were sold to Ramachandran and Devaraj respectively. Hence, *qua* Suit Item No.1 herein, the defendant is entitled to 5/8 (1 Acre 25 Cents) in Suit Item No.1 herein and his siblings - Kanniappan, Varadan and Pattu are entitled to the remaining 3/8 share equally (*i.e.*, 25 Cents each). The entire Suit Item No.1 is in possession and enjoyment of the defendant and his siblings. The plaintiffs were never in possession and enjoyment of the suit properties. The Suit is false. Accordingly, the defendant prayed to dismiss the Suit.

TRIAL COURT

6. Based on the above pleadings, the Trial Court framed necessary issues and the matter went for trial. On the side of the plaintiffs, the Plaintiff Nos.1 and 3 were examined as P.W.1 and P.W.2 respectively, and Ex-A.1 to Ex-A.11 were marked. On the side of the defendant, the defendant was examined as D.W.1 and Ex-B.1 to Ex-B.15 were marked.



7. Upon hearing either side and examining the evidence available on record, the Trial Court held that the plaintiffs did not establish their plea of adverse possession. Further held that the Compromise Decree in O.S. No. 662 of 1962 attained finality as no appeal was preferred over the same. Accordingly, the Trial Court concluded that the plaintiffs are not entitled to the relief of permanent injunction and dismissed the Suit.

FIRST APPELLATE COURT

8. On appeal by the plaintiffs before the First Appellate Court, it held that the plaintiffs are not in possession and enjoyment of the suit properties and they have not perfected title by adverse possession. The Compromise Decree in O.S. No. 662 of 1962 reached finality, as even after attaining the age of majority, the first plaintiff failed to prefer any appeal over the same. Accordingly, the First Appellate Court dismissed the appeal confirming the Judgment and Decree of the Trial Court.

**SECOND APPEAL**

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9. The aggrieved plaintiff has come to this Court by way of the captioned Second Appeal, which was admitted on July 15, 2005, on the following Substantial Questions of Law:

"1. Whether resjudicata cannot be applied based on compromise decree dated 22.01.1964 as the appellant had not signed the said compromise memo?"

2. Whether the appellant is not entitled to file suit for bare injunction to protect the possession?"

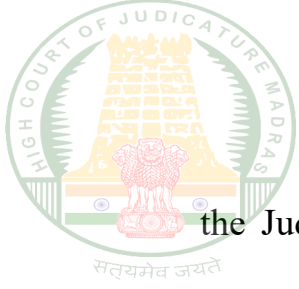
3. Whether the compromise memo dated 22.01.1964 is not valid as the minor plaintiff's guardian and the 2nd plaintiff in that suit had not signed issued compromise memo?"

ARGUMENTS

10. Mr.S.Baskaran, learned Counsel for the appellants / appellants / plaintiffs would submit that the findings of the Trial Court as well as those of the First Appellate Court are palpably erroneous. The Courts failed to consider the fact that the compromise was not signed by the guardian of the



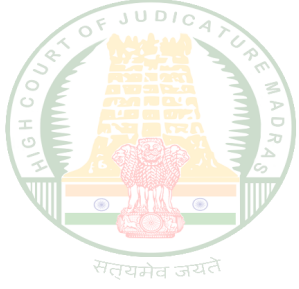
then minor first plaintiff and also the fact that Ex-B.6 - Compromise Decree in O.S. No.662 of 1962 was not registered. Elaborating the said submission, the learned Counsel would submit that the plaintiffs in O.S. No.662 of 1962 had no pre-existing right over the suit properties therein and in such a scenario, no right flows from a Compromise Decree when it is un-registered. An un-registered Compromise Decree can only be treated as an agreement not acted upon. No Execution Petition was filed pursuant to Ex-B.6 - Compromise Decree passed in O.S. No.662 of 1962. In this regard, he would rely on the Judgments of Hon'ble Supreme Court in (i) ***Bhoop Singh -vs- Ram Singh Major***, reported in (1995) 5 SCC 709; (ii) ***Khushi Ram -vs- Nawual Singh***, reported in AIR 2021 SC 1117; (iii) ***S.Kuldeep Singh -vs- Prithpal Singh***, reported in (2023) 19 SCC 609. He would further submit that the plaintiffs remained in continuous, open and exclusive possession and enjoyment of the suit properties and thereby perfected title by adverse possession as well. The Trial Court as well as the First Appellate Court failed to consider the above facts and erred in denying the relief of permanent injunction. Accordingly, he would pray to allow the Second Appeal, set aside



the Judgment and Decree of the Trial Court and First Appellate Court and decree the Suit as prayed for.

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11.*Per contra*, Ms.R.V.Gayathri, learned Counsel representing Mr.P.B.Ramanujam, learned Counsel on record for the respondent / respondent / defendant would submit that Kanniappa Naicker who is the last title holder passed away in 1940 and his wife - Ellammal passed away in October 1955. After the demise of Kanniappa Naicker, Ellammal remained as a mere limited estate holder during her lifetime. After her demise, the properties left by Kanniappa Naicker, shall devolve upon reversioners. She would refer to Ex-B.5 - Judgment and Decree dated July 26, 1960 and submit that Elumalai Naicker and Pachiappa Naicker were declared as reversioners of Kanniappa Naicker. Accordingly, they became entitled to the estate left behind by Kanniappa Naicker. Any alienation or transfer made by the limited estate holder - Ellammal, would not be valid. Accordingly, the alleged Settlement Deed executed by her in favour of her brother is invalid.



11.1. She would further submit that, in their capacity as reversioners, Pachiappa Naicker and Elumalai Naicker filed O.S. No. 662 of 1962 and Ex-B.6 - Compromise Decree was passed therein. The Trial Court as well as the First Appellate Court concurrently held that Ex-B.6 - Compromise Decree is valid and acted upon and consequently, the plaintiffs are not entitled to the relief of permanent injunction. She would further invite attention to Section 17 (2) (vi) of the Registration Act, 1908 and submit that the compromise was in respect of the suit properties therein and not any other property. When so, registration is optional and not compulsory. Yet another reason making registration optional is that the relief sought for in O.S. No. 662 of 1962 is itself based on the pre-existing rights of the plaintiffs therein. Further, in that Suit, the first plaintiff was duly represented by his brother / Court appointed guardian - Erusappa and the first plaintiff upon attaining the age of majority, has not challenged the said Compromise Decree till date. Even while assuming that the first plaintiff is 'now' entitled to challenge Ex-B.6 - Compromise Decree, it can only be done under the same proceedings. Both the Courts rendered a concurrent finding that the plaintiffs are not in



possession and enjoyment of the suit properties on the date of Suit and there is no need to interfere with the same. Accordingly, she would pray to dismiss the Second Appeal.

DISCUSSION

12. Heard on either side. Perused the entire evidence available on record.

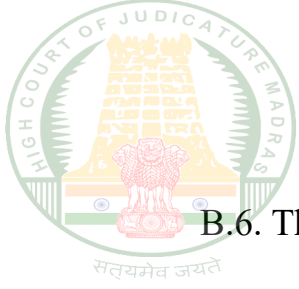
13. P.W.1 / first plaintiff in his evidence admitted that Gengammal is the pre-deceased sister of Kanniappa Naicker and that her sons are Elumalai Naicker and Pachiappa Naicker. He also admitted that they are the nearest reversioners of Kanniappa Naicker. Reference may be made to the genealogy chart set out *supra* for better appreciation of the facts as well as the discussion.

14. Ellammal is said to have executed a Settlement Deed dated September 5, 1944 in favour of her brother's daughter - Navaneethammal and said Navaneethammal's son - Manavalan. In turn, Navaneethammal and

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Manavalan executed a Sale Deed dated July 26, 1957, in favour of one Kanniappa Naicker [not Ellammal's husband - Kanniappa Naicker]. This led to Elumalai Naicker and Pachiappa Naicker, sons of Gengammal, filing the Suit in O.S. No.337 of 1958 on the file of District Munsif Court, Poonamallee seeking declaration that the said Settlement Deed is invalid. The said Suit was decreed after contest. In the said Suit, it was held that Ellammal passed away in October 1955. Its Judgment is marked as Ex-B.5. The plaintiffs or their predecessors were not parties to the said Suit and hence, it would not be binding upon them.

15. Moving on, Elumalai Naicker and Pachiappa Naicker filed yet another Suit in O.S. No.662 of 1962 on the file of District Munsif Court, Poonamallee against Kasiammal and her two sons - Erusappan and first plaintiff (then minor represented by his brother / Court appointed guardian *vide* Order dated January 7, 1963 made in I.A. No.884 of 1962), seeking possession of suit properties therein and ejecting the aforesaid defendants therefrom. The Suit ended in a Compromise Decree which is marked as Ex-

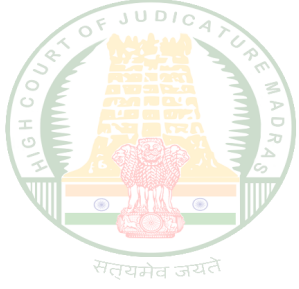


B.6. The suit properties in the present Suit are also a part of the suit properties in O.S. No.662 of 1962. What could be seen from Ex-B.6 is that, the parties jointly filed the Deed of Joint Compromise *vide* I.A. No.93 of 1964. The said Interlocutory Application was allowed and only pursuant thereto, the Compromise Decree in Ex-B.6 was passed. Ex-B.6 - Compromise Decree reads thus:

"This suit coming on this day for hearing, before me, in the presence of Sri S.Ranganatha Iyer, Advocate for the Plaintiff and of Sri.A.Jambunatha Sastriar, Advocate for the defendants and today both parties having filed into Court a deed of compromise (I.A.93 of 64) this Court in pursuance of the said compromise doth order and decree as follows:

1. that the plaintiff is entitled to items 2,3 and 5 of the suit properties (S.No.331/3 0.12 cents, 304/5 8 cents and 1050/2 1 ac. 99 cents)'

2. that the defendants be and hereby are entitled to items 1 and 4 of the suit properties in S.No.313/2A and



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the gramantham site. (The correct extent of item is 28 cents).

3. that the plaintiff shall not claim profits from the defendants upto this date;

4. that each party do bear their own costs.

Terms of Compromise

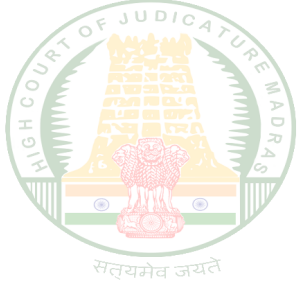
1. There will be decree in plaintiff's favour as prayed for in respect of items 2,3 and 5 of the suit properties in S.No.331/3 (12 cents) 304/5 (8 cents) and 150/2 (1 ac. 99 cents).

2. The defendants may retain item 1 and 4 of the suit properties in S.No.313/24 and the gramatham site (The correct extent of item is 28 cents.)

3. The plaintiffs shall not claim profits from the defendants up till this date.

4. The parties shall bear their costs of the suit.

Schedule



Wet lands situate in Medavakkam Vilage of Saidapet

Taluk having the following descriptions:

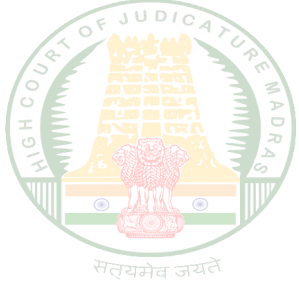
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S.No.	Survey No.	Extent	Kist
1.	313/2A	0.23	0.94
2.	331/3	0.12 with a well thereon	0.44
3.	304/5	0.08	0.31
			1.69

4. Gramanatham site of the extent of 22 ft. east to west and 100' north to south situate in Thulukkanchoolai hamlet of Medavakkam village bounded on the south by the street on the north by Murugappa Naicker's house and site, on the West by Govindaswami Naicker's house and site and on the east by Kuppu Naicker's house and site. Value Rs.200/-.

5. Dry land comprised in S.No.50/2 of the extent of 1 acre 99 cents of Vengavasal Village of Saidapet Taluk with the well in the said property. Kist Rs.1-49.

NB: All the items of the lands mentioned above are with the Sub Registration District of Tambaram and Registration District of Madras – Chingleput."



16. The first plaintiff, Erusappan and their mother - Kasiammal were parties to O.S. No.662 of 1962. Erusappan is the husband of second plaintiff and father of plaintiffs-3 & 4. Upon his demise, plaintiffs 2 to 4 became his legal heirs. Though the plaintiffs or their predecessors were not parties to O.S. No.337 of 1958, they were parties to O.S. No.662 of 1962, which is a Suit filed for possession and ejection filed by Elumalai Naicker and Pachiappa Naicker claiming to be the nearest reversioners of Kanniappa Naicker, which means they were claiming pre-existing rights accrued on them upon the demise of Ellammal. By entering into the Compromise Decree based on Joint Compromise Memo, the defendants therein (first plaintiff, his mother and Erusappan, the predecessor of plaintiffs 2 to 4) have admitted the pre-existing rights of Elumalai Naicker and Pachiappa Naicker. Though the first plaintiff was then a minor, he was duly represented by his brother as Court appointed guardian. The Compromise Decree in Ex-B.6 is dated January 21, 1964. Till date, the first plaintiff who was then a minor duly represented by his brother in the said Suit, has not taken steps to reopen O.S. No.662 of 1962 or to set aside or cancel the Compromise Decree passed therein. The plaintiffs



who attack the Compromise Decree in Ex-B.6 *inter-alia* on the ground that Kasiammal did not sign in the Joint Compromise Memo, bear the burden to prove the same. They have miserably failed to adduce any evidence in order to establish the same. Moreover, if a Compromise Decree is to be attacked, it can only be done in the same proceedings *i.e.*, in the same Court by reopening the case. Till the date of Suit, no such course of action has been undertaken by the plaintiffs. It is apposite to state here that the plaintiffs suppressed the factum of Compromise Decree in Ex-B.6 in the plaint filed in the present Suit. For the aforesaid reasons, the plaintiffs cannot question the Compromise Decree in Ex-B.6, in this Suit.

17. Coming to registration of Compromise Decree, the compromise between the parties thereto was solely in respect of the suit properties therein. Further, as stated *supra*, Elumalai Naicker and Pachiappa Naicker filed the said Suit claiming pre-existing rights as nearest reversioners of Kanniappa Naicker while questioning the validity of the alienations made by Ellammal. Hence, there is no need to register the Compromise Decree and



it would bind the parties thereto even without registration as registration in such cases are optional as per Section 17 (2) (vi) of the Registration Act, 1908, which reads thus:

"PART III

OR REGISTRABLE DOCUMENTS

17. Documents of which registration is compulsory.-

(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

x-x-x

x-x-x

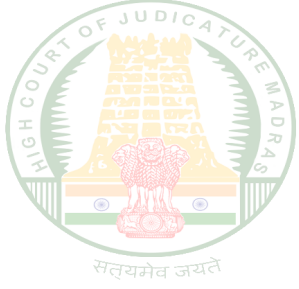
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(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—

x-x-x

x-x-x

x-x-x



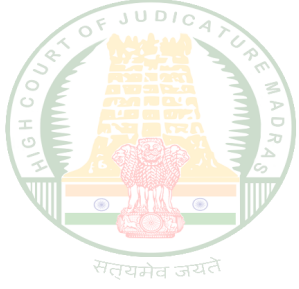
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(vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding; or ..."

18. Further, Hon'ble Supreme Court in ***Ripudaman Singh -vs- Tikka Maheshwar Chand***, reported in (2021) 7 SCC 446, following ***Bhoop Singh's Case*** [cited *supra*], held that when a Compromise Decree does not create any new right and is only in respect of any pre-existing rights, it does not require registration. Relevant extract reads thus:

"14. In respect of a question whether the decree requires registration or not, this Court in *Bhoop Singh v. Ram Singh* [*Bhoop Singh v. Ram Singh*, (1995) 5 SCC 709] held that decree or order including compromise decree creating new right, title or interest in praesenti in immovable property of value of Rs 100 or above is compulsory for registration. It was not the case of any pre-existing right but right that has been created by the decree alone. This Court explained both the situation, where a party has pre-existing right and where no such right exists. It was observed as under : (SCC pp. 714-16, paras 13, 16 & 18-19)



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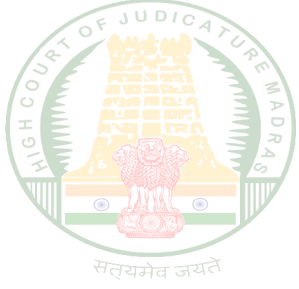
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“13. In other words, the court must enquire whether a document has recorded unqualified and unconditional words of present demise of right, title and interest in the property and included the essential terms of the same; if the document, including a compromise memo, extinguishes the rights of one and seeks to confer right, title or interest in praesenti in favour of the other, relating to immovable property of the value of Rs 100 and upwards, the document or record or compromise memo shall be compulsorily registered.

16. We have to view the reach of clause (vi), which is an exception to sub-section (1), bearing all the aforesaid in mind. We would think that the exception engrafted is meant to cover that decree or order of a court, including a decree or order expressed to be made on a compromise, which declares the pre-existing right and does not by itself create new right, title or interest in praesenti in immovable property of the value of Rs 100 or upwards. Any other view would find the mischief of avoidance of registration, which requires payment of stamp duty, embedded in the decree or order.

18. The legal position qua clause (vi) can, on the basis of the aforesaid discussion, be summarised as below:

(1) Compromise decree if bona fide, in the sense that the compromise is not a device to obviate payment of stamp duty and frustrate the law relating to registration, would not



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require registration. In a converse situation, it would require registration.

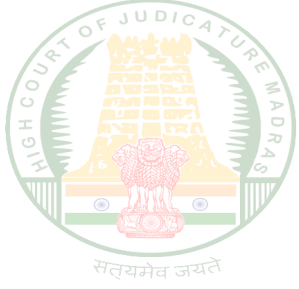
(2) If the compromise decree were to create for the first time right, title or interest in immovable property of the value of Rs 100 or upwards in favour of any party to the suit the decree or order would require registration.

(3) If the decree were not to attract any of the clauses of sub-section (1) of Section 17, as was the position in the aforesaid Privy Council and this Court's cases, it is apparent that the decree would not require registration.

(4) If the decree were not to embody the terms of compromise, as was the position in Lahore case, benefit from the terms of compromise cannot be derived, even if a suit were to be disposed of because of the compromise in question.

(5) If the property dealt with by the decree be not the "subject-matter of the suit or proceeding", clause (vi) of sub-section (2) would not operate, because of the amendment of this clause by Act 21 of 1929, which has its origin in the aforesaid decision of the Privy Council, according to which the original clause would have been attracted, even if it were to encompass property not litigated.

19. Now, let us see whether on the strength of the decree passed in Suit No. 215 of 1973, the petitioner could sustain his case as put up in his written statement in the present suit,



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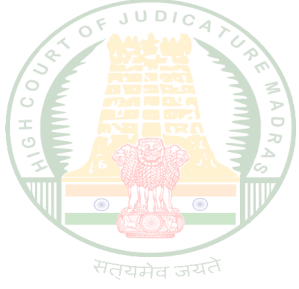
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despite the decree not having been registered. According to us, it cannot for two reasons:

(1) The decree having purported to create right or title in the plaintiff for the first time that is not being a declaration of pre-existing right, did require registration. It may also be pointed out that the first suit cannot really be said to have been decreed on the basis of compromise, as the suit was decreed “in view of the written statement filed by the defendant admitting the claim of the plaintiff to be correct”. Decreeing of suit in such a situation is covered by Order 12 Rule 6, and not by Order 23 Rule 3, which deals with compromise of suit, whereas the former is on the subject of judgment on admissions.”

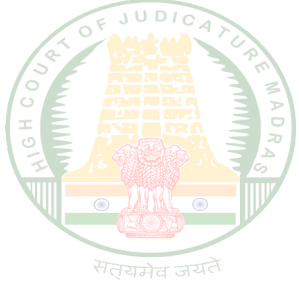
** * **

18. In view of enunciation of law in Bhoop Singh case [Bhoop Singh v. Ram Singh, (1995) 5 SCC 709] , we find that the judgment [Tikka Maheshwar Chand v. Ripudaman Singh, 2016 SCC OnLine HP 3808] and decree of the High Court holding that the decree requires compulsory registration is erroneous in law. The compromise was between the two brothers consequent to death of their father and no right was being created in praesenti for the first time, thus not requiring compulsory registration. Consequently, the appeal is allowed and the suit is decreed.”



19. Therefore, the Compromise Decree in Ex-B.6 is valid unless set aside or declared invalid as per law, and it would continue to bind the plaintiffs. Consequently, the plaintiffs are barred by the principle of estoppel from claiming otherwise. As O.S. No.662 of 1962 ended in a Compromise Decree, where the Court did not adjudicate upon any issue, the principle of *res judicata* does not come into picture in this case. ***Substantial Question of Law Nos.1 and 3 are answered as above.***

20. The defendant in his evidence as D.W.1 deposed that Suit Item Nos.2 and 3 herein were sold to third parties. Suit Item No.2 is an extent of 12 Cents in Survey No.331/3 of Medvakkam Village. Suit Item No.3 is an extent of 8 Cents in Survey No.304/5 of Medvakkam Village. According to the defendant, Suit Item Nos.2 and 3 are neither in possession and enjoyment of the defendant nor that of the plaintiffs as they have already been sold. The plaintiffs did not take any specific stand either denying or admitting the same. Hence, this Court is of the view that there is no serious dispute with Suit Item Nos.2 and 3 in this matter.



21.The primary contentions of the parties are limited to Suit Item No.1, which is an extent of 1 Acre 99 Cents in Vengaivasal Village. The plaintiffs rely on Ex-A.3 to Ex-A.11. This Court has perused the said documents.

21.1.Ex-A.3 and Ex-A.6 are Kist Receipts pertaining to the suit properties and some more properties for the year 1970-1982. They stand in the name of Erusappan.

21.2.Ex-A.4 is the Patta issued in the Fasli Year 1381 (1971). It is in respect of Suit Item No.2 and some other properties and does not include Suit Item Nos.1 or 3. It stands in the name of first plaintiff.

21.3.Ex-A.5 is the Patta bearing Patta No.358 issued in the Fasli Year 1382 (1972-1973) and stands in the name of first plaintiff and his brother - Erusappan in respect of Suit Item No.1.

21.4.Ex-A.7 is a UDR Patta issued under the Updating Registry Scheme (UDR) in the name of the plaintiffs in respect of Suit Item No.1.



Though Ex-A.7 is not dated, given that it was issued under UDR Scheme, it could be reasonably inferred that it was issued between 1982 and 1986. Ex-A.8 is an undated UDR Patta in respect of Suit Item No.3 in the name of Erusappan.

21.5.Ex-A.9 is the Adangal Extract in respect of Suit Item No.1 for Fasli Year 1382 - 1393 [1972 - 1983] which stands in the name of Erusappan. Ex-A.10 is the Registration Copy of Simple Mortgage Deed executed by plaintiffs 1, 3 & 4, in favour of one Veeraraghavan in respect of Suit Item No.1. Ex-A.11 - Encumbrance Certificate disclosing the mortgage under Ex-A.10.

21.6.The plaintiffs' side documents show that they were in possession and enjoyment of the suit properties till 1982 - 1983. There is no document to show their possession thereafter or at the time of Suit. To be noted, the present Suit was originally filed on April 4, 1988 before the District Munsif Court, Poonamallee and numbered as O.S. No.774 of 1988, and later



on the point of territorial jurisdiction it was transferred to the Trial Court and renumbered as O.S. No.517 of 1997.

22.Coming to the evidence let in by the defendant, Ex-B.1, Ex-B.8 and Ex.B.14 are relevant. Ex-B.1 is a Patta dated June 21, 1988 issued in respect of Suit Item No.1 in favour of defendant. Ex-B.8 is a registered Sale Deed dated June 17, 1982 executed by Pachiappan in favour of defendant. Ex-B.14 is a certified copy of a Kist Receipt standing in the name of defendant shows that the defendant has been paying Kist in respect of Suit Item No.1 since 1987. In view of Ex-B.1, Ex-B.8 and Ex-B.14, the defendant is in possession and enjoyment of the suit properties on the date of Suit.

23.It is also to be noted that Ex-A.9 - Adangal Extract in respect of Suit Item No.1 for Fasli Year 1382 - 1393 [1972 - 1983], was obtained on April 12, 2000. The plaintiffs if really were in possession and enjoyment of the Suit Item No.1, they could have obtained the Adangal Extract for the later years as well. But they failed to do so. This fact, when seen along with the defendant's evidence, probablizes that the plaintiffs subsequently lost



possession of Suit Item No.1 to the defendant. Further, Pachiappan executed

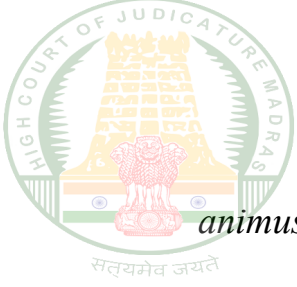
Ex-B.8 - Sale Deed in the year 1982, in favour of the defendant, in respect of his $\frac{1}{2}$ share in Suit Item No.1. This also shows that the plaintiffs were not in possession and enjoyment of Suit Item No.1 at that time.

24.A wholistic consideration of the relevant evidence let in by the plaintiffs and the defendants reveals that, though the plaintiffs were in possession and enjoyment of the suit properties till 1982 - 1983, no document was filed to sufficiently show that they were in possession and enjoyment of the suit properties ever thereafter, especially at the time of filing of Suit. Ex-A.10 is a Simple Mortgage Deed and it cannot be taken to construe that the plaintiffs were in possession and enjoyment of the suit properties on the material point of time. Both the Courts, concurrently held that the plaintiffs were not in possession and enjoyment of the suit properties on the date of Suit. On the other hand, the defendant side evidence shows that he was in possession of Suit Item No.1 on the date of Suit. Further, as stated *supra*, unless the Compromise Decree in Ex-B.6 is set aside or reopened or declared

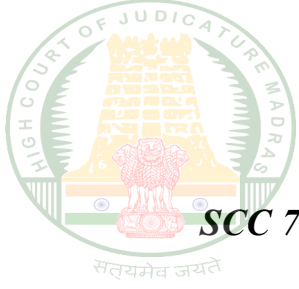


as invalid by a competent Court, it is valid in the eyes of law. One another aspect is that, the plaintiffs claimed in the plaint the relief of permanent injunction based on Ex-A.2 - Settlement Deed dated October 7, 1940 executed by Ellammal in favour of her brother Subramania Naicker in respect of the suit properties. That is to say, the plaintiffs claimed the relief on the basis of alleged title under Ex-A.2 - Settlement Deed. They suppressed the Compromise Decree in Ex-B.6. When the parties entered into a Joint Compromise Memo *inter-alia* in respect of the suit properties resulting in the Compromise Decree in Ex-B.6, it means that Ex-A.2 - Settlement Deed subsumed into the Compromise Decree in Ex-B.6. Hence, the plaintiffs who claimed the relief of permanent injunction against the defendant based on alleged title under Ex-A.2 - Settlement Deed, are not entitled to the same.

25.As regards the plea of adverse possession, adverse possession is a wrongful possession claiming as a right. The person who sets up the plea must plead and prove the same. He should admit the title of the actual title holder and hold possession adverse thereto to their knowledge with necessary



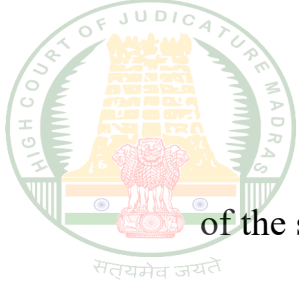
animus for the prescribed period. As far as the plea of ouster is concerned, broadly, three elements are necessary for establishing the plea of ouster in the case of co-owner. They are (i) declaration of hostile animus (ii) long and uninterrupted possession of the person pleading ouster and (iii) exercise of right of exclusive ownership openly and to the knowledge of the other co-owners. Further, law is well settled that mutation of the Revenue Records, payment of taxes, Management of Property etc., itself may not be sufficient to establish ouster or adverse possession. See ***Govindammal vs R.Perumal Chettiar*** reported in (2006) 11 SCC 600 and ***Dr.V.Jegannathan vs P.R.Srinivasan*** reported in (1999) 3 LW 742. As stated *supra*, the plaintiffs' side evidence shows that they were in possession of Suit Item No.1 till 1986. Given the relationship between the parties, and given the absence of necessary pleadings and proof on the side of plaintiffs, their possession over Suit Item No.1 could have very well been a permissive one. The plaintiffs did not seek any declaration of title by adverse possession, even when there is no bar to seek declaration in this regard [See Judgment of Hon'ble Supreme Court in [***Ravinder Kaur Grewal -vs- Manjith Kaur***, reported in (2019) 8



SCC 729]. None of essential ingredients of adverse possession has been made out by the plaintiffs during their evidence in this case. Nor is there proper and sufficient pleadings in this regard. There is nothing available on record to show that the plaintiffs' possession was open, continuous, exclusive and adverse to that of the real owner with necessary *animus*. Therefore, this Court is of the view that the plea of adverse possession is not proved in this case.

26.The plaintiffs have neither established their possession at the time of filing of Suit nor have they established their plea of adverse possession, while on the other hand the defendant has proved his possession at the time of Suit as well as succeeded in tracing his title from the Compromise Decree in Ex-B.6. Both the Courts concurrently held that the plaintiffs are not entitled to the relief of permanent injunction. Therefore, this Court finds no warrant to interfere with the same.

27.As regards Substantial Question of Law No.2, while the plaintiffs are entitled to file the Suit for injunction simpliciter, they are not entitled to the relief as it is the defendant who is in possession and enjoyment



of the suit properties on the date of Suit. ***Substantial Question of Law No.2 is answered accordingly.***

28.This Court has given its due consideration to the case laws relied on either side. As regards the two case laws relied on by the learned Counsel for the appellants / plaintiffs, which are not discussed by this Court, when delved into their factual matrix, this Court found that either there is no pre-existing right or the suit property was not a subject matter of the Compromise Decree. Whereas in the present case, the Suit in O.S.No.662 of 1962 was for declaration of a pre-existing right as stated above and the Compromise Decree was in respect of the suit properties therein. As they are factually deviant, this Court is of the view that they are not applicable to the present case. As regards the case laws relied on by the learned Counsel for the respondent / defendant, there are no serious disputes with the proposition of law advanced in them.

29.Additional grounds raised by the Appellant vide CMP No.15967 of 2005 and CMP No.13920 of 2021 and arguments advanced *qua*



additional substantial questions of law, were considered and dealt with in the judgment. Hence, the aforesaid Civil Miscellaneous Petitions are closed.

CONCLUSION

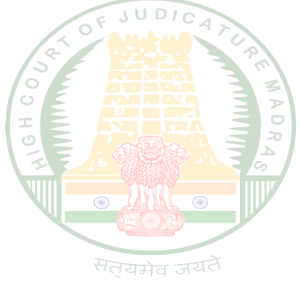
30.Resultantly, the Second Appeal is dismissed. The Judgment and Decree of the First Appellate Court and the Trial Court is confirmed. In view of the facts and circumstances of this case, there shall be no order as to costs. As stated supra, connected civil miscellaneous petitions are closed.

28 / 07 / 2026

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
pam/TK

To

- 1.The Subordinate Judge, Chengalpattu
- 2.The District Munsif Court, Tambaram.



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R. SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
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