

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.08.2018

Pronounced on : 05.12.2018

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

S.A.No.1433 and 1611 of 2002  
and

Cross Objection No.36 of 2018  
in S.A.No.1433 of 2002

S.A.No.1433 of 2002

1. V.G.Ramasamy  
2.V.G.Murugesan

... Appellants/Defendants 2 & 3

Vs.

1.V.G.Sreenivasan  
2.V.G.Natarajan

... 1<sup>st</sup> Respondent/Plaintiff

... 2<sup>nd</sup> Respondent/1<sup>st</sup> defendant

Prayer:- Second Appeal filed under Section 100 of C.P.C., to set aside the Judgment and decree dated 29.11.1999 in A.S.No.45 of 1998 on the file of the First Additional District Judge, Dharmapuri at Krishnagiri partly reversing the Judgment and Decree dated 29.01.1998 in O.S.No.38 of 1995 on the file of the Subordinate Judge, Krishnagiri.  
S.A.No.1611 of 2002:

1. V.G.Murugesan

... Appellant/Plaintiff

Vs.

1.V.G.Natarajan  
2.V.G.Ramasamy  
3.V.G.Sreenivasan  
4.Gowri (died)  
5.Mallika (died)  
6. Pushpa (died)  
7. Dhanabakkiammal  
8.V.R. Govindaraj  
9.Thirunavukkarasu @ Ravi  
10.V.G.Jegannathan  
11.Ilanthalian  
12.Gandhimathi

13. K.C.Jayaraman (deceased)  
14. Gowri  
15.Soundari  
16.Muruganandam  
17.Samundeeswari  
18.G.Amsa  
19.Chandran(died)  
20.Maheswari  
21.C.Venkatesan  
22.Pradha  
23.C.Srinivasan

... Respondents

(R8 to R12 brought on record as LRs of the deceased 4<sup>th</sup> respondent viz., Gowri vide court order dated 20.03.2013 made in CMPs.445 to 447 of 2015)

(R13 to R18 brought on record as LRs of the deceased 5<sup>th</sup> respondent viz., Mallika vide court order dated 20.03.2013 made in CMPs.448 to 450 of 2015. R13 died. RR14 to 18 are LRs of the deceased R13 K.C.Jayaraman as per the memo dated 24.07.2018 USR No.5777 of 2018 and vide order of court dated 25/07/2018.)

(R19 to R23 brought on record as LRs of the deceased 6<sup>th</sup> respondent viz., Pushpa vide court order dated 20.03.2013 made in CMPs.451 to 453 of 2015. R19 died. RR20 to 23 LRs of the deceased R19 viz., Chandran as per the memo dated 25.07.2018

Prayer:- Second Appeal filed under Section 100 of C.P.C., to set aside the Judgment and decree dated 29.11.1999 in A.S.No.47 of 1998 on the file of the First Additional District Judge-cum-Chief Judicial Magistrate, Dharmapuri at Krishnagiri against the Judgment and Decree dated 29.01.1998 in O.S.No.176 of 1992 on the file of the Subordinate Judge, Krishnagiri.  
Cross Objection No.36 of 2018 in S.A.No.1433 of 2002:

V.G.Sreenivasan

...Cross Objector

Vs.

1.V.G.Ramasamy  
2.V.G.Murugesan  
3.V.G.Natarajan

...Respondents

Prayer:Cross Objection No.36 of 2018 in S.A.No.1433 of 2002 is filed under Order 41 Rule 22 of CPC in O.S.No.38 of 1995 to set aside the findings of the First Appellate Court that the trial court's finding that the suit property absolutely belongs to the plaintiff is not correct.

For Appellants : Ms.A.L.Ganthimathi in both Appeals and  
respondent in Cross Objection No.36 of 2018.

For Respondents : Mr.P. Mani for R1 in S.A.No.1433 of 2002 and  
for R3 in SA.No.1611 of 2002

Mr.V. Murali for R2 in S.A.No.1433 of 2002  
and for R1 in S.A.No.1611 of 2002

Mr.A.S.Vijayaraghavan for R2 in S.A.No.1611/2002  
Mr.N.E.A.Dinesh for R14 to R18 in S.A.No.1611/2002

### C O M M O N J U D G M E N T

S.A.No.1433 of 2002 has been filed by the defendants 2 and 3 against the judgment and decree passed by the First Additional District Judge of Dharmapuri District at Krishnagiri in A.S.No.45 of 1998 dated 29.11.1999 confirming the judgment and decree passed by the Sub-Judge, Krishnagiri in O.S.No.38 of 1995 dated 29.01.1998.

S.A.No.1611 of 2002 has been filed by the plaintiff against the judgment and decree passed by the First Additional District Judge of Dharmapuri District at Krishnagiri in A.S.No.47 of 1998 dated 29.11.1999 confirming the judgment and decree passed by the Sub-Judge, Krishnagiri in O.S.No.176 of 1992 dated 29.01.1998.

Cross Objection No.36 of 2018 in S.A.No.1433 of 2002 has been filed by the plaintiff in O.S.No.38 of 1995 to set aside the findings of the First Appellate Court that the trial court's finding that the suit property absolutely belongs to the plaintiff is not correct.

2.The first respondent in S.A.No.1433 of 2002 viz.,V.G. Srinivasan has filed a suit in O.S.No.49 of 1992 on the file of the District Munsif, Harur, for permanent injunction restraining the defendants therein from trespassing into the suit property. The said suit was subsequently transferred to Sub-Judge, Krishnagiri and renumbered as O.S.No.38 of 1995. The third defendant in that suit viz., V.G.Murugesan has filed a suit in O.S.No.176 of 1992 on the file of the Sub-Judge, Krishnagiri, to divide the suit 'A' schedule properties therein into forty equal shares and allot nine such shares to him and for permanent injunction restraining the defendants therein from alienating or encumbering Item No.2 of the suit 'B' schedule properties therein. The learned Sub-Judge, Krishnagiri, by the common judgment dated 29.01.1998 has decreed the suit in O.S.No.38 of 1995 without costs and dismissed the suit in O.S.No.176 of 1992 without costs. Aggrieved by the same, the defendants in

O.S.No.38 of 1995 have filed an appeal in A.S.No.45 of 1998 and the plaintiff in O.S.No.176 of 1992 has filed an appeal in A.S.No.47 of 1998 on the file of the First Additional District Judge of Dharmapuri District at Krishnagiri. The learned First Additional District Judge of Dharmapuri District at Krishnagiri by the common judgment dated 29.11.1999 has dismissed both the appeals without costs. However, he set aside the findings of the trial court that the suit property in O.S.No.38 of 1995 absolutely belongs to the plaintiff therein. Feeling aggrieved, the defendants 2 and 3 in O.S.No.38 of 1995 have filed the second appeal in S.A.No.1433 of 2002. The plaintiff in O.S.No.176 of 1992 has filed the second appeal in S.A.No.16 of 2002. The plaintiff in O.S.No.38 of 1995 has filed cross objection No.36 of 2018 in S.A.No.1433 of 2002 to set aside the findings of the first appellate court that the trial court's findings that the suit property absolutely belongs to the plaintiff is not correct. For the sake of convenience, the parties are referred to as described in O.S.No.176 of 1992 on the file of the Sub-Judge, Krishnagiri.

3. The averments made in the plaint in O.S.No.176 of 1992 are, in brief, as follows:

The plaintiff and the defendants 1 to 3 are brothers, the fourth defendant is their mother and the defendants 5 to 7 are their sisters. The plaintiff, the defendants 1 to 3 and 5 to 7 are the children of one Govinda Chetty. The said Govinda Chetty died intestate in the year 1960 leaving behind the plaintiff and the defendants as his legal representatives. The said Govinda Chetty, during his life time as karta and manager of the joint family, had purchased several properties. The said Govinda Chetty got one more son viz., V.G.Kannan. The said V.G.Kannan separated from the joint family by taking his share and executed the registered release deed in the year, 1980 and hence, he was not added as a party. After the death of Govinda Chetty, the plaintiff and the defendants have enjoyed the family properties including the suit properties jointly. The said properties have to be divided between the parties. The plaintiff and the defendants 1 to 3 each entitled to 9/40 cents and the defendants 4 to 7 each entitled to 1/40 share. Since disputes arose with regard to the enjoyment of the family properties, the first defendant viz., V.G.Natarajan had filed a suit in O.S.No.36 of 1989 on the file of the Sub-Judge, Krishnagiri, for the relief of partition and in that suit, a compromise decree was passed on 12.04.1989. In that suit, the defendants 5 to 7 have not been impleaded as parties. So, the said compromise decree is not valid in law and not binding on the parties. Further, the plaintiff has signed without understanding the terms and conditions of the said compromise, because he is an illiterate. Therefore, the said decree will not bind upon the plaintiff. Hence, he filed a suit in O.S.No.176 of 1992 for the



relief of partition and permanent injunction.

4. The averments made in the written statement filed by the second defendant and adopted by the first defendant are, in brief, as follows:

The compromise decree passed in O.S.No.36 of 1989 is not valid in law. Therefore, the said decree will not bind upon the parties. The suit properties have to be divided between the parties as stated in the plaint.

5. The averments made in the written statement filed by the third defendant are, in brief, as follows:

The plaintiff and the defendants have agreed to pass a compromise decree in pursuance of the decision taken in the panchayat and accordingly, they have signed in the compromise memo. The court after taking into consideration, the parties have voluntarily compromised the issues, had passed a final decree on 31.03.1989. In pursuance of the said compromise decree, the parties have taken their respective shares and have been enjoyed exclusively. No fraud was played in getting the said compromise decree and therefore, the said decree will bind upon the parties. In the said compromise decree, "C" schedule properties were allotted to the third defendant and after taking possession of the said properties, the third defendant had sold the properties situated in S.No.51 to the eighth defendant for a valid consideration of Rs.47,000/- under a sale deed dated 15.02.1990 and from that date onwards, he is in possession and enjoyment of the same. The plaintiff and the defendants 1 and 2 tried to trespass into the properties which were allotted to the third defendant and hence he filed a suit in O.S.No.491 of 1992 on the file of the District Munsif, Harur, for permanent injunction and the same is pending. Therefore, he prayed to dismiss the above suit.

6. The averments made in the written statement filed by the defendants 5 to 7 are, in brief, as follows:

The defendants 5 to 7 are not having any right or interest in the suit properties and therefore, impleading of them in the suit is unnecessary and unwarranted. Their father died in the year 1960 and after his death, the defendants 5 to 7 were brought up by the fourth defendant and they were given in marriage by spending a lot and hence they relinquished their rights. Therefore, the defendants 5 to 7 prayed to dismiss the suit.

7. The averments made in the plaint in O.S.No.49 of 1992 on the file of the District Munsif, Harur, (O.S.No.38 of 1995 on the file of the Sub-Judge, Krishnagiri) are, in brief, as follows:

After the death of their father Govinda Chetty, the eldest son viz, V.G.Kannan got separated from the family by taking his

share. The first defendant viz., V.G.Natarajan filed a partition suit in O.S.No.36 of 1989 on the file of the Sub - Court, Krishnagiri, to divide the suit properties into four equal shares and allot one such share to him. In that suit, a compromise decree was passed on 12.04.1989 and in the said decree, 'C' schedule properties were allotted to the plaintiff and in pursuance of the said decree, they have taken their shares and have been in exclusive possession and enjoyment of their respective share. The plaintiff obtained separate patta for his properties. Subsequently, after two years, he sold 3.81 acres of lands to one Kallipelan @ Arama Gounder for valid consideration of Rs.47,000/- and from that date onwards, he has been in possession and enjoyment of the same. The plaintiff is in exclusive possession and enjoyment of the vacant site which is situated in the Uthangarai Town. The defendants tried to trespass into the said vacant site and hence, he was forced to file the above suit for the relief of permanent injunction.

8. The averments made in the written statement filed by the third defendant and adopted by the defendants 1 and 2 are, in brief, as follows:

It is true that the first defendant had filed a suit in O.S.No.36 of 1989 on the file of the Sub-Judge, Krishnagiri, for partition and separate possession of his share, but in that suit, the sisters were not added as parties. So, the said suit was vitiated for non-joinder of necessary parties. The compromise decree was passed in that suit only to declare the share of the plaintiff therein. As far as the plaintiff and the defendants 2 and 3 herein and their mother were concerned, no final decree was passed. Their shares were neither declared nor separated. The plaintiff and the defendants 2 and 3 have not paid court fees. As such, the plaintiff herein is not entitled to claim any exclusive right over the suit properties. The compromise decree in O.S.No.36 of 1989 is also vitiated by fraud. After filing of the suit in O.S.No.36 of 1989, the panchayat was held to settle the matters. At that time, the third defendant was very young. Further he is an illiterate person. He learnt only to sign. Exploiting his innocence, the plaintiff herein drew him to his side and assured him that in the ultimate division of the properties among the brothers, he would see he stands to gain the maximum. Believing his words, he signed in the said compromise memo. So, the compromise decree is not binding upon the third defendant. Hence, the third defendant has filed a suit in O.S.No.176 of 1992 on the file of the Sub-Judge, Krishnagiri, for the relief of partition and separate possession. The plaintiff is not in exclusive possession of the suit properties. All the properties are in joint possession of both the parties and therefore, the defendants 1 to 3 prayed to dismiss the above suit.

9. Based on the aforesaid pleadings, the learned Sub-Judge, Krishnagiri, has framed necessary issues and tried both the suits jointly. The evidence was recorded in O.S.No.176 of 1992 and the same was treated as evidence in another suit. During trial, on the side of the plaintiff in O.S.No.176 of 1992, the plaintiff in that suit viz., V.G.Murugesan was examined as PW1 and his brother V.G.Ramasamy (second defendant in that suit) was examined as PW2. Exs.A1 to A5 were marked as exhibits on the side of the plaintiff. On the side of the defendants, the third defendant therein viz., V.G.Srinivasan, (plaintiff in O.S.No.38 of 1995) was examined as DW1. Seven more witnesses were examined as DW2 to DW8. Exs.B1 to B26 were marked as exhibits on the side of the defendants. The report and plan filed by the Advocate Commissioner have been marked as Exs.C1 and C2 respectively.

10. The learned Sub-Judge, Krishnagiri, after considering the materials placed before him found that the compromise decree passed in O.S.No.36 of 1989 need not be registered. He further found that the said compromise decree is a valid decree and bind upon the parties and it was acted upon. He further found that as per the said compromise decree, the suit property in O.S.No.38 of 1995 was allotted to the plaintiff therein and hence, he is entitled for the relief of permanent injunction. Accordingly, by the common judgment dated 29.01.1998, he decreed the suit in O.S.No.38 of 1995 without costs and dismissed the suit in O.S.No.176 of 1992 without costs. Aggrieved by the same, the defendants in O.S.No.38 of 1995 have filed an appeal in A.S.No.45 of 1998 and the plaintiff in O.S.No.176 of 1992 has filed an appeal in A.S.No.47 of 1998 before the First Additional District Judge of Dharmapuri District at Krishnagiri. The learned First Additional District Judge of Dharmapuri District at Krishnagiri by the common judgment dated 29.11.1999, has dismissed both the appeals and thereby confirmed the judgment and decree passed by the trial court in O.S.No.176 of 1992 and O.S.No.38 of 1995. However, he set aside the findings of the trial court that the suit property in O.S.No.38 of 1995 absolutely belongs to the plaintiff therein.

11. Feeling aggrieved, the defendants 2 and 3 in O.S.No.38 of 1995 have filed the second appeal in S.A.No.1433 of 2002. The plaintiff in O.S.No.176 of 1992 has filed the second appeal in S.A.No.1611 of 2002. The plaintiff in O.S.No.38 of 1995 has filed cross objection No.36 of 2012 against the findings of the first appellate court that the trial court was not right in arriving at the conclusion that the suit property in O.S.No.38 of 1995 absolutely belongs to the plaintiff therein.

12. This court at the time of admitting the aforesaid second appeals formulated the following substantial questions of law:



In SA.No.1433 of 2002:

"1. Whether the courts below is correct in decreeing the suit for injunction when the said suit was dismissed insofar as the relief for declaration is concerned?

2. Whether the court below is correct in findings that the plaintiff is entitled to the suit property when there is a finding that he had not obtained a decree in his favour in respect of the suit property by paying the necessary court fee under the compromise decree?

3. Whether the court below is correct in findings that the partition has been effected between the parties when no separate court fee has been paid by either parties?"

In S.A.No.1611 of 2002:

" 1. Whether the courts below are correct in dismissing the suit on the ground that there was already a decree for partition, when the said decree had not come into effect and had not acted upon?

2. Whether the courts below are correct in findings that the earlier compromise decree bars the present suit when the earlier decree had not been registered under Section 17 (1) of the Registration Act?

3. Whether the courts below are correct in dismissing the suit while on the other hand giving a finding that specific shares has not been allotted to the parties as required under the compromise decree?"

13. Heard Ms.A.L.Ganthimathi, learned counsel for the appellants and respondent in Cross-objection and Mr.P.Mani, learned counsel for respondent No.1 in S.A.No.1433 of 2002 and for the third respondent in S.A.No.1611 of 2002 and Mr.V. Murali learned counsel for second respondent in S.A.No.1433 of 2002 and first respondent in S.A.No.1611 of 2002, Mr.A.S. Vijayaraghavan learned counsel for the second respondent in S.A.No.1611 of 2002 and Mr.N.E.A.Dinesh, learned counsel for the respondent Nos.14 to 18 in S.A.No.1611 of 2002 and Cross-objector in Cross-objection.

14. Ms.A.L.Ganthimathi, learned counsel for the appellants



has submitted that the courts below failed to consider that in the earlier suit i.e, in O.S.No.36 of 1989, the sisters were not added as parties and as such, the compromise decree passed in the said suit is vitiated. She further submitted that the courts below failed to consider that in the suit in O.S.No.36 of 1989, the defendants therein did not pay court fees to allot their shares. She further submitted that since the said compromise decree was not registered as mandated under Section 17 (1) of Registration Act, the third defendant viz., V.G.Srinivasan cannot claim any right based on the said decree. She further submitted that the first appellate court having come to the conclusion that the findings of the trial court that the suit property which is mentioned in O.S.No.38 of 1995 absolutely belongs to the said V.G.Srinivasan, is not correct, erroneously confirmed the decree which was granted for the relief of permanent injunction. She further submitted that as per the compromise decree passed in O.S.No.36 of 1989, dated 12.04.1989, the share of the plaintiff therein alone was allotted, but, shares of other brothers viz., the defendants therein were not allotted and they have been jointly enjoying the suit properties and therefore, the suit properties in O.S.No.176 of 1992 have to be divided into 40 equal shares and 9 such shares to be allotted to the plaintiff in that suit viz., V.G.Murugesan. Therefore, she prayed to allow these second appeals and set aside the judgments and decrees passed by the courts below and pass a preliminary decree for partition in O.S.No.176 of 1992 as prayed for and dismiss the suit in O.S.No.38 of 1995. She also prayed to dismiss the cross objection which has been filed by the plaintiff in O.S.No.38 of 1995 viz., V.G.Srinivasan. In support of her contentions, she relied upon the following decisions:

1. Bhoop Singh Vs. Ram Singh Major and others (1995) 5 SCC 709
2. K.Raghunandan and others Vs. Ali Hussain Sabir and others (2008) 13 SCC 102
3. Phool Patti and another Vs. Ram Singh (dead) through Legal Representatives and another (2015) 3 SCC 465
4. Danamma @ Suman Surpur and another vs. Amar and others 2018 (1) CTC 788.

15. Per contra, Mr.P.Mani, learned counsel for the first respondent in S.A.No.1433 of 2002 and third respondent in S.A.No.1611 of 2002 and cross-objector in cross-objection viz., V.G.Srinivasan has submitted that sisters who have been arrayed as defendants 5 to 7 in O.S.No.176 of 1992 have filed written statement stating that they do not want any share in the suit properties and in such a case, the plaintiff in that suit cannot contend that the compromise decree passed in O.S.No.36 of 1989 is vitiated on the ground that sisters were not impleaded as parties. He further submitted that the plaintiff in

O.S.No.176 of 1992 and the defendants 1 and 2 in that suit are parties in O.S.No.36 of 1989 and in that suit, they have voluntarily filed a petition to record compromise and also appeared before the court and requested the court to pass a final decree in terms of the compromise. He further submitted that the court after satisfying the fact that the parties have voluntarily entered into a compromise, passed a decree in terms of the compromise. He further submitted that if the plaintiff in that suit felt that the said decree was obtained fraudulently, he ought to have filed a suit to set aside the said decree and without setting aside the said decree, he cannot take a plea that the said decree will not bind upon him. He further submitted that the evidence on record would show that in pursuance of the said compromise decree, the parties have taken their respective shares and they have been exclusively enjoying their shares and therefore, the plaintiff is estopped from taking the plea that the said decree is not valid. He further submitted that through the said compromise decree, no right was created for the first time and therefore, the said decree need not be registered. He further submitted that since the said decree was not challenged by filing the suit, merely because the defendants therein have not paid court fees, it cannot be said that they have not acquired any right through the said decree and therefore, he prayed to dismiss the second appeals and also prayed to set aside the findings of the first appellate court that the trial court has wrongly held that the suit property in O.S.No.38 of 1995 absolutely belongs to the plaintiff therein. In support of his contention, he relied upon the following decisions.

1. Bachan Singh Vs. Kartar Singh and others, 2002 (3) R.C.R. (Civil) 495 = 2001 (10) JT 64

2. Kale Vs. Deputy Director of Consolidation and others AIR 1976 SC 807.

16. The learned counsel for other respondents have adopted the arguments of the learned counsel for the appellants.

17. In this case, the daughters were arrayed as defendants 5 to 7 in O.S.No.176 of 1992. They have filed a written statement stating that they do not claim any share in the suit properties. When the daughters themselves not claimed any share in the suit properties, the plaintiff in O.S.No.176 of 1992 cannot take a plea that the compromise decree passed in O.S.No.36 of 1989 is vitiated on the ground that the daughters were not impleaded as parties.

18. In Danamma @ Suman Surpur and another vs. Amar and others (supra), the Hon'ble Supreme Court has held that the daughters are entitled to get share in the joint family co-parcenary property as co-parceners even if they were born prior

to the enactment of Hindu Succession (Amendment) Act, 2005 (39 of 2005). As per sub-section (1) of Section 6 of the Hindu Succession Act, 1956 on and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu Family governed by the Mitakshara law, the daughter of a coparcener shall by birth become a coparcener and have the same rights in the coparcenary property as she would have had if she had been a son. Sub-Section (5) of Section 6 of the Hindu Succession Act says that nothing contained in that Section shall apply to a Partition, which has been effected before the 20<sup>th</sup> day of December, 2004. The Explanation attached to the said Section says that for the purposes of that section "Partition" means any partition made by execution of Deed of Partition duly registered under the Registration Act, 1908 (16 of 1908) or Partition effected by a Decree of a Court.

19. In this case, in the suit filed by one of the sons of Govinda Chetty viz., V.G.Natarajan in O.S.No.36 of 1989, a compromise decree was passed on 12.04.1989. Since a decree for partition was already passed before 20<sup>th</sup> day of December 2004, the Section 6 of the Hindu Succession Act will not apply to this case. So on this ground also, the daughters cannot claim any share in the suit properties.

20. In Bhoop Singh Vs. Ram Singh Major and others, (supra) in paragraphs Nos.17 and 18 the Hon'ble Supreme Court has observed as follows:

"17. It would, therefore, be the duty of the court to examine in each case whether the parties have pre-existing right to the immovable property, or whether under the order or decree of the court one party having right, title or interest therein agreed or suffered to extinguish the same and created right, title or interest in praesenti in immovable property of the value of Rs.100/- or upwards in favour of other party for the first time, either by compromise or presented consent. If latter be the position, the document is compulsorily registerable.

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 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.

21. In K. Raghunathan vs. Ali Hussain sabir and others (supra), the Hon'ble Supreme Court in paragraph No.38 has held as follows:

"A statute must be construed having regard to the purpose and object thereof. Sub-section (1) of Section 17 of the Act makes registration of the documents compulsory. Sub-section (2) of Section 17 of the Act excludes only the applications of Clauses (b) and (c) and not clause (e) of Sub-section (1) of Section 17. If a right is created by a compromise decree or is extinguished, it must compulsorily be registered. Clause (vi) is an exception to the exception. If the latter part of Clause (vi) of Sub-section (2) of Section 17 of the Act applies, the first part thereof shall not apply. As in this case not only there exists a dispute with regard to the title of the parties over the passage and the passage, itself, having not found the part of the compromise, we do not find any infirmity in the impugned judgment. "

22. In Phool Patti and another Vs. Ram Singh (dead) through Legal Representatives and another, (supra), the matter was referred to a larger Bench as there is a conflict between the decisions Bhoop Singh Vs. Ram Singh Major and others (supra) and K. Raghunathan vs. Ali Hussain Sabir and others (supra). The larger Bench of the Hon'ble Supreme Court has held that there is no conflict between those two decisions.

23. It is not a case of the right being created by the decree for the first time. Admittedly, the properties are joint family properties and one of the brothers viz, V.G.Natarajan had filed a suit in O.S.No.36 of 1989 for partition and in the said suit, the other brothers were shown as defendants and all the brothers had filed a petition to record compromise and also appeared before the court and made request to pass a final decree in terms of the compromise. The court, after satisfaction that the parties have voluntarily entered into compromise, passed a final decree for partition in terms of the compromise. Therefore, it cannot be said that only for the first time, rights were created through the said decree. Already, the parties to the said suit got right in the suit property. Therefore, the said decree does not require registration.

24. In Bachan Singh Vs. Kartar Singh and others, (supra), the Hon'ble Supreme Court has held in paragraph No.2 as follows:

"2. Learned counsel appearing for the appellant urged that the decree passed in a suit No.1365 of 1981 was void, having been obtained by fraud and, therefore, it could be avoided under Section 44 of the Evidence Act. We do not find any merit in the argument. It may be stated that the plaintiff was the defendant in the suit No.1365 of 1981 filed by the respondents. In the said suit, the claim of the respondents was admitted by the present plaintiff-appellant and on the basis of the said admission, the suit was decreed. In case the present appellant was not satisfied with the decree, either he could have filed an appeal or moved an application for setting aside the decree alleged to have been obtained by fraud. Before the first Appellate Court, the plaintiff-appellant stated that there was no fraud in passing the decree in suit No.1365 of 1981, but the Appellate Court set aside the decree of the trial Court on the ground that the decree was a sale only to overcome the provisions of the Indian Registration Act. This view of the Appellate Court was not correct. A consent decree passed by the Court is not required to be registered under the provisions of the Indian Registration Act and therefore, the view taken by the first Appellate Court was not legally correct and has been rightly set aside by the High Court. We are, therefore, in agreement with the view taken-by the High Court."

25. From the aforesaid decision, it is clear that if the plaintiff in O.S.No.176 of 1992 is not satisfied with the decree passed in O.S.No.36 of 1989, either he would have filed an appeal or filed a suit to set aside the said decree as it was obtained by fraud, but he has not chosen to file either an appeal or suit to set aside the said decree. Therefore, the said decree will bind upon him. Further since it is a consent decree passed by the court, it does not require registration.

26. In Kale Vs. Deputy Director of Consolidation and others, (supra), a three Judge Bench of the Hon'ble Supreme Court in paragraph No.38 has held as follows:

"Rebutting the arguments of the learned counsel for the appellant, Mr. Sharma for the respondents, contended that no question of estoppel would arise in the instant case inasmuch as if the document was to be compulsorily registrable there can be no estoppel against the statute. In the first place in view of the fact that the family arrangement was

oral and the mutation petition was merely filed before the Court of the Assistant Commissioner for information and for mutation in pursuance of the compromise, the document was not required to be registered, therefore, the principle that there is no estoppel against the statute does not apply to the present case. Assuming, however, that the said document was compulsorily registrable the Courts have generally held that a family arrangement being binding on the parties to it would operate as an estoppel by preventing the parties after having taken advantage under the arrangement to resile from the same or try to revoke it..... "

27. In this case, the PW1 and PW2, in their evidence have categorically admitted that they have been in exclusive possession of the properties allotted to them. Further, they have admitted that they have raised sugarcane crops and entered into a loan agreement with the sugar mill by saying that they have raised sugarcane crops exclusively. Further, in pursuance of the said compromise decree, the third defendant viz., V.G.Srinivasan had sold one of the properties viz., agricultural lands in favour of the eighth defendant and she is in exclusive possession of the said property. All these facts would clearly show that the said compromise decree was acted upon and therefore, in view of the aforesaid decision of the Hon'ble Supreme Court, the plaintiff in O.S.No.176 of 1992 is estopped from taking a plea that the said decree will not bind upon him.

28. The trial court taking into consideration of the aforesaid facts, came to the conclusion that suit properties which are mentioned in O.S.No.38 of 1995 absolutely belongs to the plaintiff therein viz., V.G. Srinivasan, but the first appellate court relying upon the decision of this court in S.V.Muthu and others Vs. Veerammal and others (1981) 1 MLJ 502 held that since the plaintiff in O.S.No.36 of 1989 alone had paid court fees and the other brothers have not paid court fees, they cannot claim exclusive right or title over the respective shares. In S.V.Muthu and others Vs. Veerammal and others, (supra), the defendants contested the partition suit, but the trial court found that the defendants also entitled to get share in the amount which was deposited in the bank. The appeal filed by the defendants also dismissed. Subsequently, the bank had deposited the amount before the court and at that time, the defendants had filed an application to issue a cheque for the amount as per the preliminary decree. The trial court had dismissed the said application stating that they did not pay the court fees to allot their shares, against which the defendants have filed Civil Revision Petition before this court. This court has observed that since the defendants have not paid court fees,



they cannot claim share. But in this case, the facts are totally different. In this case, both the parties entered compromise and based on the said compromise, the final decree was passed straightaway and hence, the question of paying court fees by the defendants does not arise. So, the findings of the first appellate court that since the defendants have not paid court fees, the right or title not passed on them through the said compromise decree, cannot be accepted. Therefore, these second appeals are liable to be dismissed and the cross objection has to be allowed and the judgments and decrees passed by the trial court have to be restored. Accordingly, these points are answered.

29. In the result, these second appeals fail and accordingly, they are dismissed. The Cross objection No.36 of 2018 in S.A.No.1433 of 2002 is allowed. The Judgment and Decree passed by the trial court are restored. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gv

To

1. The First Additional District Judge, Dharmapuri, Krishnagiri.
2. The Subordinate Judge, Krishnagiri.

+1cc to Mr.P.Mani, Advocate sr.no.83460

+2cc to Ms.A.L.Ganthimathi, Advocate sr.no.84113, 84112

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Judgment made in  
S.A.No.1433 and 1611 of 2002  
and  
Cross Objection No.36 of 2018  
in S.A.No.1433 of 2002

gjii(co)  
nr 05/03/2019