



S.A(MD)No.395 of 2005

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 30.01.2023**

**CORAM:**

**THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

**S.A(MD)No.395 of 2005**

1.Gandhi Veerappan  
2.RM.Veerappan

...Appellants

-Vs-

1.R.M. Umayal  
2.RM.Karuppiah(died)  
3.K. Sekar  
4.K.Ekaparam  
5.K.Ramu  
6.V.Selvi  
7.S.Chithra  
8.S.Indhira  
9.Lakshmi  
10.Minor. Santhiya  
11.Minor Kaviya

(minor respondents 10 and 11 represented by 9<sup>th</sup> respondent  
viz., Lakshmi)

(Respondents 3 to 11 are brought on record  
as per the order of this Court, dated 16.12.2002,  
made in CMP(MD).Nos.4695, 4702 and 4704 of 2022  
in SA(MD).No.395 of 2005)

... Respondents

**PRAYER:** Second Appeal filed under Section 100 of the Code of Civil



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Procedure, to set aside the judgment and decree, dated 27.12.2004 made in A.S.No.51 of 2004, on the file of the Subordinate Judge, Devakottai confirming the Judgment and decree, dated 31.03.2004 made in O.S.No.10 of 2003, on the file of the Additional District Munsif, Karaikudi

For Appellants : Mr.V.R. Shanmuganathan

For Respondents : Mr.K. Balasundaram

### **JUDGMENT**

The defendants 1 and 2 are the appellants. The first respondent herein filed a suit for declaration of title and for mandatory injunction to remove the thatched shed found in the eastern half of the suit property. The suit was decreed by the trial Court and the findings of the trial Court was confirmed in the first appeal. Aggrieved by the concurrent Judgments, the defendants 1 and 2 are before this Court.

2. According to the first respondent / plaintiff the suit property was originally assigned to her by the Government under Ex.A1. The second respondent / 3<sup>rd</sup> defendant is the husband of the first respondent. The second appellant is the brother of first respondent's husband viz.,



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second respondent. The first appellant is the wife of the second appellant.

It was further pleaded by the first respondent that the appellants who have no right over the suit property, taking advantage of their absence in the suit village put up a thatched shed in the suit property in the year 2000. It was also stated that the suit property was surreptitiously included in the suit for partition between the 2<sup>nd</sup> appellant and the first respondent's husband viz., 2<sup>nd</sup> respondent. The 2<sup>nd</sup> respondent, in that, suit raised a defence that the suit property was not an ancestral property of the family and it was assigned in the name of first respondent / plaintiff. Notwithstanding such defence, ultimately there was a compromise in the suit, wherein, the suit property was also included in the compromise memo without her knowledge. It was further pleaded that the first respondent was an illiterate lady and she put her thumb impression in the compromise memo without knowing the contents. On this pleading, she prayed for declaration of title and for mandatory injunction to remove the superstructure put up by the appellants.

3. The appellants filed a written statement claiming that the suit property was an ancestral property of the family and the first respondent never enjoyed the suit property exclusively as her own property. It was



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specifically pleaded by the appellants that all along the suit property had been enjoyed as the property of the family and accordingly, it was included in the compromise memo reached between the second appellant, second respondent and her sister in the earlier partition suit. It was also specifically pleaded that the first respondent subscribed her thump impression in the compromise memo knowing the contents of the same without any objection and therefore, she is estopped by conduct from maintaining the present suit for declaration of title and mandatory injunction.

4. Before the trial Court, the first respondent / plaintiff was examined as PW.1 and yet another independent witness was examined as PW.2 and six documents were marked as Exs.A1 to A6. On behalf of the appellants, the second appellant was examined as DW.1 and 11 documents were marked as Exs.B1 to B11.

5. On appreciation of the oral and documentary evidence available on record, the trial Court came to the conclusion that the first respondent being an illiterate lady, put her thump impression in the compromise memo entered between 2<sup>nd</sup> appellant and 2<sup>nd</sup> respondent



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without knowing the contents of the same and consequently, the compromise decree passed in earlier partition suit in O.S.No.35 of 1995 would not bind the first respondent and decreed the suit as prayed for. Aggrieved by the same, the appellants had preferred a first appeal in A.S.No.51 of 2004, on the file of the Sub Court, Devakottai and the first Appellate Court concurred with the findings of trial Court and dismissed the first appeal. Aggrieved by the same, the appellants are before this Court.

6. At the time of admission, this Court formulated the following substantial questions of law:

*“a. Whether the Courts below had failed to see that a person who claims title to a property and subsequently becomes an attesting witness to a document where by the said title to the property passes to an another person, is not entitled to question the title of the person to whom the title so passed?”*

*b. Whether the Courts below had failed to see that the plaintiff is estopped by his conduct and therefore, the suit filed by him is not maintainable?”*

7. Heard the arguments of the learned counsel for the appellants and the respondents.



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8. The learned counsel appearing for the appellants elaborated the rule of estoppel by conduct based on which substantial questions of laws were formulated and submitted that the first respondent had been asked to put her thumb impression as an attesting witness to the compromise memo only to make the said document binding on her. It is submitted by the learned counsel for the appellants that the first respondent had put her thumb impression in the compromise memo entered into the earlier partition between her husband and his brother, knowing the contents of the same. Therefore, by conduct she is estopped from asserting the title to the suit property and seeking mandatory injunction to remove the superstructure put up by the appellants.

9. In support of his contention, the learned counsel appearing for the appellants relied on the following Judgments:

i) Ramaswamy Gounder and others Vs.

Anantapadmanabha Iyer reported in 1971 (1) MLJ 392

ii) Jeyarama Chandra Iyer Vs. Thulasi Ammal and others

reported in 1975(2) MLJ 167

iii) Jegannatham Pillai Vs. Kunjithapatham Pillai reported

in 1972 (85) LW 112



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10. The above said decisions are relied on by the learned counsel for the appellants for the proposition that there was a practice prevailing in Madras presidency to ask a person who had interest over the property to attest the documents concerning those properties, with a view to prevent him from claiming any right over the property dealt with by the documents in the future date. The learned counsel by taking this Court to the relevant portion of the Judgments, submitted that whenever a person having interest in the property attest the document, it can be safely presumed that he does so with the knowledge of the contents of the documents.

11. In the case on hand, it is averred by the first respondent / plaintiff that she was an illiterate lady and she put her thump impression without having knowledge about the contents of the documents. The first respondent was examined as PW.1 and in the witness box also she asserted that she was an illiterate lady. In all the cases, relied on by the learned counsel for the appellants attestator signed the document. Further there was some corroborating evidence to come to the conclusion that the attestators signed the document with the knowledge of the contents. But,



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however in the case on hand, the first respondent who attested the compromise memo is admittedly an illiterate lady and she put her thump impression in the document. On behalf of the appellants, only the second appellant was examined as DW.1. The persons who were present at the time of execution of the compromise memo viz., Mediators were not examined by the appellants / defendants to prove that though the first respondent was an illiterate lady, she subscribed her thump impression with the knowledge of the contents of the documents. In the absence of any convincing evidence available on record to come to a conclusion that an illiterate lady put her thump impression as an attesting witness with the knowledge of the contents of the documents, we cannot presume that she put her thump impression with the knowledge of the contents of the documents. Therefore, the citations relied on by the learned counsel for the appellants cannot be useful to advance his case in the peculiar circumstances of the present case where the attestator is an illiterate lady and put her thump impression in the compromise memo as an attestator.

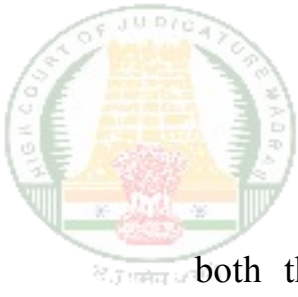
12. The learned counsel for the appellants also tried to attack the title of the first respondent by taking this Court to the correction in the Ex.A1 - assignment order, wherein, there are corrections with regard to the



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Survey, extent etc., of the property assigned under Ex.A1. In this regard, patta transfer order viz., Ex.B8 filed by the appellants is a relevant document. Perusal of patta transfer order would suggest that subsequent to compromise entered into between the second appellant and second respondent, patta for the suit property was transferred from the name of the first respondent to the name of the second appellant. Therefore, from the appellants document – Ex.B8, it is clear that originally patta for the suit property stood in the name of the first respondent in pursuance of the assignment order under Ex.A1. Therefore, the contention made by the learned counsel for the appellants that there is a doubt in respect of Ex.A1 due to corrections found therein cannot be accepted. The appellants own document, Ex.B8 proves that patta originally stood in the name of the first respondent.

13. In view of the discussions made earlier, it cannot be said that merely by subscribing her thump impression in the earlier compromise memo between the second appellant and second respondent, the first respondent is estopped from asserting her title to the suit property when there is nothing on record to suggest that she subscribed her thump impression with the knowledge of the contents of the documents. Hence,



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both the questions of laws formulated at the time of admission are answered against the appellants.

14. In fine,

(i) this Second Appeal stands dismissed by confirming the judgment and decree passed by the Courts below;

(ii) in the facts and circumstances of the case, there will be no order as to costs.

**30.01.2023**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No  
trp

To



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1. The Subordinate Judge, Devakottai
2. The Additional District Munsif, Karaikudi
3. The Record Keeper,  
V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**S.SOUNTHAR, J.**

**trp**

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