

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2019

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.S.No.1008 of 2008

1. C.Ramaiah
 2. RM.Chandramouli alias
A.Chandramouli
 3. RM.Chandramouli
rep. By his father and Power of Attorney
C.Ramaiah
 4. C.Muthu
rep. by his father and Power of Attorney
RM.Chandramouli
 5. A.Annamalai
 6. A.Rathinam
rep. by his Brother and Power of Attorney
A.Annamalai
 7. L.A.Lakshmanan
 8. KK.KR.Sigappi alias L.Sigappi
 9. RM.Alagappan
rep. by his father and Power of Attorney
C.Ramaiah
- .. Plaintiffs

Vs.

1. A.Kothai Atchi
2. Dr.A.Jawahar Palaniappan

3. Kumudham Publications Pvt. Ltd.

4. L.Govindan

5. L.Rathinam (deceased)

6. L.Murugappan

7. R.Seethalakshmi *

.. Defendants

* 7th defendant is brought on record as L.R.
of the deceased 5th defendant as per order
dated 08.03.2016 in A.No.1211 to 1213/2016

* * *

Prayer : Civil Suit filed under Order IV, Rule 1 of the Original Side Rules read with Order 7 Rule 1 of the Code of Civil Procedure praying to pass a decree and judgment against the defendants 1 to 3,

(a) for declaration of plaintiffs and defendants 4, 6 and 7 title to the suit property ;

(b) to declare that the partition deed dated 01.05.1968 document No.1348 of 1968 and sale deeds dated 19.08.1972 document No.1518 of 1971 and 10.03.1976 document Nos.361 and 362 of 1976 executed in favour of defendants 1 to 3 interse are null and void as far as plaintiffs and defendants 4, 6 and 7 are concerned ;

(c) consequently directing the defendants 1 to 3 to deliver/restore possession of the suit property to the plaintiffs and defendants 4, 6 and 7 ;

(d) directing the defendants to pay damages of Rs.10,00,100/-

(e) to pay the costs of the suit ; and

(f) granting such other relief or reliefs as this Court deems fit and proper in the circumstances of the case.

* * *

For Plaintiff : Mr.S.V.Jayaraman, Senior Counsel
for Mr.S.Raghu

For Defendants : Mr.T.V.Ramanujam, Senior Counsel for
Mr.T.V.Krishnamachari for DD 1 and 2
and Mr.R.Amizhdhu for D3

J U D G M E N T

The suit is for declaration of (i) the title of the plaintiffs and defendants 4, 6 and 7 to the suit property ; and (ii) the partition deed dated 01.05.1968 document No.1348 of 1968 and sale deeds dated 19.08.1972 document No.1518 of 1971 and 10.03.1976 document Nos.361 and 362 of 1976 executed in favour of defendants 1 to 3 interse as *null and void* as far as plaintiffs and defendants 4, 6 and 7 are concerned. The consequential direction sought for is to the defendants 1 to 3 to deliver/restore possession of the suit property to the plaintiffs and defendants 4, 6 and 7 and also a direction to the defendants to pay damages of Rs.10,00,100/-.

सत्यमेव जयते

2. The suit property relates to land and building measuring about 22 grounds and 5 sq.ft. situate at Purasawalkam/Vepery, Chennai. The plaintiffs and the defendants 1 and 2 are closely related and they are descendants of S.A.Annamalai Chettiar, who died in the year 1907. The said Annamalai Chettiar had five sons, of whom, the heirs of SA.RM.Ramasamy Chettiar and S.A.P.Palaniappan are litigating. On the

death of the said Annamalai Chettiar, who died in 1907, the family business and properties were managed and administered by the grandfather of the plaintiffs 1 and 2, namely, SA.RM.Ramasamy Chettiar. Thereafter, there was a partition among the family, which was reduced to writing and registered as Document No.789 of 1915. In the said partition, the properties described in the B Schedule were allotted to SA.RM.Ramasamy Chettiar's children. The plaintiffs and the defendants 4 to 6 (the seventh defendant is brought on record in the place of the deceased fifth defendant, for the sake of convenience, they are referred to as defendants 4 to 6) are the heirs of the said Ramasamy Chettiar, who died on 06.11.1913. According to the plaintiffs, by virtue of the said partition, the plaintiffs and defendants 4 to 6 became owners of the suit property. It is further stated that the said partition deed was acted upon by executing the release deeds in the year 1917, 1921 and 1927.

3. While so, the predecessors of the defendants, namely, Palaniappan Chettiar challenged the partition of the year 1915 by filing O.S.No.105 of 1925 on the file of the Subordinate Court, Devakottai. He had also executed a release deed favouring the plaintiffs' predecessors acknowledging and admitting their right, interest and title. It is further stated by the plaintiffs that S.A.Annamalai Chettiar

was in management and possession till 1960 and thereafter, he handed over the possession to S.A.P.Annamalai Chettiar, S/o.Palaniappan/second defendant's father on behalf of plaintiffs' predecessor. Therefore, according to the plaintiffs, the possession of Annamalai Chettiar, S/o.Palaniappan was only on behalf of plaintiffs predecessor and he did not have any ownership in the property. It is also admitted by the plaintiffs that the defendants 1 to 3 had filed suits in the City Civil Court, Chennai, against the third plaintiff for bare injunction in O.S.No.1574 of 2001 and 1575 of 2001. The third plaintiff, being the defendant in those suits, was contesting the said suits. However, later, the suits were withdrawn by the plaintiffs therein. The plaintiffs are tracing their source of title on the partition deed of the year 1915. Only after defendants 1 to 3 filed the suits before the City Civil Court, the intention of the parties was understood and hence, the plaintiffs have filed the present suit seeking declaration that the alienation in favour of the defendants 1 to 3 are *null and void*. The plaintiffs are also claiming damages for use and occupation.

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4. The suit is resisted by the first defendant by filing a written statement. The first defendant is the wife of S.A.P.Annamalai Chettiar, who is the son of SAP.Palaniappan Chettiar. The first defendant challenged the *locus standi* of the plaintiffs to maintain the suit and the

prayers sought for therein. The plaint refers to a release deed dated 03.12.1927, which was pursuant to the compromise entered into between the parties in the suit in O.S.No.105 of 1925 by the S.A.Palaniappan Chettiar against SA.RM.Annamalai, Ramasamy and Chandramouli, who were minors. A compromise was arrived at between the parties, which was filed before the Subordinate Court, Devakottai in O.S.No.105 of 1925 and the same was also recorded on 08.03.1927. The said compromise was never challenged by any of the parties till today. As per the said compromise, the Rama Vilas Front Bungalow, which is the subject matter of the present suit, was handed over to the father-in-law of the first defendant, who is the plaintiff in that suit. In order to adjust an amount of Rs.40,000/-, the defendants therein, i.e., the ancestors of the plaintiffs and the defendants 4 to 6, had agreed to execute the sale deed in favour of father-in-law of the first defendant. The said details were suppressed by the plaintiffs in the plaint.

5. The first defendant also stated that her father-in-law was given possession in the year 1927 as a rightful owner and till date the suit property is in their possession and enjoyment. She claimed that she lived in that property along with her husband, which was subsequently, when partition of properties took place between her

husband and her son/the second defendant in the year 1968, allotted to her husband. A portion of the said property was sold by her husband to M/s.Kumudam Printers Private Limited/the third defendant, vide sale deed dated 19.08.1972, wherein, the third defendant constructed a bungalow in the year 1973-1974 to accommodate its Director. Though the plaintiffs and defendants 4 to 6 knew all these facts, for attaining some financial mileage, the suit was instituted.

6. It is also stated that the ancestors of the plaintiffs and defendants 4 to 6 have sold the remaining part of the property allotted to them in the partition deed of 1915, apart from the property conveyed to her father-in-law by way of compromise decree. A reading of the recitals of the sale deed makes it clear that the ancestors have agreed and accepted in an unequivocal terms that the suit property was not possessed and owned by them and the land conveyed by way of sale deed alone owned and possessed by them. It is also stated that even in the schedule of the said sale deed, the boundaries were described as "on the south by S.A.Palaniappa Chettiar's Bungalow", which established that the ancestors have already confirmed and accepted the fact that they have already parted with the right over the suit schedule property and retained the balance of share allotted to them under the partition deed of the year 1915. Thus, the first

defendant stated that they have been in possession of the suit property from 1927 onwards without any interruption from any of the parties. She also had stated that they mutated the revenue records by paying taxes, electricity charges, property taxes, etc. The ancestors of the plaintiffs had also not challenged the same till the filing of the suit.

7. The first defendant further stated that her mother-in-law had managed the estate as the mother and natural guardian of S.A.P.Annamalai Chettiar, the husband of the first defendant and the only son born to them, who is the second defendant - Dr.Jawahar Palaniappan. It is further stated that the husband of the first defendant, who is the founder and founder-editor of famous Tamil weekly Kumudam had shifted his residence to the suit schedule property and lived there for more than 50 years ; all the functions in the family were celebrated in that house ; and the forefathers of the plaintiffs and the plaintiffs also participated without any objection.

8. The first defendant also claimed that admittedly, except one plaintiff, all the other plaintiffs had attained majority at least 20 years before the date of filing of the suit and the suit ought to have been filed within the period of limitation, even presuming that they had a right. Further, the plaintiffs challenged the documents of the year

1968, which are partition deed in Document No.1348 of 1968; sale deed in document No.1518 of 1972 and also sale deeds in Document Nos.361 and 362 of 1976. Such a challenge to those documents, which are more than four decades old, cannot be made as they are already barred by limitation.

9. It is also pointed out that the release deed of the year 1925 was executed based on the compromise, which would go to show that the partition deed of the year 1915 was subjected to change in the subsequent release deeds, which were executed by the parties. Therefore, the plaintiffs cannot rely on the 1915 partition deed alone to base their claim by suppressing the compromise, that was entered into in O.S.No.105 of 1925. Further, it is pointed out that the forefathers of the plaintiffs and the defendants 4 to 6 have handed over the physical possession of the suit schedule property admitting the ownership absolutely with S.A.Palaniappan Chettiar, as they have admitted the defendants rights, while selling the part of the property retained in the year 1932. The earlier suit filed by the defendants against the third plaintiff alone for bare injunction was only to stall the blackmail from the plaintiffs for financial gain and the same was withdrawn at the instance of the elders of the community, who had advised to do so. As the plaintiffs have not made out a case even by

pleading the same and by suppressing the actual facts, the first defendant prayed for dismissal of this suit.

10. The first defendant also filed an additional written statement stating that after the demise of S.A.Palaniappan Chettiar, who was in enjoyment of the property, his wife Lakshmi Achi was in management. The said Lakshmi Achi executed a Will dated 03.06.1976 bequeathing a portion of the property in favour of her grandson/the second defendant Dr.Jawahar Palaniappan. The said Will dated 03.06.1976, had also been probated before this Court in O.P.No.327 of 1989. The S.A.P.Annamalai Chettiar, S/o.Late Palaniappa Chettiar himself executed a Will dated 25.08.1983 bequeathing in favour of the second defendant a portion of the suit property and the said Will was also duly probated before this Court in O.P.No.151 of 1995. Thus, the second defendant has been in possession and enjoyment of the suit property as the owner thereof exercising the right of ownership. The second defendant also has been dealing with the property by leasing a portion of the suit property to Indian Bank and to a third party. The portion of the property was also sold by S.A.P.Annamalai in favour of Kumudam Publishers, which is the third defendant herein. Thus, she pleaded for dismissal of the suit.

11. The second defendant, who is the son of the first defendant, had independently filed a written statement narrating the same facts. He had stated that of the entire extent of 24 grounds and 1500 sq.ft., an extent of 9 grounds and 1800 sq.ft. was sold to M/s.Kumudham Publishers by way of registered sale deed dated 19.08.1972. After purchase, the said company, being the rightful owner, had constructed a Bungalow in the year 1973-74. As the defendants 1 and 2 have been in absolute possession of the property from the year 1927 onwards by dealing with the same including effecting mutation of the revenue records, the plaintiffs cannot have any right in the property. The said 1927 compromise has been accepted and acted upon by the ancestors of the plaintiffs. Therefore, the plaintiffs cannot change the same, after several decades. Repeating the same facts as that of the first defendant, the second defendant has stated that their possession of the suit schedule property is in the capacity of rightful owners based on the documents and the suit filed to disturb the same is not maintainable, particularly, when the same is barred by limitation.

12. In the additional written statement, the second defendant has claimed title by adverse possession as could be seen from the conduct of the defendants' father ascertaining title adverse to the claim of the plaintiffs by dealing with the title to the suit property.

13. The Managing Director of the third defendant filed the written statement reiterating the factual position portrayed by the first and second defendants in their respective written statements. The third defendant sought for dismissal of the suit, while questioning the *locus standi* of the plaintiffs to maintain the suit. It is stated that the third defendant is a bonafide purchaser and its vendor, the husband of the first defendant and the father of the second defendant, had shown documentary evidence that the ancestors of the plaintiffs have entered into a compromise with his father in O.S.No.105 of 1925 and thus, the suit schedule property was given to the father of its vendor in the year 1927 as a rightful owner, which was taken over by the vendor, after his father's demise. The third defendant claimed that till the date of purchase by it by way of registered sale deed dated 19.08.1972 in Document No.518/1972, the suit property was in the possession and enjoyment of the family of the vendor, and its vendor and his son entered into a partition deed, in which, the suit property was allotted to the vendor. The third defendant claimed that it constructed a bungalow in the year 1973-74 to accommodate its Director and has been in possession and enjoyment of the suit property. Thus, the third defendant sought for dismissal of the suit.

14. On the side of the plaintiffs, plaintiffs 1 to 3 were examined as P.Ws.1 to 3 and Exs.P.1 to P.10 were marked, while on the side of the defendants, second defendant was examined as D.W.1 and the Chairman and Managing Director of the third defendant was examined as D.W.2 and Exs.D.1 to D.47 were marked.

15. The following issues were re-framed for consideration by this Court on 29.06.2011 :

- (1) Whether the plaintiffs and defendants 4 to 6 are entitled to the suit property and whether they are entitled to declaration of their title ?
- (2) Whether the partition deed dated 01.05.1968 and sale deed dated 19.08.1972 and 10.03.1976 null and void as far as plaintiffs and defendants 4 to 6 are concerned and whether those documents be set aside ?
- (3) Whether the plaintiffs and defendants 4 to 6 are entitled to recovery of possession ?
- (4) Whether the defendants 1 to 3 liable to pay damages as claimed ?
- (5) Whether the defendants 1 to 3 are estopped from denying the title of plaintiffs and defendants 4 to 6 ?
- (6) Whether the suit barred by limitation ?
- (7) Whether the suit is maintainable ?
- (8) To what other reliefs are plaintiffs and defendants 4 to 6 are entitled to ?

16. On 01.02.2012, this Court framed "Whether in any event the defendants 1 to 3 have prescribed title to the suit property by adverse possession ?" as additional issue for consideration.

17. Heard the learned counsel on either side and perused the materials available on record.

Issue Nos.1, 2, 5 and 6 :

18. The entire suit revolves around the suit property, which has been the subject matter in an earlier proceeding. The relationship between the parties are not disputed. The plaintiff and defendants 4 to 6 are the heirs of Ramasamy Chettiar, who died on 06.01.1907. According to the plaintiffs, by virtue of the Partition Deed dated 17.07.1915-Ex.P.1, the plaintiffs and defendants 4 to 6 became owners of the said property as heirs of Ramasamy Chettiar. The other branch comprised of defendants 1 and 2. In the partition deed-Ex.P.1, the suit properties referred to as B Schedule property, was allotted to the other branch. To evidence the fact that the said partition deed was acted upon, the plaintiffs also had exhibited the release deeds dated 02.08.1917, 02.12.1921 and 03.02.1927, which are marked as Exs.P.2, 3 and 4 respectively. By virtue of Ex.P.2, S.A.Chidambaram

had released his interest ; by virtue of Ex.P.3 Annamalai Chettiar released his interest and by Ex.P.4, the defendants 1 to 3's predecessors-in-interest, namely, Palaniappan released his interest in respect of B Schedule properties including the suit schedule property. Hence, it is contended by the plaintiffs that the defendants have got no right or interest in respect of the suit property, which was described as B Schedule in the original partition and claimed that only the plaintiffs and defendants 4 to 6 are entitled for the same.

19. The plaint also speaks about the suit filed by S.A.P.Palaniappan, who is the father-in-law of the first defendant, challenging the partition of the year 1915 in O.S.No.105 of 1925 on the file of the Subordinate Court, Devakottai. The plaintiffs, however, had not mentioned about the compromise entered into between the parties, which was recorded in the above mentioned suit in O.S.No.105 of 1925 and thus, the plaintiffs are guilty of *Suppresio veri, suggestio falsi*. On the other hand, defendants 1 and 2 have stated that the challenge to the partition deed of the year 1915 in the above suit ended upon in a compromise between the parties. Challenge was made by S.A.P.Palaniappan because in the 1915 partition, the division was not equal and equitable. Accepting the contention of the plaintiff in O.S.No.105 of 1925, the said compromise was entered into by the

parties, which was reduced to writing under Ex.D.1 – Compromise Memo and a decree dated 08.03.1927 – Ex.D.2 in terms of the same was passed. As per the compromise, 1/5th of A schedule property was enjoyed by the plaintiffs. The other properties and claims, which were verified, checked and quantified at a sum of Rs.40,000/- payable to the plaintiff therein. Thus, the defendants therein agreed to transfer the Rama Vilas Bungalow, Vepery, Madras, in favour of the plaintiff therein by a registered deed, as the plaintiff therein had already been in possession of the suit property. Thus, compromising the said suit, the same was recorded on 08.03.1927, as per Ex.D.2 and the suit was dismissed (sic-disposed of). As the terms of the compromise were filed before the court with a clear understanding between the parties, neither the plaintiffs nor the defendants 4 to 6 can challenge the same, as the same would operate as estoppel.

20. Learned Senior Counsel for the plaintiffs raised the following contentions :

- (a) The compromise decree was not acted upon ;
- (b) The doctrine of estoppel would not apply because as per the compromise the plaintiffs should have executed a registered document in favour of the first/second defendants, which is not done till today ; and

(c) Only by virtue of Ex.D.2, the defendants are claiming rights in the suit property.

21. Before dealing with the above contentions, it is relevant to discuss the effect and value of the joint compromise memo filed in O.S.No.105 of 1925, which is the continuation of the family partition effected. By virtue of the said family arrangement, the members of the family descending from a common ancestor had brought to an end their differences and disputes, settled their conflicting claims once for all, which is also recorded in O.S.No.105 of 1925. It is relevant to state that the principle that apply for compromises in the nature of family arrangements are governed by special equity.

22. The object of a family arrangement itself is to protect the family from long-drawn litigation which would mar the unity of the family. This is the reason why Courts are keen on upholding a family compromise, instead of disturbing them on technical or trivial grounds.

23. It is not the case of the plaintiffs that the compromise was induced by fraud, coercion or undue influence. The said compromise is a bona fide one, which is recorded by the Court and there is no challenge to the same till today.

24. The Hon'ble Apex Court in **Kale and others V. Deputy Director of Consolidation and others, AIR 1976 SC 807** held as follows :

"42. Finally in a recent decision of this Court in S. Shanmugam Pillai case after an exhaustive consideration of the authorities on the subject it was observed as follows:

"Equitable principles such as estoppel, election, family settlement, etc. are not mere technical rules of evidence. They have an important purpose to serve in the administration of justice. The ultimate aim of the law is to secure justice. In the recent times in order to render justice between the parties, courts have been liberally relying on those principles. We would hesitate to narrow down their scope.

** * **

As observed by this Court in T.V.R. Subbu Chetty's Family Charities case, that if a person having full knowledge of his right as a possible reversioner enters into a transaction which settles his claim as well as the claim of the opponents at the relevant time, he cannot be permitted to go back on that agreement when reversion actually falls open."

In these circumstances there can be no doubt that even if the family settlement was not registered it would operate as a complete estoppel against Respondents 4 and 5. Respondent 1 as also the High Court, therefore, committed substantial error of law in not giving effect to the doctrine of estoppel as spelt out by this Court in so many cases. The learned counsel for the respondents placed reliance upon a number of authorities in

Rachbha v. Mt Mendha [AIR 1947 All 177] ; Chief Controlling Revenue Authority v. Smt Satyawati Sood [AIR 1972 Del 171] and some other authorities, which, in our opinion have no bearing on the issues to be decided in this case and it is therefore not necessary for us to refer to the same.

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44. In view of our finding that the family settlement did not contravene any provision of the law but was a legally valid and binding settlement in accordance with the law, the view of Respondent 1 that it was against the provisions of the law was clearly wrong on a point of law and could not be sustained. Similarly, the view of the High Court that the compromise required registration was also wrong in view of the clear fact that the mutation petition filed before the Assistant Commissioner did not embody the terms of the family arrangement but was merely in the nature of a memorandum meant for the information of the court. The High Court further erred in law in not giving effect to the doctrine of estoppel which is always applied whenever any party to the valid family settlement tries to assail it. The High Court further erred in not considering the fact that even if the family arrangement was not registered it could be used for a collateral purpose, namely, for the purpose of showing the nature and character of possession of the parties in pursuance of the family settlement and also for the purpose of applying the rule of estoppel which flowed from the conduct of the parties who having taken benefit under the settlement keep their mouths shut for full seven years and later try to resile from the settlement. In *Shyam Sunder v. Siya Ram [AIR 1973 All 382]* it was clearly held by the Allahabad High Court that the compromise could have been taken into consideration as a piece of evidence even if it was not registered or for that matter as an evidence of an antecedent title. The High Court observed as follows:

"The decision in Ram Gopal v. Tulshi Ram [AIR 1928 All 641] is clear that such a recital can be relied upon as a piece of evidence.

* * *

It is clear, therefore, that the compromise can be taken into consideration as a piece of evidence.... To sum up, therefore, we are of the view that the compromise could have been relied upon as an admission of antecedent title."

25. Reliance was also placed in this regard on the judgments in **Ram Charan Das V. Girija Nandini Devi and others, AIR 1966 SC 323** and **Subraya M.N. V. Vittala M.N. and others, 2016 (8) SCC 705.**

26. In **Roshan Singh and others V. Zile Singh and others, 2018 (14) SCC 814**, it has been held that an instrument with respect to past settlement is not required to be registered. The relevant paragraphs are as follows :

"12. Partition, unlike the sale or transfer which consists in its essence of a single act, is a continuing state of facts. It does not require any formality, and therefore if parties actually divide their estate and agree to hold in severalty, there is an end of the matter.

13. On its true construction, the document, Ext. P-12 as well as the subsequent confirmatory panch faisala, Ext. P-1 merely contain the recitals of a past event, namely, a decision arrived at between the parties as to the manner in which the

parties would enjoy the distinct items of joint family property in severalty. What follows in Ext. P-12 is a mere list of properties allotted at a partition and it cannot be construed to be an instrument of partition and therefore did not require registration under Section 17(1)(b) of the Act. That apart, the document could always be looked into for the collateral purpose of proving the nature and character of possession of each item of property allotted to the members.

14. The matter can be viewed from another angle. The true and intrinsic character of the memorandum, Ext. P-12 as later confirmed by the panch faisala, Ext. P-1 was to record the settlement of family arrangement. The parties set up competing claims to the properties and there was an adjustment of the rights of the parties. By such an arrangement, it was intended to set at rest competing claims amongst various members of the family to secure peace and amity. The compromise was on the footing that there was an antecedent title of the parties to the properties and the settlement acknowledged and defined title of each of the parties. The principle governing this was laid down by the Judicial Committee in Khunni Lal v. Gobind Krishna Narain 1911 SCC OnLine PC 14. Ameer Ali, J. delivering the judgment of the Privy Council quoted with approval the following passage from the judgment in Lalla Oudh Beharee Lall v. Mewa Koonwer (1868) 3 Agra HCR 82] : (Khunni Lal case)

"... 'The true character of the transaction appears to us to have been a settlement between the several members of the family of their disputes, each one relinquishing all claim in respect of all property in dispute other than that falling to his share, and recognising the right of the others as they had previously asserted it to the portion allotted to them respectively. It was in this light, rather than as conferring a new distinct title on each other, that the parties themselves seem to have

regarded the arrangement, and we think that it is the duty of the Courts to uphold and give full effect to such an arrangement.' (Lalla Oudh Beharee Lall v. Mewa Koonwer, (1868) 3 Agra HCR 82].

15. This view was adopted by the Privy Council in subsequent decisions and the High Courts in India. To the same effect is the decision of this Court in *Sahu Madho Das v. Mukand Ram*, AIR 1955 SC 481. The true principle that emerges can be stated thus: If the arrangement of compromise is one under which a person having an absolute title to the property transfers his title in some of the items thereof to the others, the formalities prescribed by law have to be complied with, since the transferees derive their respective title through the transferor. If, on the other hand, the parties set up competing titles and the differences are resolved by the compromise, there is no question of one deriving title from the other, and therefore the arrangement does not fall within the mischief of Section 17 read with Section 49 of the Registration Act as no interest in property is created or declared by the document for the first time. As pointed out by this Court in *Sahu Madho Das v. Mukand Ram*, AIR 1955 SC 481, it is assumed that the title had always resided in him or her so far as the property falling to his or her share is concerned and therefore no conveyance is necessary."

27. Yet another recent judgment of the Hon'ble Supreme Court, on which learned Senior Counsel for the defendants 1 and 2 placed reliance, was **Thulasidhara V. Narayanappa** reported in **(2019) 6 SCC 409** and the relevant paragraphs of the said judgment read as hereunder :

"9.5. As held by this Court in Subraya M.N. [Subraya M.N. v. Vittala M.N., (2016) 8 SCC 705 : (2016) 4 SCC (Civ) 163] even without registration a written document of family settlement/ family arrangement can be used as corroborative evidence as explaining the arrangement made thereunder and conduct of the parties. In the present case, as observed hereinabove, even the plaintiff has also categorically admitted that the oral partition had taken place on 23-4-1971 and he also admitted that 3 to 4 panchayat people were also present. However, according to him, the same was not reduced in writing. Therefore, even accepting the case of the plaintiff that there was an oral partition on 23-4-1971, the document, Ext. D-4 dated 23-4-1971, to which he is also the signatory and all other family members are signatory, can be said to be a list of properties partitioned. Everybody got right/share as per the oral partition/partition. Therefore, the same even can be used as corroborative evidence as explaining the arrangement made thereunder and conduct of the parties. Therefore, in the facts and circumstances of the case, the High Court has committed a grave/manifest error in not looking into and/or not considering the document Ext. D-4 dated 23-4-1971."

28. It is to be stated that what was given to the plaintiff in the said suit was the front part of Rama Vilas Front Bungalow, which is the subject matter of this suit. It was clearly written in the memorandum of compromise that in order to adjust the amount of Rs.40,000/- payable to the plaintiff therein, the defendants therein, who are the ancestors of the plaintiffs herein, had agreed to execute the sale deed in favour of the grandfather of the second defendant. Admittedly, the

possession was with the grandfather of the second defendant herein and the same was confirmed in the compromise memo. Therefore, from the year 1927, from the date of compromise, the grandfather of the second defendant was in possession of the property, as the original owner and after the demise of the grandfather of the second defendant, the father of the second defendant took possession and in enjoyment of the property. The parents of the second defendant lived in the suit property. Subsequently, the father of the second defendant had partitioned the properties on 01.05.1968 under Ex.P.5, which is now under challenge. It is relevant to mention that the said partition deed is also a registered one, as per which, the suit schedule property was allotted to the father of the second defendant. The defendants 1 and 2 have also pleaded in the written statement that the revenue records, taxes, charges and other payables with respect to the suit schedule property were only paid by the father of the second defendant and mutation of documents was also effected.

29. It is also pertinent to advert to the fact that a portion of the said property, an extent of 9 grounds and 1800 sq.ft. out of the entire property to an extent of 24 grounds and 1500 sq.ft. was sold by the father of the second defendant to M/s.Kumudam Printers (Private) Limited (subsequently merged with M/s.Kumudam Publications Pvt.

Ltd.), which is the third defendant herein, vide a registered sale deed dated 19.08.1972. The said third defendant also after purchase of the property had constructed a bungalow in the year 1973-1974 to accommodate its Director. The said fact is also known to the plaintiffs and defendants 4 to 6. Interestingly, it is pointed out by the learned Senior Counsel for the defendants 1 and 2 that the ancestors of the plaintiffs and the defendants 4 to 6 had sold the remaining part of the property allotted to them by virtue of the partition deed of the year 1915, apart from the property conveyed to the grandfather of the second defendant by way of compromise decree. In the said sale deed dated 30.05.1932, which is marked as Ex.D.3, the ancestors of the plaintiffs and defendants 4 to 6, have specifically stated that all of them were residing at Kanadukathan, whereas, the vendors own and possess all that house and ground called Rama Vilas situate in Daley Road, Vepery, Madras. From the above recitals, it is clear that the ancestors have agreed and accepted in unequivocal terms that the land to an extent of 24 grounds and 1500 sq.ft. and the front bungalow of Rama Vilas was not possessed and owned by them and the land conveyed by way of sale deed alone was owned and possessed by them. Even in the schedule of the said sale deed, it was stated that,

"all that parcel of land with bungalow and outhouse boundary walls

excluding the southern side boundary wall and erection situate thereon and known as "Rama Vilas" situate in Daley Road on the South by S.A.Palaniappa Chettiar's Bungalow on East by C.R.Murugesu Mudaliar's vacant site and outhouse and on the West by C.V.Periayya Mudaliar's house".

The above recitals in the sale deed executed by the plaintiffs ancestors as early as in the year 1932 establishes that the ancestors of the plaintiffs were already confirmed and accepted the fact that they had parted with their right over the schedule property and retained the property that was allotted to them in the partition deed of the year 1915. As the defendants 1 and 2 have been in enjoyment of the property through their ancestors from the year 1927 onwards, by dwelling there, by letting out a portion of the same to a Bank, by selling a portion of the property to the third defendant herein, transferring the names in the appropriate revenue registers and by paying all the municipal and corporation taxes, they have established their continuous and uninterpreted possession of the suit property.

30. The plaintiffs, who have the burden to prove their case, have not even offered any explanation for not dealing with the property at least from 1927, by any convincing evidence, both oral and documentary. Even for the allegation that the occupation of the defendants 1 and 2 was in the capacity of the Guardian and trustee was also not established beyond doubt. Thus, the plaintiffs have

miserably failed to establish their right or title over the suit property by independent evidence, as also by their act.

31. So far as the question of declaring the documents, namely, partition deed dated 01.05.1968, sale deed 19.08.1972 and sale deed dated 10.03.1976 are *null and void* is concerned, the plaintiffs ought to have filed it within the period of limitation. It is not the case of the plaintiffs that they were not aware of those documents. As any suit for cancellation of a document can be filed within a period of three years from the date of the document and the plaintiffs, having filed the suit after three or four decades, the same is clearly barred by limitation. Even presuming that the documents challenged were executed when the plaintiffs and defendants 4 to 6 were minors, the limitation would start running from the date they attained majority. Therefore, even the prescribed period for challenging the said documents lapsed on the date of filing of the suit. सत्यमेव जयते

32. Thus, the action of the plaintiffs, who are claiming the title to the property and seeking to set aside the documents as *null and void*, is hit by limitation. Accordingly, the issue Nos.1, 2, 5 and 6 are answered against them.

Issue No.3 :

33. So far as the possession of the property is concerned, the plaintiffs themselves have stated in paragraph 8 of the plaint that during the relevant point of time, plaintiffs and/or their predecessors were minors and therefore, notwithstanding the partition of the year 1915 their uncles/great-uncles were looking after them and their properties as Guardian and Trustees. The plaintiffs have further stated that S.A.A.Annamalai Chettiar was in management and possession till 1960 and thereafter, he handed over and entrusted the possession to S.A.P.Annamalai Chettiar, S/o.Palaniappan/the second defendant's father on behalf of the plaintiffs' predecessor and it is alleged that S.A.P.Annamalai Chettiar only in that capacity had continued in possession. However, there is no iota of evidence let-in by the plaintiffs in this regard to prove that the possession of the second defendant's father was on behalf of the plaintiffs' predecessor. Besides, when it is decided in the previous issues that the second defendant's father had dealt with the property independently, as the owner of the same by virtue of the compromise memo dated 07.03.1927 to the knowledge of the plaintiffs, the question of holding possession in trust for the plaintiffs and defendants 4 to 6 is only based on surmises. In the absence of proof that the possession of the

suit property with the second defendant's father was as that of the Trustee and also having failed to establish the title for the suit property, the plaintiffs and defendants 4 to 6 are disentitled to claim recovery of possession of the same. Thus, the issue is answered against the plaintiffs.

Additional Issue No.1 :

34. So far as the question of adverse possession is concerned, the plaintiffs have stated that neither the defendants 1 to 3 nor their predecessors had any animus to prescribe title against the plaintiffs and defendants 4 to 6. As held in previous issues, the plaintiffs have, by their own conduct, while executing the sale deed, had shown the suit property as lying south of their property. Admittedly, all the plaintiffs and defendants 4 to 6 were residing in Kanadukathan and not in Chennai. In the absence of any evidence to prove that the possession of the ancestor of the defendants 1 and 2 was only as permissive occupant and when the defendants 1 to 3 have beyond doubt established that their right and title were confirmed from the date of the passing of the compromise decree in O.S.No.125 of 1925, the plaintiffs cannot have any right over the property.

35. The Hon'ble Apex Court in **Karnataka Board of Wakf V. Government of India and others, 2005-1-L.W. 730**, sustained the judgment and decree of the High Court which based, *inter alia*, on the plea of adverse possession. While doing so, the Hon'ble Apex Court held as follows :

"11. In the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is a well- settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See : *S M Karim v. Bibi Sakinal* AIR 1964 SC 1254, *Parsinni v. Sukhi* (1993) 4 SCC 375 and *D N Venkatarayappa v. State of Karnataka* (1997) 7 SCC 567). Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. (*Dr. Mahesh Chand Sharma v. Raj Kumari Sharma* (1996) 8 SCC 128)."

36. In **Des Raj & Others V. Bhagar Ram (Dead) By LRs and others, 2007-3-L.W. 429**, the Hon'ble Apex Court, relying upon it is earlier decisions in **Saroop Singh V. Banto and others, (2005) 8**

SCC 330 ; Govindammal V. R.Perumal Chettiar and Others, 2006

(11) Scale 452 and T.Anjanappa and Others V. Somalingappa an

another, (2006) 7 SCC 570, reiterated that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner. In the instant case also, admittedly, the defendants 1 to 3 have been in possession. Even presuming that the plaintiffs had right and title over the property, the said defendants have been dealing with the property as that of an owner with the knowledge of the plaintiffs. Therefore, even presuming that the registration of the suit property was not effected after the compromise, the defendants get the perfected title by adverse possession.

37. In **Ponnaiyan V. Munian (died) and others, 1995-1-L.W. 680,** this Court, relying upon a number of earlier decisions qua adverse possession, held as follows :

"8. There is no statutory definition of adverse possession. Adverse possession refers to actual and exclusive possession coupled with intention to hold as owner. Adverse possession becomes hostile to the rightful owner when a person openly and continuously, possesses a land under a claim of right adverse to the title of the true owner for the statutory period. Adverse possession means a hostile possession which is express or implied in denial of the title of the true owner. Such possession must be actual and exclusive, under a claim of right, adequate in continuity in publicity and in extent so as to show that it is adverse to the true owner. Such possession, in denial of title of the true owner must be peaceful open and continuous . Mere possession without a claim of

right for over a long time is not sufficient to create adverse possession. A mere user of property cannot be taken as a definite assertion of proprietary right; there must be some definite quality in the possession, before it can be called adverse and there must be some fact of unequivocal character which may put the owner on guard. There can be no adverse possession if the person claiming does not know that he is enjoying somebody else's land. He must have the intention of using the property adversely against another having an interest in it. To summarise it, a person by holding possession of the property for the statutory period can acquire title only when his possession is: (1) under a claim of title, (2) hostile to the true owner, and (3) actual, open, uninterrupted, exclusive and continuous."

38. If the conduct of the parties coupled with the ratio reiterated in the above judgments is taken into consideration, it has to be presumed that even the defendants 2 and 3 have established adverse possession to their respective suit schedule properties to the hostile interest of the plaintiffs and respondents 4 to 6. Thus, additional issue is answered in favour of the said defendants.

Issue No.7 : Whether the suit is maintainable ?

39. The plaintiffs have laid the suit only based on the partition of the year 1915 marked as Ex.P.1. Even when the defendants have filed the written statement pointing out the compromise decree in O.S.No.105 of 1925 nothing has been filed by the plaintiffs by way of reply. It is not the case of the plaintiffs that the said compromise entered into between the parties on the file of the Subordinate Court, Devakottai, was not acted upon. The contention of the plaintiffs is that

even presuming that the compromise memo is valid and admitted, as the plaintiffs had not executed the sale deed in favour of the defendants 1 and 2, as agreed in the compromise memo, the defendants 1 and 2 cannot claim any title. In this regard, as held supra even without registration the defendants 1 and 2 were allowed to be in possession even prior to 1925. The plaintiffs also had not challenged the compromise memo, in which, the plaintiffs' predecessor were parties. Thus, looking at any angle, the plaintiffs have miserably failed to establish their case and hence, they are not entitled for a decree as prayed for and the plaintiffs have been non-suited.

Issue Nos.4 and 8 :

40. In view of the above findings qua the aforestated issues, these issues are answered against the plaintiffs.

41. The irresistible conclusion of the foregoing discussion would be that there is no merit in the claim made by the plaintiffs and the suit is liable to be dismissed as devoid of merits. Accordingly, the suit is dismissed. The parties shall bear their respective costs.

18.11.2019

Index : Yes / No

Internet : Yes

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Witnesses examined on behalf of plaintiffs :

Witnesses examined on behalf of defendants :

Documents marked on the side of the plaintiffs :

Documents marked on the side of the defendants :

34/36

Ex.D.32	17.05.1988 – Building planning permit by MDA
Ex.D.33	24.08.1989 – Copy of Probate order in OP No.327/1989 with registered Will of Lakshmi Achi
Ex.D.34	01.08.1991 – Property tax assessment
Ex.D.35	18.11.1991 – Letter from the Income Tax Department
Ex.D.36	10.03.1992 – Receipt of MMWSSB for suit property
Ex.D.37	12.03.1996 – MMWSSB Card
Ex.D.38	07.07.1995 – Copy of Probate order in OP No.151/1995 with registered Will of SAP Annamalai
Ex.D.39	28.03.1996 – Letter of Area Engineer II, MMWSSB for arrears
Ex.D.40	June 1997 – Extract of permanent Land Register
Ex.D.41	23.07.1997 – Letter from Indian Bank (tenant)
Ex.D.42	06.09.2000 – Corporation of Chennai notice for revision of property tax
Ex.D.43	20.08.2002 – Revised property tax notice by Corporation of Chennai
Ex.D.44	14.01.2003 – Copy of registered Lease Deed by D2
Ex.D.45	11.11.2003 – Corporation of Chennai notice to D2 for revision of property tax
Ex.D.46	05.07.2007 – Property tax assessment order in favour of D2
Ex.D.47	18.03.2010 – Property Tax Receipt issued to D2

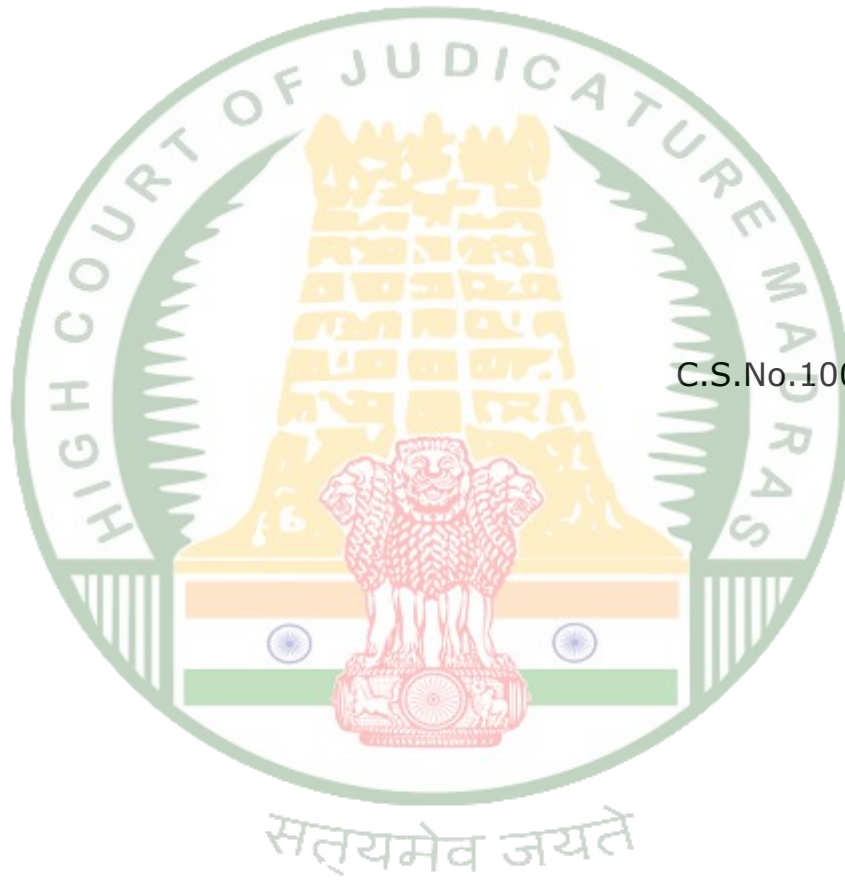
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PUSHPA SATHYANARAYANA, J.

99



C.S.No.1008 of 2008

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