

SA(MD). Nos.95 & 96 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 16.06.2026

Delivered On : 03.07.2026

CORAM

THE HONOURABLE MR. JUSTICE P.B. BALAJI

**SA(MD). Nos.95 & 96 of 2020
and
CMP(MD)No.2046 of 2020**

SA(MD). No.95 of 2020

1. S.M.Krishnakumar,

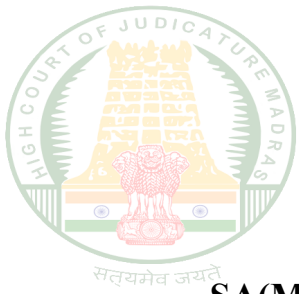
2. S.Chinnaraj, ... Appellants/Appellants / Plaintiffs

Vs.

1. S.C.Balakrishnan,

2. B.Pandian, ... Respondents/Respondents / Defendants

PRAYER :- Second Appeal filed under Section 100 of Civil Procedure Code against the judgement and decree dated 27.02.2017 made in A.S.No. 9 of 2015 on the file of the Sub ordinate Judge, Periyakulam and set aside the decree and judgement dated 19.08.2015 made in O.S.No. 31 of 2012 passed by the District Munsif Judge, Periyakulam.



SA(MD). Nos.95 & 96 of 2020

SA(MD). No.96 of 2020

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1. Krishnakumar,

2. Krishna Manohar, ... Appellants /Appellants /Defendants

Vs.

1. Pappammal (Died)

Amaravathy(Died),

1.B.Pandian

2. Vairamani,

3. Rajeshwari,

4. Maheshwari,

5. Sikkammal

(Thorugh Power Agent P.Ramadass)

6. Ramamoorthy,

Thorugh His Power of Attorney

S.C.Balakrishnan

7. M.Selvam,

8. Chinnayan,

9. Jeya,

10. Vanitha, ... Respondents / Appellants/Plaintiffs

PRAYER :- Second Appeal filed under Section 100 of Civil Procedure Code, against the judgement and decree dated 27.02.2017 made in A.S.No. 15 of 2015 on the file of the Subordinate Judge, Periyakulam and set aside the decree and judgement dated 04.03.2016 made in O.S.No.140 of 2011 passed by the District Munsif Judge, Periyakulam.



SA(MD). Nos.95 & 96 of 2020

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(In both Appeals)

For Appellants : Mr.T.Gowthaman, Senior Counsel
for M/s.BFS Legal

For Respondents : Mr.M.C.Swamy in SA(MD)No.95/2020
and R1 to R9 in SA(MD)No.96/2020

COMMON JUDGMENT

The plaintiffs in O.S.No.31 of 2012, aggrieved by challenging the concurrent findings against them, have preferred S.A.(MD)No.95 of 2020.

2. SA(MD)No.96 of 2020 is at the instance of the defendants in O.S.No.140 of 2011, challenging the reversal findings rendered by the first appellate Court in A.S.No.15 of 2015. The trial Court had initially dismissed the suit filed by the plaintiffs in O.S.No.140 of 2011, however, the first appellate Court decreed the suit. As against the same, the defendants have come up by way of the second appeal.



SA(MD), Nos.95 & 96 of 2020

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3. These Second Appeals have been admitted by this Court on 17.02.2020, on the following substantial questions of law:

i) Whether the respondent/plaintiff have right to claim declaration and injunction u/s.25(b) Tamil Nadu Court Fee Act, whenever the alleged treasury receipts, and D-Namuna and Jamin Pattas in 1925 without correlated revenue records?

ii) Whether the predecessor in title of the respondents/plaintiff named Pandara Gounder @ Panda Thathaya Gounder is one and the same person, when the Ex.B10 states that both are different persons?

iii) Whether the respondent/plaintiff have right to claim declaration and injunction u/s.25(b) Tamil Nadu Court Fee Act, whenever the alleged revenue records and D-Namuna and Jamin Pattas in 1925 without correlating the revenue records?

iv) Whether the Ex.B10 order of the Tahsildar in Na.Ka.NO.1168/2008/A6 is related to legal heirs of P.Bommaya Gounder, S/o. Pandara Thathaya Gounder correct when even the respondents/plaintiffs failed to challenge in proper forum?



SA(MD). Nos.95 & 96 of 2020

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4. I have heard Mr.T.Gowthaman, learned Senior Counsel for the appellants in both the second appeals and Mr. M.C.Swamy, learned counsel for the respondents in SA(MD)No.95 of 2020 and respondents 1 to 9 in SA(MD)No.96 of 2020.

5. The parties are described as per their rank before the trial Court in the first suit in O.S.No.140 of 2011, who are the present appellants/contested defendants.

6. Brief facts, that would be necessary for deciding the second appeals on the admitted substantial questions of law, are as follows:

6.1. The plaintiffs in O.S.No.140 of 2011 came to Court with the case that the plaintiffs 1 to 3 and 8 are brothers and sisters being children of Bommaya Gounder, who was son of Pandara Goundar @ Pandara Thathaiya Gounder. The plaintiffs 4 and 7 are the respective wives of Iyaappan and Anandhan, predeceased sons of said Bommaya Gounder



SA(MD). Nos.95 & 96 of 2020

and the defendants 5 and 6 are the daughters. According to the plaintiffs, item No.2 properties were assigned to Bommaya Gounder by the Government in the year 1912 and patta No.548 was also issued to him. The plaintiffs are in possession of the said suit property through the power agent. Insofar as item No.1 of the suit property, it is the case of the plaintiffs that Bommaya Gounder purchased the same wayback in the year 1925 and D form patta was also issued in the name of Government property, both item Nos.1 and 2 admittedly being situated adjacent to each other. According to the plaintiffs, Bommaya Gounder was in possession of the said items of the property and he died on 20.10.1962 and patta also continued to be in his name till 1984. By way of inheritance, the plaintiffs became entitled to the suit properties and in view of drought, they moved away from the suit property and used to visit the suit property on and off and they had appointed one Ramdoss, as a power agent, to maintain the suit property.

6.2. Survey No.1237 /1 is a Government poromboke land situated to the north of, and adjacent to, the suit property. Thathaiya Gounder was cultivating the said lands in survey No.1237/1 under lease from the



SA(MD), Nos.95 & 96 of 2020

Government, his son Raj Gounder and his grand-son Alagarsamy took

lease of the said land, after the demise of Thathaiya Gounder and taking advantage of the long absence of the plaintiffs from the suit property, the said Raj Gounder and Alagarsamy fraudulently got patta mutated from Bommaya Gounder 's name to Thathaiya Gounder's name in 1984, during UDR survey. According to the plaintiffs, Thathaiya Gounder died 40 years prior to the said mutation of patta in his name. Raj Gounder and his son, Alagarsamy also alienated portion of the suit property under sale deed dated 15.12.1982, in document No.26/1983. That apart, one Bommayan, claiming to be a son of Jothulu Bommaya Gounder sold a portion of the suit property under sale deed dated 25.11.1982 to the first defendant in document No.3150/82. In the said document, it is claimed by the vendor Bommaya Gounder that he got the property at a family partition dated 05.10.1982. The plaintiffs made a diligent search and found that the partition deed was unregistered and brought about by eight persons belonging to different families and there was no tracing of title as well in the said partition deed. Similarly, Alagarsamy claiming to be the son of Jothulu Bommaya Gounder also executed a sale deed in favour of the first defendant on 07.02.1983 in document No.304/83, again, the



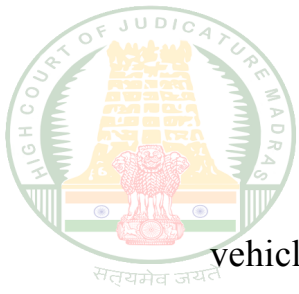
SA(MD), Nos.95 & 96 of 2020

plaintiffs claiming right under partition deed, dated 05.10.1982.

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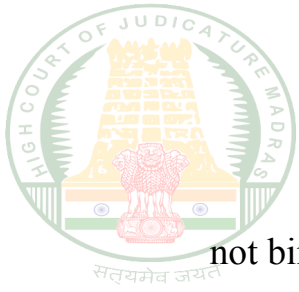
Similarly, Subburaj Gounder, who is none else than the son-in-law of Jothulu Bommaya Gounder sold the Government Tharisu land to Packiyalakshmi as if it was his property.

6.3. According to the plaintiffs, in the sale deed dated 25.11.1982 document No.3150/82, the properties sold are described to be of an extent of 2.85 Acres in the middle of the western side of a total extent 11.42 Acres, in survey No.1241/2. The lands in survey No.1241/1, of an extent of 89 cents was claimed to be in the middle of 3.32 Acres and similarly in document No.304/83, Alagarsamy had also described two survey numbers in the same manner. Even in document No.26/83, two survey numbers are described as if they situate in the middle of a larger extent. However, strangely, patta reflecting the properties conveyed under the sale deeds, reflect as if it is a one single plot. The plaintiffs are not parties to any of the sale deeds. The first defendant is not a *bonafide* purchaser and did not even peruse the title to the properties before embarking on purchase. The second defendant induced local persons and on 13.06.2011, trespassed into the suit property with bulldozers and JCB



SA(MD). Nos.95 & 96 of 2020

vehicles and the same was informed by neighbouring land owners and the third plaintiff immediately rushed to the suit property and thwarted the encroachment attempt made by the second defendant. A second attempt was made in July 2011, which was also defeated by the third plaintiff. Though the complaint was lodged before the District Superintendent of Police, no action was taken. The defendants are affluent and also highly influential person. The plaintiffs, on the other hand, are aged and six of them are women, other plaintiffs are agricultural coolies and the defendants have attempted to exploit their innocence. The plaintiffs sent a legal notice to the defendants. The defendants sent a reply with false allegation and hence the plaintiffs have filed the suit to declare themselves as the owners of the suit properties in item Nos.1 and 2. Item No.1, 3.32 Acres in survey No.1241 /1 and item Nos.2 measuring 11.42 Acres comprised in survey No.1241/2. The plaintiffs also sought for relief of a permanent injunction as a consequential relief to restrain interference or disturbance to their possession and enjoyment of the suit property. These apart, the plaintiffs also challenged the sale deeds dated 25.11.1982 (document No.3150/82); dated 07.02.1983 (document No. 304/83); dated 15.12.1982 (document No.26/83), as null and void and

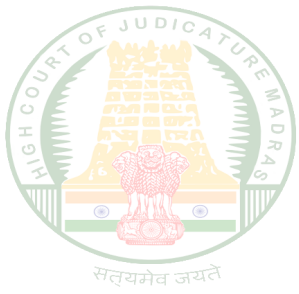


SA(MD), Nos.95 & 96 of 2020

not binding on the plaintiffs.

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7. The said suit was resisted by the defendants, firstly, contending that the reliefs of declaration challenging the sale deeds in favour of the first defendant are barred by limitation. The maintainability of suit is also attacked on the ground of non joinder of necessary parties. The first defendant claimed to be a *bonafide* purchaser for value and in possession right from 1982 onwards. The first defendant has mutated all revenue records in his name. Though third plaintiff had two brothers Iyappan and Anandhan and sisters Pappammal and Amaravathy, the brother Anandhan has not joined them in filing the suit. The plaintiffs suppressed the proceedings in W.P.(MD)No. 2955 of 2008 before the Madurai Bench of Madras High Court, where the third plaintiff has given an undertaking that he has not filed any suit before any Court of law. In the said writ petition, the first defendant has also impleaded himself. The defendants denied the right of the plaintiffs' predecessors-in-title and claim of possession of the suit property and also genealogy table of the predecessors-in-title.



SA(MD). Nos.95 & 96 of 2020

8. According to the defendants, the plaintiffs genealogy was rejected by the Tahsildar, Theni, vide proceedings dated 02.03.2009. The defendants were also denied D form patta in the name of Bommaya Gounder, son of Pandara Thathaiya Gounder and were issued D form pata in the name of Bommaya Gounder S/o. Pandara Gounder alone and therefore, the defendants were in lawful possession and enjoyment, including construction of a compound wall and barbed iron fencing of the property. It is further contended that survey No.1241/1 and 1241/2 are main survey numbers and subsequently, they have been subdivisions and the first defendant had purchased lands in survey No.1241/1B to an extent of 0.77.0 Ares and survey No.1241/2C to an extent of 1.02.0 Hectres. All revenue records are mutated in the name of the first defendant and the plaintiffs have no right, title or interest in the suit property. It is also contended that the suit ought to have been filed for declaration and recovery of possession and not for declaration and injunction, since the plaintiffs have not even been in possession. It is also contended by the first defendant that he has purchased only 2.98 Acres, whereas the plaintiffs claimed right for 11.42 Acres in survey No.1241/2. The allegations regarding trespass and use of JCB are denied, contending



SA(MD). Nos.95 & 96 of 2020

that the said machines were used only for maintenance work in the suit properties, which has always been in possession of the defendants.

9. After filing of the suit in O.S.No.140 of 2011, the first defendant therein Krishnakumar along with one S.Chinnaraj filed a suit in O.S.No. 31 of 2012, against the power agent of the eighth plaintiff in O.S.No.140 of 2011 and the third plaintiff in O.S.No.140 of 2011. In the said suit, the plaintiffs therein prayed for bare injunction to restrain the defendants from interfering with their peaceful possession and enjoyment of the suit properties comprised in survey No.1241/2B and 1241/2C as well as 1242/2 and 1241/3A.

10. A written statement was filed by the defendants in O.S.No.31 of 2012, referring to the earlier suit filed in O.S.No.140 of 2011 and reiterating the stand taken by the plaintiffs in O.S.No.140/2011.

11. The suits were tried separately. O.S.No.31 of 2012 filed by the appellants herein for permanent injunction was dismissed and the suit filed by the contesting respondent herein in O.S. No.140 of 2011 was

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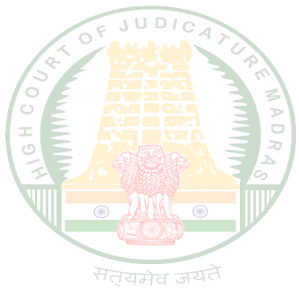


SA(MD), Nos.95 & 96 of 2020

also dismissed holding that the suit was time barred as well as on the ground of non joinder of proper parties.

12. Both the plaintiffs in O.S.No.140 of 2011 as well as O.S.No.31 of 2012 preferred first appeals. The plaintiffs in O.S.No.140 of 2011 filed A.S.No.15 of 2016 and the plaintiffs in O.S.No.31 of 2012 filed A.S.No.9 of 2015. Both the appeals were heard together by the Sub Court, Periyakulam and disposed of in and by way of common judgment.

13. The appellants herein took out an application in I.A.No.3 of 2016 for adducing additional evidence in A.S.No.9 of 2015. The said application was taken up along with the final hearing of the appeals and the first appellate Court finding that the petitioners/appellants herein had not adduced any reasons for non-production of the additional documents during the stage of trial and that the said documents were also not necessary for deciding the first appeal, dismissed the said Interlocutory Application.



SA(MD). Nos.95 & 96 of 2020

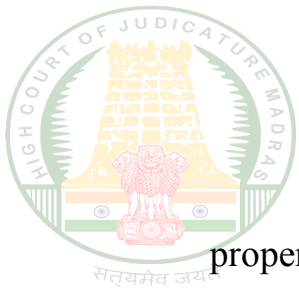
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14. The first appellate Court reversed the findings of the trial Court and held that the plaintiffs in O.S.No.140 of 2011 were entitled to relief and the suit was not barred by limitation and also not liable to be dismissed, on the ground of non joinder of proper and necessary parties. The said appeal in A.S.No.15 of 2016, filed by the plaintiffs in O.S.No. 140 of 2011, was allowed, reversing the findings of the trial Court, dismissing the suit. However, the first appellate Court affirmed the findings of the trial Court in O.S.No.31 of 2012 and dismissed the appeal in A.S.No.9 of 2015.

15. As against the said common judgment, the present two appeals have been preferred.

16. Mr.T.Gowthaman, learned Senior Counsel, would firstly contend that the first appellate Court had erroneously reversed the well considered findings of the trial Court. A summary of his arguments are that:

(a) the Courts below have not appreciated the documents especially Ex.B1 “Fasili” filed by the appellants to prove possession of the suit



SA(MD), Nos.95 & 96 of 2020

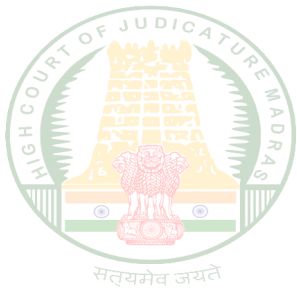
property being with them.

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(b) The report of the Tahsildar, Theni, after full enquiry, finding that Bommaya Gounder son of Pandara Gounder, was not a predecessor in title of the respondents herein and that prior to the UDR, properties were standing only in the name of Thathaiya Gounder, Ramaiah Gounder, Jothulu Bommaiya Gounder has not even been considered and consequently, the Court failed to see that the defendants cannot claim to be a legal heir of Pandara Thathaiya Gounder.

(c) The suit in O.S.No.140 of 2011 was hopelessly barred by limitation, especially, when it has been established by the appellants that even in 2006 survey stones had been fixed by the appellants, which factum was admitted by the respondents, during cross examination and the suit not having been filed within three years and only filed in 2011 was clearly beyond time.

(d) The first appellate Court erred in granting a modified relief, limiting the extent to 4.65 Acres, including the property, not belonging to the appellants, under the guise of moulding relief and the same was improper and impermissible.



SA(MD). Nos.95 & 96 of 2020

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(e) The Courts below failed to see that only under partition deed, mutation of revenue records was effected in favour of the appellants in the year 2011, which clearly evidenced the fact that it was only the appellants herein, who are in absolute possession and enjoyment of the suit property.

(f) possession of the appellants had been admitted by the third defendant in O.S.No.31 of 2012 and possession, following title, namely three registered sale deeds, in favour of the first defendant, the settled principle has been ignored by the Courts below.

(g) The Courts below ought not to have non suited the appellants on the ground that they did not seek for a relief of declaration, especially, when the respondents had not filed any documents of title and there was no real cloud on the title of the appellants.

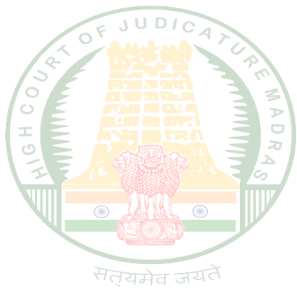
(h) The first appellate Court has not dealt with I.A.No.3 of 2016 for reception of additional evidence in a proper manner and failed to see that the two receipts, which were sought to be marked as an additional evidence was only to establish the factum of possession being with the appellants.



SA(MD), Nos.95 & 96 of 2020

The learned Senior Counsel would pray for both the appeals being allowed.

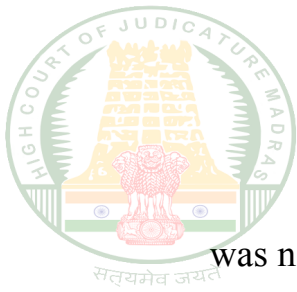
17. Per contra, Mr.M.C.Swamy, learned counsel for the contesting respondents in both the second appeals, would state that insofar as O.S.No.31 of 2012, the Courts below had rightly declined the relief of permanent injunction, finding that suit for bare injunction, without declaration, was not maintainable under Section 34 of the Specific Relief Act. In this regard, he would submit that admittedly O.S.No.140 of 2011 was filed, and pending on the date of institution of suit, in O.S.No.31 of 2012 and therefore, there is no merit in the arguments of the appellants that there was no cloud on the title necessitating the inclusion of relief of declaration. He would further state that insofar as the molding of relief by the first appellate Court, it is only on the basis of a memo filed by the contesting respondent, restricting their right to a lesser extent and in such circumstances, no infirmity or illegality can be attached to the reversal findings rendered by the first appellate Court.



SA(MD), Nos.95 & 96 of 2020

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18. Mr.M.C.Swamy, learned counsel, would further state that it is only the appellants / their vendors, who do not have any title and even the 1982 sale deed under which the appellants claim does not disclose the fact that the vendors were the legal heirs of Pandara Gounder. He would also refer to O.S.No.35 of 2010 filed by one M.Periya Karuppan and the suit also came to be dismissed and the same issue was also decided in the said suit and the judgment and decree has also become final. He would also take me through the oral evidence before the trial Court, where the third plaintiff in O.S.No.140 of 2011 was examined as P.W.6 and in his cross examination, he has stated that his father is P.Bommaya Gounder and his grand father was Pandara Gounder @ Pandara Thathaiya Gounder. He has further stated that no suggestion was even put to the witnesses, the third plaintiff, regarding the alleged purchase in 1982 under which document, the appellants claim right. It is therefore the submission of Mr.M.C.Swamy that the mere fact that there is a clear admission that, in the year 2006, the survey stones were fixed, when admittedly the lands are barren in nature, the said admission was not fatal to deny relief to the respondents / plaintiffs on the ground that the suit



SA(MD). Nos.95 & 96 of 2020

was not filed within the period of limitation.

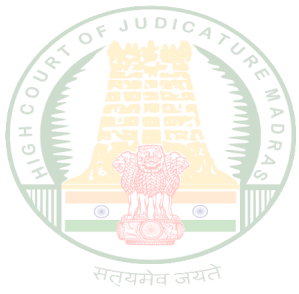
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19. Mr.M.C.Swamy, would further contend that the owner Krishnakumar, in whose name the properties were purchased under three different sale deeds, was also not examined and according to the learned counsel, such non examination of the first defendant is fatal to the case of the appellants. With regard to the Tahsildar proceedings relied on by the learned Senior Counsel, it is the submission of Mr.M.C.Swamy that the said proceedings of the year 2001 were not inter se parties and in such circumstances, no relevance can be attached to the said contention.

20. In support of his submissions, Mr.M.C.Swamy, learned counsel relied on the following judgments:

(i) Judgment of this Court in *Arulmigu Velukkai Sri Azhagiya Singaperumal Devasthanam v. G.K.Kannan (deceased)*, reported in **2020-3-CTC-69**;

(ii) Judgment of the Hon'ble Supreme Court in *Yellappu Uma Maheswari v. Buddha Jagadheeswararao*, reported in **2015-13-SCALE**;



SA(MD), Nos.95 & 96 of 2020

(iii) Judgment of the Hon'ble Supreme Court in ***Union of India v.***

Vasavi Co-op. Housing Society Ltd, reported in ***2014-4-CTC-471***;

(iv) Judgment of this Court in ***D.Balachandran v.***

T.C.Shanmugam, reported in ***2013-2-CTC-832***;

(v) Judgment of this Court in ***Vincent Lourdhenathan Dominique***

v. Josephine Sylva Dominique reported in ***2008-1-CTC-308***;

(vi) Judgment of this Court in ***Amudha v. K.Jeyaraman***, reported

in ***2005-2-CTC-385***;

(vii) Judgment of this Court in ***R.Deivanai Ammal (Died) v.***

G.Meenakshi Ammal, reported in ***2004-4-CTC-208***;

(viii) Judgment of this Court in ***A.C.Lakshmipathy v.***

A.M.Chakrapani Reddiar reported in ***2001-1-CTC-112***;

(ix) Judgment of the Hon'ble Supreme Court in ***Anathula***

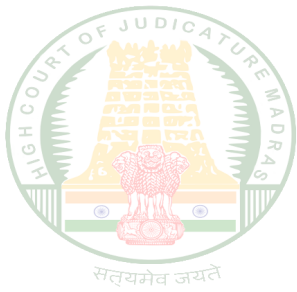
Sudhakar v. P.Buchi Reddy (Dead) reported in ***2008-4-SCC-594***;

(x) Judgment of this Court in ***M.S.Karuppanna Nadar v.***

Nariyan @ Shanmugam (deceased) reported in ***1997-1-CTC-309***;

(xi) Judgment of this Court in ***Natarajan v. R.Muthukrishnan***,

reported in ***2001-4-CTC-513***;



SA(MD), Nos.95 & 96 of 2020

(xii) Judgment of this Court in ***Kesavalu Naidu v. Doraiswami***

Naidu (died), reported in ***1955-1-MLJ-189***; and

(xiii) Judgment of this Court in ***R.Francis Xavier v. Maria Jothi***

Valarmathi, (S.A.(MD)No.557 of 2013 dated 26.07.2021).

21. I have carefully considered the submissions advanced by the learned Senior Counsel appearing for the appellants and the learned counsel appearing for the contesting respondents. I have also gone through the judgments of the Courts below and the typed set of papers, containing the pleadings, oral and documentary evidence as well as the decisions on which strongly placed on by Mr.M.C.Swamy learned counsel for the respondents.

22. Firstly, with regard to the arguments advanced by Mr.T.Gowthaman, learned Senior Counsel, attacking the dismissal of I.A.No.3 of 2016 as being improper and not in accordance with law, I am unable to entertain the said arguments, especially, when no substantial questions of law have been framed with regard to the dismissal of the said application. In fact, there is not even a single ground raised in the

21/34



SA(MD). Nos.95 & 96 of 2020

second appeal with regard to the dismissal of I.A. No.3 of 2016, leave alone suggesting a substantial question of law. In any event, since the arguments have been advanced, on going through the order of the first appellate Court and the reasons assigned for rejecting I.A.No.3 of 2016, I do not find any impropriety in the findings and reasons assigned by the first appellate Court in rejecting I.A.No.3 of 2016, warranting interference in second appeal.

23. Coming to the second appeals, it is the contention of the appellants that the first defendant has purchased the suit properties under three registered sale deeds from then lawful owners and the declarations sought for to nullify the sale deeds are time barred. It is also the contention of the appellants that they are in possession and there is no cloud on title necessitating suit for declaration with consequential relief and the suit instituted for a bare permanent injunction was very well maintainable. It is also the case of the appellants that the defendants have not established their title or right in interest in the suit property and lastly, it was not a case, where the appellate Court under the guise of moulding relief, could have granted declaratory right in respect of lesser extent,



SA(MD). Nos.95 & 96 of 2020

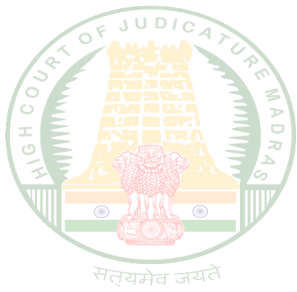
including properties that were not even belonging to the appellants. It is an admitted fact that the property was originally belonged to Pandara Gounder and later, it devolved upon P.Bommaya Gounder. However, the partition deed dated 05.10.1992, which is also unregistered, does not even indicate as to how the parties to the said partition deed traced title or relationship with the original owner/Pandara Gounder. Yet another argument is that the disputed property in survey No.1241/2 is of an extent of 1.42 Acres and in survey No.1241/1 was 3.32 Acres, in all 4.74 Acres, which was alone purchased by the appellants and there are several other owners in respect of the remaining lands, especially, in the light of the description of the property itself to be reflected as being more than 11 Acres. Arguments were also directed against the findings of the first appellate Court holding that the suit is in time, especially, with respect to the declaratory relief to challenge the sale deed. I would take up the issue of limitation first, since, if the said issue of limitation is held in favour of the appellants, then it may have a serious impact with regard to the other findings rendered by the first appellate Court. Admittedly, the trial Court disbelieved the evidence on the side of the plaintiffs in O.S.No.140 of 2011 holding that the *ipse dixit* evidence of the power



SA(MD), Nos.95 & 96 of 2020

agent that the plaintiffs came to know about the sale deeds only in March 2011 was totally imaginary and not believable. However, the first appellate Court found that the power agent Balakrishnan, who was examined as P.W.1 in O.S.No.140 of 2011 had clearly spoken about the attempt to trespass into the suit properties.

24. Though he had stated that he came to know about the survey stone fixed in the year 2006, it is only in September – 2010, when encumbrance certificate was applied and the plaintiffs came to know about the documents that cause of action arose for challenging the documents. The first appellate Court, has placed reliance on Ex.B9 and Ex.B10 in this regard and referring to Article 58 of the Limitation Act, the first appellate Court on re-appreciation of the evidence held that the suit seeking the relief of declaration having been filed within the a period of three years from the date of knowledge cannot be said to be time barred. The first appellate Court being the final Court of facts and having come to findings based on the available evidence on record and on a proper appreciation of the documentary evidence, I do not see how such a finding can be interfered with under Section 100 CPC.



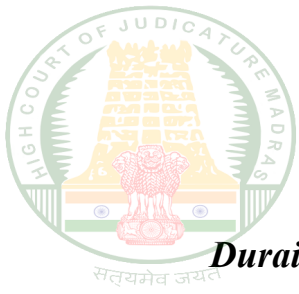
SA(MD), Nos.95 & 96 of 2020

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25. Even insofar as non joinder of necessary parties, in view of the plaintiffs themselves restricting the right to the extent purchased by the appellants, I do not see any infirmity in the findings of the first appellate Court holding that the suit cannot be dismissed, on the ground of non joinder of necessary parties, when the plaintiffs chose to restrict their right to 4.74 Acres as against 14.74 Acres.

26. Moving on to the other argument with regard to the moulding of relief, it has been vehemently contended by the learned Senior Counsel, Mr.T.Gowthaman, that it is not a case of moulding of relief and granting lesser relief to the plaintiffs, but, the procedure adopted by the first appellate Court was clearly fallacious and impermissible in law, it is seen that a memo was filed even before the trial Court, seeking to restrict the relief prayed for. However, the trial Court did not consider the memo, while dismissed the suit.

27. However, the first appellate Court taking note of the memo and placing reliance on the judgment of this Court in ***Kesavallu Naidu v.***



SA(MD), Nos.95 & 96 of 2020

Duraiswami Nadu and others reported in ***1958-2-MLJ-189***, held that it

is permissible for the Court to grant such relief that the plaintiff is entitled to and though the plaintiff had originally sought for a relief in respect of 14.74 Acres, when the plaintiffs themselves restricted the declaratory relief to the extents conveyed under Ex.A7, A8 and A25, there is no impediment for the first appellate Court to grant lesser relief. This approach and finding of the first appellate Court also cannot be faulted since it is only after the appellate Court came to the conclusion that the plaintiffs were entitled to the reliefs, that the appellate Court has proceeded to restrict the relief to a lesser extent eventhough in the original suit, the plaintiffs had claimed right to an extent of larger extent. This now leads us to the question as to whether the plaintiffs in O.S.No. 140 of 2011, having come to Court with a prayer for declaration and other reliefs, were in possession and enjoyment and claiming right under lawful owners, contrary to the claim of the plaintiffs in O.S.No.31 of 2012 that they were alone claiming right under the lawful owner Pandara Gounder and thereafter, his son P.Bommaya Gounder.

28. While discussing the title to the survey No.1241/1 and 1241/2



SA(MD). Nos.95 & 96 of 2020

and examining Ex.A16 unregistered partition deed, the first appellate

Court has rightly found that the document does not even disclose as to how the executants to the deed had any interest in the subject properties.

Referring to Ex.A19, the first appellate Court found from the death certificate of Bommaya Gounder that it refers to P.Bommaya Gounder.

Ex.X10, the legal heir certificate refers to names of the plaintiffs in O.S.No.140 of 2011 as the legal heirs of Bommaya Gounder. The first

appellate Court has also found that under Ex.A1 dated 30.04.1925, the lands in survey No.1241/1 and 1241/2 were belonging to Bommaya

Gounder, son of Pandara Gounder. Similarly Ex.A2 and Ex.A3 also referred to Bommaya Gounder, son of Pandara Gounder only. Ex.A4

patta dated 20.05.1919 has also been issued in the name of Bommaya Gounder. Similarly, Ex.A5 patta dated 06.05.1922 was also in the name

of Bommaya Gounder and adangal register exhibited as Ex.A6 is also in the name of Bommaya Gounder. The legal heir certificate produced as

Ex.A9 evidences the plaintiffs in O.S.No.140 of 2011 alone to be the legal representatives of the said Bommaya Gounder. Based on these

documents and Ex.A16 unregistered partition deed, the first appellate Court has come to the conclusion that the plaintiffs in O.S.No.140 of



SA(MD), Nos.95 & 96 of 2020

2011 are the legal representatives of Bommaya Gounder. I do not see how such finding based on re-appreciation of oral and documentary evidence for the first appellate Court suffers any perversity and infirmity, warranting interference under Section 100 CPC. In fact, the first appellate Court has also found that there is no documentary evidence filed on behalf of the appellants, to establish as to how they claimed right under the original heirs of Bommaya Gounder and that their vendors alone were the actual legal representative of Bommaya Gounder son of Pandara Gounder. In fact the purchaser from the first defendant Krishnakumar has not even examined himself.

29. Even as regards the first appellate Court confirming the findings in O.S.No.31 of 2012 and the trial Court's decision to dismiss the suit, I do not see necessity to interfere with the concurrent findings of fact. The appellants have suppressed the factum of O.S.No.140 of 2011, having already been filed in the plaint. To contend that there was no cloud of title is totally unsustainable and unacceptable. The plaintiffs were fully aware that there was a suit in which this very sale deeds are under attack and despite the same, suppressing the filing of the suit, they



SA(MD), Nos.95 & 96 of 2020

have proceeded to file a suit for bare injunction alone. The Courts below concurrently found that such a relief for bare injunction, in the absence of a relief of declaration was not maintainable in law. These findings are also, in my considered opinion, proper and do not call for any interference.

30. Coming to the decisions on which the learned Counsel M.C.Swamy, has relied on in *Arulmigu Velukkai Sri Azhagiya Singaperumal Devasthanam*'case, this Court held that when title was disputed and the plaintiffs did not even choose to amend the prayer for declaration of title and there was admittedly a cloud on the plaintiff's title, then, and when there is a *bonafide* denial of title as against the colourable denial of title, then, the relief of declaration has to be sought for.

31. In the judgments of the Hon'ble Supreme Court, in *Yellappu Uma Maheswari's* case and this Court in *M.S.Karuppanna Nadar's* case, it has been held that documents, which are compulsory registrable under Section 17 of the Registration Act, are inadmissible in evidence.

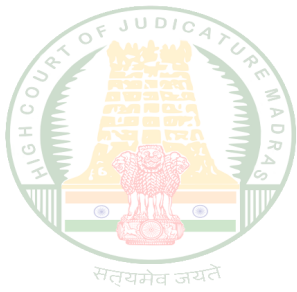


SA(MD), Nos.95 & 96 of 2020

This decision is pressed into service insofar as the admissibility of Ex.A16/ unregistered partition deed is concerned.

32. The Hon'ble Supreme Court in *Union of India's* case, held that even if entries in the record of rights may have evidenciary value, it will not confer any title on the person, in whose name records were mutated and independent of such entries, the party has to show that the predecessor in title of said party had title in the property in question and it is that property which has been purchased. This decision will apply insofar as the claim of the appellants that they have purchased from parties to Ex.A16 unregistered partition deed which does not even discuss the manner in which title came to be vested in respect of title of the appellants.

33. This Court in *D.Balachandran's* case, held that in terms of Section 35 of the Stamp Act, there is a total prohibition to receive evidence of an unstamped document. This again is relied on to fortify his submission that Ex.A16 cannot be looked into. A similar view in *Vincent Lourdhenathan Dominique's* case is also relied on for the very same proposition.



SA(MD), Nos.95 & 96 of 2020

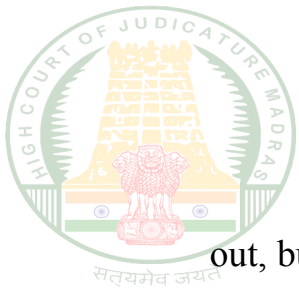
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34. In **Anathula Sudhakar's** case, the Hon'ble Supreme Court discussed the requirement of a relief for declaration and held that despite the plaintiff's title being in serious dispute. In view of a rival claim set up by the defendants, the plaintiff has instituted the suit merely for a relief of permanent injunction. In fact, admittedly, despite having knowledge of O.S.No.140 of 2011, the suit was filed by the appellants only for bare injunction.

35. The Hon'ble Division Bench in **R.Francis Xavier's** case, **Amudha's** case and **R.Deivanai Ammal's** case, also held that an unregistered document cannot be looked into.

36. In **M.S.Karuppanna Nadar's** case, this Court held that when the plaintiff proved his case in respect of lesser extent of property, despite a larger relief being prayed, lesser relief can be granted. Similarly, in **Natarajan's** case, this Court held that it is permissible for the Court to grant lesser relief instead of a larger relief.

37. In **Kesavalu Naidu's** case, this Court held that when a prayer was for a larger relief and a prayer for such larger relief was not made



SA(MD). Nos.95 & 96 of 2020

out, but, lesser relief made out then, it is the duty to the Court to grant the lesser relief to the plaintiff.

38. In fine, exercising jurisdiction under Section 100 of the Code of Civil Procedure, I am unable to interfere with the findings arrived at by the first appellate Court, being the final Court of facts, especially, when there is no mis-application of law or misreading of evidence, oral and documentary, or also misconstruction of pleadings. The second appeals fail and the substantial questions of law are accordingly are answered against the appellants.

39. In fine, these second appeals are dismissed. The judgment and decree of the First appellate Court in A.S.No.15 of 2016 and A.S.No.9 of 2015 are hereby confirmed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

03.07.2026

NCC:Yes/No
Index:Yes/No
Internet:Yes/No
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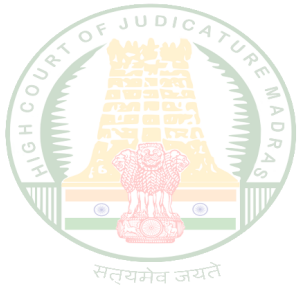
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SA(MD). Nos.95 & 96 of 2020

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1. The Sub ordinate Judge,
Periyakulam
2. The District Munsif Judge,
Periyakalam
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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SA(MD). Nos.95 & 96 of 2020

P.B. BALAJI,J.

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**Pre-delivery judgments made in
SA(MD) Nos.95 & 96 of 2020**

03.07.2026