

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.07.2018

PRONOUNCED ON : 06.08.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.2278 of 2004

1.S.V.Krishnamoorthy (Deceased)
2.Rajeshwari
3.Vaanmathi
4.Pragalaadhan
5.Venkatesan
6.Rajkumar
7.Vijayalakshmi
8.Manimegalai ...Appellants/LRs of Defendant
(Appellants 2 to 8 brought on record
as LRs of the deceased sole appellant
vide order of Court dated 22.06.2018
made in CMP.No.5752 to 5754 /2018
in S.A.No.2278 of 2004)

Vs.

S.Vasanthan ...Respondent/Plaintiff

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 22.07.2004 passed in A.S.No.38 of 2002 on the file of the Additional District and Sessions Judge, Fast Track Court, Vellore District, Tirupattur, confirming the Judgment and Decree dated 30.04.1997 passed in O.S.No.893 of 1996 on the file of the Principal District Munsif Court, Ambur.

For Appellants : Mr.S.Silambanan
Senior Counsel
for Mr.N.Umapathy

For Respondent : M/s.V.Srimathi

JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 22.07.2004 passed in A.S.No.38 of 2002 on the file of the Additional District and Sessions Judge, Fast Track Court, Vellore District, Tirupattur, confirming the Judgment and Decree dated 30.04.1997 passed in O.S.No.893 of 1996 on the file of the Principal District Munsif Court, Ambur.

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

3. Suit for declaration and possession.

4. The case of the plaintiff, in brief, is that she is the daughter of the deceased Subramani S/o Rajukannur Mudaliar and Rajukannur Mudaliar died in or about the year 1967 and his wife predeceased him. Rajukannur Mudaliar had only one son, namely, Subramani and on the eve of the marriage of the abovesaid son with the Plaintiff's mother Sivakami Ammal, Rajukannur Mudaliar executed a settlement deed in favour of the Plaintiff's mother Sivakami Ammal by way of a registered document dated 11.7.1945 and on the date of the abovesaid settlement deed, the Plaintiff's mother was a minor and her father Venkatasamy, as her guardian, took delivery of the properties described in the said document for and on behalf of the minor Sivakami Ammal and Sivakami Ammal married Subramani and gave birth to two children, namely, the plaintiff and one Harimurthy and Sivakami Ammal died in or about the year 1958 and after her death, the Plaintiff's father Subramani became insane and left the family in 1959 and his whereabouts are unknown for the past 21 years and not heard of by any one and he is deemed to have attained civil death as per law and the Plaintiff's brother Harimurthy, when he was young, also left the family and his whereabouts are also not known for the past 20 years and is presumed to be dead and to have attained civil death as per law and his whereabouts are also not heard of by any one for several years. As per the settlement deed dated 11.07.1945, Sivakami Ammal was given only life estate and as per the deed, after her demise, her heirs are to enjoy the settled properties absolutely and accordingly, the plaintiff being her only daughter is entitled to succeed to the said properties and no one has any right, title or interest with reference to the same and the plaintiff attained majority in 1970 and till then, she was under the care and protection of the defendant. The plaintiff got married in the year 1978 and now, she is living with her husband. Even after attaining majority, she was in the possession and enjoyment of the plaint schedule properties and was residing in the house situated in the suit properties and only after her marriage, she is separately living with her husband and the defendant was in the management of the plaint schedule properties on behalf of the plaintiff, had refused to hand over the possession of the same or pay the income therefrom to the plaintiff and the plaintiff has learnt that during her minority, her maternal grandfather Venkatasamy Mudaliar had executed a sale deed in favour of the defendant with regard to the plaint schedule properties. However, Venkatasamy Mudaliar has no right to sell the same in favour of the defendant, who is none other than his own son and the abovesaid sale is void in law and not binding on the plaintiff

and no consideration was received by way of the abovesaid sale deed from the defendant by Venkatasamy Mudaliar and the abovesaid sale was also not for the benefit of the plaintiff and the sale is therefore void ab initio and Venkatasamy Mudaliar is not competent to alienate the plaint schedule properties and also had not obtained the permission from any Court to sell the same and hence, according to the plaintiff, she has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. The averments contained in paragraphs 3 & 4 are true and the plaintiff was born on 23.10.1952 and the allegations that she was in the possession and enjoyment of the plaint schedule properties after attaining majority and residing in the house situated therein is false and it is false to state that the defendant had refused to hand over the possession of the plaint schedule properties or the income therefrom to the plaintiff and the plaintiff had come to know recently about the alienation of the plaint schedule properties by Venkatasamy Mudaliar in favour of the defendant and it is false to state that Venkatasamy Mudaliar is not competent to sell the plaint schedule properties in favour of the defendant and the said sale deed is void in law and not binding on the plaintiff and that, no consideration was paid under the same and Venkatasamy Mudaliar was not competent to sell the same. On the other hand, the plaintiff knew pretty well that the sale deed dated 26.02.1960 had been lawfully made for legal and binding necessity and for the benefit and welfare of the plaintiff and her family and for discharging the antecedent debts and family debts, which are not illegal or immoral and hence, the abovesaid sale deed is legal and binding upon the plaintiff. The defendant obtained possession of the plaint schedule properties pursuant to the abovesaid sale deed and been in open, continuous and uninterrupted possession and enjoyment of the plaint schedule properties in his own right exercising all the rights of ownership in respect of the same since the date of the sale i.e. 26.02.1960 by obtaining patta, paying kist, current consumption charges etc., and hence, the plaintiff is not entitled to obtain the reliefs sought for. The suit laid by the plaintiff is barred by limitation and there is no cause of action for the suit and the suit is therefore liable to be dismissed.

6. In support of the plaintiff's case, PWs1 & 2 were examined and Exs.A1 to A2 were marked. On the side of the defendant, DW1 was examined and Exs.B1 to B23 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to grant the relief of declaration in respect of the suit properties in favour of the plaintiff and

her brother Harimurthy and also granted the relief of possession in their favour and also directed the defendant to pay the mesne profits in favour of the plaintiff from the date of the suit till the delivery of possession and accordingly, disposed of the plaintiff's suit. On appeal, the first appellate Court also, on the appreciation of the materials placed on record, concurred with the judgment and decree of the trial Court. Impugning the same, the present second appeal has been laid.

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

"(i). Having regard to the fact that the plaintiff and her brother are the legal heirs of the Sivagami Ammal is a suit for declaration by any one of the co-owners of maintainable?

(ii). Having regard to the finding that the plaintiff and her brother are entitled to the property, is not the defendant acquired valid title in respect of the plaintiff's brother's half share and is a decree for declaration and possession in favour of plaintiff above is legally valid?

(iii). When the plaintiff had sought for a mesne profits, is the courts below right in granting a decree for mesne profits?

9. The plaintiff and one Harimurthy are the children of Sivagami Ammal. Subramani is the husband of Sivagami Ammal and father of the plaintiff and Harimurthy. The plaintiff's paternal grandfather is one Rajakannur Mudaliar. It is not in dispute that Rajakannur Mudaliar, on the eve of the marriage of his son Subramani with Sivagami ammal, the plaintiff's mother, had executed a settlement deed in favour of Sivagami ammal in respect of the plaint schedule properties on 11.07.1945, the copy of which has been marked as Ex.A1 and it is also noted that on the date of the abovesaid settlement deed, Sivagami ammal was a minor, accordingly, it is found that Sivagami ammal took delivery of the settled properties through her father Venkatasamy Mudaliar and accordingly, following the said settlement deed, it is found that Sivagami ammal had married Subramani and out of the said wedlock, the plaintiff and her brother Harimurthy had been born. As regards the above facts, there is no dispute between the parties as such.

10. It is also found that as per the case of the plaintiff, her mother Sivagami ammal died in the year 1958 and after her

death, her father Subramani became insane and left the family and his whereabouts are not known for several years and accordingly, it is stated by the plaintiff that Subramani has attained civil death as per law. It is also the further case of the plaintiff that her brother Harimurthy left the family when he was young and his whereabouts are also not known for several years and according to the plaintiff, he has attained civil death as per law. The abovesaid case of the plaintiff has been narrated in para 4 of plaint. The defendant has not disputed the abovesaid averments contained in para 4 of the plaint and admitted the same as true in his written statement.

11. As such, it is found that it is only the plaintiff, who is the legal heir of Sivagami ammal. As above seen, by way of Ex.A1 settlement deed, the plaint schedule properties had been settled in favour of Sivagami ammal by Rajakannur Mudaliar and as per the recitals contained therein, it is seen that by way of the said document, Sivagami ammal had been given only life enjoyment in respect of the plaint schedule properties and after her demise, the properties should devolve upon her legal heirs absolutely. Accordingly, it is found that on the demise of Sivagami ammal, the plaint schedule properties would devolve upon her children viz., the plaintiff and Harimurthy. Further, as above noted, according to the plaintiff, her brother Harimurthy had attained civil death. Be that as it may, the plaintiff claiming to be the legal heir of Sivagami ammal had laid the suit against the defendant for appropriate reliefs as abovestated.

12. It is found that the defendant is the uncle of the plaintiff and the brother of Sivagami ammal and as abovenoted, it is only the defendant's father Venkatasamy, as the guardian, who had taken the possession of the plaint schedule properties on behalf of Sivagami ammal under Ex.A1 and enjoying the same for and on behalf of Sivagami ammal and as on the date of Ex.A1 settlement deed, Sivagami ammal was only a minor. It is found that as per the case of the plaintiff, Venkatasamy, the plaintiff's maternal grandfather, after the demise of Sivagami ammal, had alienated the plaint schedule properties in favour of his own son viz., the defendant i.e. maternal uncle of the plaintiff on 24.02.1960, the copy of which sale deed has been marked as Ex.B6 and according to the plaintiff, Venkatasamy Mudaliar is incompetent to alienate the plaint schedule property in favour of the defendant and hence, according to her, the abovesaid sale transaction is void ab initio and further, it is also stated that Venkatasamy had not obtained the permission of the Court for the said alienation and the said alienation is also not effected for any legal necessity as such and hence, not binding upon the plaintiff and it is also the further case of the plaintiff that on the date of the abovesaid sale deed i.e. Ex.B6, she was only a minor and it is her case that she was

residing in the house located in the plaint schedule properties along with her maternal grandfather Venkatasamy Mudaliar, till his demise and after his demise, with her maternal uncle, the defendant and according to the plaintiff's case, only after the marriage, she had left the family and inasmuch as she is entitled to the plaint schedule properties as the legal heir of Sivagami ammal and as the defendant had refused to part with the possession of the plaint schedule property in her favour and also not given any income therefrom to the plaintiff, it is stated that the plaintiff has been necessitated to lay the suit for necessary reliefs.

13. Per contra, it is the case of the defendant that the sale deed Ex.B6 had been executed by Venkatasamy Mudaliar in his favour only for discharging the antecedents debts and the other debts of the plaintiff's family and accordingly, it is his case that the said sale deed is effected only for the benefit of the minor plaintiff and her family and hence, it is his case that the abovesaid sale deed is valid and binding upon the plaintiff and further, according to the defendant, right from the date of Ex.B6 sale deed, it is only the defendant, who is in the possession and enjoyment of the plaint schedule properties openly, continuously by asserting his independent right in respect of the same as the full owner thereof and thereby, it is found that the defendant seeks a claim of title to the plaint schedule properties also on the plea of adverse possession and accordingly, put forth the plea that the plaintiff's suit is barred by limitation and prayed for the dismissal of the plaintiff's suit.

14. Therefore, the short point that arises for consideration is what is the effect of the sale deed Ex.B6 i.e. whether, it is a valid sale transaction or a void transaction. Admittedly, as per the recitals of the settlement deed Ex.A1, on the demise of Sivagami ammal, the plaint schedule properties should devolve only upon her children viz., the plaintiff and her son Harimurthy. However, it is found that Venkatasamy Mudaliar, Sivagami ammal's father had alienated the plaint schedule properties in favour of his son, the defendant by way of Ex.B6 sale deed. Admittedly, on the date of Ex.B6 sale deed, the plaintiff was a minor. Materials placed on record would go to show that the plaintiff was born on 23.10.1952. It is thus found that only during 1970, the plaintiff had attained majority. It is also found that as per the plaint averments, the plaintiff got married in the year 1978 which fact has not been controverted. Accordingly, it is found that the plaintiff, during her minority was under the custody of her maternal grandfather Venkatasamy and after the demise of Venkatasamy, her maternal uncle, the defendant and would have been in the possession and enjoyment of the plaint schedule properties along with Venkatasamy and the defendant as the case may be and it is

accordingly noted that, as determined by the Courts below, the plaintiff would have in the possession and enjoyment of the plaint schedule property through her maternal grandfather and maternal uncle, the defendant till the date of her marriage and as abovenoted, the plaintiff having a vested remainder interest in respect of the plaint schedule properties, accordingly, it has to be seen whether the defendant would be entitled to claim title to the plaint schedule properties as against the plaintiff as putforth by him.

15. On the date of Ex.B6, as above seen, the plaintiff was a minor. Even the plaintiff's brother Harimurthy was also a minor. Venkatasamy, by way of Ex.B6, had conveyed the plaint schedule properties in favour of his own son, the defendant. Thus, when it is found that Venkatasamy is not the natural guardian of the plaintiff as such, he could only be the defacto guardian of the plaintiff at the relevant point of time, accordingly, it is noted that on the date of Ex.B6 i.e. 24.02.1960 Venkatasamy being only a defacto guardian and accordingly, in that capacity, having conveyed the plaint schedule properties in favour of the defendant, it is evident that he is not legally competent to sell the plaint schedule properties to the defendant by way of Ex.B6 sale deed. Section 11 of the Hindu Minority and Guardianship Act, 1956 reads as follows:

" 11. De facto guardian not to deal with minor's property.- After the commencement of this Act, no person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the de facto guardian of the minor."

16. On a perusal of the same, it is evident that after the commencement of the abovesaid Act, the defacto guardian is not entitled to dispose of or deal with the property of a Hindu Minor, merely, on the ground of his or her being a defacto guardian of the minor. Now, what is effect of the sale transaction executed by the defacto guardian, and as regards the abovesaid position, in the decision reported in 2013-4-L.W 371 (Jeyam Vs. Minor Rejimon & others), our High Court has held that the alienation made by the defacto complainant of minor property is void. Further, in the decision of ILR 2009 KAR 2294 (Sri Nanjappa Vs. Sri Doddiah and another), it has been held that the alienation effected by the defacto guardian of a minor's property in view of the statutory bar provided under Section 11 of the Hindu Minority and Guardianship Act, 1956, the same would be void ab initio and the alienee would not acquire any title to the property in the following manner:

"(A) HINDU MINORITY AND GUARDIANSHIP ACT, 1956 - SECTION 11 - De-facto Guardian to deal with the minors property- Bar contained under - HELD, In terms of Section 11, no person has the right or authority to do any act as a de facto guardian of a minor, to dispose of or deal with the property of a Hindu minor, on the ground of his or her being a de facto guardian of the minor. Thus, Section 11 has put a complete bar in the authority of any person to deal with or dispose of any property of a Hindu minor and any alienation made thereunder, being against the statutory provision, would be void ab initio and the alienee, would not acquire any title to the property."

17. The above position has also reiterated in the decision reported in 1983 (2) (H.C.) Andhra Pradesh Law Journal page 153 (Pallela Konnarao alias Nallamari alias Konnayyadora Vs. Karri Suryanarayana and another) equivalent to 1983 SCC online AP 55. In the light of the abovesaid legal position, when there is a complete bar on the part of the defacto guardian to alienate the minor's property after the advent of the Hindu Minority and Guardianship Act, 1956 and when it is seen that such alienation made by the defacto guardian being void ab initio and the alinee thereby would not get valid title to the properties acquired, accordingly, the resultant position would be that the plaintiff on her part, is not required to take any steps to set aside the abovesaid void sale transaction as the same is not binding on her in any aspect. Accordingly, it is found that despite the alienation of the plaint schedule properties by way of Ex.B6 in favour of the defendant, the plaintiff has not ceased to retain the ownership of the plaint schedule properties and accordingly, it is found that as per the recitals contained in Ex.A1 settlement deed, it is only the plaintiff, who would be the title holder of the plaint schedule properties along with her brother Harimurthy.

18. No doubt, the defendant would plea that Ex.B6 sale transaction had been effected for discharging the antecedent debts and the other debts of the plaintiff's family and also for the welfare of the plaintiff and hence, binding upon the plaintiff. In this connection, some evidence has been let in on the side of the defendant. However, the abovesaid aspects had been dealt with by the Courts below in a detailed manner, the same being factual aspects and the Courts below had held that the defendant has failed to establish the legal necessity for the execution of Ex.B6 as putforth by him and accordingly, did

not accept the abovesaid version of the defendant. I do not find any valid materials to deviate from the abovesaid findings of the Courts below. Be that as it may, when it is noted that Ex.B6 is void ab initio and not in any manner binding upon the plaintiff, therefore, the question does not arise as to whether Ex.B6 had been effected for any legal necessity as such and as put forth by the defendant and accordingly, it is found that the Courts below had also negatived the above aspect of the defence version as projected therein by the defendant.

19. The argument has been put forth by the defendant's Counsel that the plaintiff should have laid the suit for the reliefs sought for within 3 years after attaining majority i.e. on or before 1973 and the plaintiff having laid the suit in the year 1996, according to the defendant, the suit laid by the plaintiff is barred by limitation. However, when the sale transaction Ex.B6 is found to be void ab initio and not required to be set aside by the plaintiff as such, it is seen that the limitation aspect putforth by the defendant for negating the plaintiff's suit on the above angle is liable to be rejected.

20. Knowing fully well that the defendant would not be entitled to claim any legal right in respect of the plaint schedule properties by way of Ex.B6 sale deed, it is found that the defendant had also taken the plea of adverse possession for claiming title to the suit properties. Accordingly, it is the case of the defendant that right from the date of Ex.B6 sale deed, it is he, who has been in open, continuous and long possession and enjoyment of the plaint schedule properties to the knowledge of one and all, by paying kist, house tax, current consumption charges etc., and thereby, it is his case that he has prescribed title to the plaint schedule property by way of adverse possession and on that line, also projected the case that the suit laid by the plaintiff is hit by the law of limitation.

21. The sale transaction Ex.B6 is found to be a void transaction and not binding upon the plaintiff and therefore, there is no need on the part of the plaintiff to set aside the same. It is thus found that Article 60 of the Limitation Act would not apply to the facts of the present case. The suit has been laid by the plaintiff based on title, and as above seen as per Ex.A1 settlement, it is only the plaintiff and her brother, who are entitled to succeed to the suit properties on the demise of their mother Sivagami ammal. Accordingly, it is seen that the suit having been laid by the plaintiff for the reliefs of declaration and possession based on the title, it is found that as rightly determined by the Courts below, only Article 65 of the Limitation Act would apply and accordingly, as per Article 65 of the Limitation Act, it has to be seen whether the plaintiff has levied the suit within a period of 12 years, when

the possession of the defendant had become adverse to the plaintiff. Accordingly, it is found that the plaintiff being found to be the title holder of the plaint schedule properties as per Ex.A1 settlement deed along with her brother and the defendant's title deed Ex.B6 is found to be a void transaction as above discussed and the defendant cannot lay any claim of pucca title to the plaint schedule properties on the basis of Ex.B6 sale transaction, it is seen that accordingly, it is for the defendant to establish that his title has become adverse to the plaintiff 12 years prior to the institution of the plaintiff's suit. Further, as per the explanation - (a) appended to Article 65 of the Limitation Act, it is seen that for the purpose of the said article

Description of suit	Period of limitation	Time from which period begins to run
65. For possession of immovable property or any interest therein based on title. Explanation.- For the purposes of this article- (a). Where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession;	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

22. It is thus found that as per the abovesaid explanation, the plaintiff deriving title to the plaint schedule properties as the remainderman along with her brother and accordingly, it is seen that the possession of the defendant shall be deemed to have become adverse only when the estate of the plaintiff/remainderman falls into the possession of the defendant. As above seen, till the date of marriage, it is only the plaintiff, who has been in the possession and enjoyment of the plaint schedule properties, no doubt, along with her

maternal grandfather Venkatasamy and thereafter, with her maternal uncle, the defendant. In this connection, even the defendant examined as DW1 during the course of cross examination has admitted that till the date of the plaintiff's marriage, she was in the custody of his mother and he was also assisting her and accordingly, it is seen that when the plaintiff till the date of her marriage and accordingly, when the plaintiff's marriage took place in the year 1978, it is found that the plaintiff has been in the possession and enjoyment of the plaint schedule properties along with her maternal grandfather, maternal grandmother and maternal uncle, the defendant and thus, it is found that as per the explanation - (a) appended to Article 65, it is seen that the defendant's possession would if at all be construed as adverse to the plaintiff, the same would only operate or commence from the date of the plaintiff's marriage i.e. 1978. The present suit has come to be laid by the plaintiff on 24.09.1987 as an indigent person, thus, it is found that within the time allowed by law, the plaintiff has laid the suit claiming the reliefs prayed for against the defendant.

23. Even assuming for the sake of arguments that the plaintiff has to lay the suit within a period of 12 years as per Article 65 of the Limitation Act, it is found that 12 years period would operate or commence only when the possession of the defendant had become adverse to the plaintiff. Accordingly, it is found that when the plaintiff has laid the suit on 24.09.1987, it is for the defendant to establish that 12 years prior to the same, he has been openly, continuously enjoying the plaint schedule properties to the knowledge of one and all including the plaintiff by exercising hostile attitude and by asserting title on himself exclusively and thereby established the hostile title to the suit properties by way of adverse possession. Accordingly, it is found that the defendant has to establish his claim of adverse possession from 1975 onwards. Looked at that angle, considering the materials placed on record by the defendant, it is found that three kist receipts marked as Exs.B7 to B9 pertaining to 1388, 1387 and 1380 fasli, two house receipts marked as Exs.B10 & B11 for the year 1988-1989, 1984-1985, current consumption payment receipts during the period 1965, 1996, 1974 and another receipt undated marked as Exs.B12 to B15, Current consumption card being marked as Ex.B16 in the name of Venkatasamy, patta dated 31.04.1983 marked as Ex.B17 and another patta dated 24.05.1994 marked as Ex.B18, which had emanated after the institution of the suit, another kist receipt dated 18.02.1997 marked as Ex.B20, which had come into existence after the institution of the suit and accordingly, when the defendant seeks to claim adverse title to the suit properties based on the abovesaid set of documents and when the abovesaid documents are not found to be exhibiting any hostile title on the part of the defendant in respect of the plaint schedule properties for a period of 12 years prior to the date of the

institution of the plaintiff's suit, the Courts below had rightly negatived the plea of adverse possession projected by the defendant. The determination of the Courts below in negating the plea of adverse possession claimed by the defendant do not warrant any interference as such, as the abovesaid documents relied upon by the defendant for the said purpose do not in any manner support his version. As rightly put forth by the plaintiff's counsel, the defendant by taking the plea of adverse possession has impliedly admitted the plaintiff's title to the suit property dehors the execution of Ex.B6 sale deed. Be that as it may, as abovenoted, Ex.B6 sale deed being a void document, the same is not binding upon the plaintiff. Resultantly, it has to be held that as determined by the Courts below the defendant has failed to establish his claim of title to the plaint schedule properties on the plea of adverse possession and accordingly, it has to be held that the defendant having failed to establish that his possession having become adverse to the plaintiff, 12 years prior to the institution of the plaintiff's suit, it is found that the plaintiff suit is not hit by the law of limitation as claimed by the defendant.

24. Though the defendant had resisted the plaintiff's suit on various contentions as above discussed and disallowed, the second appeal has been admitted on the other points of law. It is found that though the plaintiff has laid the suit seeking for declaration of her title to the plaint schedule properties on the premise that her brother Harimurthy had attained civil death, the trial Court has granted the relief of declaration and possession both in favour of the plaintiff and her brother Harimurthy. Attacking the same, it is contended by the defendant's counsel that the relief above granted by the trial Court and confirmed by the first appellate Court, not even been asked for the plaintiff, is untenable and accordingly, sought for the dismissal of the plaintiff's suit. However, considering the fact that as per Ex.A1 settlement deed, the plaintiff and her brother, being vested remainders entitled to the suit properties on the demise of their mother Sivagami ammal and accordingly, the Courts below had deemed it fit to grant of relief of declaration both in favour of the plaintiff and her brother Harimurthy and the other relief of possession and in such view of the matter, it is found that no infirmity as such, could be attributed to the abovesaid grant of the relief by the Courts below and accordingly, it is seen that the suit laid by the plaintiff for the reliefs of declaration and possession could be deemed to be the suit laid by her on behalf of her brother Harimurthy, the other co-owner and accordingly, the suit laid by the plaintiff is found to be legally maintainable. When the defendant has failed to establish that his title deed Ex.B6 is valid document and the defendant's plea of adverse possession has been negatived by the Courts below as well as found to be

not established even by this Court as above discussed, it is found that the defendant cannot lay any claim of title to the half share, to which, the plaintiff's brother would be entitled to the plaint schedule properties and accordingly, it is found that the contention of the defendant that by way of Ex.B6, he would be entitled to claim the half share in the plaint schedule properties belonging to the plaintiff's brother as such cannot be countenanced in any manner.

25. Further, though the plaintiff had not asked for the relief of mesne profits from the defendant as such, however, it is the specific case of the plaintiff that the defendant had not parted with any income derived from the suit properties to her since the date of marriage and accordingly, sought for the relief of possession alone. However, the trial Court as well as the first appellate Court had held that the plaintiff is entitled to the relief of mesne profits from the defendant from the date of the suit till the delivery of possession of the plaint schedule properties. When it is found that the plaintiff is the title holder of the plaint schedule properties and accordingly, the defendant is liable to be hand over the possession of the suit properties to the plaintiff and on the other hand, the defendant had been unlawfully retaining the possession of the suit property by claiming adverse possession to the same and unable to establish the said plea, it is seen that the Courts below had held that the Court is all competent to grant the relief of mesne profits also in favour of the plaintiff from the date of the suit till the delivery of the possession of the plaint schedule properties. It is not the case of the defendant that the Court is not competent to grant such relief in favour of the plaintiff though not asked for. In such view of the matter, when the defendant is liable to account for the mesne profits to the plaintiff, being the title holder of the plaint schedule properties, in my considered opinion, there is no reason to interfere with the abovesaid grant of relief in favour of the plaintiff as regards the mesne profits and accordingly, the substantial questions of law formulated in the second appeal are accordingly, answered against the defendant and in favour of the plaintiff.

26. The Counsel for the defendant, in support of his contentions, placed reliance upon the decision of the Supreme Court in Appeal (Civil) No.554 of 1998 (Vishwambhar & Ors. Vs. Laxminarayan (Dead) Through). The principles of law outlined in the abovesaid decision are taken into consideration and followed as applicable to the case at hand.

For the reasons aforesated, the second appeal fails and is, accordingly, dismissed with costs. Consequentially connected miscellaneous petition, if any, is closed.

-s/d-
Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

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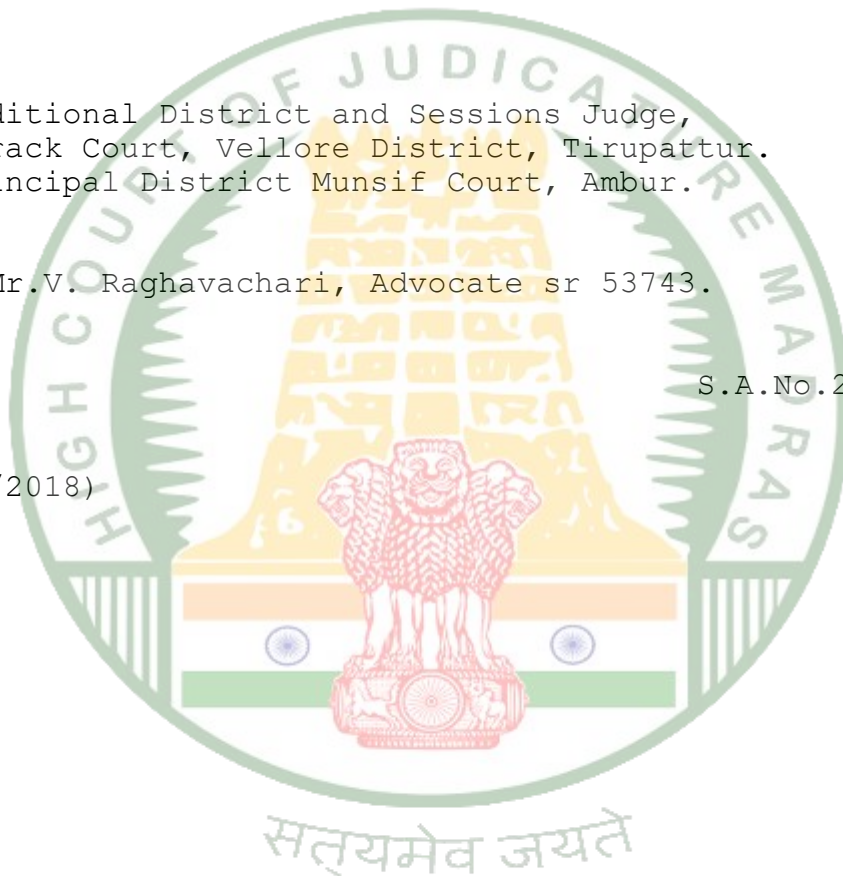
To

1. The Additional District and Sessions Judge,
Fast Track Court, Vellore District, Tirupattur.
2. The Principal District Munsif Court, Ambur.

+1 CC to Mr.V. Raghavachari, Advocate sr 53743.

S.A.No.2278 of 2004

TM(CO)
GSP(27/09/2018)



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