

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
RESERVED ON : 22.11.2017  
PRONOUNCED ON : 12.01.2018  
CORAM  
THE HONOURABLE MR. JUSTICE T.RAVINDRAN  
S. A.No.1396 of 2001

A.Venkatesan ... Appellant/1<sup>st</sup> Defendant  
Vs.

1.Padmavathi  
2.Senbagavalli  
3.Senthilvel

... Respondents/Plaintiff/  
Defendants 2 & 3

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 04.4.2001 and made in A.S.No.174 of 2000 on the file of Principal District Court, Nagapattinam, reversing the judgment and decree dated 22.11.1999 and made in O.S. No.109 of 1998 on the file of Principal Subordinate Court, Myladuthurai.

For Appellant : Mr. N.Anand Venkatesh  
For Respondent No.1 : Mr. A.Muthukumar  
For Respondent No.2 : Set exparte  
For Respondent No.3 : No appearance

JUDGMENT

This second appeal is directed against the judgment and decree dated 04.4.2001 passed in A.S.No.174 of 2000, on the file of District Court, Nagapattinam, reversing the judgment and decree dated 22.11.1999 passed in O.S. No.109 of 1998, on the file of Subordinate Court, Myladuthurai.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for recovery of possession or in the alternative for partition of the suit property into two equal shares and allot half share to the plaintiff and for further reliefs.

4. The case of the plaintiff, in brief, is that the plaintiff is the daughter of the second defendant and she is her only surviving legal heir. The father of the plaintiff and the husband of the second defendant Govindaraj Iyengar died in the year 1987. Govindaraj Iyengar had a sister, namely, Renganayaki and the father of Renganayaki as well as Govindaraj Iyengar namely Venkatachariar died about 45 years ago and the property described in the plaint belonged to Venkatachariar and when he was alive, he executed a Will in favour of his daughter bequeathing the suit property absolutely under the Will dated 14.12.1938 and by virtue of the same, Renganayaki became the

full owner of the suit property and Renganayaki looked after her brother Govindaraj Iyengar and out of love and affection, in his favour, she had executed the settlement deed in his favour on 18.02.1944, conveying the suit property in favour of Govindaraj Iyengar to be enjoyed by him, till his life time, without any power of alienation and thereafter, to be enjoyed absolutely by the legal heirs of Govindaraj Iyengar. The above said settlement deed was accepted by Govindaraj Iyengar and he was enjoying the suit property and Venkatachariar, while alive, mortgaged the suit property in favour of third parties and incurred debts and Renganayaki mortgaged the suit property in favour of third parties, to discharge the earlier debts. As per the settlement deed dated 18.02.1944, Govindaraj Iyengar had no right of power to alienate the suit property excepting the right of enjoying, during his life time and he died in the year 1987 and on his death, his legal heirs are to take the suit property absolutely, on the death of Govindaraj Iyengar, the persons, who are entitled to succeed to the suit property are the plaintiff and the second defendant as vested remainder holders. The plaintiff had a brother, by name, Jagannathan alias Chinna Venkatachari and he predeceased his father, when he was aged about 1½ years. While so, Renganayaki as well as Govindaraj Iyengar had executed another document dated 27.04.1949, styling it as a settlement deed, said to have been executed in favour of Aravamudha Iyengar, father of the first defendant, who is also the sister's son of Renganayaki and in the said settlement deed, Renganayaki, Govindaraj Iyengar and the second defendant being the executors, however, Renganayaki not having any right in respect of the suit property at that point of time, since, she had already divested all the right over the suit property, by virtue of the settlement deed dated 18.02.1944 and as Govindaraj Iyengar was also having only life estate over the property and the second defendant without understanding the contents thereof, also signed the document at the dictation of Govindaraj Iyengar and thus, the settlement deed dated 27.04.1949, is not valid and no right will flow to any one from the said document. The first defendant's father, at the foremost, would be entitle to remain in the suit property as long as Govindaraj Iyengar was alive and as the settlement deed dated 27.04.1949, had been executed by the persons having no right and title over the suit property, the person who claim to acquire right under the same cannot also derive any right or title to the suit property and Aravamudha Iyengar is also now dead and therefore, the plaintiff requested the first defendant to surrender the possession of the suit property several times, but he failed to do so. Hence, the plaintiff issued a notice dated 04.07.1996 and to the same, the first defendant sent a reply containing false allegations. The settlement deed dated 27.04.1949 is not valid and binding upon the plaintiff and hence, the plaintiff, left with no other alternative, is necessitated to lay the suit for appropriate reliefs.

5. The case of the first defendant, in brief, is that the suit laid by the plaintiff is belated and barred by time and the suit property had been transferred long prior to her birth, for the purpose of effacing the liability of the original owner of the property and also the subsequent borrowings made thereafter and the plaintiff's claim to the suit property, on the basis of the settlement deed dated 18.02.1944, is not tenable as per law. In fact, the defendants has set out all the true facts in the reply notice, sent to the notice issued by the plaintiff. It is true that the property originally belonged to Venkatachariar and Venkatachariar had incurred debts by obtaining loans and by mortgaging the suit property from various sources and inspite of his best efforts, he could not discharge the debts and his son Govindaraj Iyengar did not offer his support and help to his father to reduce his financial liability and therefore, Venkatachariar got a release from Govindaraj Iyengar on 12.07.1937, from all his right from the property and thereafter, subsequently mortgaged the suit property in favour of third parties, for incurring debts, for the purpose of discharging the earlier debts and in order to protect the property, bequeathed the suit property by way of a Will dated 14.12.1938, in favour of his widow daughter Renganayaki and died thereafter in 1940 and as per the Will above stated, Renganayaki was obliged to discharge the debts and as she had no support, she settled the suit property in favour of her brother Govindaraj Iyengar, with a direction to discharge the liability and also maintain her and as the conditions putforth in the settlement deed were onerous and unable to be discharged by Govindaraj Iyengar, as he had also incurred debts by way of mortgaging the property further executed in favour of Suganthavalli, Wife of Aravamutha Iyengar and unable to discharge the said debts and accordingly, the parties entered into a family arrangement on 27.4.1949, as per which, Aravamudha Iyengar was directed to liquidate all their liabilities and transfer the property to him and accordingly, the document dated 27.4.1949, which is the family settlement, had come into existence and as per the above said settlement deed, the settlement deed dated 18.02.1944, stands cancelled and superceded and believing the above said bonafide family arrangement/settlement, Aravamudha Iyengar discharged the debts and made various improvement in the suit property by residing therein for a period of 50 years and the plaintiff was not even born at that time, when the settlement deed dated 27.7.1949, came into existence and thus, Aravamudha Iyengar had acquired the absolute right over the suit property and made improvement thereon, by spending several amounts and thereafter, the property was succeeded by his son, namely, the first defendant and even assuming that the plaintiff has any right over the same, she had acquiesced in all the said transactions and estopped from making any claim to the suit property. Thus, the suit property have been enjoyed by Aravamudha Iyengar and his legal representatives in their own rights for the statutory period prescribing the right to the suit property and the plaintiff's suit is also bad for non-joinder of necessary

parties and the plaintiff, in order to make unlawful gain, has come forward with the delayed suit, which is not maintainable and barred by limitation and the plaintiff has lost title, if any, by way of adverse possession and the prescribed title of the first defendant and hence, the suit is liable to be dismissed.

6. The case of the third defendant, in brief, is that the third defendant is adopting the written statement of the first defendant in all aspects. The plaintiff has no right to the suit property. On account of the long enjoyment of Aravamudha Iyengar of the suit property, and the first defendant, continuously from 1949 onwards, they had prescribed title to the suit property by way of adverse possession and therefore, neither the plaintiff nor the second defendant can claim right to the suit property and the suit property had been purchased by the third defendant for a valuable consideration, even prior to the institution of the suit and made improvement in the same by spending a huge amount and hence, the plaintiff has no title to claim the reliefs sought for and the suit is liable to be dismissed.

7. In support of the plaintiff's case PW1 has been examined Exs.A1 to A8 were marked. On the side of the defendants DWs 1 to 3 were examined and Exs.B1 to 43 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to dismiss the suit. On appeal by the plaintiff, the first appellate Court, on an appreciation of the materials placed, was pleased to allow the appeal and thereby, set-aside the judgment and decree of the trial Court and consequently, held that the plaintiff is entitle to obtain half share in the suit property and accordingly, granted the preliminary decree of partition sought for by way of the alternative remedy in favour of the plaintiff. Impugning the same, the present second appeal has been laid.

9. At the time of time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

1. Is not the suit barred by limitation?
2. Have not the defendants perfected their possession by adverse possession?
3. Does not the execution of Ex.A2 revoke the previous settlement Ex.A1?
4. Is not Ex.A2 a family arrangement deed?
5. Does not Ex.B26 show clearly that the plaintiff or her predecessors have no claim in the suit property?

10. After hearing the counsel appearing for the respective parties and on a perusal of the materials placed, it is found that there is no dispute that the suit property originally belonged to Venkatachariar. It is further found that the parties are also not in dispute that Venkatachariar had bequeathed the suit property in favour of his daughter Renganayaki by way of a Will dated 14.12.1938, which has come to be marked as Ex.B7. It is further found that the parties are not in dispute that Renganayaki had settled the suit property in favour of her brother Govindaraj Iyengar, by way of a settlement deed dated 18.02.1944, which has come to be marked as Exs.A1/B10. A perusal of Ex.B10 would go to show that under the same, Govindaraj Iyengar was given only the right to enjoy the suit property till his life time, without any power of alienation and thereafter, the suit property was directed to be enjoyed absolutely by the legal heirs of Govindaraj Iyengar. Admittedly, on the date of execution of Exs.A1/B10, the wife of Govindaraj Iyengar was alive, who is none other than the second defendant. It is thus found that under Exs.A1/B10, the vested remainder in respect of the suit property had been given to the legal heirs of Govindaraj Iyengar and at that point of time itself, one of the legal representatives namely, the second defendant, was very much alive. It is further found that Venkatachariar, Renganayaki as well as Govindaraj Iyengar had incurred debts by mortgaging the suit property to various persons and one way or the other, they are unable to discharge the debts. It is unnecessary to discuss the various debt transactions incurred by them for the disposal of this second appeal. However, it is admitted that the debts had been incurred by the above said parties from various sources by mortgaging the suit property and it is the case of the defendants that only to discharge the said debts and as Govindaraj Iyengar was also not able to maintain his sister Renganayaki, the same also being one of the condition of the settlement deed dated 18.12.1944, it is the case of the defendants that Renganayaki, Govindaraj Iyengar and the second defendant had settled the suit property in favour of Aravamudha Iyengar, the father of the first defendant and similarly, based upon the above said arrangement, Aravamudha Iyengar liquidated all the debts in respect of the suit property and dealt with the suit property as his own and made several improvements to the same and bequeathed it to his legal representative, by way of a Will and as such, it is stated that he was enjoying the suit property as absolute owner thereof for several years and it is alleged by the first defendant as well as the third defendant that on account of the long and continuous enjoyment of the suit property by Aravamudha Iyengar and by his legal representatives, pursuant to the settlement deed dated 27.04.1949, they have prescribed title to the suit property by way of adverse possession. The above said settlement deed dated 27.04.1949, has come to be marked as Exs.A2/B12. In the written statement, the above stated settlement deed has been claimed to

be a family arrangement. Now, according to the plaintiff, since she is one of the vested remainders entitled to succeed to the suit property on the death of Govindaraj Iyengar and Govindaraj Iyengar having died on 29.06.1987, according to the plaintiff, her right to succeed in the suit property arise immediately and therefore, immediately after the death of her father, she had been requesting the first defendant to admit her claim of the suit property and hand over the possession and as the first defendant did not hand over the possession of the suit property and on the other hand, set up the claim to the suit property on himself as above pleaded, according to the plaintiff, she has been necessitated to institute the suit for appropriate reliefs. It is found that pending suit, as per the case of the defendants, the suit property had been alienated in favour of the third defendant and accordingly, the third defendant had been impleaded as a party to the proceedings and he has also contested the plaintiff's suit, on the same line as that of the first defendant.

11. According to the plaintiff, the settlement deed dated 27.04.1949 is invalid and not binding upon her and any conveyance made by the life estate holder namely, Govindaraj Iyengar, claiming the suit property as his absolute property is invalid and further according to the plaintiff, as Renganayaki had already devised her right of the suit property by way of the settlement deed Exs.A1/B10, she is not competent to execute the settlement deed marked as Exs.A2/B12 and further according to the plaintiff, the second defendant was asked to execute the said document along with Govindaraj Iyengar and hence, it is stated by the plaintiff that the settlement deed Exs.A2/B12 would not disentitle her right of claim to the suit property and hence, she should be granted the reliefs sought for in the suit.

12. It is mainly contended by the first defendant's counsel that prior to Exs.A2/B12, Govindaraj Iyengar had a son and he predeceased him and thereafter, as the parties were unable to discharge the debts, they had chosen to execute Exs.A2/B12, in favour of Aravamudha Iyengar. Therefore, after the execution of Exs.A2/B12, the plaintiff not even born at that point of time, later, she cannot claim any right to the suit property and it is stated that the plaintiff's right to the suit property under Exs.A1/B10, gets superceded by Exs.A2/B12 and further, according to the first defendant's counsel, the plaintiff has laid claim to the suit property very belatedly, much after the execution of Exs.A2/B12 and as much water has flown down the bridge i.e., various transactions had been made by the parties in respect of the suit property, subsequent to Exs.A2/B12, it is contended that, at the foremost, the document Exs.A1/B10 is hit by the rule against perpetuity and therefore, as the said transaction is hit by Section 14 of the Transfer of Property Act, enunciating the principles of rule against perpetuity, it is contended that the plaintiff cannot make any valid claim to the suit property by virtue of Exs.A1/B10. Per contra, it is

contended by the plaintiff's counsel that the rule against perpetuity does not apply to the facts and circumstances of the present case, particularly to Exs.A1/B10 and as the plaintiff had been given the vested remainder right in the said document as the legal heir of Govindaraj Iyengar, it is stated that in respect of such transactions, the rule against perpetuity does not apply.

13. With reference to the above contention, the plaintiff's counsel relied upon the passage found in page 507 of " PARUCK The Indian Succession Act 1925, 9<sup>th</sup> Edition, by Justice SS Subramani (Retd), Madras High Court".

14. It is found that Section 114 of the Indian Succession Act is akin in all aspects to Section 14 of the Transfer of Property Act and therefore, it is found that the above said passage is also relevant for the determination of the issues involved in this case. The passage relied upon by the plaintiff's counsel reads as follows:

The rule does not apply to vested remainders. It applies to contingent remainders, both legal and equitable and to executory devises. A remainder is said to be vested when it is ready to take effect on the determination of the prior estate, eg. If a devise is made to A for life and after his death to B, B has vested remainder ready to take effect on the death of A and if B dies in A's lifetime his legal representatives will take. Obviously, the rule against perpetuity cannot have any application to a devise of this kind for there is no postponement.

15. Thus, it is found that the above said rule against perpetuity does not apply to vested remainders and when there are specific and clear recitals in Exs.A1/B10 that Govindaraj Iyengar has to take only life interest in respect of the suit property and thereafter, it is to be given to his legal heirs and when the legal heirs are entitled to take the property after the death of Govindaraj Iyengar, as the vested remainders, it is found that the rule against perpetuity does not have any application to Exs.A1/B10. Therefore, it is seen that Exs.A1/B10 is not offended against the principle of rule against perpetuity.

16. Now, it has to be seen as to what is the effect of Exs.A2/B12 vis-a-vis Exs.A1/B10. It is seen that and also admitted that Exs.A1/B10 has also come to be executed by Renganayaki, Govindaraj Iyengar and the second defendant in favour of Aravamudha Iyengar. Admittedly, at that point of time, Renganayaki had no valid right over the suit property, as she had already devisted of her right over the suit property

under Ex.A1/B10, she had only a claim of maintenance and charge over the suit property at that point of time. Therefore, as rightly pointed out, she is not competent or had no valid right to convey the suit property under Ex.A2/B12. Similarly, it is also seen that Govindaraj Iyengar had only life interest over the suit property under Exs.A1/B10. So, if at all he is entitled to convey Exs.A2/B12, it could only be his life interest and not in any other aspects. Therefore, it is seen that Govindaraj Iyengar had also no valid right to convey absolute right over the suit property under Exs.A2/B12. When it is found that the second defendant had only a vested interest at that point of time and she would be able to lay a claim to the suit property, only on the death of the life estate holder, namely, Govindaraj Iyengar, it is found that she had also no right to convey the suit property under Exs.A2/B12. Thus it is seen that Exs.A2/B12 had come to be executed by persons having no absolute right over the suit property and therefore, by virtue of the said document, Aravamudha Iyengar or anyone through/ under him, could not claim any right over the suit property.

17. As to what is the legal effect of Ex.A2/B12 or whether Ex.A2/B12 would have a over riding effect on Ex.A1/B10 has been rightly determined by the first appellate Court following the decision of the High Court of Andhra Pradesh. In similar situation, the High Court of Andhra Pradesh had considered the issues in the decision reported in AIR 1983 AP 139 (Javvadi Venkata Satyanarayana Vs. Pyboyina Manikyan and others), wherein, the principles of law pertaining to the same have been succinctly laid as under:

" Transfer of property Act (4 of 1882),  
S.13, S.14, S.16 - Transfer for benefit of  
unborn person - Life estate holder cannot  
defeat interest of unborn person by  
transferring life estate to third person.

Where "M" executed a settlement deed in respect of suit property conferring life estate on his son "G" and after his death to the sons of "G" to be borne absolutely and "G" in his turn executed a relinquishment deed of his life estate in favour of his father, merely because the relinquishment deed was executed before the birth of the sons of "G" the gift in favour of the unborn sons would not fail. The invalidity of the transfer must be judged with reference to the original settlement deed but not by the voluntary act of the donees under the deed itself. The person who obtained the benefit of the deed by his own volition cannot defeat the terms of the deed under which he obtained the interest. Merely, because "G"

made the relinquishment deed before the birth of children to him to would have no legal consequence as once the gift to the unborn person is valid under S.13, no one can defeat such interest and the unborn person acquires vested interest on his birth. The life estate holder cannot defeat the interests of the unborn person by transferring the life estate to a third person. The relinquishment made by "G" before the birth of his children had not altered the legal position in any way and the sons born to him acquired vested interest as and when they were born. Once it is admitted that the gift to unborn children in this case did not offend S.13 or 14 and the unborn children acquire vested interest the moment they are born under S.20 there is no possibility of defeating the interests of the unborn children as violative of the provisions of S.16. None of the requirements of S.16 were satisfied and hence the settlement deed was operative in respect of both life interest and the interest created in favour of unborn children."

It is thus found that in the above said decision, it has been clearly held that subsequent transfer of the property either by life estate holder or any one, who have no interest over the suit property, would not in any manner affect the interest of the unborn children, being the vested remainders of the property concerned.

18. In the decision reported in AIR 1989 Andhra Pradesh 34 (Pulibandla Venkata Subbanna and others Vs. Devasani Chinna Panayya and another), the above position of law has been elucidated as follows:

(A) Transfer of Property Act (4 of 1882), S.14- Settlement deed reserving life estate for executor and his wife - Vesting remainder to children to be born to them - Principle of perpetuity is not offended - Document is valid.

when both wife and husband are living and they intend to have the benefit of the property for their life, there is nothing illegal to give the vested remainder to their unborn children creating life interest in themselves. If life estate created in favour of the wife, the better half of the husband is entitled to enjoy for life along with husband and on his demise for her residue period. Thus there is created an interest in them to appropriate in present of its usufruct for personal benefit. So it cannot

be said that the life estate created in favour of the wife offends the principle of perpetuity as incorporated under S.14 or that the document creating such interest is invalid.

(B) Transfer of Property Act (4 of 1882), S.14 - Settlement deed reserving life estate for executor and his wife - Vesting remainder to children to be born to them - Executor or his wife can alienate life estate only and not title.

Where under a settlement deed the executor and his wife has life estate in the property and the remainder is vested to the children to be born to them, the executor or his wife can alienate their life estate which is permissible under law but not the absolute right and title in the property. If under any sale deed effected by the executor the purchaser has purchased right, title and interest in the properties but not life estate, the sale is void and it is not binding on the children of the executor. Once it is found that the vendor has no title to alienate the property, the purchaser cannot acquire any better title than what their vendors have. Accordingly the purchaser cannot acquire any title. Therefore the sale made in his favour is not binding on the children.

19. The above said two decisions, as rightly determined by the first appellate Court, clearly applies to the facts and circumstances of the case at hand. It is thus found that the executors of Exs.A2/B12 have no right to convey any absolute title in favour of the Aravamudha Iyengar, resultantly it is also found that Aravamudha Iyengar cannot also derive any valid right over the suit property by virtue of the said document. It is found that Exs.A2/B12 will not defeat the vested remainder right of the plaintiff to the suit property, which she is entitled to obtain, on the death of Govindaraj Iyengar. The mere fact that the plaintiff was not born at that point would not be a deciding factor for determining the validity of Exs.A1/B10 against the plaintiff. On the other hand, when it is admitted that Exs.A1/B10 had been made by Renganayaki only conferring life estate on Govindaraj Iyengar and when it is rightly appreciated and determined by the first appellate Court that the said document had been accepted and acted upon by the settlee, Govindaraj Iyengar and Govindaraj Iyengar, thereafter also dealt with the property, as held by the first appellate Court, therefore, the limited life estate holder namely, Govindaraj Iyengar or any other person cannot as per law, divert

or deprive the right of the property by executing the transfer deed in favour of the third parties, in respect of the suit property. The birth and death of the son, Govindaraj Iyengar, prior to Exs.A1/B10, would not alter the legal position as such and as contended by the plaintiff's counsel, the plaintiff having been given the vested remainder right under Exs.A1/B10, the moment she is born, she gets the vested interest in the suit property and on the death of Govindaraj Iyengar, she gets the vested remainder right in the suit property and the same cannot be interdicted in any manner by executing Exs.A2/B12.

20. It is contended by the first defendant's counsel that pursuant to Exs.A2/B12, several transactions have been effected by various parties, as exhibited in the suit and as Aravamudha Iyengar also made improvement in the suit property and after his death, his son, who had acquired the title, had also made improvement to the suit property by spending a huge amount and therefore, the plaintiff, at a belated stage after several years, cannot make claim to the suit property and hence, even if the plaintiff has any right to lay the claim under Exs.A1/B10, through the lapse of time, her right gets extinguished and the suit laid by the plaintiff is barred by limitation. In other words, it is contended that the first defendant and his predecessors in interest have acquired title by way of adverse possession, on account of long and continuous and uninterrupted enjoyment as absolute owner thereof and therefore, the plaintiff cannot lay any claim over the suit property.

21. However, the above contention does not merit acceptance. As put forth by the plaintiff's counsel, as seen from the decisions of the Andhra Pradesh Court referred to earlier and the decision of the Kerala High Court reported in AIR 1973 Kerala 65 (V 60 C 23) Full Bench (Narayana Menon and others Vs. Kochuvareed and others) and also the decision reported in AIR 1979 SCC 1298 (N.Krishnammal Vs.R.Ekamabaram and others), it is found that the plaintiff as the vested remainder holder would be entitled to lay a claim over the suit property, only on the death of Govindaraj Iyengar and therefore, when it is noted that Govindaraj Iyengar admittedly having died only in the year 1987, it is found that only thereafter, the plaintiff would be entitled to, as per law, to make any claim over the suit property. Therefore, as rightly argued, the transfer of life interest by Govindaraj Iyengar would survive only till his death and then, the right of the plaintiff as vested remainder would operate and it is contended that only thereafter the plaintiff acquired the right to make a claim to the suit property. It is thus stated that the suit laid by the plaintiff well before the time prescribed by law is not hit by the law of limitation.

22. The above argument of the plaintiff's counsel seems acceptable. It is found that the suit has been laid by the plaintiff by way of O.P.No.1/97. It is thus found that even before the expiry of 12 years period, from the date of death of

Govindaraj Iyengar, the plaintiff has asserted her right to the claim of title to the suit property and it is further found that prior to the institution of the suit, the plaintiff sent a notice and the claim of the plaintiff had been repudiated by the first defendant by sending a reply claiming title up on himself. It is therefore seen that the plaintiff had been necessitated to lay the suit for appropriate reliefs. Therefore, when the plaintiff had instituted the suit well before the time prescribed by law, she had a right to claim title to suit property, it is seen that the claim of the first defendant and the third defendant that they had perfected title to the suit property by adverse possession, as such, cannot be accepted. Therefore, the period of enjoyment of the suit property, till the death of Govindaraj Iyengar, would not constitute adverse possession to the claim of the title of the plaintiff to the suit property, when the plaintiff claims right to the suit property as the vested remainder, on the death of Govindaraj Iyengar and it is thus found that when the plaintiff has instituted the present lis in time, the claim of the defendants 1 and 3 that they had perfected the title to the suit property by way of adverse possession cannot be countenanced in any manner. It is thus found that the first appellate Court has rightly negatived the above plea of the first defendant and the third defendant following the correct position of law in this aspect.

23. It is further found that as rightly argued by the plaintiff's counsel, the plaintiff being not a party to Exs.A2/B12, not even a eo nominee party to the same, it is seen that there is no necessity for the plaintiff to seek the cancellation of the document for claiming the relief sought for in the suit and in this connection, the decisions, reported in 2000 (1) MLJ 601 (Mariasironmani and others Vs. Pappammal alias Savariammal and others), 1991 (1) MLJ 592 (Venkatesa Mudaliar and others Vs. N.Krishnaswamy Mudaliar Trust, Vellore represented by its Managing Trustee) are relied upon. A perusal of the above said decisions would go to show that the plaintiff is not necessitated to seek the claim to cancel Exs.A2/B12 within three years on the attainment of her majority, when her right to claim to the suit property emanates only on the death of Govindaraj Iyengar and when she has laid the suit within 12 years from her father's death, it is seen that her suit is not barred by limitation and this position could also be seen from the decision reported in AIR 1997 SCC 381 (Parwatabi Vs. Sonabai and others).

24. The contention of the defendants in the written statement that Exs.A2/B12 is a family arrangement as such also cannot be accepted and the same has been rightly disbelieved by the first appellate Court and it is further noted that the first appellate Court has rightly held that the parties to the document, not being family members, as such, they cannot effect such a family arrangement as claimed in the written statement

and therefore, it is seen that the claim of the defendants that Exs.A2/B12 is a family arrangement entered into between the parties amongst the family members for purchasing peace cannot be accepted and in any event, it is found that the said document is not binding upon the plaintiff in respect of the suit property and as such, an invalid document as discussed above.

25. In this connection, a useful reference can be made to the decision reported in AIR 1972 SCC 2069 (S.Shanmugam Pillai & others Vs. K.Shanmugam Pillai & others)

26. In the light of the above discussions, it is found that the suit laid by the plaintiff is not barred by limitation and it is further found that the claim of the defendants that they had perfected title to the suit property by adverse possession, as such, cannot be accepted and also found to be not established as the suit had been laid by the plaintiff within the period allowed by law, from the date on which she is entitled to make claim to the suit property. It is further found that the execution of Exs.A2/B12 would not in any manner revoke or cancel the settlement deed Exs.A1/B10 and Exs.A2/B12 having been executed by the person having no right in the suit property and is invalid and the settlee under the said document could not acquire any valid title to the suit property so as to defeat the right of the plaintiff. It is further seen that Ex.A2 cannot be termed as a family arrangement, as rightly determined by the first appellate Court and it is further seen that Ex.B26, settlement Will, claimed to have been executed by Govindaraj Iyengar, being only a life estate holder, would not in any manner affect the plaintiff's vested remainder right over the suit property and therefore, it is seen that the same is also not valid and binding upon the plaintiff. Accordingly, the substantial questions of law formulated in this second appeal are answered in favour of the plaintiff and against the defendants.

27. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sli

To

1. The Principal District Court, Nagapattinam.
2. The Principal Subordinate Court, Myladuthurai.
3. The Section Officer,  
VR Section, High Court, Madras (2 copies)

+1cc to Mr.A.Muthukumar, Advocate SR.No.2814

S. A.No.1396 of 2001

NM(CO)  
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