

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :25.04.2019

PRONOUNCED ON: 03.06.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.Nos.812 and 822 of 2006

&

M.P.No.4 of 2014

S.A.No.812 of 2006

1.Pennarasi

2.Elamaran

3.Elavalagan

4.Elango

[Cause title accepted vide order
of court dated 12.07.2006 made
in M.P.No.1 of 2006]

[Name of the 4th appellant amended
vide order of Court dated 14.07.2014
made in M.P.Nos.1 & 1 of 2014 in
S.A.No.812 of 2006 and S.A.822 of 2006]

[Appellants 3 and 4 declared as major
and the first appellant discharged from
her guardianship vide order of Court
dated 04.08.2014 made in M.P.Nos.2 & 3
of 2014 in S.A.No.812 of 2006]

5.Palaniammal

...Appellants/LRS of II Defendant&I Defendant

Vs.

Veeramani

... Respondent/Plaintiff

S.A.No.822 of 2006

1.Palaniammal

.. Appellant/I Defendant

2.Pennarasi

3.Elamaran

4.Elavalagan

5.Elango

[Cause title accepted vide order
of court dated 05.07.2006 made
in M.P.No.1 of 2006]

[Name of the 5th appellant amended
vide order of Court dated 14.07.2014
made in M.P.No.1 & 1 of 2014
in S.A.Nos.812 and 822 of 2006]

[Appellants 4 and 5 declared as major
and the second appellant discharged from
her guardianship vide order of Court
dated 04.08.2014 made in M.P.Nos.2 & 3
of 2014 in S.A.No.822 of 2006]

... 2 to 5 Appellants/LRS of II Defendant

Vs.

Sivagami Ammal

.... Respondent/Plaintiff

Prayer in S.A.No.812 of 2006:

Second Appeal filed under Section 100 of C.P.C.,
against the judgment and Decree of Subordinate Judge's
Court at Ariyalur dated 04.08.2005 in A.S.No.35 of 2001
reversing the judgment and decree of the Additional
District Munsif Court at Ariyalur dated 28.04.2000 in
O.S.No.135 of 1991.

Prayer in S.A.No.822 of 2006:

Second Appeal filed under Section 100 of C.P.C.,
against the judgment and Decree of Subordinate Judge's
Court at Ariyalur dated 04.08.2005 in A.S.No.1 of 2001
reversing the judgment and decree of the Additional
District Munsif Court at Ariyalur dated 28.04.2000 in
O.S.No.55 of 1991.

For Appellants : M/s.Mythili Suresh
for M/s.Sarvabhauman Associates

For Respondent : Mr.N.Sankaravadivel

C O M M O N J U D G M E N T

S.A.Nos.812 and 822 of 2006 are directed against the judgment and decree dated 04.08.2005 passed in A.S.Nos.35 and 1 of 2001 on the file of the Subordinate Court, Ariyalur reversing the judgment and decree dated 28.04.2000 passed in O.S.No.135 of 1991 and O.S.No.55 of 1991 on the file of the Additional District Munsif Court, Ariyalur.

2.The second appeals have been admitted on the following substantial questions of law.

(a).Whether the lower appellate court is correct in law in discarding Ex.B8 Family Arrangement which was signed by both parties and duly attested and proved through evidence only on the ground that Ex.B8 has come into existence after Ex.A1?

(b).Whether the finding of the lower Appellate Court that only a prior document will prevail over later document is legally sustainable?

(c).Whether the first appellate court is right in law in applying the provision of section 48 of the Transfer of Property Act to the case on hand when the purchase under Ex.A1 and A2 are only sham and nominal and partial partition under Ex.A11 dated 29.12.1971 is also bad in law? and

(d).Whether the lower Appellate Court being the final Court of fact is correct in law in not considering the evidence available on record in its entirety?

3.Considering the scope of the issues involved between the parties as regards the subject matter lying in

a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. For the sake of convenience, the parties are referred to as per the rankings in the trial court.

5. The plaintiff Sivagami Ammal has laid the suit against the defendants in O.S.No.55 of 1991 seeking for the reliefs of declaration and permanent injunction in respect of the properties comprised in the abovesaid suit. Similarly, the plaintiff Veeramani has laid the suit against the defendant in O.S.No.135 of 1991 seeking for the reliefs of declaration, possession and mense profits in respect of the properties comprised in the abovesaid suit.

6. The case projected by the plaintiff Sivagami Ammal is that she had acquired title to the properties described in her suit by way of the sale deeds dated 06.04.1971 and 18.12.1971 and accordingly enjoying the same and the defendants therein, have no right, title or interest in respect of the said properties and on the other hand, without any entitlement or authority, the defendants therein attempted to interfere with her possession and enjoyment of the said properties and hence according to the plaintiff Sivagami Ammal, she had been necessitated to lay the suit against the defendants for appropriate reliefs.

7. The plaintiff Veeramani has put forth the case that the properties described in his suit are his absolute properties and the abovesaid suit properties and other properties originally belonged to the family of the deceased Perumal Padayachi and that he is the son born to Perumal Padayachi through his second wife Sivagami Ammal and the defendant Anbalagan is the son of Perumal's first wife Palani Ammal and further according to him, in the partition which took place by way of a registered partition deed dated 29.12.1971, the suit property and other properties were allotted to his share and since then, it is he, who is in the possession and enjoyment of the suit properties by paying Kists etc., and the defendant Anbalagan without any entitlement or authority trespassed into the suit property and accordingly he had called upon him and also issued notice to surrender the possession of the suit properties and to the same, the defendant sent a reply containing false allegations and the case of the defendant that the family arrangement took place on 09.12.1985 in respect of the suit properties and other properties is false and denied and even if his signatures had been obtained in the abovesaid family arrangement, the same had been obtained by deceit, fraud and coercion and

the plaintiff had not executed the said document, having knowledge about the contents of the said document and therefore the so called family arrangement dated 09.12.1985, has no probative value and cannot affect the defendant's title to the properties vested with him by way of the registered partition deed dated 29.12.1971 and accordingly it is his case that he has been necessitated to lay the suit against the defendant for appropriate reliefs.

8. The defendants in both the suits abovestated, resisted the suits laid by the respective plaintiffs mainly contending that it is only they who are in the possession and enjoyment of the suit properties by virtue of the family arrangement effected on 09.12.1985 in which, all the members of the family including the plaintiffs had signed and according to them the plaintiffs abovestated had suppressed the abovesaid family arrangement and come forward with the false suit as if they are the owners of the suit properties and having accepted the family arrangement and also executed the deed of family arrangement, the plaintiffs are estopped from disputing the same and the plaintiffs had never been in the possession and enjoyment of the suit properties as put forth by them. On the other hand, it is only the defendants, who are in the possession and enjoyment of the suit properties as per family arrangement abovestated and accordingly it has also been stated that the first appeal preferred by the defendant Anbalagan against the judgment and decree passed in O.S.No.390 of 1976 has been withdrawn and even the decree of maintenance passed in O.S.No.388 of 1976 has not been persuaded and therefore it is contended that the plaintiffs have no cause of action and the suits laid by them are liable to be dismissed.

9. Based on the materials placed on record both oral and documentary and on the appreciation of the same, the trial court was pleased to dismiss the plaintiffs' suits. The first appellate court set aside the judgment and decree of the trial court in both the suits and thereby granted the reliefs in favour of the plaintiffs as prayed for by them in their respective suits. Impugning the same, the present second appeals have been preferred.

10. As abovenoted, the plaintiff Sivagami Ammal claims title to the properties described in her suit by virtue of the sale deeds dated 06.04.1971 and 18.12.1971. The plaintiff Veeramani has claimed title to the suit properties described in his suit by virtue of the partition deed dated 29.12.1971. The abovesaid documents have not been seriously put to challenge by the defendants. According to the defendants, though the sale deeds dated

06.04.1971 and 18.12.1971 stand in the name of Sivakami ammal, the properties comprised therein are only treated and enjoyed as the joint family properties of Perumal Padayachi and accordingly it is stated that inclusive of the abovesaid properties, the family arrangement had been effected between the parties concerned on 09.12.1985, whereunder the suit properties had been allotted to the share of the defendants and since then, it is only the defendants, who are in the possession and enjoyment of the suit properties and therefore the plaintiff Sivagami ammal is not entitled to claim any title or right to the suit properties described in her plaint. Though according to the defendants, the partition deed dated 29.12.1971 had been executed, the same was not acted upon and further according to them, the challenge made to the abovesaid partition deed was pending in the High Court by way of the first appeal and the members of the family had chosen to effect the partition in respect of the properties belonging to them by way of the family arrangement dated 09.12.1985 and accordingly it is stated that the first appeal preferred by the defendant Anabalagan against the judgment and decree passed in O.S.No.390 of 1976 has been dismissed as withdrawn and settled out of Court and by way of the family arrangement dated 09.12.1985, the suit properties had been allotted to the defendants and enjoyed by them and therefore the plaintiff Veeramani is not entitled to claim any right or title to the suit properties and not entitled to seek and obtain the reliefs prayed for by him.

11. It is thus found that the defendants are mainly resisting the plaintiffs' suit by way of the family arrangement said to have been effected between the parties on 09.12.1985. The abovesaid family arrangement has been in toto challenged by the plaintiffs. In such view of the matter, it is for the defendants to establish the truth and validity of the family arrangement said to have been effected on 09.12.1985.

12. As rightly determined by the first appellate court, the fact remains that the plaintiff Sivagami ammal had acquired the suit properties described in her plaint by virtue of the sale deeds dated 06.04.1971 and 18.12.1971. Though the defendants contended that it is only Perumal Padayachi who had acquired the said properties comprised in the abovesaid sale deeds in the name of Sivagami ammal and the same had been enjoyed as the joint family properties, however the abovesaid defence plea putforth by the defendants is not sustainable in the eyes of law. By way of the said defence, the defendants are

only pleading Benami transaction in respect of the sale deeds dated 06.04.1971 and 18.12.1971. As rightly pointed out, in the light of the Benami Transactions [Prohibition] Act 1988, the defendants cannot be allowed to raise such a plea and furthermore, there is no acceptable and reliable material evidencing that the properties comprised in the abovesaid sale deeds had been treated and enjoyed as the joint family properties and, as such, in the valid possession and enjoyment of the defendants. In such view of the matter, the plea of Benami put forth by the defendants to stifle the title of Sivagami ammal in respect of the properties comprised in the sale deeds dated 06.04.1971 and 18.12.1971, as such, cannot be countenanced.

13. Similarly, with reference to the partition deed dated 29.12.1971, as rightly put forth by the plaintiff Veeramani, it is evident that the suit properties and other properties had been allotted to his share by way of the abovesaid registered partition deed. Throwing a challenge to the abovesaid partition deed and also seeking a fresh partition in respect of the family properties, it is found that the defendant Anbalagan had preferred the suit in O.S.No.390 of 1976 against Perumal Padayachi, Veeramani and Sivagami ammal. The abovesaid suit after contest has come to be dismissed on various grounds. Aggrieved over the same, the defendant Anbalagan had preferred the first appeal in A.S.No.540 of 1980 in the High Court. As could be seen from the materials available on record, the abovesaid first appeal has come to be dismissed as withdrawn and settled on 28.10.1985. However, as to on what terms of settlement, the abovesaid first appeal had come to be withdrawn, there is no indication or proof on the part of the defendants. It has not been placed and established by the defendants with acceptable and convincing materials that the abovesaid first appeal had been come to be withdrawn by them based on the family arrangement said to have been effected on 09.12.1985. The position however remains is that the truth and validity of the registered partition deed dated 29.12.1971 as upheld in O.S.No.390 of 1976 remains intact and not turned down till date.

14. It is resultantly seen that it is only the plaintiff Sivagami ammal and the plaintiff Veeramani who have the valid claim of title to their respective suit properties as put forth by them and the only plea of defence projected by the defendants to challenge their title is by way of the family arrangement said to have been effected on 09.12.1985. As abovenoted, the plaintiffs have thrown a stiff challenge to the truth and validity of the abovesaid family arrangement. In such view of the matter,

it is for the defendants to establish the truth and validity of the family arrangement dated 19.12.1985 putforth by them for divesting the title of the plaintiffs to the suit properties.

15. In the written statement preferred in O.S.No.55 of 1991 as regards the plea of family arrangement dated 09.12.1985, the plea has been putforth that the plaintiff Sivagami ammal had suppressed the family arrangement which took place in the first week of December in 1985 since there was a family dispute and the same was written on 09.12.1985 in which all the members of the family had signed and further it is pleaded that the plaintiff is one of the executants of the family arrangement along with the other family members and she had accepted and acted thereupon and thereby lost her title and right in respect of the suit properties standing in her name and she is estopped from disputing the abovesaid family arrangement and pursuant to the abovesaid family arrangement, it is only the defendants who are in the possession and enjoyment of the shares allotted to them as per family arrangement by paying Kists etc., and also putforth that in the light of the family arrangement abovestated, the first appeal in A.S.No.540 of 1980 on the file of the High Court, Madras had been withdrawn and even the maintenance decree passed in O.S.No.388 of 1976 on the file of the Subordinate Court, Trichy was not persuaded and accordingly prayed for the dismissal of the suit laid by Sivagami ammal.

16. In O.S.No.135 of 1991, the written statement has been filed by putting forth the case that the Kartha of the family Perumal Padayachi in the face of the maintenance decree obtained against him by his first wife and also the pendency of the first appeal in A.S.No.540 of 1980 on the file of the High Court, Madras, decided to settle the family dispute by way of family arrangement even prior to the month of September 1985 and in view of the same, convened a Panchayath and arrived an oral family arrangement in the first week of December 1985, after withdrawing the appeal preferred by the defendant Anbalagan and subsequent to the oral family arrangement, to confirm the same, reduced the same into writing in stamped papers which was not registered and by virtue of the family arrangement, the suit properties had been allotted to the defendants and oral family arrangement took place in the first week of December 1985 and in order to confirm the same, it was reduced into writing in the stamp papers on 09.12.1985 and as the abovesaid family arrangement had been executed by all the family members including the plaintiff, the same is acted upon and binding upon the plaintiff and

therefore the plaintiff is not entitled to claim any right or title over the suit properties.

17. In the light of the abovesaid defence pleas, nowhere in the written statement preferred in O.S.No.55 of 1991, the plea has been put forth by the defendants therein that prior to the execution of the family arrangement on 09.12.1985 there had been a panchayath convened amongst the family members with reference to the settlement of the properties belonging to them one way or the other and thereafter the same got reduced into writing on 09.12.1985 and on the other hand, the plea put forth in the written statement filed in O.S.No.55 of 1991 would only go to disclose that the family arrangement took place in the first week of December 1985 and the same was written on 09.12.1985 in which all the members of the family had signed. It has not been disclosed in the abovesaid written statement that prior to 09.12.1985 the members of the family had by way of Panchayath accepted the division of the properties by way of which they had agreed the allotment of the suit properties to the defendants and the said arrangement had been subsequently reduced into writing on 09.12.1985. On the other hand, the reading of the averments contained in the written statement filed in O.S.No.55 of 1991 would only go to reveal that the family arrangement took place in the first week of December 1985 and the same was written on 09.12.1985. However in the written statement filed in O.S.No.135 of 1991 by way of the amendment, the plea had been taken that even before the month of September 1985, Perumal Padayachi had decided to settle the disputes by way of the family arrangement, after withdrawing the appeal preferred by the first defendant and it has also been put forth that the oral family arrangement took place in the first week of December 1985 and in order to confirm the same, it was reduced into writing on stamp papers on 09.12.1985 in which all of the family members had signed.

18. From the abovesaid pleas put forth in the written statement, it could only be inferred and gathered that Perumal Padayachi had intended to settle the family arrangement one way or the other before September 1985, and accordingly chose to convene the Panchayath and arrived an oral arrangement in the first week of December 1985 after withdrawing the appeal in A.S.No.540 of 1980 and following the family arrangement which took place in the first week of December 1985, the same had come to be reduced into writing to confirm the oral family arrangement in the stamp papers on 09.12.1985. As abovenoted, the first appeal in A.S.No.540 of 1980 had been withdrawn only on

28.12.1985. In such view of the matter, it is found that in conjunction with the abovesaid factual matrix, when even according to the defendants, the oral panchayath had been convened to settle the family dispute after the withdrawal of the first appeal and when the first appeal is found to have been withdrawn only on 28.12.1985 and when according to the defendants in specific Perumal Padayachi had convened the oral family arrangement only in the first week of December 1985 after withdrawing the abovesaid appeal, at the most, it is found that as per the pleas putforth in the written statements, the oral family arrangement had been effected and arrived amongst the family members only in the first week of December 1985 and not prior to the same. If really, the oral family arrangement had been arrived and concluded prior to December 1985, the same would have been specifically pleaded by the defendants in the written statement and on the other hand, the specific case of the defendants, in particular, in O.S.No.135 of 1991 is that after the withdrawal of the first appeal in A.S.No.540 of 1980, Perumal Padyachi convened the family oral arrangement in the first week of December 1985 and to confirm the same, the same got reduced into writing in the stamp papers on 09.12.1985. It is found that as per the plea of the defendants putforth in the written statement, the family members had convened the Panchayath at the instance/presence of Perumal Padayachi for settling the disputes amongst them and arrived at an oral arrangement in the first week of December 1985 and subsequently the same got reduced into writing on 09.12.1985 in the stamp papers and signed by the respective parties. Having taken the plea that the oral family arrangement had been effected only in the first week of December 1985 in specific in the written statement, the defendants cannot be allowed to putforth a different case in the course of evidence as if the oral family arrangement had been effected and concluded prior to the first week of December 1985. As abovenoted, in the written statement filed in O.S.No.135 of 1991, it has been only pleaded that Perumal Padaychi intended to settle the family dispute before the month of September 1985 and accordingly after the withdrawal of the first appeal, convened the oral family arrangement in the first week of December 1985 and got the same reduced into writing in the stamp papers on 09.12.1985. In such view of the matter, as rightly putforth by the plaintiffs' counsel, the evidence adduced by the defendants during the course of trial, as if the oral family arrangement had been convened and concluded in the month of Aani i.e., by the end of June 1985 cannot at all be accepted and relied upon. The pleadings of the parties form the foundation of their case and it is not open to them to give up the case set out in

the pleading and propound a new and different case. The ordinary rule of law is that the evidence has to be given only on a plea primarily raised and not in contradiction to the plea. Evidence has to be adduced in relation to the pleadings set out and the party to the suit is required to put forth his case in pleadings so that the opposite party would have an opportunity to controvert the case and to put forth the evidence in support of his own case and if the evidence had not been adduced with reference to the point in issue, it would not be proper to rely on the said evidence and arrive at finding, regarding question which was not in issue. The above position of law could be gathered from the decisions reported in AIR 1968 Supreme Court 1083 (Mrs. Om Prabha Jain vs. Abnash Chand and another), AIR 1987 Supreme Court 2179 (Vinod Kumar Arora vs. Smt. Surjit Kaur) and 2001 (3) CTC 142 (Pazhamaruthai @ Marudamathu and 7 others vs. M. Subramaniam) and the decision of the Madras High Court reported in 2001 (3) CTC 142 [Pazhamaruthai @ Marudamurthi and 7 others Vs. M. Subramaniam]

19. When according to the defendants as per the plea put forth by them in the written statement, the oral family arrangement itself was convened only the first week of December 1985, particularly after the withdrawal of the first appeal which was withdrawn on 28.10.1985, there is no possibility of any oral family arrangement between the parties prior to 28.10.1985 and in such view of the matter, the evidence adduced by the defendants through the mouth of the so called Panchayathars and scribe examined as D.Ws. 2 to 4 in O.S.No.55 of 1991 and D.W.2 in O.S.No.135 of 1991 as if the oral Panchayath was convened in the month of Aani 1985, as such, cannot be countenanced. If the abovesaid oral evidence adduced by the abovesaid witnesses claiming that the oral Panchayath had been conducted/convened and concluded in the month of Aani 1985 is true, the same would take us to, as if the oral Panchayath had been conducted/convened and concluded by the end of June 1985. However, in specific, according to the defendants, the oral Panchayath had been conducted only after the withdrawal of the first appeal in A.S.No.540 of 1980 and as abovenoted, when the first appeal abovestated had been withdrawn only on 28.10.1985, it is found that the evidence adduced by the abovesaid witnesses as if the oral Panchayath took place and conducted in the month of Aani 1985 is false and liable to be rejected in toto. The abovesaid witnesses have not deposed that the oral Panchayath have been convened and concluded in the first week of December. The resultant position is that the so called oral arrangement said to have taken place in the month of Aani 1985, being

found to be a false version and when there is no proof adduced on the part of the defendants through reliable oral evidence that the oral family arrangement had been convened and concluded in the first week of December 1985, in all, it is found that, inasmuch as, no such oral arrangement had been effected between the parties at any point of time, it is found that the inconsistent pleas have been put forth by the defendants during the course of their pleas and their oral evidence. If really, the oral family arrangement had been effected in the first week of December 1985 or in the month of Aani 1985 as deposed by the defendants in the course of evidence, necessary recitals to that effect in either way should have been incorporated in the family arrangement put forth by the defendants and marked in the proceedings. On the other hand, in the family arrangement projected in the matter, nothing has been averred as to when the alleged family arrangement was effected and concluded other than vaguely stating that the abovesaid family arrangement had come to be reduced into writing as agreed to by them in the presence of Panchayathars. As to when they had agreed so, and in whose presence/Panchayathars they had so agreed and what was the mode of agreement effected amongst the family members as regards the properties, with reference to the abovesaid facts, the family arrangement projected in the matter is completely silent and the family arrangement projected in the matter does not disclose as to the so called oral family arrangement said to have taken place either in the month of Aani 1985 or during the first week of December 1985. In such view of the matter, when the family arrangement which is relied upon by the defendants to resist the plaintiffs' suits itself is not clear as to when the so called oral family arrangement had been effected and concluded, it is seen that, inasmuch as, no such family arrangement had been effected and concluded, the same had not been incorporated in the family arrangement projected in the matter and accordingly the defendants are unable to project the clear case with reference to the same in the written statement and also as above noted, had adduced the evidence quite inconsistent to the pleas set out in the written statement as if the oral family arrangement was convened and concluded in the month of Aani 1985. When in specific, according to the defendants, the oral family arrangement itself was convened by Perumal Padayachi after the withdrawal of the first appeal A.S.No.540 of 1980 and when the abovesaid appeal has come to be withdrawn only on 28.10.1985, there is no possibility of the oral family arrangement having been convened and concluded in the month of Aani 1985. On the abovesaid ground alone, the evidence adduced by the

defendants with reference to the same, has to be thrown out and discarded. Furthermore, the defendants have not come forward with the specific case as to who are the Panchayathars in the so called family arrangement which took place in the month of Aani 1985, what was the understanding arrived at between the parties as regards the division of the properties and as above noted, when the same had been convened etc., in such view of the matter, the plea of oral family arrangement projected by the defendants is found to be a false theory and cannot at all be relied upon. Inasmuch as no such oral family arrangement had been effected and concluded at any point of time, necessary recitals pointing to the same are not incorporated in the family arrangement projected in the matter and the defendants are also unable to sustain the said case by placing acceptable and reliable evidence. Furthermore, when there is no evidence on the part of the defendants that the oral family arrangement had been convened and concluded in the first week of December 1985 as put forth in the written statement and the defendants' witnesses have only been sticking on to the plea as if the oral family arrangement had been convened and concluded in the month of Aani 1985, in such view of the matter, the theory of family arrangement said to have been effected in the first week of December 1985 as put forth by the defendants in the written statement also cannot be accepted sans any acceptable and reliable evidence pointing to the same. In such view of the matter, it is found that the family arrangement projected in the matter is found to have been effected without any prior arrangement with reference to the division of the properties amongst the family members and accordingly it is found that when on a reading of the terms of the family arrangement projected in the matter go to disclose that the parties had pursuant to the same, chosen to acquire title, interest and enjoyment of the properties as set out therein, in such view of the matter, when it is found that only by way of the family arrangement projected in the matter, the parties had intended to divide the properties and take the interest in respect of the same, the abovesaid document, in such view of the matter, requires compulsory registration as per law. When the family arrangement projected in the matter has not been registered as required by law, it is found that as contended by the plaintiffs' counsel, no credence could be attached to the family arrangement projected in the matter and accordingly it is seen that the so called family arrangement projected by the defendants cannot be sustained in the eyes of law.

20. When it is found that it is only Sivagami ammal who owns title to the properties comprised in the sale deeds dated 06.04.1971 and 18.12.1971 and the contra pleas projected by the defendants with reference to the same are found to be unsustainable in the eyes of law and when it is further found that the suit properties had been allotted only to the share of the plaintiff Veeramani by way of a registered partition deed dated 29.12.1971 and the challenge thrown to the abovesaid partition deed by the defendant Anbalagan has been turned down in O.S.No.390 of 1976 and the appeal preferred by the defendant Anbalagan in A.S.No.540 of 1980 has also not been prosecuted further and the same had come to be dismissed as withdrawn as above noted and when there is no convincing proof that the abovesaid first appeal has been withdrawn only following the Panchayath said to have been convened and concluded between the parties, in such view of the matter, the defence put forth by the defendants that the plaintiffs had been divested of all the suit properties vested with them by virtue of the sale deeds dated 06.04.1971 and 18.12.1971 and the partition deed dated 29.12.1971, as such, cannot be countenanced, particularly when the defendants had projected the unregistered family arrangement for depriving the right and title to the plaintiffs in respect of the suit properties.

21. When the parties had been in dispute with reference to the suit properties over a period of time and also litigation pending between the parties one way or the other, as above noted, and in particular, when at the relevant point of time, A.S.No.540 of 1980 is found to be pending, if really, as put forth by the defendants, the parties had agreed for any settlement and brought about re-division of the properties contrary to the arrangement effected by way of the registered partition deed dated 29.12.1971 and when the lis throwing a challenge to the abovesaid partition deed is pending by way of the first appeal in A.S.No.540 of 1980 on the file of the High Court at the relevant point of time, if the so called family arrangement put forth by the defendants has any semblance of truth, nothing would have prevented the parties concerned to effect the terms of settlement said to have been arrived between them in writing and place the same for consideration before the High Court, wherein the first appeal in A.S.No.540 of 1980 was pending and accordingly invited the decision of the High Court to record the terms of the compromise or arrangement said to have been effected amongst them in respect of the suit properties and prayed the High Court to pass a compromise decree in terms of the so called arrangement said to have been effected amongst them in the first appeal itself. On the other hand, to say

that, pending the abovesaid first appeal, the parties had chosen to effect the so called family arrangement amongst themselves, which fact has not been established, as above pointed out and got the same reduced into writing on 09.12.1985 which also could not be accepted for want of registration and as the defendants have failed to establish that the deed of family arrangement was preceded by an oral arrangement amongst the family members with reference to the division of the properties concerned, viewed in the above angle also, it is found that the case of the family arrangement projected by the defendants is found to be far far away from the truth and unreliable and unacceptable and also unsustainable in the eyes of law.

22. As regards the plaintiff Sivagami Ammal is concerned, absolutely there is no acceptable and reliable plea on the part of the defendants that she was a consenting party to the so called arrangement effected on 09.12.1985 and put her LTI in the said document knowing the contents of the same. As above noted, the plaintiff Sivagami ammal has in toto disputed the execution of the abovesaid deed of family arrangement. Though the plaintiff Veeramani would admit his signature in the deed of family arrangement, however would contend that the signature had been obtained by using deceit, fraud and coercion etc., according to the defendants, if the abovesaid plea of the plaintiff Veeramani is true, he would have taken proper legal action against the defendants and having not done so, his abovesaid stand should not be accepted. No doubt the abovesaid plea of Veeramani, as such, cannot be readily countenanced. Be that as it may, when as above discussed, the plea of family arrangement projected by the defendants has not been established by them by adducing acceptable and reliable evidence in tune to their pleas projected in the written statement and on the other hand, the evidence which had been placed by them with reference to the family oral arrangement is totally inconsistent with the pleas put forth by them in the written statement and when it is further seen that only by way of the deed of family arrangement, the parties thereto had proceeded to acquire and enjoy the alleged rights in the properties allotted to them by way of the same, in such view of the matter, the said document requiring compulsory registration and when the deed of family arrangement projected in the matter is found to be not a registered instrument, resultantly, it is found that the deed of family arrangement projected cannot, at all, be countenanced as per law and therefore the mere fact that Veeramani's signature had been obtained in the said document, that by itself, would not lend a colour of validity to the said instrument and in such view of the

matter, the defendants cannot be allowed to contend that their case should be accepted, on the mere score that the plaintiff Veeramani had not initiated any action against them as regards the obtainment of the signature in the deed of family partition. When the deed of family arrangement projected by the defendants is found to be unsustainable in the eyes of law and also not found to have been established to have come into force, pursuant to the so called oral arrangement as pleaded and the said document not having been registered as required by law, in such view of the matter, the plea of family arrangement put forth by the defendants is found to be a false one and cannot at all be accepted in any manner.

23. The mere fact that the defendants are found to be in the possession and enjoyment of the suit properties, as such, as claimed by them, by itself would not lend a colour of right to the deed of family arrangement as projected by the defendants. When as per the materials placed on record, it is found that even the plaintiffs have placed the documents of possession for sustaining their claim of title to the suit properties one way or the other, in such view of the matter, merely from the revenue documents projected by the defendants, we cannot conclude that the deed of family arrangement projected by them is a true and valid one. In this connection, the arguments of the defendants' counsel relying upon the Commissioner's report cannot at all be accepted, when it is seen that the Commissioner's report cannot be the basis for determining the possession of the properties in dispute as projected by the rival parties.

24. In the light of the abovesaid discussions, the defendants cannot be allowed to divest the title of plaintiffs' in respect of the suit properties vested with them by virtue of the sale deeds dated 06.04.1971 and 18.12.1971 and the partition deed dated 29.12.1971 by projecting an untrue and invalid deed of family arrangement and in such view of the matter, the plea of estoppel projected by the defendants on the basis of the untrue and invalid deed of family arrangement is unacceptable in the eyes of law and when the plaintiffs are found to have been not divested of their lawful title to the suit properties acquired on the basis of the sale deeds and the partition deed relied upon by them as above noted, in such view of the matter, the decisions relied upon by the defendants/appellants' counsel reported in

1. 2016-5-Law Weekly 62 [Ashokarajan Vs. Dr.Padmarajan & Others]

2.2018 (15) Supreme Court Cases 130 [Sita Ram Bhamra Vs. Ramvatar Bhamra]

3. 1976 (3) Supreme Court Cases 119 [Kale and others Vs. Deputy Director of Consolidation and others]
are found to be, as rightly put forth by the plaintiffs' counsel, not applicable to the facts and circumstances of the case at hand. The plaintiffs' counsel in support of his contentions placed reliance upon the decisions reported in 2008 (6) Supreme Court Cases 745 [Chandrakant Shankarrao Machale Vs. Parubai Bhairu Mohite (dead) Through Lrs], the same is also considered and taken note of.

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25. The abovesaid petition has been preferred by the defendants to file the sale deed said to have been effected by the plaintiff Veeramani in favour of the third party in respect of the suit properties said to have been allotted to him by virtue of the deed of family arrangement projected in the matter and by way of the same, it is contended on behalf of the defendants that inasmuch as, the deed of family arrangement had been executed, accepted and acted upon and following the same, according to the defendants, the plaintiff Veeramani had executed the abovesaid sale deed dated 22.06.2005, to throw light on the said issue, according to them, the said document should be received as an additional evidence in the matter on their side.

26. The abovesaid application has been resisted by the plaintiff Veeramani contending that what had been conveyed by way of the sale deed dated 22.06.2005 is only his interest in the said property derived by him through his father and further it is stated in the abovesaid document, there is no reference about the deed of family arrangement as put forth by the defendants in any manner and accordingly, further contending that when the deed of family arrangement itself has not been established to be a true and valid transaction by the defendants, prayed for the dismissal of the application.

27. As abovenoted, the plea of family arrangement put forth by the defendants has not been established by them to be a true and valid transaction. In such view of the matter, their new case that the plaintiff Veeramani had conveyed the property allotted to him by way of the said family arrangement to the third party by way of the sale deed dated 22.06.2005, as such, cannot be accepted. The mere factor that the plaintiff Veeramani had taken two

stands with reference to the abovesaid sale deed by filing a counter and additional counter, that by itself would not entitle the acceptance of the defence version as regards the so called family arrangement. Furthermore, in the abovesaid sale deed, there is no reference at all about the so called family arrangement. In such view of the matter, in my considered opinion the reception of the so called additional evidence would not improve the case, in any manner, of the defendants, particularly, when the defendants have failed to establish the truth and validity of the so called family arrangement. In addition to that when the defendants have not projected sufficient cause for not placing the abovesaid additional evidence at the earliest point of time before the Courts below as well as in this Court and when the petition is found to be not in consonance with the ingredients of Order 41 Rule 27 CPC, in all it is found that the petition for the reception of additional evidence is devoid of merits and not entitled for acceptance. Accordingly, the said petition is dismissed.

28. In the light of the abovesaid discussions, the substantial questions of law formulated in the second appeals are accordingly answered against the defendants and in favour of the plaintiffs.

29. In conclusion, both the second appeals fail and are accordingly dismissed with costs. M.P.No.4 of 2014 is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mfa
To

WEB COPY

1. The Subordinate Judge,
Ariyalur.
2. The Additional District Munsif,
Ariyalur.

Copy to

The Section Officer,
VR Section, High Court, Chennai.

+2ccs to Mr.N.Sakthivel , Advocate SR.No. 44779&44683
+1cc to M/s.Sarvabhauman Associates , Advocate SR.No. 44617
+1cc to M/s.Sarvabhauman Associates , Advocate SR.No. 44618
(02/12/2019)

S.A.Nos.812 and 822 of 2006

&

M.P.No.4 of 2014

A.SK(23/10/2019)



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