

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :11.01.2019

Pronounced on :30.01.2019

Coram

The Hon'ble Mr. Justice C.V.KARTHIKEYAN

S.A.No.358 & 359 of 2000

and

CMP.NO.3020 of 2000

Vasanthamma

...Appellant in S.A.Nos.358 & 359 of 2000

Vs

1.Krishnaveni Ammal (Deceased)

2.Thangavel Padayachi

3.Rajagopal

4.Veera Padayachi

5.Palani

6.Mani

7.Sagadevan

8.Minor Vishalakshi ...Respondents in S.A.Nos.358 of 2000

Rep.by guardian Rajagopal.

RR4 to 8 brought on record as Legal
Representatives of the deceased R1
vide order of court dated
19.04.2002(PSJ) made in
CMP.Nos.10842 to 10844 of 2001 in
S.A.No.358 of 2000.

1.Rajagopal Padayachi

2.Krishnaveni Ammal (Deceased)

3.Veera Padayachi

4.Palani

5.Mani

6.Sagadevan

7.Minor Vishalakshi

Rep.by guardian Rajagopal.

...Respondents in S.A.Nos.359 of 2000

RR5 to 7 brought on record as Legal Representatives of the deceased R2 vide order of court dated 19.04.2002(PSJ) made in CMP.Nos.10431 to 10433 of 2001 in S.A.No.359 of 2000.

Prayer in S.A.Nos.358 of 2000: The Second Appeal is filed under Section 100 of CPC, against the judgment and decree made in A.S.No.80 of 1993, dated 10.02.1999 on the file of the Additional District Court, Villupuram, allowing in part and in modification of the decree made in O.S.No.995 of 1985 dated 16.03.1993 on the file of the District Munsif Court, Thirukoilur. Prayer in S.A.Nos.359 of 2000: The Second Appeal is filed under Section 100 of CPC, against the judgment and decree made in A.S.No.68 of 1993, dated 10.02.1999 on the file of the Additional District Court, Villupuram, confirming the judgment and decree made in O.S.No.693 of 1991 dated 16.03.1993 on the file of the District Munsif Court, Thirukoilur.

For Appellant : M/s.R.Gayathri
For R.SunilKumar
[in both the Second Appeals]

For R1 : Died
[in SA.No.358 of 2000]
For R2 : Died
[in SA.No.359 of 2000]

For Respondents 3 to 8 : Mrs.V.Srimathi
[in SA.No.358 of 2000]
For Respondents 1 & 3
[in SA.No.359 of 2000]

For Respondent 2 : Mr.V.Lakshmi Narayanan
[in SA.No.358 of 2000]

For Respondents 4 to 7 : Dismissed vide order
dt.14.12.2009
[in SA.No.359 of 2000]

COMMON JUDGMENT

S.A.No.358 of 2000:-

The second defendant in O.S.No.955 of 1985 on the file of the District Munsif, Court, Thirukoilur, is the appellant herein.

2.O.S.No.955 of 1985 had been filed by the plaintiff Krishnaveni Ammal against Thangavel Padayachi, Vasantha Ammal, Veerammal, Kaliyammal and Rajagopal, seeking a judgement and

decree for partition and separate possession of 1/3rd share in B-schedule property. The B-schedule property was described as land measuring 28 cents in R.S.No.250/6 in Kuvaagam Village and 3.11 acres in R.S.No.77 in Ayanvellore Village and 45 cents in R.S.No.78/2 and vacant land measuring East to West 80 feet and North to South 52 feet in R.S.No.40/2 and 3HP motor bore and pump set with Service Connection No.23 in R.S.No.79/2.

S.A.No.359 of 2000:-

3.The plaintiff in O.S.No.693 of 1991, on the file of the District Munsif Court, Thirukoilur, is the appellant herein.

4.O.S.No.693 of 1991 had been filed by the plaintiff Vasantha Ammal against Rajagopal, Krishnaveni, Kaliyammal, Veerappa Padayachi, and Palani. Seeking judgment and decree for declaration of title and for permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and in case defendants were found to be in possession, for recovery of possession and for pay of damages for use and occupation. The schedule of property was 16½ cents land in Ayan Vellore Village and in R.S.No.79/2 and 3HP electric motor pumpset with service connection No.23 and bore set in R.S.No.79/2.

O.S.No.955 of 1985 and O.S.No.693 of 1991:

5.Both the suits O.S.No.955 of 1985 and O.S.No.693 of 1991, came up together for consideration before the District Munsif Court, Thirukoilur. By common judgment dated 16.03.1993, O.S.No.955 of 1985 was decreed and a preliminary decree was granted to the plaintiff for 1/3rd share in the schedule mentioned property and O.S.No.693 of 1991 was dismissed.

A.S.No.80 of 1993 and A.S.68 of 1993:

6.Challenging the grant of decree in O.S.No.955 of 1985, the second defendant Vasantha Ammal filed A.S.No.80 of 1993. Challenging the dismissal in O.S.No.693 of 1991, the plaintiff Vasantha Ammal filed A.S.No.68 of 1993. Both the appeals came up for consideration before the Additional District Court, Villupuram. By common judgment and decree dated 10.02.1999, A.S.No.80 of 1993 was allowed in part and a preliminary decree for 1/3rd share was granted in item Nos.1 to 4 alone and the appeal dismissed with respect to the 5th item, which was the electric motor pumpset and bore set. The appeal in A.S.No.68 of 1993 was dismissed and the judgment and decree of the Trial Court was confirmed.

S.A.No.358 of 2000 and 359 of 2000:

7.Challenging the judgment in A.S.No.80 of 1993, the second defendant Vasantha Ammal filed S.A.No.358 of 2000. The Second Appeal was admitted on 19.04.2002, on the following two substantial questions of law:-

1.Whether the admission of division of properties by two brothers to the express

exclusion of sister for more than 23 years prior to suit did not constitute ouster and adverse possession against the plaintiff and her vendor?

2. Whether grant of share to the plaintiff in respect of item No.3 which was admittedly not shown to be the property of Thaiyanayaki by any evidence not untenable and against law, especially when failure to prove title by the defendant would not ipso facto vest title in the plaintiff?

8. Challenging the judgment in A.S.No.68 of 1993, the plaintiff Vasantha Ammal filed S.A.No.359 of 2000. The Second Appeal was admitted on 19.04.2002, on the following four substantial questions of law:-

1. Whether the finding of the Courts below that Ex.B2 settlement was not valid, not based on irrelevant factors and outside the ingredient of of proof required under Section 68 of the Evidence Act?

2. Whether the alleged joint enjoyment of electric service connection standing in the exclusive name of a person (Sadaya Padayachi) amount to admission also of joint ownership of the electric service and electric motor with the 5th defendant by the only fact that land belonged to the said persons?

3. Whether the claim of ownership to a half share in electric motor and service connection by the 5th defendant not against the Benami Transaction Prohibition Act and the provisions of the Tamilnadu Electricity Supply Rules?

4. Whether the appellant DW1 was not entitled to a decree as a heir to the father even if B2 was invalid and the failure to consider the effect of intestacy by the courts below was against law?

O.S.No.955 of 1985(District Munsif Court, Thirukoilur):-

9. The plaintiff claimed that the B-schedule property, described as land measuring 28 cents in R.S.No.250/6 in Kuvaagam Village and 3.11 acres in R.S.No.77 in Ayan Vellore Village and

45 cents in R.S.No.78/2 and vacant land measuring East to West 80 feet and North to South 52 feet in R.S.No.40/2 and 3HP motor bore and pump set with Service Connection No.23 in R.S.No.79/2, originally belonged to Chinammal wife of Sanyasi Padayachi. She had three sons, Chinnasamy Padayachi, Rathina Padayachi and Sadaya Padayachi and one daughter Thaiyanayaki. Sanyasi Padayachi died in or about 1950 and his eldest son Chinnasamy also predeceased his mother Chinammal. The third defendant Veerammal was the wife of Chinnasamy. They had no issues. Rathina Padayachi died in the year 1968 and his wife Manankatti Ammal predeceased him. The fifth defendant is the son of Rathina Padayachi. The plaintiff Krishnaveni was the wife of Rajagopal. The daughter Thaiyalnayaki died in the year 1965 and the fourth defendant Kaliyammal was her only daughter. Sadayappa Padayachi died in the year 1984. He married Anjalai Ammal, but she died without any issues. He married Kaliyammal and she also had no issues. He kept the third defendant Veerammal as his concubine and the second defendant Vasantha Ammal was born to them. Chinammal died in the year 1962. It was claimed that since the eldest son Chinnasamy predeceased her, his wife, the third defendant cannot acquire any share of the property of her mother-in-law. It was further claimed that the fourth and fifth defendants were each entitled to 1/3rd share. After the death of Sadaya Padayachi, the fourth defendant was entitled to succeed to his share as his wife. The fourth defendant was already entitled to a 1/3rd share and consequently, she was entitled to 2/3 share.

10. It was stated that the second defendant being the illegitimate child of Sadaya Padayachi was not entitled to any share. The fourth defendant sold her 1/3rd share by sale deed dated 03.12.1983, for valid consideration by registered sale deed. There was no partition of the property. The fourth defendant demand partition when Sadaya Padayachi was alive, but he refused to partition the property. She issued a notice on 17.12.1982. A reply was issued on 03.10.1983. The plaintiff then filed the suit for partition of 1/3rd share and from mesne profits.

11. In the written statement filed by the first defendant, Thangavel Padayachi, it was stated that the fourth defendant cannot claim 2/3rd share and that the fifth defendant had 1/3rd share. The first defendant claimed to have taken on lease the land from the second defendant and was cultivating the suit property. He stated that he is prepared to pay the lease amount to whomsoever he is ordered to pay.

12. The second and third defendants filed their written statement. They stated that item Nos.1,2 and 4 alone were owned by Chinammal and item Nos.3 and 5 did not belong to her. Item No.3 was assigned in favour of Chinnasamy Padayachi. After his death, only the third defendant was entitled to succeed to the said property and the plaintiff was not entitled to 1/3rd share

in the said Item No.3. It was stated that Rathina Padayachi was entitled to 1/4th share, Sadaya Padayachi was entitled to 1/4th share, Chinnasamy Padayachi was entitled to 1/4th share and Thaiyanayaki was entitled to an another 1/4th share. It was stated that Sadaya Padayachi married the third defendant, according to the custom prevailing in the community. The second defendant was born to them. It was stated that Sadaya Padayachi also married the fourth defendant Kaliyammal as his second wife. It was denied that the third defendant was his concubine. It was stated that he was enjoying the properties along with his brother Rathina Padayachi. It was stated that Sadaya Padayachi also obtained electricity connection and installed electric motor pump set and got service connection in his name in Service No.23. He settled the property in favour of the second defendant. She was in possession and enjoyment of the same. She claimed to have prescribed title by way of adverse possession. She had leased out the property to Thangavel Padayachi, the first defendant. It was stated that the suit for partition has to be dismissed.

O.S.No.693 of 1991(District Munsif Court, Thirukoilur):-

13. The plaintiff Vasanthammal claimed that the properties in S.No.79/2 measuring 6½ cents out of 88 cents with 3HP motor pumpset and Service Connection No.23 belonged to her father and he had executed a settlement deed in her favour on 03.10.1983. She leased out the property to Thangavel Padayachi. She subsequently, took back possession. The second defendant is the wife of the first defendant and the fourth and fifth defendants are their children. The third defendant is a close relative. The plaintiff claimed that the defendants were attempting to grab the property. Consequently, she filed the suit for declaration of title and permanent injunction or in the alternate for recovery of possession.

14.The written statement filed by the first and second defendants was adopted by third and fifth defendants. It was denied that the plaintiff was the daughter of Sadaya Padayachi and that he had executed a settlement deed on 03.10.1983. It was stated that Anjalaiammal was the first wife of Sadaya Padayachi. He then married Kaliyammal. The mother of the plaintiff, Veerammal was said to be the concubine by Sadaya Padayachi. The plaintiff was said to be the illegitimate daughter of the Sadaya Padayachi. It was therefore stated that, she and her mother were not entitled to any share. The settlement deed was also not valid and was not enforceable. It was also stated that Sadaya Padayachi was suffering from paralytic attack for two years before his death and his right hand and left leg were inactive till his death. It was stated that the settlement deed had been executed by impersonating him in the Sub-Registrar office. It was stated that the plaintiff cannot claim any right in the suit property. It was stated that Rathina Padayachi and Sadaya Padayachi jointly dug a bore well and installed 3HP motor and

obtained service connection. It was stated that Kaliyammal was entitled to 1/3rd share as wife of Sadaya Padayachi and Thaiyanayaki was entitled to another 1/3rd share. It was stated that Kaliyammal had sold the property to the second defendant by registered sale deed dated 03.12.1983. It was stated that the plaintiff was not entitled for the relief of declaration of title. It was therefore stated that the suit should be dismissed.

O.S.No.955 of 1985 & O.S.No.693 of 1991(District Munsif Court, Thirukoilur):-

15.Joint trial was conducted in both the suits. The plaintiff in O.S.No.955 of 1985, Krishnaveni Ammal, led evidence and she and the witnesses on her side were categorized as plaintiff witnesses. The second defendant in O.S.No.995 of 1985, Vasantha Ammal and her witnesses were categorized as defendant witnesses. The learned District Munsif, Thirukoilur, framed the following recasted issues on 23.02.1993 in O.S.No.955 of 1985:-

1.Whether the fourth defendant was entitled to 1/4th share as legal heir of Thaiyanayaki?

2.Whether the sale deed executed by the fourth defendant in favour of the plaintiff dated 03.12.1983 was the valid and binding document?

3.Whether the third defendant was the legally married wife of Sadaya Padayachi and whether the second defendant was the legitimate daughter of Sadaya Padayachi?

4.Whether the oral partition between Sadaya Padayachi and Rathina Padayachi was true?

5.Whether the settlement deed dated 03.10.1983, executed by Sadaya Padayachi in favour of the second defendant was a true and valid and binding document?

6.Whether the settlement deed dated 03.10.1983, executed by Sadaya Padayachi in favour of the fourth defendant was a true and valid and binding document?

7.Whether the fourth defendant was entitled to the 1/3rd share of Sadaya Padayachi.?

8.Whether the fifth defendant was entitled to 1/3rd share in the suit properties?

9.Whether the plaintiff was entitled to 1/3rd share in the suit property?

10.To what relief the plaintiff is entitled to?

16.The learned District Munsif, Thirukoilur, also framed the following recasted issues on 23.02.1993 in O.S.No.693 of 1991:-

1.Whether suit properties were absolutely entitled to Sadaya Padayachi?

2. Whether the settlement deed executed by Sadaya Padayachi dated 03.10.1983 in favour of the plaintiff was a true and binding document?

3. Whether the first defendant was entitled to $\frac{1}{2}$ share in the electric motor pumpset and bore?

4. Whether the second defendant was entitled to $\frac{1}{3}$ share in the electric motor pumpset and bore?

5. Whether the plaintiff is entitled to for the relief of declaration of title and permanent injunction?

17. During joint trial, the plaintiff in O.S.No.955 of 198, Krishnaveni Ammal was examined as PW1. She also examined Chinnathambi, Subraya Padayachi and Sambasivan as PW2, PW3 and PW4. On the side of the defendants, Vasantha Ammal, the plaintiff in O.S.No.693 of 1991 and second defendant in O.S.No.955 of 1985 was examined as DW1. Dhanapal, Thiyagarajan, Murugan, Kaliyammal, Rajagopal Padayachi and Ariputhiri were examined as DW2 to DW7. The plaintiff marked Exs.A1 to A18 documents. Ex.A1 was the sale deed dated 14.06.1961, in favour of Rathina Padayachi and Sadaya Padayachi. Ex.A2 dated 03.12.1983, was the sale deed in favour of the plaintiff executed by Kaliyammal. Exs.A3 to A7 were copies of notices. On the side of the defendants, Exs.B1 to B187 were marked. Ex.B1 was the sale deed in favour of Adhimoola Padayachi, dated 20.07.1979. Ex.B2 dated 03.10.1983, was the settlement deed executed by Sadaya Padayachi in favour of Vasantha Ammal. Ex.B3 dated 03.10.1983, was the settlement deed executed by Sadaya Padayachi in favour of Kaliyammal. Ex.B4 was the lease deed executed by Vasantha Ammal dated 16.05.1984, in favour of Thangavel Padayachi. Ex.B6 was the electricity service connection No.23. Exs.B8 and B9 were Adangal. Exs.B10 to B26 were tax receipts. Exs.B27 to B141 were receipts for payment of electricity charges. Exs.144 to 187 were receipts for purchase of iron vessels.

18. On the basis of the oral and documentary evidence, the learned District Munsif, found that the fourth defendant Kaliyammal was married to Sadaya Padayachi, as his second wife, after the death of his first wife. She was the daughter of Thaiyanayaki, who was the daughter of Chinnammal, the original owner of the property. It was also found Kaliyammal was entitled to $\frac{1}{3}^{\text{rd}}$ undivided share in the schedule mentioned properties as daughter of Thaiyanayaki. It was also found that the sale deed dated 03.12.1983 executed by Kaliyammal in favour of the plaintiff Krishnaveni Ammal was a true and valid document.

19. It was also specifically found that the third defendant Veerammal was the wife of the elder brother of Sadaya Padayachi. After the death of her husband she started to live with Sadaya

Padayachi. Their daughter was Vasantha Ammal the plaintiff in O.S.No.693 of 1991. It was found that there was no valid marriage conducted between Sadaya Padayachi and Veerammal. Consequently, it was found that Vasantha Ammal was not the legitimate daughter of Sadaya Padayachi. It was also found that the oral partition between Sadaya Padayachi and Rathina Padayachi was true and had been proved in evidence.

20.It was also specifically found that Sadaya Padayachi was bed ridden owing to paralytic attack before his death. He was not able to speak. He was not able to put his signature. It was therefore found that the settlement said to have been executed by him on 03.10.1983, was a fraudulent document and was not binding on the parties. It was also similarly found that the settlement deed said to have been executed by him in favour of fourth defendant was also not a true document. Both the settlement deeds were rejected by the Court. However, the fourth defendant was stated to be entitled to 1/3rd undivided share in the suit properties. It was also found that the plaintiff Krishnaveni Ammal was entitled to an undivided 1/3rd share as a legal heir of Kaliyammal. Finally, the suit in O.S.No.955 of 1985 was decreed and preliminary decree was passed granting 1/3rd undivided share to the plaintiff. However, O.S.No.693 of 1991 was dismissed and it was specifically found, the plaintiff Vasantha Ammal was not the legitimate daughter of Sadaya Padayachi.

A.S.No.68 of 1993 & A.S.No.80 of 1993(Additional District Court, Villupuram):-

21.Challenging the dismissal of O.S.No.693 of 1991, the plaintiff Vasantha Ammal filed A.S.No.68 of 1993. Challenging the decree in O.S.No.955 of 1985, the second defendant Vasantha Ammal filed A.S.No.80 of 1993. Both the appeals came up for consideration before the Additional District Court, Villupuram. The learned Additional District Judge, framed the following points for consideration.

- 1.Whether the vendor of the plaintiff in O.S.No.995 of 1985 by name Kaliyammal had any share in the suit properties and if so whether the plaintiff is entitled to partition of 1/3 share?
- 2.Whether the mother of the said kaliyammal by name Thaiyanayaki is ousted from claiming any share in the suit properties and whether it is proved?
- 3.Whether settlement executed by Sadaya Padayachi in favour of his daughter the plaintiff in O.S.No.693 of 1991 is true, valid, accepted and acted upon?

4. Whether the plaintiff in O.S.No.693 of 1991 entitled for declaration and permanent injunction or in the alternative recovery of possession as prayed for by her?
5. To what relief the parties are entitled to?

22. Preliminary judgment dated 10.02.1999, the Additional District Judge, specifically found that the settlement deed said to have been executed by Sadaya Padayachi was not proved to a true and valid one. It was observed that Ex.A4 notice was issued by the plaintiff in O.S.No.955 of 1985, and in the acknowledgment card, Sadaya Padayachi had affixed only his thumb impression. It was also observed that in Ex.B2, settlement deed there were mistakes in the letters in the signatures. Both the witnesses DW2 and DW3 deposed that the settlor had not seen them attesting the document. It was held that their evidence would not prove execution. The identifying witness was not examined before the Court. It was also found that Sadaya Padayachi admittedly suffered from paralytic stroke and could not have signed the document using his right hand. It was specifically held that the settlement deed had not been proved to be a true and valid document. It was however found with respect to Item no.5 that the motor pumpset was used in common and consequently, 1/3rd exclusive share cannot be granted to the plaintiff in O.S.No.955 of 1985.

23. However, it was found that Kaliyammal had sold 1/3rd share in items 1 to 5 to the plaintiff in O.S.No.955 of 1985 under Ex.A2 dated 03.12.1983, for a sale consideration of Rs.15,360/-. It was also found that Thaiyanayaki was entitled to 1/3rd share in items 1 to 4. Kaliyammal was the only daughter of Thaiyanayaki. She inherited the 1/3rd share which fell to her mother and consequently, she succeeded to that extent in the suit property. Thaiyanayaki died in or about 1965 and her daughter Kaliyammal succeeded to her share. She also married Sadaya Padayachi. It was stated that Kaliyammal had inherited the share of her mother in all items of the property except Item no.5. Finally, the learned Additional District Judge held that a preliminary decree should be granted only with respect to items 1 to 4 in O.S.No.955 of 1985 and also held that O.S.No.693 of 1991 should be dismissed.

S.A.No.358 of 2000 and 359 of 2000:-

24. Challenging the judgment in A.S.No.80 of 1993, the second defendant Vasantha Ammal filed S.A.No.358 of 2000. The Second Appeal had been admitted on 19.04.2002, on the following two substantial questions of law:-

1. Whether the admission of division of properties by two brothers to the express

exclusion of sister for more than 23 years prior to suit did not constitute ouster and adverse possession against the plaintiff and her vendor?

2. Whether grant of share to the plaintiff in respect of item No.3 which was admittedly not shown to be the property of Thaiyanayaki by any evidence not untenable and against law, especially when failure to prove title by the defendant would not ipso facto vest title in the plaintiff?

25. Challenging the judgment in A.S.No.68 of 1993, the plaintiff Vasantha Ammal filed S.A.No.359 of 2000. The Second Appeal had been admitted on 19.04.2002, on the following four substantial questions of law:-

1. Whether the finding of the Courts below that Ex.B2 settlement was not valid, not based on irrelevant factors and outside the ingredient of of proof required under Section 68 of the Evidence Act?

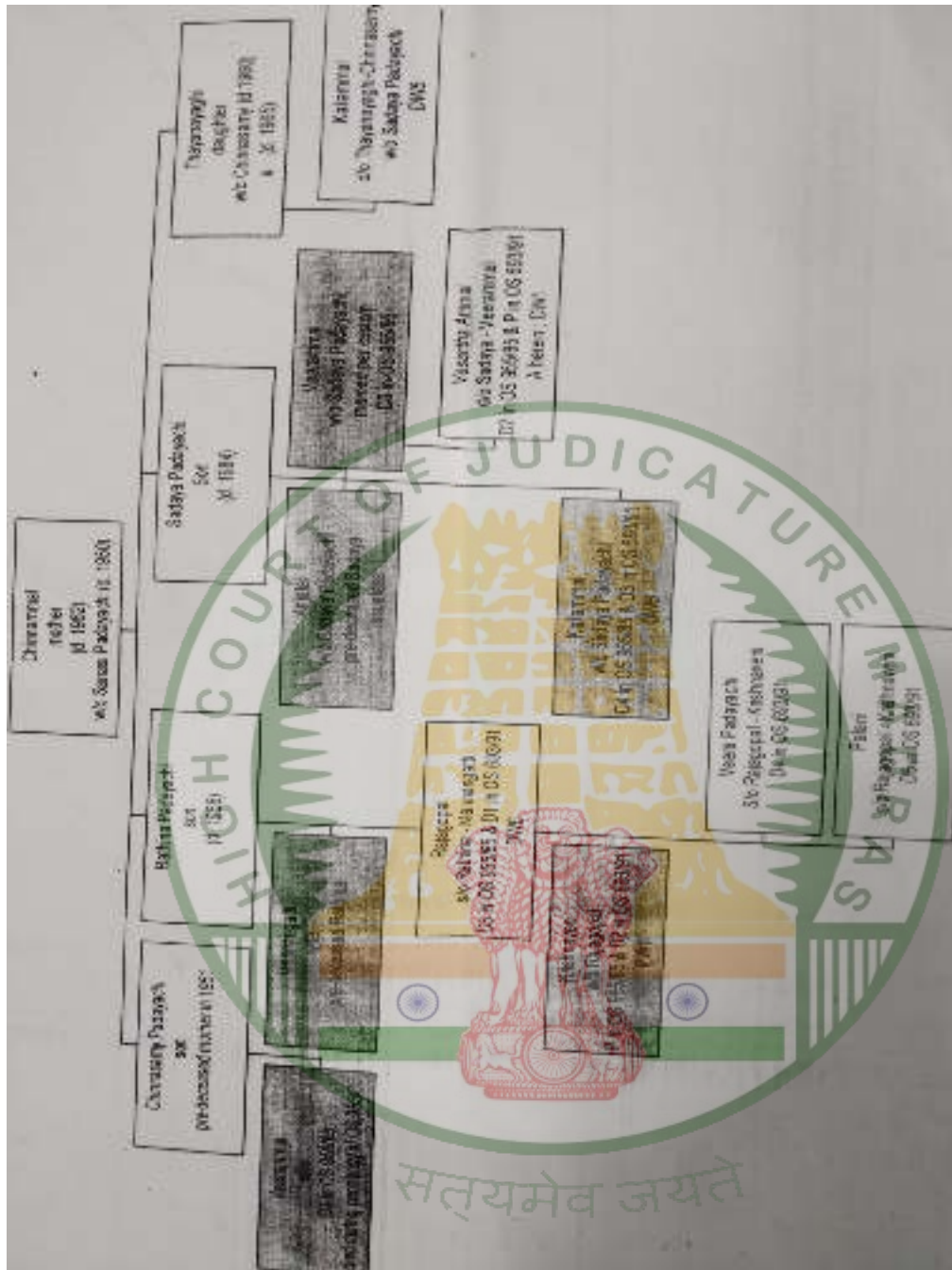
2. Whether the alleged joint enjoyment of electric service connection standing in the exclusive name of a person (Sadaya Padayachi) amount to admission also of joint ownership of the electric service and electric motor with the 5th defendant by the only fact that land belonged to the said persons?

3. Whether the claim of ownership to a half share in electric motor and service connection by the 5th defendant not against the Benami Transaction Prohibition Act and the provisions of the Tamilnadu Electricity Supply Rules? सत्यमेव जयते

4. Whether the appellant DW1 was not entitled to a decree as a heir to the father even if B2 was invalid and the failure to consider the effect of intestacy by the courts below was against law?

26. S.A.No.358 of 2000 arises from O.S.No.955 of 1985 which was a suit for partition seeking 1/3rd undivided share in item Nos.1 to 5 of the suit property. The following genealogy table would be useful in understanding the relationship among the parties.

27. The properties originally belonged to Chinnammal who died



in the year 1962. A perusal of the genealogy table reveals that she had three sons and one daughter, Chinnasamy Padayachi, Rathina Padayachi, Sadaya Padayachi and Thaiyanayaki. The first son Chinnasamy Padayachi predeceased his mother Chinnammal and died in 1951. His wife Veerammal was the third defendant in O.S.No.955 of 1985. She died during the pending of the suit. The second son Rathina Padayachi died in the year 1968. His wife Manankatti predeceased him. They had a son Rajagopal. He was the fifth defendant in O.S.No.955 of 1985 and first defendant in O.S.No.693 of 1991. He also tendered oral evidence as DW6. His wife was Krishnaveni Ammal, the plaintiff in O.S.No.955 of 1985

and the second defendant in O.S.No.693 of 1991. She claimed 1/3rd undivided share having purchased the same from Kaliyammal the daughter of Thaiyanayaki. It was stated that Rathina Padayachi and Sadaya Padayachi had orally partitioned the properties and had ousted Thaiyanayaki. But both the Courts below had found as a fact that ouster was not proved and consequently, Kaliyammal, as daughter of Thaiyanayaki was entitled to an undivided 1/3rd share. Kaliyammal was also the wife of Sadaya Padayachi. She tendered evidence as DW5. She sold her undivided 1/3rd share to the plaintiff Krishnaveni Ammal. Vasantha Ammal was the daughter of Veerammal. The marriage between Veerammal and Sadaya Padayachi, though stated to have been conducted as per custom was asserted to be not legal. Veerammal was the widow of Chinnasamy, the elder brother of Sadaya Padayachi. The Trial Court found that Vasantha Ammal, the daughter of Veerammal was not entitled to claim any share, but the First Appellate Court recognised her status. No cross appeal has been filed against that observation.

28. The learned counsel for the appellants relied on that observation of the First Appellate Court Judgment, wherein it had been observed as follows:

"Whether the settlement is true and valid has to be decided in the subsequent issue. For the limited purpose as there is no dispute as the appellant Vasantha is the daughter of Sadaya Padayachi, she succeeds to the share to be allotted to her."

However, Vasantha Ammal O.S.No.693 of 1991, seeking declaration of title for the entire property. That declaration had been concurrently negated by both the Courts below. But, it cannot be denied that she is entitled to an undivided 1/3rd share.

Substantial Questions of Law discussed and answered in both the Second Appeals.

29. The first substantial question of law in S.A.No.358 of 2000 was whether the plaintiff Krishnaveni Ammal and her vendor Kaliyammal should be deemed to have been ousted, since the mother of Thaiyanayaki was stated to be ousted in the oral partition between Rathina Padayachi and Sadaya Padayachi. There cannot be any ouster since Thaiyanayaki as daughter was entitled to an undivided 1/3rd share by birth. Her daughter Kaliyammal inherited that 1/3rd share. She had sold that share to the plaintiff Krishnaveni Ammal. Both the Courts below have held that the sale deed is a valid document and supported by consideration. Consequently, I hold there had been no ouster of the plaintiff or her vendor.

30. With respect to the second substantial question of law, I hold that the plaintiff had proved title through the sale deed in her favour executed by Kaliyammal. Kaliyammal was the daughter of Thaiyanayaki. Both the courts below had consistently

held with respect to item Nos.1 to 4 that they are the properties of Chinnammal. It is only with respect to the motor pumpset, that the First Appellate Court held that it was used in common and partition cannot be granted.

31.With respect to the first substantial question of law in S.A.359 of 2000, the finding of the courts below with respect to Ex.B2, settlement deed was based on relevant facts and on evidence. It was specifically found that Sadaya Padayachi suffered from paralytic attack. He could not speak or write. He had lost mobility in his left leg and right hand. It was specifically found that DW2 and DW3 deposed that he did not see them attesting the document. Moreover, the identifying witness had not been examined. Consequently, the findings of both the courts in rejecting Ex.B2 is correct.

32.With respect to the second substantial question of law, the joint enjoyment of electric motor pumpset in common cannot be stretched to indicate that the land was also used in common. The said finding does not warrant interference.

33.With respect to the third substantial question of law, I hold that the First Appellate Court had only stated that the motor pumpset was used in common and this observation cannot attract the Benami Transaction Prohibition Act or can be said to be in contradiction to the provisions of Tamil Nadu Electricity Supply Rules.

34.With respect to the fourth substantial question of law, I hold that though the marriage between mother of the appellant and Sadaya Padayachi had not been proved in manner known to law, particularly, since the second wife was alive, and the custom which had been relied on cannot be a substitute for a legal marriage still the appellant, as daughter is entitled to an undivided 1/3rd share in Item Nos.1 to 4 of the suit properties. The mother of the appellant was the widow of Chinnasamy, the eldest son of Chinnammal. I hold that as daughter of Sadaya Padayachi, the appellant Vasantha Ammal can join in the final decree proceedings and claim her undivided 1/3rd share.

35.In all other respects both the Second Appeals fail and are dismissed. However, in view of the circumstances and the relationship among the parties, without costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

smv

To

1.The Additional District Court, Villupuram.

2.The District Munsif Court, Thirukoilur

3.The Section Officer, VR Section
Madras High Court.

+2cc to M/s.V.Raghavachari, Advocate sr.no.7378

+1cc to Mr.R.Sunil Kumar, Advocate sr.no.8073

S.A.No.358 & 359 of 2000

cnr(co)
nr 02/04/2019



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