IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 21.08.2018

DELIVERED ON: 11.09.2018

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

SECOND APPEAL NO.1003 OF 1999 AND
CROSS OBJECTOR NO.92 OF 1999

In S.A.No.1003 of 1999

Thaiyalnayaki Ammal ... Appellant/Appellant/ 3rd Defendant

Vs.

1. Kothandapani @ Dhandapani .. 1st Respondent/ 1st Respondent/Plaintiff
2. Sithanandam
3. Illangovan
4. Manimekalai
5. Govindammal @ Saraswathy ..2 to 5 Respondent/ 5 to 8 Respondent/ 5 to 7 Plaintiff/1st Defendant
6. Dhanalakshmiammal
7. Gopalakrishnan
8. Malliga
9. Ramalingam .. 6 to 9 Respondents/10 to 13 Respondents/4,5 Defendants

In Cross Objection No.92 of 1999

1. Kothandapani @ Dhandapani
2. Sithanandam
3. Ilangovan
4. Manimekalai
5. Malliga
6. Ramalingam .. Appellants/1 to 4,8,9 Respondents

Vs.

1. Thaiyalnayaki
2. Govindammal @ Saraswathi
3. Dhanalakshmiammal
4. Gopalakrishnan ... Respondents/Appellants/ 5 to 7 Respondents

(Respondents 2 to 4 are exparte in the appellate court)

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PRAYER in S.A.No.1003 of 1999:-

Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment dated 25.08.1998 in A.S.No.10 of 1991 on the file of the III Additional District Judge, Pondicherry upholding the decree and judgment dated 12.10.1990 in O.S.No.75 of 1973 on the file of the Additional Subordinate Judge, Pondicherry.

PRAYER in Cross Appeal No.92 of 1999:-

Cross Appeal filed under Order 41 Rule 22 of the Code of Civil Procedure in S.A.No.1003 of 1999 against the decree and judgment dated 25.08.1998 in A.S.No.10 of 1991 on the file of the III Additional District Judge, Pondicherry upholding the decree and judgment dated 12.10.1990 in O.S.No.75 of 1973 on the file of the Additional Subordinate Judge, Pondicherry.

For Appellant in Second appeal and respondents in Cross objection : Mr.S.V.Jayaraman, Senior Counsel for Mr.N.P.Jayakumar

For Respondents 1 to 4 and 8 and 9 in Second appeal and appellants in Cross objection : Mr.R.G.Narendiran

JUDGMENT

This is the second appeal filed by the defendant against the decree and judgment of O.S.No.75 of 1973 dated 12.10.1990 on the file of Additional Subordinate Judge, Pondichery and also against the first appeal dated 25.08.1998 in A.S.No.10 of 1991 on the file of the III Additional District Judge, Pondicherry.

2. The Cross Appeal is also filed by the plaintiffs 1, 5, 6 and 7 and two others in this second appeal against the decree and judgment of O.S.No.75 of 1973 dated 12.10.1990 on the file of Additional Subordinate Judge, Pondichery and against the first appeal dated 25.08.1998 in A.S.No.10 of 1991 on the file of the III Additional District Judge, Pondicherry.

3. One late Periasamy Chettiar owned many properties in Cuddalore and Pondicherry including the suit property in Pondicherry.. He had three sons by name Kumarasamy, Muthusamy @ Kandasamy and Namasivayam. Namasivayam died as a bachelor. Kumarasamy had a son by name Palanisamy. He also was issueless. He married one Visalakshi, who adopted one Devanathan, @ Ethirajalu @ Venkatachalam @ Kumarasamy, after the death of Palanisamy on 31.01.1919. The said Devanathan married one

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Govindammal @ Saraswathi, who is the 5th respondent in this appeal and the 1st defendant in O.S.No.75 of 1973. Aggrieved over the adoption, the said Muthusamy @ Kandasamy had filed a suit in O.S.No.36 of 1921, which was subsequently compromised between Muthusamy and Devanathan, the adopted son of Visalakshi by agreeing to share the property equally. The adoptee Devanathan died in 1958 (Ex.A13) and the reversioner Muthusamy attempted to take possession of the properties, when Govindammal, wife of the deceased Devanathan opposed it. In the meanwhile, Muthusamy died leaving behind Thangavelu @ Vadivelu, who again filed a suit challenging the adoption, which ended in a compromise, in which he got certain properties, which was half share and he died on 2.4.1966 (Ex.A12) before he could take possession of the properties. The first plaintiff Kothandapani in O.S.No.75 of 1973 is the son of the deceased Thangavelu. He sold away the property to one Kunjithapatham, who was the 2nd plaintiff in the suit. In the meanwhile, Visalakshi, the widow of late Palanisamy executed a Will dated 27.03.1928 (Ex.B2) in favour of her brother Palanisamy. This Will was disputed and the matter is subjudice. Prior to this, Visalakshi filed a suit (O.S.No.43 of 1926) against her own adopted son Devanathan and also against Muthusamy. This ended in a compromise (Ex.A9), in which the suit property was agreed to be given to the mother Visalakshi by the adopted son Devanathan. This was later settled through a Will to her brother V.Palanisamy. Muthusamy was not a party to the compromise. However, Muthusamy filed a suit in O.S.No.11 of 1929 against the Will and the compromise, which was dismissed in 1934 (Ex.A8) and this court in the appeal in A.S.No.74 of 1935 had held that the said Muthusamy is entitled to half share of the estate of Palansamy stating that the compromise between the mother and son cannot be binding on the rights of Muthusamy, who is entitled to half share. Based on these facts, both the lower court had concurrent view and adopted the same by decreeing and confirming the suit and giving half share of the suit property to the plaintiff/1st respondent.

4. Now, the present appeal is by Thaiyalnayaki Ammal , who is the daughter of the V.Palanisamy through his first wife Sugambal. She became the owner of this suit property by way of a partition arrangement with her siblings. V.Palanisamy is the brother of Visalakshi, widow of late Palanisamy son of late Periasamy, who is the original owner of the suit property and many other properties. Visalakshi, widow of late Palanisamy executed a Will dated 27.03.1928 in favour of her brother V.Palanisamy, though the suit property was in the possession of Devanathan, the adopted son of her. V.Palanisamy filed a suit and a judgment was passed on 18.10.1935 (Ex.B4), which favoured him and an appeal by Devanathan also was dismissed on 19.04.1937 (Ex.B5). Thereafter, execution proceedings were initiated and delivery of the property was taken (Ex.B6). Subsequently, on

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19.07.1937, a Will (Ex.B41) was executed by the said V.Palanisamy in favour of his two wives and their children. The partition took place subsequently.

5. The substantial question of law for consideration in the second appeal are

> 1. Whether the courts below did not err in applying old Mitakshara Hindu Law to parties domiciled in Pondicherry and property situate within the then French Territory?
>
> 2. Whether the plaintiff's claim to title as a heir to Muthusamy who in turn claimed as a reversioner to the original owner Palanisamy was not without any legal basis?
>
> 3. Whether the courts below did not err in failing to note that the claim to title under apparent title under a Will executed by Visalakshi and affirmed in Civil Court decree constituted prescriptive title by adverse possession under Article 2265 of the French Code Civil?

6. Mr.S.V.Jayaraman, learned Senior Counsel appearing for Mr.N.P.Jayakumar, counsel for the appellant would contend that both the lower courts have over looked the important aspect that Mitakshara Hindu Law principles was not applicable to the property situated at Pondicherry, since Pondicherry was under French Rule and that on this sole ground, the lower courts' decisions are liable to be set aside. In order to substantiate this contention, reference has been made to the certified copy of the judgment by the court of First instance of Pondichery dated 11.03.1932 (Ex.B28) in which a suit filed by Muthusamy son of Kandasamy referring to the compromise arrived in O.S.No.36 of 1921 was dismissed stating that a judgment rendered by a court in British India cannot be accepted in Pondichery territory.

7. Another contention of the learned counsel appearing for the appellant is that the possession of the suit property was with the appellant for a long period exceeding 30 years and thereby adverse possession naturally entitles the appellant to become the absolute owner of the suit property.

8. Thirdly, it is contended that the verdict of the High Court on an appeal A.S.No.74 of 1935 against the verdict in O.S.No.11 of 1929 whether the compromise between Visalakshi and her adopted son Devanathan was binding on Muthusamy, it was clearly mentioned that it was not binding on the half share of Muthusamy, which he is entitled to. According to the learned counsel appearing for the appellant, the said decision was clear

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that the said Muthusamy was entitled for 50% of the entire estate of late Palanisamy and therefore, the lower courts erred in dealing that 50% of the suit property belongs to the first respondent, since this suit property was already given to Devanathan and was later handed over to Visalakshi, as per the compromise in O.S.No.43 of 1926.

9. Another contention is that the said V.Palanisamy took proper delivery of the suit property after courts' intervention and that this itself proves that there was no attempt on the part of the appellant to encroach or illegally occupy the property.

10. It has also been argued by the learned counsel appearing for the appellant that when it is contended that the widow of late Palanisamy, Visalakshi cannot bequeath the property belonging to her husband, which according to the appellant is a wrong interpretation of law in Pondicherry, the lower courts have failed to understand the fact that Visalakshi got the 50% share only through a compromise deed executed with Devanathan.

11. On the other hand, the contention of the 1st respondent is that the Will executed by the said Visalakshi is fraudulent and that she had, as a widow, restricted rights and in such circumstances, the right of V.Palanisamy cannot be better. Secondly, the appellant's possession of the property can be construed only as a continuous possession and therefore, the plea of adverse possession fails.

12. Another contention on the side of the respondent is that the compromise dated 13.10.1965 between Thangavelu and Govindammal made it clear that the suit property was allotted to Thangavelu. Though no document is available to substantiate this, the said Govindammal, as the first defendant in A.S.No.10 of 1991 in her written statement, has averred that the suit property was a part of the share agreed to be handed over to Thangavelu.

13. The suit in O.S.No.36 of 1921 was dismissed as not pressed as a result of a compromise settlement between Muthusamy and Devanathan (the adopted son). Compromises are between litigating parties and there is a moral responsibility on both sides to keep up to the terms of the compromise. This is universal and knows no jurisdiction. As regards the 'restricted rights' of Visalakshi under the Mitakshara Hindu Law, as discussed by the lower court, it is not applicable in the instant case, because of the compromise settlement between Visalakshi and Devanathan in O.S.No.43 of 1926. A bare perusal of the compromise deed shows that the suit property does not find a place in the list of properties reportedly belonging to

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Devanathan, who had agreed to settle his share in favour of his mother Visalakshi, as per the deed. Visalakshi has reportedly made a Will on 27.03.1928 in favour of her brother V.Palanisamy, that is, subsequent to the compromise deed in O.S.No.43 of 1926. So, it is not clear whether she has bequeathed the suit property which belonged to her. Even assuming that the contention of the learned counsel appearing for the appellant that Visalakshi had unrestricted power in property matters, since Mithakshara Hindu Law was not applicable to Pondicherry Territory, she could not have bequeathed the said property, the title of which has not been substantiated by her. Therefore, the issue whether Mitakshara Hindu Law was applicable in Pondicherry as it was in Tamilnadu becomes irrelevant. The averment of Govindammal, widow of the adopted son Devanathan assumes significance in the absence of the contents of earlier compromise deed in O.S.No.36 of 1921. The compromise decree in O.S.No.36 of 1921 between Muthusamy and Devanathan is not furnished by both the parties and hence, the contents not known. The said Govindammal had averred in A.S.No.10 of 1991, as first defendant, that the suit property was part of the share agreed to be handed over to Thangavelu, the late father of the present plaintiff/first respondent. It is pertinent to mention at this juncture that she had arrived at compromise with Thangavelu on the same subject matter of the estate of late Periyasamy, after the demise of her husband Devanathan. However, the said compromise deed is also not produced by the first respondent. Moreover, it is not the case of the appellants that Visalakshi was not aware of the contents of the compromise in O.S.No.36 of 1921, which was filed by her brother-in-law Muthusamy against her adoption of Devanathan and also other subsequent compromises.

14. The plaintiff in O.S.No.75 of 1973 i.e. the first respondent in this appeal is the rightful legal heir of the properties of the reversioner Muthusamy. Muthusamy is the grand father of the plaintiff/1st respondent. Muthusamy was the brother of Palanisamy and was the first to challenge the adoption by Visalakshi and was party to the first such compromise in which Devanathan, the adoptee son of Visalakshi became entitled to half share of the estate of late Palanisamy. Thangavelu son of Muthusamy, after the death of Devanathan in 1958, tried to take possession of the entire property, when Govindammal stepped in, claiming to be the wife of Devanathan necessitating the second compromise with Govindammal and Thangavelu as parties in which the suit property was reportedly agreed to be given to Thangavelu and before the possession, Thangavelu died. The plaintiff/1st respondent is the son of Thangavelu and is the rightful legal heir of the estate of late Palanisamy.

15. In fact, in O.S.No.11 of 29 (Ex.A8), it was observed

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that " In this case if inspite of his having connected to the compromise, the 1st defendant wanted to contend that the compromise could not have any validity as a decree passed by a court without jurisdiction, it was open to him to carry the matter on appeal and raise the question of jurisdiction in the appellate court. It cannot be said that the first defendant had no right to appeal." Further it was observed that " The plaintiff is entitled to a decree for partition and delivery of possession of a half share in all the items in schedule A except the items set out already.". In A.S.No.74 of 1935, it is held that " The fact that the first defendant saw fit to compromise the suit which was brought against him by Visalakshi has nothing whatever to do with his compromise embodied in the decree of 1923. It is clear and positive and absolute. One half of the estate must go to the plaintiff and any subsequent action by the 1st defendant in connection with the estate in his hands cannot possibly relieve him from handing over to the plaintiff what he promised to hand over." The two lower courts, based their decisions on the ruling by this court in A.S.NO.74 of 1935, which is the appeal against the decree and judgment in O.S.No.11 of 1929 dated 31.03.1934. It was held that the compromise between the mother Visalakshi and her adopted son Devanathan in O.S.No.43 of 1926 is not binding on the reversioner Muthusamy and that the latter is entitled for half of the share in the estate of late Palanisamy. Therefore, the suit was decreed stating half of the suit property belongs to the plaintiff/ the first respondent and the same was confirmed in the appeal. The said Visalakshi irrespective of whether she had restricted or unlimited right was already aware of the compromise in O.S.No.36 of 1921 and subsequent verdict in A.S.No.74 of 1935 against the decree in O.S.No.11 of 1929 wherein it was held by this court that the compromise in O.S.No.43 of 1926 is not binding on Muthusamy, as he is already entitled for half share of the estate of late Palanisamy. The contents of the earlier compromises are not furnished by both the parties. The appellant having claimed that the lower courts have erred, ought to have adduced documentary evidence in support to her claim for the suit property, especially when Govindammal has averred that the suit property was given to Thangavelu in an earlier compromise.

16. The issue of adverse possession is countered by one glaring fact. The litigations have been going on since the year of adoption of Devanathan by Visalakshi. All the suits except the one filed by Va.Palanisamy have ended in compromise. As already stated compromise is an effective and more practical solution to any dispute and is the best alternate dispute redressal method. In the instant case, the 1st respondent cannot be deprived of his right merely on the basis of continuous occupation by the appellant. In fact the Will was

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disputed at the earliest instance and the matter is subjudice. In such circumstances, it cannot be stated that adverse possession is a valid ground against the plaintiff.

17. Both the sides have not adduced the documentary evidence for the suit property entitlement. While the appellant has claimed it through the Will dated 19.07.1937 executed by her father Va.Palanisamy, whether the suit property was part of the property agreed to be allotted to Devanathan, the adopted son of Visalakshi, has not been substantiated. At the same time, the first respondent also has not adduced any documentary evidence to substantiate his claim that the suit property in deed was allotted to his father late Thangavelu. In such circumstances, the lower courts have decided to go by the decision of this court in A.S.No.74 of 1935. For all the reasons stated above, I find no reason to allow the appeal and the same is liable to be dismissed.

18. In this second appeal, the plaintiffs 1, 5, 6 and 7 and two others have filed Cross objection No. 92 of 1999. Their specific contention in the cross objection is that the Will Ex.B2 is not a valid document, since Visalakshmi Ammal had only restricted right over the properties of her husband, which she got on his death. According to them, though it is held in A.S.No.74 of 1935 that a compromise made in O.S.No.43 of 1926 would not bind Muthusamy chettiyar, grand father of the first plaintiff, the first appellate court had failed to consider all these aspects. As already discussed, I do not see any reason to allow this cross appeal. Hence, the same is liable to be dismissed.

19. In the result,

(i) The second appeal is dismissed. No costs.

(ii) The Cross Objection is dismissed. No costs.

(iii) The decree and judgment dated 25.08.1998 passed by the III Additional District Judge, Pondicherry in A.S.No.10 of 1991 is upheld.

(iv) The decree and judgment dated 12.10.1990 passed by the Additional Subordinate Judge, Pondicherry in O.S.No.75 of 1973 is upheld.

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Assistant Registrar(CS VIII)

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To

1. The III Additional District Judge, Pondicherry
2. The Additional Subordinate Judge, Pondicherry.

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+1cc to Mr.R.G.Narendiran, Advocate, S.R.No.62921
+2cc to Mr.N.P.Jayakumar, Advocate, S.R.No.63283

Second Appeal No.1003 of 1999 and
Cross Objection No.92 of 1999

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