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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.02.2024

PRONOUNCED ON : 11.06.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.Nos. 251, 289 & 552 of 2022

&

S.A.No. 100 of 2023

S.A.No. 251 of 2022:

1.Shankar Jagannathan

2.Sridhar Jagannathan

3.Shalini Jagannathan

...Appellants

Vs.

1.G.Balakrishnan

2.B.Satish

3.B.Subramaniam

4.Maniasupethi

...Respondents

PRAYER: Second Appeal filed under Section 100 of CPC against Judgement and Decree in A.S.No.16 of 2021 dated 23.09.2021 on the file of the Principal District Judge, Tiruppur in reversing the well – considered Judgement and Decree in O.S.No.413 of 2003 dated



28.07.2020 on the file of the Additional Subordinate Judge,
Tiruppur.

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For Appellants : Mr. V.Raghavachari
Senior Counsel
for Mrs. V.Srimathi

For Respondents : Mr. T.R.Rajagopalan
1 and 2 Senior Counsel
for Mr. M.Sivavarthan

For Respondents : No Appearance.
3 and 4

S.A.No. 289 of 2022:

1.Shankar Jagannathan

2.Sridhar Jagannathan

3.Shalini Jagannathan

...Appellants

Vs.

1.G.Balakrishnan

2.B.Renuka

3.B.Sathish

4.B.Sharmila

5.M.Mohana

...Respondents



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PRAYER: Second Appeal filed under Section 100 of CPC against Judgement and Decree in A.S.No.04 of 2021 dated 23.09.2021 on the file of the Principal District Judge, Tiruppur in reversing the well – considered Judgement and Decree in O.S.No.582 of 2001 dated 28.07.2020 on the file of the Additional Subordinate Judge, Tiruppur.

For Appellants : Mr. V.Raghavachari
Senior Counsel
for Mrs. V.Srimathi

For Respondents : Mr. T.R.Rajagopalan
1 to 4 Senior Counsel
for Mr. M.Sivavarthan

For Respondent 5: Ms. K.M.Valsala.

S.A.No. 552 of 2022:

1.P.Nanjathal

2.P.Senthilkumar

3.P.Rajesh Kumar

4.K.Rukmani

5.K.Suresh Kumar

6.K.Hari Prakash



7.V.Dhana Suganya

...Appellants

Vs.

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1.B.Satish

2.G.Balakrishnan

3.Shankar Jagannathan

4.Sridhar Jagannathan

5.Shalini Jagannathan

...Respondents

PRAYER: Second Appeal filed under Section 100 of CPC against Judgement and Decree in A.S.No.2 of 2021 dated 23.09.2021 on the file of the Principal District Judge, Tiruppur in reversing the well – considered Judgement and Decree in O.S.No.194 of 2006 dated 28.07.2020 on the file of the Additional Subordinate Judge, Tiruppur.

For Appellants : Mr. A.K.Sriram
Senior Counsel
for Mr. T.Balaji

For Respondents : Mr. T.R.Rajagopalan
1 and 2 Senior Counsel
for Mr. M.Sivavarthan

For Respondents : Mr. V.Raghavachari
3 to 5 Senior Counsel
for Mrs. V.Srimathi



S.A.No. 100 of 2023:

Mohana

...Appellant

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Vs.

L.Govindaraj (Died)

1..Shankar Jagannathan

2.Sridhar Jagannathan

3.Shalini Jagannathan

4.G.Balakrishnan

5.B.Renuka

6.B.Sathish

7.B.Shalini

...Respondents

PRAYER: Second Appeal filed under Section 100 of CPC against Judgement and Decree in A.S.No.100 of 2020 dated 23.09.2021 on the file of the Principal District Judge, Tiruppur confirming the Judgement and Decree in O.S.No.582 of 2001 dated 28.07.2020 on the file of the Additional Subordinate Judge, Tiruppur.

For Appellants : Ms. K.M.Valsala.

For Respondents : Mr. V.Raghavachari
1 to 3 Senior Counsel
for Mrs. V.Srimathi

For Respondents : Mr. T.R.Rajagopalan
4 to 7 Senior Counsel
for Mr. M.Sivavarthan



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COMMON JUDGEMENT

This case highlights how unscrupulous litigants use the judicial process to get over Governmental controls enjoy the fruits of the decree and thereafter once again take recourse to the legal process to resort them to a position of status quo ante.

2. The above four appeals arise in respect of a Common Judgement passed in three suits. Given below are the details of the Second Appeals, their respective First Appeals and Suits which forms their genesis.

<i>Second Appeal</i>	<i>First Appeal</i>	<i>Suit</i>
S.A.No.251 of 2022	A.S.No.16 of 2021	O.S.No.413 of 2003
S.A.No.289 of 2022	A.S.No.2 of 2021	O.S.No.582 of 2001
S.A.No.552 of 2022	A.S.No.4 of 2021	O.S.No.194 of 2006
S.A.No.100 of 2023	A.S.No.100 of 2020	O.S.No.582 of 2001.

3. O.S.No.582 of 2001 was a suit filed by one Govindaraj against his son Balakrishnan and his wife and children family. The suit was one filed for partition and separate possession of the



plaintiff's half share in the suit schedule property.

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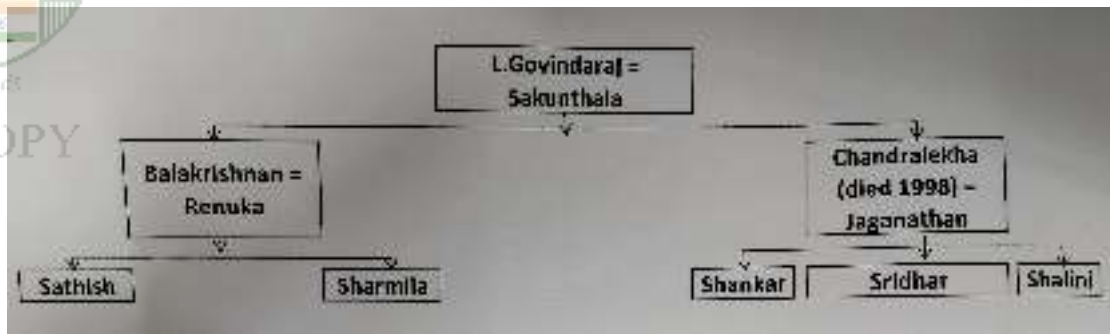
4. O.S.No.413 of 2003 has been filed by one Sakunthala, the wife of Govindaraj against Balakrishnan and his family for a declaration that she is the absolute owner of the A schedule property, directing the 3rd defendant to deliver the 3rd item of the B schedule property and also to declare the sale deeds standing in the name of the defendants 3 and 4 relating to the B schedule property as null and void, inappropriate and finally to grant permanent injunction not to disturb the plaintiff's possession of the A schedule property.

5. O.S.No.194 of 2006 has been filed by Sathish, the son of Balakrishnan to declare his title to the suit property and for recovery of possession and damages.

6. Before narrating the facts of the case, it would be useful to show geneology of the 1st plaintiff, Govindaraj and the ranking of the members of the family in each suit and also set out the details of the third party defendants:



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7. The suit O.S.No.582 of 2001, was originally instituted by L.Govindaraj against his son Balakrishnan and his wife Renuka and children, Sathish and Sharmila. Pending the suit Govindaraj died and his daughter Chandralekha's children Shankar, Sridhar and Shalini were brought on record as plaintiffs 2 to 4 on the strength of a Will said to have been executed by the 1st plaintiff in their favour. Thereafter, the 5th defendant, a purchaser of a portion of the property was impleaded as the 5th defendant.

8. O.S.No.194 of 2006 is filed by Sathish, the 3rd defendant in O.S.No.582 of 2001 against Karuppusamy (1st defendant) and Palanisamy (2nd defendant) purchasers from Govindarajan, the 1st plaintiff in O.S.No.582 of 2001, Govindarajan (3rd defendant) his father Balakrishnan (11th defendant). On the death of the 2nd



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defendant Palanisamy his legal heirs were brought on record as defendants 4 to 6. Later, the 1st defendant Karuppusamy died and his legal representatives were brought on record as defendants 7 to 10. Thereafter, after the demise of the 3rd defendant, Govindarajan defendants 12 to 14 were brought on record as his legal representatives in the light of a Will executed by Govindarajan in their favour.

9. O.S.No.413 of 2003 was filed by Sakunthala, Govindarajan's wife against her son Balakrishnan, the 1st defendant in O.S.No.582 of 2001 and his son, Sathish, the 3rd defendant in O.S.No.582 of 2001 and plaintiff in O.S.No.413 of 2003 and one B.Subramanian and Maniarasy Pethi who are purchasers from Balakrishnan and his son Sathish. Therefore, the 5th defendant in O.S.No.582 of 2001, defendants 1, 2, 4 to 10 in O.S.No.194 of 2006 and defendants 3 and 4 in O.S.No.413 of 2003 and purchasers of portions of the suit property.

10. The facts as narrated in the pleadings of each of the suits are set out herein under as also the submissions. Though these



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details adds to the volume of the Judgement, however the same is required as it forms the basis for the discussion of the Court and ultimately the Judgement. The properties originally were the ancestral properties of the 1st plaintiff and the 1st defendant. This is the admitted case of all parties. The parties are referred to in their ranking in the suit O.S.No.582 of 2001.

[I. O.S.No.582 of 2001]:-

Plaintiff's Case:-

11. The property originally belonged to one Lakshminarayana Chettiar, the father of the 1st plaintiff and his brother K.L.P.Rengasamy Chettiar. On 06.09.1963, after their demise the properties were partitioned amongst their legal representatives and the properties which has been described as “I” in the said deed fell to the share of the 1st plaintiff.

12. It is the contention of the 1st plaintiff that he and his son, the 1st defendant were enjoying the property without partitioning the same. In the year 1970, the Land Ceiling Act was enacted. In order to overcome the provisions of the above Act and to avoid excess



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lands being taken by the government, they had devised a method whereby they would retain the entirety. They had filed a suit for partition in O.S.No.236 of 1970 and had entered into a compromise where under the properties were partitioned and a decree in terms of the compromise was passed. According to the 1st plaintiff, this partition was only on paper and the documents continued to be in the custody of the 1st plaintiff. That apart, it was the 1st plaintiff who continued to manage all the properties.

13. It is the further contention of the 1st plaintiff that he had sold some of the properties which were given to him. The 1st plaintiff had also sold some of the family properties for the welfare and benefit of the family. That apart, superstructures have also been constructed from out of the sale proceedings from the joint family lands. Some of the lands were also developed as agricultural lands. That apart, the 1st plaintiff ran a bleaching factory in Angeripalayam, which has been managed only by him.

14. The 1st plaintiff would submit that he alone managed the business. Further, the 1st defendant and his family (defendants 2 to



4) were living in the joint family house in the first floor and the 1st plaintiff and his wife are residing in the ground floor of the same building. Just months prior to the filing of the suit, misunderstandings arose between the 1st plaintiff and the first defendant with reference to the common enjoyment of the properties. On 03.10.2001, a Panchayat was convened. However, the first defendant refused to partition the property. Therefore, left with no other alternative the 1st plaintiff has filed the suit O.S.No.582 of 2001.

Written Statement of the 1st Defendant:-

15. The 1st defendant had filed a written statement inter alia contending that since the 1st plaintiff had attempted to alienate family properties, the suit O.S.No.236 of 1970 was filed on the file of the District Munsif Court, Dharapuram. This suit was compromised and the properties were partitioned amongst the parties.

16. The 1st defendant denied the 1st plaintiff's contention that the alleged partition had been taken place in the year 1970 only for



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circumventing the provisions of the Land Ceiling Act. It is his case that after the partition the properties were being enjoyed as per the terms of the partition deed till the year 1985. In the year 1985, the 1st plaintiff's wife and the defendant's mother Sakunthala, the plaintiff in O.S.No.413 of 2003 had filed a suit O.S.No.215 of 1985 on the file of the Sub Court, Tiruppur against the 1st plaintiff and the first defendant herein for partition and other relief. Once again a compromise was entered into between the parties and the suit property and the other properties were allotted to the share of the first defendant.

17. It is the contention of the 1st defendant that post 1985 the plaintiff had no right, title or interest over the suit properties which had fallen to the share of the 1st defendant. He would further contend that the said Bleaching factory belonged to him and the plaintiff was attempting to occupy the same. Therefore, a separate suit is pending in respect of this cause of action. It is the further case of the 1st defendant that he had left the family long back and had set up independent residence with his family. The 1st plaintiff has sold the properties allotted to the 1st defendant's share without



his consent.

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18. As regards the possession of the properties, it is the case of the 1st defendant that he is in possession of the same through his tenants and it is he who is collecting the rents from the tenants. The 1st plaintiff is attempting to threaten and coerce the tenants into paying the rents to him which the 1st defendant has objected to. The contention of the 1st plaintiff that misunderstanding had erupted between the two recently is absolutely false as even much earlier, the 1st plaintiff and the defendant were not seeing eye to eye for a considerable time. It is the further case of the 1st defendant that the 1st plaintiff who exerts considerable clout in the area has obtained some revenue records in his name. He would therefore pray that the suit be dismissed in limine.

19. Pending the suit, the original plaintiff had passed away and the plaintiffs 2 to 4 were impleaded as parties to the proceedings on the basis of the Will stated to have been executed by the 1st plaintiff bequeathing all his rights in the suit properties to plaintiffs 2 to 4.

Similarly, the 5th defendant was also impleaded, he having purchased



an extent of 34 ½ cents from the 1st plaintiff.

Written Statement of the 5th Defendant:-

20. The 5th defendant on being impleaded had filed a written statement inter alia contending that the 1st defendant had neglected the 1st plaintiff without providing him with the food and medical expenses which had prompted him to file a suit for partition. On 19.10.2005 during the pendency of the above suit, the 1st plaintiff had sold an extent of 34 ½ cents from out of the extent of 3.50 acres in G.S.No.8/A3, Thottipalayam Village to one Raghupathy, specifying the four boundaries.

21. The 1st plaintiff had executed the sale as a Kartha of the family for meeting his urgent medical expenses and also for discharging certain debts in favour of one Raghupathy. Thereafter, under a sale deed dated 23.01.2013, the 5th defendant had purchased the aforesaid extent of 34 ½ cents from the said Raghupathy. In the meanwhile, the said Raghupathy obtained patta in respect of the lands purchased. The 5th defendant had given up her right in the common well at the time of negotiations for the purchase of the



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property. The 5th defendant would state that the purchase was made only on the basis of the decree for partition of the 1st plaintiff's half share in the above suit which was challenged by the defendants 1 to 4 by filing A.S.No.1 of 2007.

22. The 5th defendant would also contend that the Will executed by the 1st plaintiff in favour of plaintiffs 2 to 4 would not be binding on the 5th defendant. Further, the Will includes this extent of 34 ½ cents which has been sold by the 1st plaintiff himself. The 5th defendant would clarify that except for this extent of 34 ½ cents she has no interest in any other property which is the subject matter of the suit. The 5th defendant would further reiterate that she is ready to pay necessary Court fee in respect of the property purchased by her and the same be allotted to her in the partition decree.

23. The 5th defendant would further contend that during the pendency of the suit, lands were subdivided and is presently comprised in G.S.No.8/A/3a2. The 5th defendant would admit that the application filed by the 1st plaintiff for cancelling the joint patta



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had been dismissed. She would also submit that she has already filed a suit for declaring her title in respect of the extent of 34 ½ cents in a suit O.S.No.133 of 2013 on the file of the Principal Sub Court, Tiruppur. This suit had been instituted against defendants 2 to 4. The 5th defendant therefore prayed for the dismissal of the suit.

Additional Written Statement of the 5th Defendant:-

24. Thereafter, an additional written statement came to be filed on 19.06.2017 which included a counter claim by the 5th defendant seeking allotment of the 34 ½ cent purchased by her towards her share. This additional written statement has been filed after the appeal filed challenging the initial decree had been dismissed and the matter was remitted for fresh consideration by judgement and decree in A.S.No.1 of 2007. The 5th defendant had contended that additional issues were framed by the Court on the date of the Judgement, which were not made known to the parties. Therefore, the appeal was allowed and the Judgement and Decree of the Trial Court set aside and the matter was remanded back for fresh consideration. The parties to the lis were also given a right to file additional documents and adduce oral evidence with reference to the



additional issues that had been framed by the Trial Court at the time of the Judgement.

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25. On 19.10.2005, the sale by the 1st plaintiff of the 34 ½ cents to Raghupathy within specified boundaries was for meeting out his food and medical expenses. Raghupathy had taken possession of the property immediately and had also transferred the patta in his name. Raghupathy in turn had sold the property on 27.01.2013 to the 5th defendant. It is their contention that there is a joint patta standing in the name of the 5th defendant as well.

26. The 5th defendant would also contend that prior to the purchase, she had met with the plaintiffs and defendants 2 to 4 informed them about the intention to purchase the extent of 34 ½ cents and requesting the right to the open well, motor pumps etc,. The 1st defendant had also undertaken to demolish a portion of the petrol Bunk's roof, which was protruding into the plaintiff's land. However, this assurance was observed in the breach.



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27. Thereafter, the 5th defendant had filed a suit in O.S.No.133 of 2013 against the defendants 2 to 4 on the file of the P.S.J. Court, Tiruppur and the same is pending. The 5th defendant would also contend that she has purchased the property only after making necessary enquiry. During the enquiry, she came to learn that the plaintiffs and defendants have not acted upon the partition decree in O.S.No.236 of 1970, District Munsif Court, Dharapuram and O.S.No.215 of 1985, Sub Court, Tiruppur.

28. The 5th defendant would further contend that after she had instituted the suit O.S.No.133 of 2013, the 2nd defendant had lodged a petition before the Revenue Divisional Officer to cancel the patta issued to the 5th defendant. The 5th defendant would further contend that the Will in question had not been filed immediately. The implead petition had been filed by plaintiffs 2 and 4 to implead themselves. That apart, the Will would not bind the extent of the lands purchased by the 5th defendant from the 1st plaintiff, testator himself and on the date of the 1st plaintiff's death i.e., on 03.03.2013, the 5th defendant was a co-owner along with the defendants 1 to 4 and the plaintiffs. The 5th defendant would therefore submit that she



is entitled to seek a partition in respect of 34 ½ cents that has been sold to her.

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Reply of Plaintiff to the 5th Defendant's Counter:-

29. The plaintiffs have filed a reply to this counter claim inter alia contending that the 5th defendant has to work out her remedy in the suit O.S.No.133 of 2013 as she is a pendent lite purchaser.

30. The plaintiffs would further submit that the 5th defendant has to await the result of that suit. The suit has been pending since the year 2001. Further, the Court fee paid is very low. The value of the property is Rs.3,75,00,000/- and the Court fee payable was Rs.11,25,000/-. They would further submit that this suit is a second suit for the very same relief. The plaintiffs would therefore submit that the counter claim has to necessarily be rejected.

Additional Written Statement of Defendants 1 to 4:-

31. After the remand, an additional written statement was also filed by defendants 1 to 4, wherein, they had questioned the validity of the will dated 20.02.2008. They would submit that the health



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condition of the 1st plaintiff had deteriorated and he was not in a mental state to execute the Will in the year 2007. It is their contention that the Will has been prepared by the natural guardian of the plaintiffs 2 to 4. They would further submit that if the first plaintiff had executed the Will, it would have come to their knowledge since the suit has been pending from the year 2001.

32. They had also questioned the sale in favour of Raghupathy which is hit by Lis-Pendens and the subsequent sale in favour of the 5th defendant was also denied. They therefore sought to have the counter claim dismissed.

[II. O.S.No. 194 of 2006]:

Plaintiff's Case:-

33. One Sathish, the son of the 1st defendant in O.S.No.582 of 2001, who has been arrayed as the 3rd defendant in the suit O.S.No.582 of 2001 had filed the suit in O.S.No.194 of 2006 on the file of the Additional Sub Court, Tiruppur. This suit was originally filed before the District Munsif, Tiruppur and numbered as O.S.No.173 of 2002. This suit had been filed seeking declaration



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that the plaintiff therein is entitled to the suit property as he is the owner of the suit property and to direct defendants 1 and 2 to hand over possession of the property and for damages. He would trace his right to the property through the compromise decree entered into between his grand father Govindarajulu (the 1st plaintiff in O.S.No.5820 of 2001) and his father, Balakrishnan (the 1st defendant in O.S.No.5820 of 2001) in I.A.No.1048 of 1970 in O.S.No.236 of 1970 on the file of the District Munsif, Dharapuram.

34. In this suit, S.F.No.309 and 310 was allotted to the share of Govindarajulu, along with the other properties. Thereafter, the said Govindarajulu's wife Sakunthala had filed a suit O.S.No.215 of 1985 on the file of the Sub Court, Tiruppur against Govindarajulu and Balakrishnan. The suit was compromised on 30.07.1986 under which the lands comprised in S.No.309 and 310 was allotted to the share of Balakrishnan.

35. It is also the plaintiff's contention that earlier he had filed a suit in O.S.No.299 of 2000 against his father Balakrishnan and his mother, Renuka. This suit was compromised and the lands



comprised in S.F.No.309 and 310 was allotted to the share of the plaintiff herein. Though property had been allotted to his father Balakrishnan in the year 1986, his grandfather, Govindaraj who had no right, title or interest to the said property had sold it to the defendants 1 and 2 and the sale is therefore invalid. Since the defendants are attempting to disturb his possession he has come forward with the above suit.

Written Statement of the 2nd Defendant:-

36. The 2nd defendant in this suit, Palanisamy had filed written statement which is adopted by the 1st defendant. They would contend that for the last 40 years it was Govindarajulu alone who was in exclusive possession and enjoyment of the suit property. He owned large extent of lands in Tiruppur and Gobi.

37. They would contend that the decree obtained in the partition suits O.S.No.215 of 1985 and 299 of 2000 are both invalid. The defendants 1 and 2 would further submit that the plaintiff, his father Balakrishnan and his grand father Govindarajulu were all living under the same roof and negotiations were held by these



defendants with all of them and the original documents were produced. Therefore, they would contend that the plaintiff and his father Balakrishna are very much aware about the sale and cannot feign ignorance. The defendants had also taken possession of the property purchased by them to the knowledge of the plaintiff. Therefore, the suit deserves to be dismissed.

38. It is also their further case that the suit property was purchased by the said Govindarajulu's father Lakshmi Narayanan Chettiar. In the year 1963, there was a partition between the said Lakshmi Narayanan Chettiar and Govindarajulu. To avoid the Government from taking over the property under the Land Ceiling Act, a collusive suit was filed and compromised. However, the parties had never acted upon nor intend to act upon the said compromise and it was the 3rd defendant who continued to enjoy the property.

39. In the subsequent suit O.S.No.215 of 1985 filed by Sakunthala, a consent decree has been passed without the consent of the 3rd defendant Govindarajulu. The decree was brought about by



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the plaintiff's father Balakrishnan with an evil intent of taking away the entire properties from the hands of his father, Govindarajulu. It was contended that Balakrishnan had obtained signature of Govindarajulu which he had put to use to being about the compromise decree in O.S.No.215 of 1985.

40. The defendants would contend that once the decree in O.S.No.236 of 1970 is valid, the concept of joint family had become non existent. This defendant had also taken out a defence that the second partition suit in O.S.No.215 of 1985 was not valid as the decree had not been registered and therefore no interest was created under this compromise. The defendants would submit that the 3rd defendant continued to be in exclusive possession of the suit properties and he had spent huge sums of money to develop the property. Further, he has also exercised rights as the owner of the property by mortgaging the same and raising the loans for developing the property.

41. The defendants would further submit that the suit for partition is filed in Dharapuram is one without jurisdiction, since all



the other properties subject matter of the suit were situate at Tiruppur. They would also raise a plea that under the decree the said Balakrishnan had for the first time obtained a right to the property and therefore the same was to be registered and an absence to register the document would render it invalid. Further, the sale in favour defendants 1 and 2 had been done only under knowledge of plaintiff and his father Balakrishnan. Therefore, the suit should be dismissed.

Written Statement of Defendants 4 to 6:-

42. The 4th to 6th defendants who are the grand children of Govindaraj though his predeceased daughter, Chandralekha had filed a written statement inter alia contending that Govindarajulu alone was the owner of the property as it is his self acquired property. There was no family property in the name of the plaintiff's mother. Under the decree in O.S.No.215 of 1985, Sakunthala the wife of Govindarajulu was given property for the first time and the same decree has not been registered and therefore not valid. These defendants would submit that the decree under which the plaintiff's father is claiming right is non est in the eye of law. Therefore, they



had also prayed for the dismissal of the suit.

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[III. O.S.No.413 of 2003]:-

Plaintiff's Case:-

43. The third of the suit which has been challenged in these proceedings is the suit O.S.No.413 of 2003 filed by Sakunthala, the wife of Govindarajulu against her son Balakrishnan, his wife and children. This suit has been filed to declare that the plaintiff, Sakunthala is the absolute owner of the A schedule property, direct the 3rd defendant, purchaser to deliver vacant possession of Items 1 and 2 of the B schedule property and 4th defendant, purchaser to deliver possession of the 3rd item of the B schedule property, to declare the sale deeds standing in the name of defendants 3 and 4 in respect of B schedule properties as null and void, inoperative and not binding on the plaintiff and to grant permanent injunction not to disturb the plaintiff's peaceful possession of the A schedule property.

44. The plaintiff had come to Court contending that the A schedule property had been settled on her by her sister in law i.e., her husband's sister, Abaranji Ammal under a settlement deed dated



26.08.1981. From the date of the settlement, she has been in absolute possession and enjoyment of the property and has been dealing with the same as a true owner. The plaintiff would contend that she has created mortgages in respect of the property. While so, the sale deeds executed by 1st defendant in favour of defendants 3 and 4 are unenforceable and they are therefore trespassers in the property.

45. The plaintiff would submit that the compromise decree which had been entered into in the earlier suit in O.S.No.215 of 1985 filed by her against defendants and his father was never acted upon. Therefore, she has come forward with the suit in question.

Written Statement of the 1st Defendant:-

46. The 1st defendant had filed a written statement inter alia contending that in the earlier suit O.S.No.215 of 1985, a compromise decree was entered into and the compromise was filed into Court in I.A.No.612 of 1986. Under this compromise, the A schedule property had been allotted to the 1st defendant. Since the plaintiff and the 1st defendant had cordial relationship, the 1st



defendant did not deem it fit to have the revenue records and tax receipts transferred into his name. Further, the mortgages that have been created by the plaintiff's husband were not valid. Further, the husband of the plaintiff did not have cordial relationship with the 1st defendant. The 1st defendant pleaded delay since after the issue of reply notice, the plaintiff had taken 1 ½ years to file the suit, which would clearly show that the suit was only an afterthought. An additional written statement also came to be filed by the 1st defendant.

Written Statement of Defendants 5 to 7:-

47. The defendants 5 to 7 who are the legal heirs of Govindaraj through his predeceased daughter and plaintiffs 2 to 4 in the suit O.S.No.582 of 2001 have filed a written statement. They would contend that the deceased 1st plaintiff Sakunthala had acquired right to 7.08 acres in A Schedule property under a registered settlement deed dated 26.08.1981. During her life time, she had sold away 3.02 acres of the suit property leaving behind an extent of 4.06 acres.



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48. The defendants 5 to 7 therefore submit that the defendant 5 and 6 are each entitled to a 1/9th share in the property and the 7th defendant to a 4/9th share in the remaining extent. It is also their contention that the property continued to remain in the possession of the said Sakunthala and her husband was managing and cultivating the same.

49. In the year 1996, Sakunthala had hypothecated the property to the Bharat Overseas Bank as collateral security for a loan given to a company in which she was a director. Till her death, the suit property continued to be hypothecated to a bank. In March 2009, D.S.Jaganathan, son-in-law of Sakunthala and the father of defendants 5 to 7 had cleared the loan and taken the original documents back from the bank and the same is in his custody to date. It is also noticed that prior to the filing of the suit, the 1st defendant and 2nd defendant had sold a part of the B schedule property to the 3rd and 4th defendants.



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50. The 1st defendant claims a right title to the suit property by virtue of a compromise decree in O.S.No.215 of 1985 on the file of the Sub Court, Tiruppur. These defendants would submit that the suit O.S.No.215 of 1985 had been filed by Sakunthala against her son Balakrishnan, who is also a party to the instant proceedings seeking share of the joint family property in the compromise decree in O.S.No.236 of 1970. This suit had been filed by Balakrishnan against his father Govindarajulu in Dharapuram Munsif Court and that suit was never heard and decided.

51. It is the case of the defendants that at no point in time Sakunthala had handed over the suit property to her son Balakrishnan. The property was her individual property to which she has an inherent right and she has not parted possession of the same. By no stretch of imagination as it be called a joint Hindu Family Property. According to the defendants, the said Balakrishnan did not have any pre existing right on the property and further this property was not included in the suit O.S.No.215 of 1985. The Court fee paid by Sakunthala was only in respect of 4.06 acres of the land in joint family property which is allotted to her son.



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52. The compromise decree was also not registered and is therefore unenforceable. The 3rd defendant traces his right to the suit property through a compromise decree in O.S.No.299 of 2000 on the file of the Dharapuram Sub Court. This compromise decree has been passed without the parties be heard and case decided on merits.

53. The defendants would reiterate that the deceased 1st plaintiff continued to be in possession of the properties even after the sale. During her lifetime and after her death, her husband, the 2nd plaintiff was managing and cultivating the property. The defendants would further submit that the 1985 compromise said to have been executed between Sakunthala and her son is not enforceable and not valid in the light of the same not having being registered. Further, the property being the property of a Hindu Female Property, the succession will follow the Hindu Succession Act.

54. In the suit O.S.No.215 of 1985 she had claimed a share in the joint family property and her individual property was not included therein. The defendants would reiterate that the 2nd



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defendant, Sathesh who is the son of Balakrishnan had filed O.S.No.299 on the file of the Dharapuram Subordinate Court and a compromise decree was executed. The compromise decree has been obtained collusively and fraudulently.

55. These defendants further contended that the 1st Defendant has only a 1/3rd right in the remaining 4.06 acres of the suit property unsold by the 1st Plaintiff. He and his son, the 2nd Defendant, have already sold the land and pathway right to the extent of 1/3rd of 4.06 acres of property. Defendants 5, 6 and 7 collectively have a 1/3rd right in this extent of 4.06 acres. The 2nd Plaintiff has the other 1/3rd share. He has gifted his 1/3rd share to Defendant 7. Considering this, Defendants 5,6 and 7 collectively own 2/3rd of 4.06. i.e., 2.71 acres of the suit property. The extent of the suit property physically remaining now after sales by the Defendants 1 and 2 is 2.70 acres and is in the possession, and belongs in its entirety to Defendants 5 to 7. Neither the 1st Defendant nor his son the 2nd Defendant has any rights in this property.



56. The defendants had also prayed that an injunction should be given preventing the 1st and 2nd defendants from interfering with the peaceful possession and enjoyment of the suit properties by these defendants. They therefore sought to have the suit dismissed.

57. Though all the suits have a common genesis and the facts in each case overlap, however, I have chosen to extract briefly the pleadings in each of the suits for ease of understanding the pleadings set out in each of the suits.

Trial Court:-

58. The issues framed by the Trial Court in these three suits are herein below set out as set out by the Trial Court.

(i) O.S.No.582 of 2001:

1.தாராபுரம் மாவட்ட உரிமையியல் நீதிமன்ற அ.வ.எண்.236/1970 மற்றும் திருப்பூர் சார்பு நீதிமன்ற அ.வ.எண்.215/1985 இந்த இரு வழக்குகளிலும் ஏற்பட்ட ஒத்திசைவு ராசி தீர்ப்புகளினால் இவ்வழக்கு 1908 சி.பி.சி. பிரிவு 11ன் கீழான முன் தீர்ப்பு தடை தோஷத்திற்கு உட்படுகிறது என்பது சரியா?



2.தாராபுரம் மாவட்ட உரிமையியல் நீதிமன்ற அ.வ.எண்.236/1970 மற்றும் திருப்பூர் சார்பு நீதிமன்ற அ.வ.எண்.215/1985 இந்த இரு வழக்குகளிலும் ஏற்பட்ட சமாதான ஏற்பாட்டின்படி 1970 மற்றும் 1985 வருடங்களில் உபயவாதிகளுக்கு இடையே சொத்துக்கள் சம்பந்தமாக பாகப்பிரிவினை ஏற்பட்டுவிட்டது என்பது சரியா?

3.திருப்பூர் சார்பு நீதிமன்ற அ.வ.எண்.215/1985ல் ஏற்பட்ட தீர்ப்பு 1908 இந்திய ஆவணங்கள் பதிவு சட்டம் பிரிவு 17(2) (ஏஐ)ன் படி பதிவு செய்யாததால் செல்லத்தகாத தீர்ப்பா?

4.திருப்பூர் சார்பு நீதிமன்ற அ.வ.எண்.215/85ல் வாதி கோவிந்தராஜ் தமது பங்கு சொத்துக்களை பொது குடும்ப சொத்துக்களாக கலந்து, பொது குடும்பத்தில் மீண்டும் இணைந்து விட்டார் என்பது சரியா?

5.வாதி கோரியபடி பாதி பாக உரிமைக்கு முதல்நிலை தீர்ப்பாணை பெறத்தக்கவரா?

6.வாதி பெறத்தக்க வேறு நிவாரணங்கள் எவை?

Additional Issues:

1. *Whether the fifth defendant is entitled for the relief of partition with respect to purchased portion from*



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the sole plaintiff as contended in the additional written statement filed by fifth defendant?

2. Whether the decree is OS. No. 299/2000 passed by sub court, Dharapuram binding on the Plaintiff ?

3. Whether the Sub — Division effected is S.R.No.8A/3 is valid?

O.S.No.194 of 2006:

“1.Whether the Plaintiff is the owner of the suit property ?

2. Whether the plaintiff is entitled for recovery of possessions of the suit property ?

3.Whether the plaintiff is entitled for declaration ?

4.Whether the Plaintiff is entitled for damages of Rs.10,000/- till delivery of Possession ?

5.To what relief plaintiff is entitled ?

O.S.No.413 of 2003:

“1.Whether the compromise decree passed in OS.No.299/2000 by Sub Court, Dharapuram and



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compromise decree passed in OS.No.215/1985 by Sub Court, Tirupur is valid and enforceable ?

2.Whether the sales favour of D3 and D4 by D1 and D2 are valid ?

3.Whether the plaintiff has the titled to “A” schedule properties?

4.Whether the Court fee paid in respect of declaration regarding documents is correct?

5.Whether the plaintiff is entitled for the relief claim in the plaint?

59. The learned Judge has recorded common evidence in the suits O.S.No.582 of 2001 and O.S.No.194 of 2006. The 1st plaintiff has examined himself as P.W.1, the power agent Jaganathan as P.W.2 and one Karthik as P.W.3 and Ex.A.1 to Ex.A.45 have been marked. The 1st defendant had examined himself as D.W.1 and the 2nd defendant as D.W.2 and five other witnesses have been examined as D.W.3 to D.W.7. Ex.B.1 to Ex.B.101 have been marked on their side.



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60. The learned Trial Judge has recorded evidence separately in O.S.No.413 of 2003. The power agent Jaganathan has been examined as P.W.1 and Ex.A.1 to Ex.A.11 have been marked and the 1st defendant Balakrishnan had been examined as D.W.1 and Ex.B.1 to Ex.B.31 have been marked. That apart, the Court exhibits Ex.C.1. to Ex.C.3 have been marked.

61. The Trial Court by Judgement and Decree dated 28.07.2020 was pleased to decree the suit O.S.No.582 of 2001. The Trial Court returned a finding that no physical partition has taken place pursuant to the decree in O.S.No.236 of 1970 and O.S.No.215 of 1985 and therefore there is no question of the 1st plaintiff once again blending properties allotted to him into the joint family properties.

62. The Trial Court further held that the fact that no properties had been allotted to the 1st plaintiff and the 1st defendant under the compromise decree and as the compromise decree has not been registered, the same would not confer any right upon the plaintiff in O.S.No.194 of 2006. Therefore, the claim that the suit properties



belonged to the 6th defendant, Sathish by reason of the decree in O.S.No.299 of 2000 cannot be sustained. Therefore, the claim of the plaintiff in O.S.No.194 of 2006 was rejected stating that he is not entitled to a declaration in respect of S.No.309 and 310 and that the decree in O.S.No.299 of 2000 was not binding on the plaintiff.

63. Further, the learned Judge observed that the plaintiff has not chosen to implead the vendor of the 5th defendant, namely, Raghupathy who had originally purchased the property from the 1st plaintiff.

64. The learned Judge held that the 5th defendant has not proved his counter claim and was not entitled to a decree in the counter claim. The learned Judge declared the title of Sakunthala to suit properties as prayed in O.S.No.413 of 2003 and since the said Sakunthala was no more her legal representatives were directed to obtain the necessary partition decree by filing a partition suit. The learned Judge had ultimately decreed the suit O.S.No.582 of 2001 granting a partition as prayed for to the plaintiff.



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65. The decree passed:-

(a) The suit O.S.No.582 of 2001 was decreed.

(b) The plaintiffs 2 to 4 were entitled to a partition in respect of 2/3rd share in the suit schedule property for which a preliminary decree was passed.

(c) Counter claim filed by the 5th defendant in O.S.No.582 of 2001 was dismissed.

(d) O.S.No.194 of 2006 was dismissed.

(e) O.S.No.413 of 2003 has been partly allowed.

(f) The 1st plaintiff, Sakunthala in O.S.No.413 of 2003 is entitled to the suit property and as she had passed away her legal representatives have to file an appropriate suit before the Civil Court.

(g) The sale executed by defendants 1 and 2 in O.S.No.413 of 2003, in favour of defendants 3 and 4 was invalid and do not confer any title to them.

Appellate Court:-

66. Aggrieved by the Judgement and Decree, the 5th defendant

<https://www.mhc.tn.gov.in/judis> in O.S.No.582 of 2001 had filed A.S.No.100 of 2022. The



defendants 1 to 4 in O.S.No.582 of 2001 had filed A.S.No.2 of 2021.

The plaintiff in O.S.No.194 of 2006 had filed A.S.No.4 of 2021 and the defendants 1 and 2 in suit O.S.No.413 of 2003 had filed A.S.No.16 of 2021.

67. The Lower Appellate Court after re-considering the evidence on record and after setting out the points for determination in each of the appeals had ultimately held that the plaintiff in O.S.No.582 of 2001, namely, Govindaraj had failed to prove that the partition effected in O.S.No.236 of 1970 was not acted upon and proceeded to dismiss the suit O.S.No.582 of 2001 and confirmed the dismissal of counter claim in the said suit. The learned Judge has also dismissed the suit O.S.No.413 of 2003 on the ground that the plaintiff had failed to prove that she is entitled to the relief of possession. The decree in O.S.No.194 of 2006 was set aside as the Court found that the plaintiff therein had proved that the property was allotted to his share in the compromise decree in O.S.No.299 of 2000 and the sale in favour of Sakunthala was effected by a person who had no right over the property sold and therefore the plaintiff was entitled to recovery of possession.



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68. The learned Judge observed that the plaintiff in O.S.No.413 of 2003 had sold various properties on the basis of the compromise decree entered in that suit and the contention that the decree is not valid as it has not been registered has no legs to stand. Ultimately, A.S.No.4 of 2021 and A.S.No.16 of 2021 were allowed and the decree in O.S.No.582 of 2001 and O.S.No.413 of 2003 was set aside. A.S.No.2 of 2021 was also allowed and the Judgment in O.S.No.194 of 2006 was set aside. The defendants 1 and 2 and their legal representatives were directed to handover possession of the suit property to the plaintiff in O.S.No.194 of 2006.

69. It is challenging these Judgement and Decree that the appeals as described in the opening paragraphs of this Judgement has been filed.

70. Though the learned counsels have advanced oral arguments, however, they have filed their written submissions and their submissions as set out in the written arguments are extracted

herein below.



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Submissions:-

71. The lead arguments on the side of the appellant was advanced by Mr. V.Raghavachari, senior counsel, who had appeared on behalf of Mrs. V.Srimathi, the learned counsel for the appellants in S.A.No.289 of 2022 and S.A.No.552 of 2022. Mr. A.K.Sriram, Senior Counsel, for Mr.T.Balaji, learned counsel had made his submissions for the appellants in S.A.No.552 of 2022. Ms.K.M.Valsala, learned counsel had advanced arguments for appellants in S.A.No.100 of 2023.

72. Mr.T.R.Rajagopalan, learned senior counsel had advanced arguments on behalf of Mr. M.Sivavarathana who is the counsel for the respondents 1 to 4 in S.A.No.289 of 2022, respondents 1 and 2 in S.A.No.251 of 2022 and S.A.No.552 of 2022 and respondents 4 to 7 in S.A.No.100 of 2023.

Submissions of the appellants in S.A.Nos. 251 & 289 of 2022:

73. The main contention advanced by the learned senior counsel was that the suit O.S.No.236 of 1970 was a collusive suit



and the compromise decree entered into was never intended to be acted upon and that though the properties were stated to have been partitioned under the said document, in reality it was not so done. The 1st defendant and the 1st plaintiff continued to be in joint possession and enjoyment of all the properties.

74. It is the contention of the learned senior counsel that after the filing of O.S.No.236 of 1970 yet another proceeding under the ceiling laws were initiated by the authorities. Thereafter, another suit in O.S.No.215 of 1985 was filed by the mother of the 1st defendant, Balakrishnan and wife of the 1st plaintiff, Govindarajulu claiming a right to 15 acres of land. This suit was also instituted to ensure that the properties were not taken over by the authorities. He would further submit that though the compromise decree had been obtained, it was never acted upon.

75. The learned senior counsel would submit that the defendant as D.W.1 has admitted to the fact that even after the compromise decree in O.S.No.236 of 1970, it was his father the 1st plaintiff who was in effective management and control of the



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properties. The investments for the business were also made only by the father since at that point in time the 1st defendant was not worldly wise. It is his contention that if really the partition decree was given effective then it would be the 1st defendant who would be managing the property and their business.

76. The learned senior counsel would draw the attention of the Court to the cross examination of D.W.1, where D.W.1 has admitted that he had no source of income and was not running the business and it is his father who had made investments in the year 1980.

77. The learned senior counsel would also draw the attention of the Court to another admission in the cross examination of D.W.1, wherein he has stated that rents in respect of 12 shops was being collected only by his father in his name from 1985.

78. The learned senior counsel would further submit that in the year 1970 when the compromise decree was passed the 1st defendant was still a minor. Though such a stand had been taken by the plaintiffs, the defendant has failed to prove that he was a major as on



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the date of the decree and competent to seek partition of the lands of the various properties situate in different districts and to acquire title to an extent of 61.5 acres.

79. The learned senior counsel would also draw the attention of the Court to Ex.A.42 which is the hand diary of Sakunthala the mother of the 1st defendant and wife of the 1st plaintiff, which would go to show that in the year 1972 Balakrishnan was still a minor. Further , Ex.X.3 which is the transfer certificate filed through D.W.7 shows that the admission of the 1st defendant to the PUC (Pre University Course) was on 30.06.1972 and he has completed the course on 02.04.1973. This would only go to show that even in the year 1972 the 1st defendant was a minor.

80. The learned senior counsel would draw the attention of the Court to the photograph taken at the time of the wedding of Balakrishnan's sister Chandraleka, which is in the year 1968. This photo would clearly show that he was very young. He would therefore submit that on the date of the decree in O.S.No.236 of 1970, the 1st defendant was only a minor and could not taken



independent charge of the properties and all of these only go to show that the compromise was only a ploy to overcome the Land Ceiling Act.

81. The other main contention that has been raised by the learned senior counsel is that the compromise decree has not been registered as contemplated under Section 17 of the Registration Act and therefore the decree was not legally valid and binding. The learned senior counsel would submit that the decree in O.S.No.236 of 1970 under which the property has been transferred for the first time in favour of the 1st defendant has not been registered. Likewise in the suit O.S.No.215 of 1985 once again where Balakrishnan is allotted properties for the first time and where the value of these properties are over and above a sum of Rs.100/- the decree has not been registered.

82. The learned counsel would distinguish the fact that registration under Section 17 was compulsory when there is no pre-existing right as opposed to a case where the parties has a pre-existing right in the property. Admittedly, the 1st defendant's mother



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Sakunthala had no ancestral properties and she obtained a right only by virtue of settlement deed executed by her sister in law in her favour. This property has been included in the suit O.S.No.215 of 1985 which has been allotted to the 1st defendant. This amounts to a creation of a fresh right in favour of the said Balakrishnan and therefore registration of the decree was compulsory.

83. According to the learned senior counsel, the compromise decree in O.S.No.236 of 1970 was invalid and Balakrishnan do not have any pre-existing right in Govindarajulu's 50% share in the suit property. Therefore, the registration of the decree was compulsory. Under the decree in O.S.No.215 of 1985, Sakunthala was allotted to an extent of 4.55 acres and the entire B schedule property has been allotted to the share of Balakrishnan. In none of the properties Balakrishnan had pre-existing right.

84. Consequently, since the compromise decree was invalid the subsequent rights created in favour of his son and wife by the compromise decree in O.S.No.299 of 2000 does not confer any right on them. He would rely upon the following judgments for the



proposition regarding registration of the decree:-

Sl. No	Citation	Judgement
1	1995 (5) SCC 709	<i>Bhoop Singh Vs. Ram Singh Major and others</i>
2	(2006) 10 SCC 788	<i>Som Dev and Others Vs. Rati Ram and Another</i>
3	(2008) 13 SCC 102	<i>K.Raghunandan and Othes Vs. Ali Hussain Sabir and Others</i>
4	2011 (8) SCC 613	<i>Ramesh Kumar and another Vs. Furu Ram and another</i>
5	2015 (3) SCC 164	<i>Phool Patti and anothers Vs. Ram Singh (died)</i>
6	(2020) 10 SCC 250	<i>Gurucharan Singh and Others Vs Angrez Kaur and Another</i>

85. As regards the counter claim filed by the 5th defendant, it is the contention of the learned senior counsel that the 5th defendant in the suit O.S.No.582 of 2002 had purchased the property from Raghupathy under a sale deed dated 23.01.2013, who inturn purchased it from the 1st plaintiff in the year 2006 under a registered sale deed. Both the Courts below have rightly come to the conclusion that the counter claim was not maintainable. The appellants would submit that their right to the property is not only on account of the Will executed by Govindarajulu in their favour but



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also on account of the fact that their deceased mother was coparcener in respect of the suit properties by reason of Hindu Succession Amendment Act, 2005 and therefore the compromise decree passed in O.S.No.236 of 1970 and O.S.No.215 of 1985 without including her was not binding on them.

86. The 1st and the 3rd appellants are mentally challenged and therefore limitation would not apply to them. They are setting up claim based on the ground that they are the legal representatives of the deceased coparcener Chandraleka. The learned senior counsel would submit that the Lower Appellate Court has totally lost sight of the above factors and has reversed the Judgement and decree of the Trial Court.

Written Submissions of the appellant in S.A.No.100 of 2023

87. The appellant in S.A.No.100 of 2023 is the 5th defendant in O.S.No.582 of 2001. The appellant would contend that she is the *bonafide* purchaser in respect of 34-1/2 cents in S.No.8-3/A which is the 5th item in the schedule of properties to the suit and which is situate in Thottipalayam Village, Tiruppur Taluk, Tiruppur Sub



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Registration District forming part of a larger extent of 3 acres 50 cents. The appellant would concede that she is a pendente lite purchaser who had purchased the property from one Raghupathy under a registered sale deed dated 23.01.2013 (Ex.B85). The said Raghupathy, in turn, has purchased the property from the first plaintiff on 19.10.2005 (Ex.B77). The appellant has also sought allotment of this extent to her share. Apart from reiterating the sequence of events as pleaded by the first plaintiff, the appellant would also contend that the decree in O.S.No.236 of 1970 was not acted upon.

88. It is also the appellant's contention that the subsequent decree in O.S.No.215 of 1985 is not valid inasmuch as the decree had not been registered as contemplated under Section 17 of the Registration Act. It was also her contention that the first defendant, Balakrishnan did not have any pre-existing right in the properties that had been allotted to him under the decree. Since it was for the first time that he had acquired a right, the compromise decree had to be compulsorily registered. Since the decree is not registered, no right would flow under this decree. It is her contention that the suit



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O.S.No.299 of 2000 filed by Sathish, the son of the first defendant was also a collusive suit which again had not been registered. That apart, under this compromise decree, the first defendant's wife, Renuka was allotted properties though she is not a coparcener and had no right to the joint family properties belonging to Govindaraj and Balakrishnan, The property which has been purchased by the appellant has been allotted to the said Renuka.

89. The appellant would further contend that the trial Court in both suits O.S.No.236 of 1970 and O.S.No.215 of 1985 had held that the decrees obtained in these suits were invalid. However, the trial Court has erroneously proceeded to declare the sale in favour of the appellant invalid. She would further contend that the finding that the suit is bad for non-joinder of Raghupathy and non-examination of Mohana was absolutely erroneous. She would further submit that from a plain reading of Ex.A.27, plaint in O.S.No.94 of 2006, Ex.A28, written statement of the first plaintiff in the above suit and Ex.A.29, written statement of the first defendant in the above suit, it is crystal clear that they were very much aware about the sale of 34 ½ cents in favour of the appellant by



Raghupathy even as early as in the year 2005.

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90. In the written statement filed by the first plaintiff, he has admitted that he has sold 34 ½ cents to Raghupathy and that this extent has been sold only with the knowledge of the first defendant, his son Sathish and his wife, Renuka, The first defendant, in his written statement, has also stated that the patta in respect of the property in Survey No.8-A/3 is in the joint names of Raghupathy and Renuka. Therefore, the parties cannot now turn around and contend that they were not aware about the sale in favour of the appellant. Further, this sale deed has not been challenged by the first defendant, his son and his wife. The appellant would further submit that she is a bonafide purchaser and her possession has to be protected even under equity.

Written Submissions of the appellants in S.A.No.552 of 2022.

91. This appeal has been filed by the legal representatives of the defendants 1 and 2 in O.S.No.194 of 2006 which is the suit filed by the first defendant's son, Sathish. In the written submissions, the appellant would submit that they are only concerned with the lands



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measuring 3.85 acres in S.No.309 and 6 acres in Survey No.310 which the original defendants 1 and 2 has purchased under Exs.B93 and B94 dated 31.05.2000 from the first plaintiff Govindaraj. It is their contention that under the compromise decree in O.S.No.236 of 1970, the properties comprised in S.Nos.309 and 310 were allotted to the share of Govindaraj as the “B” schedule property. They would submit that after the partition, each of the sharers has been in exclusive possession of their shares and they have accepted and acted upon the compromise decree. This factum is evident, as both Govindaraj as well as Balakrishnan have sold their respective shares under various sale deeds to various persons. In fact, these purchasers have not been impleaded as parties to the present suit, which only goes to show that the compromise decree in O.S.No.236 of 1970 has been given effect to. The appellant would further submit that when Govindaraj's wife Sakunthala had filed a suit in O.S.No.215 of 1985 against the first defendant, he had voluntarily impleaded himself in the above said suit and brought the properties allotted to him into the suit and executed the memorandum of compromise, which was subsequently decreed. They would further submit that the transfer of the suit properties allotted to the share of



Govindaraj in favour of Balakrishnan creates a new right in the suit properties to Balakrishnan which has to necessarily be registered without which no right would flow to Balakrishnan. Govindaraj, according to the appellants, had executed two separate sale deeds in favour of defendants 1 and 2, one in favour of one Karuppasamy and another sale deed in favour of Karuppasamy and Palanisamy.

92. The appellants would contend that the defendants 1 and 2 in O.S.No.194 of 2006 were in exclusive possession and enjoyment of the suit properties from the date of the purchase. Subsequently, the first defendant's son, Sathish had filed O.S.No.299 of 2000 on 03.11.2000 on the file of the Sub Court, Dharapuram against his father, mother and sister for a partition. This suit was compromised in I.A.No.30 of 2011. The appellants would submit that since no right flowed to the first defendant under the un-registered compromise decree in O.S.No.215 of 1985, the subsequent un-registered compromise decree passed in O.S.No.299 of 2000 filed by the sixth defendant, Satish also does not confer any title or interest to the said Sathish. It is their contention that all the other suits following the decree in O.S.No.215 of 1985 does not create any



right, title or interest in the properties since the compromise decree in O.S.No.215 of 1985 has not been registered as contemplated under Section 17 of the Registration Act. They would also contend that the plaintiff, Sathish has claimed a right to the property on the basis of the compromise decree entered into in O.S.No.299 of 2000. Therefore, the compromise, having been entered into after the sale in favour of defendants 1 and 2, will have no effect on the sale deed executed in favour of defendants 1 and 2. They would therefore, seek to have the appeal allowed.

93. It is also the contention that there is no cause of action for filing the suit O.S.No.194 of 2006, since even as per the pleadings in O.S.No.299 of 2000-Ex.A41, the cause of action had arisen on 02.11.2000 subsequent to the sale in favour of the appellants. In the judgment reported in **1995 (5) SCC 709 [Bhoop Singh Vs. Ram Singh Major and Others]**, the Hon'ble Supreme Court has clearly held that a genuine and bonafide compromise entered in respect of a pre-existing right is exempted from registration. In the case on hand, the compromise decree has to necessarily be registered and the same has not been done. Therefore, no rights would flow. They would



further contend that after the partition in the year 1970 and from a perusal of Exs.A19 and B2, the father and son are enjoying the properties as their individual properties. Therefore, the claim that the properties have been allotted to the grandson under Ex.B11 is clearly mischievous and not binding on the purchaser. They have also raised a ground that the finding that there has been a blending of the properties is totally misconceived inasmuch as it is not backed by pleadings. The lower appellate Court has arrived at this finding without any oral evidence of the re-union in 1986. In support of their contentions, the appellants relied on the following judgments.

<i>Sl. No</i>	<i>Citation</i>	<i>Judgement</i>
1	(1995) 5 SCC 709	<i>Bhoop Singh Vs. Ram Singh Major and Others</i>
2	(2015) 3 SCC 164	<i>Phool Patti and Another Vs. Ram Singh (Dead) Through Legal Representatives and Another</i>

Written arguments of the respondents in all the second appeals

94. After setting out the reliefs and the relevant dates and events, the respondents have contended that the appellants in all the appeals had no locus standi to question the validity of the decree passed in O.S.No.236 of 1970.

<https://www.mhc.tn.gov.in/judis> I a) The first plaintiff, Govindaraj, after



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obtaining the decree in O.S.No.236 of 1970, has amended the decree twice once in the year 1970 and secondly in the year 1983.

b) On 08.04.1984, a suit filed by the State Bank of India on the file of the Sub Court, Tiruppur was allowed to be dismissed against the properties allotted to Balakrishnan under the decree in O.S.No.236 of 1970.

c) Govindaraj has executed various sale deeds in respect of the portions of the property that he had been allotted under the decree in O.S.No.236 of 1970 in which he has specifically referred to the partition decree in O.S.No.236 of 1970 dated 25.04.1970. The sale deeds have been marked as Exs.B5 to B8, B34, B35, B36 and B74.

d) In the affidavit filed in I.A.No.595 of 1986 in O.S.No.215 of 1985, the first plaintiff has specifically admitted the partition that has taken place between him and his son, the first defendant in O.S.No.236 of 1970.



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e) Balakrishnan, under Exs.A27, A28, A38, A39, A40, A41, Exs.B68 and B69, has sold portions of the property allotted to him under the decree in O.S.No.236 of 1970.

Therefore, it is crystal clear that both the parties have not only entered into a compromise and allowed the decree to be passed based upon the compromise, they have also acted upon this decree. Therefore, it does not lie in the mouth of the first plaintiff to question the decree in O.S.No.236 of 1970.

f) In none of these sale deeds has the first plaintiff mentioned that he is executing these sale deeds in his capacity as Kartha of the joint family.

g) The revenue records have been mutated in the name of the first defendant and defendants 2 to 4 as evidenced from Exs.B12 to B24. The plaintiffs 2 to 4 cannot question the decree in O.S.No.236 of 1970 as they have been impleaded as plaintiffs 2 to 4 in O.S.No.582 of 2001 on the strength of the Will



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said to have been executed by the first plaintiff.

h) Subsequent to the decree in O.S.No.236 of 1970, the joint family status ceased to exist. The admission of P.W1, the first plaintiff that he and his son have been living separately since 1970 only goes to strengthen the fact that the compromise decree has been given effect to.

II. i). The respondents 1 to 4 have countered the arguments of the appellants regarding the non registration of the compromise decree in O.S.No.215 of 1985, being fatal to the claim of the defendants, by contending that the compromise had been entered into only in respect of the suit properties in which parties had a pre-existing right and the decree was granted in respect of these properties.

ii). Exs.B1 and B2, which are the certified copies of the impleading applications and affidavit in

I.A.No.595 of 1986 in O.S.No.215 of 1985, would



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show that the first plaintiff has voluntarily taken out this application to have himself added as a party in the above suit. Not stopping with having himself impleaded, he has also sought to include all the properties allotted to him under the decree in O.S.No.236 of 1970 added in the suit in order to maintain unity in the family.

iii) Govindaraj and Sakuntala have signed the Memo which contains the terms of the compromise and had appeared before the Court. The said compromise was recorded and a decree was passed in O.S.No.215 of 1985.

(iv). Under the compromise, the prime property which stood in the share of Balakrishnan in G.S.Nos.663 and 664 of Thottipalayam Village, measuring an extent of 4.55 acres, had been allotted to the share of Sakunthala only to purchase peace in the family and in turn, the properties of a much lesser value have been allotted to the first defendant.

<https://www.mhc.tn.gov.in/judis> All of this would go to show that the properties are joint



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family properties and the title was traceable prior to the decree of the year 1970, which clearly shows that Balakrishnan had a pre-existing right in the properties and there was no necessity to register the same.

(iv). P.W2 in his cross examination has admitted that the properties, which are the subject matter of the suit O.S.No.215 of 1985 are part of the properties comprised in Ex.A1-Partition Deed, which was allotted to the share of the first plaintiff under the partition of the year 1963.

(v). The decree in O.S.No.215 of 1985 has been accepted and acted upon which is evident from Exs.B9, B42 to B67-Sale Deeds executed by Sakunthala where Sakunthala referred to the partition deed dated 30.07.1986 in O.S.No.215 of 1985-Ex.B3. Further, the first plaintiff, Govindaraj has signed as witness in most of the documents.

(vi) Even after this compromise, the parties have been individually selling the properties that had been allotted to them under the suit O.S.No.215 of



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1985. The compromise had been reduced into writing signed by the parties and presented before the Court by the parties themselves which was recorded. The decree was passed as contemplated under Order 23 Rule 3 of C.P.C. Therefore, there is no necessity to register the decree. The parties have received substantial benefits from these decrees.

III. i) The decree in O.S.No.236 of 1970 and O.S.No.215 of 1985 has been acted upon in view of the alienations done by the first plaintiff, Sakunthala and the first defendant on the basis of the aforesaid decree. Therefore, once the parties have executed and acted upon the decree, they are estopped from once again claiming a right to the property.

ii). By not including some of the properties that had been allotted to Sakunthala, the appellants have clearly admitted that the properties belonged to Sakunthala over which they could not claim a right.



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IV 1) The plaintiff in O.S.No.582 of 2001 and O.S.No.413 of 2003 have not made out any grounds as contemplated under proviso to Rule 3 of Order 23 of C.P.C for setting aside the compromise decree. The independent suit filed challenging the same is clearly barred by the provisions of Rule 3A of Order 23.

2) The compromise in the suit O.S.No.215 of 1985 has been signed by the first plaintiff, Sakunthala and the first defendant in O.S.No.215 of 1985 and they have also acted upon this decree which is evident from the sale deed executed by Sakunthala's mother.

V. The plaintiffs in O.S.No.582 of 2001 and O.S.No.413 of 2003 have deliberately suppressed the alienations made by them pursuant to the decree in O.S.No.236 of 1970 and O.S.No.413 of 2004. That apart, these properties which had been sold were not included in the suit. Once again confirming the fact that the compromise decree were given effect to. They



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have not come on record to disclose the sale consideration for which the properties were sold.

VI. (i) The respondents would further submit that the appellant in S.A.No.582 of 2022 does not have a valid title in respect of the properties subject matter of the suit O.S.No.194 of 2006.

(II) The properties comprised in S.F.Nos.309 and 310 of Chettipalayam Village were allotted to the share of the first plaintiff who had suo moto brought the properties in the suit O.S.No.215 of 1985.

3) In the compromise in the aforesaid suit, these properties were allotted to the share of the first defendant and thereafter, by virtue of the compromise in the suit O.S.No.299 of 2000, the properties were allotted to the share of the plaintiff in O.S.No.299 of 2000 i.e the son of the first defendant.

4) The first plaintiff, having given up his right



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by virtue of his getting impleaded in O.S.No.215 of 1985 and bringing in his properties into the suit has no right title or interest in the property and therefore, the alienations carried out by him are not binding on the parties.

VII. The respondents would further contend that the fifth defendant cannot claim equity when the person who has alienated the property to his vendor has no right, title or interest in the property.

95. The respondents have relied upon the following judgments.

Validity of un- registered compromise decree		
1.	2006(1) SCC 168	Amteshwar & Others Vs Verandar mohan Singh
2.	2006(10) SCC 788	Somdev & Others Vs Rathi ram & Others
3.	2015(3) SCC 164	Phool Patti & Others Vs Ram Singh
4.	2020(10) SCC 250	Gurcharan Singh & Others Vs Angrez Kaur & Others
5.	2021(7) SCC 446	Ripudaman Vs Tikka

<https://www.mhc.tn.gov.in/judis>



		Maheswar
6.	2021(16) SCC 279	Kushi ram & Others Vs Nawal Singh
7.	1999 SCC Online Cal 546 = 1999(3) ICC 677(cal)	Smt.Sefail Mukherjee & Others Vs Sri Amal Krishna Chatterjee
8.	2010 SCC Online Cal 173	Dipali Roy vs Samir abnerjee
Effect of Family Arrangement		
9.	AIR 1955 SC 481	Sahu Madho Das & Others Vs Pandit Mukand ram & Others
10.	AIR 1966 SC 323	Ram Charan Das Vs Girija Nandhini Devi and Others

Discussions:

96. These second appeals have been admitted on the following substantial questions of law:

“(A) Whether the Lower Appellate Court below is right in upholding the claim of the DWI when it was proved that the compromise decree in O.S 236 of 1970 is only for the purposes of avoiding the land ceiling especially when it was established that Govindaraj continued to be in management of the property as the karta of the family?”

(B) Whether the courts below are right in



recognising the decree in O.S 215 of 1985 when the party to the compromise have no exclusive title to the property?

(C) Whether the compromise decree in O.S 299 of 2000 is not fraudulent and mischievous in as much as the parties interested in the property were not made parties to the suit?

(D) Whether the lower appellate court has properly appreciated the provision of Section 17(2)(vi) of the Registration Act while considering the validity of the compromise decree passed in O.S.No.215 of 1985 under which properties are allotted to the plaintiff's father for the first time without any pre-existing right?

(E) Whether the lower appellate court is right in law in decreeing the suit O.S.No.194 of 2006 by allowing, without appreciating the well settled principles of law laid down by the Hon'ble Apex Court in the decisions reported in 2015(3) SCC 164 and 1995(5) SCC 709 that the allotment of property



under the compromise decree for the first time is compulsorily registrable documents?

(F) Whether the finding and reasoning of the lower appellate court regarding "blending" is sustainable, particularly in the absence of any pleading and cogent evidence for reunion in the year 1986 after the disruption of joint family in the year 1970?

(G) After having held that the joint family properties were divided by metes and bounds under the decree passed in O.S.No.236 of 1970, is it correct on the part of the Lower Appellate Court to held that the parties have blended their properties in the subsequent compromise in O.S.No.215 of 1985?

(H) Whether the Lower Appellate Court is right in law in involving the doctrine of blending, when admittedly no joint family nucleus and no joint family property was in existence as the

division of status has taken place long back and the



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*properties have already been divided by the sharers
by metes and bounds"?*

97. Though these second appeals have been admitted on the above substantial questions of law, the arguments have been advanced by the appellants in all the appeals on grounds giving rise to the following substantial questions. Therefore, this Court has re-framed the substantial questions of law as follows:

a) Whether the compromise decree in O.S.No.236 of 1970 which had been executed only for the purpose of overcoming the provisions of the Land Ceiling Act and to avoid surrendering the surplus land to the Government had not been acted upon?

b) Whether the non-registration of the compromise decree in O.S.No.215 of 1985 would confer any right, title or interest on the first defendant?

c) Whether the decree in O.S.No.236 of 1970 has been fraudulently obtained as the 1st defendant



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has suppressed the fact that he was a minor at the time of instituting the suit?

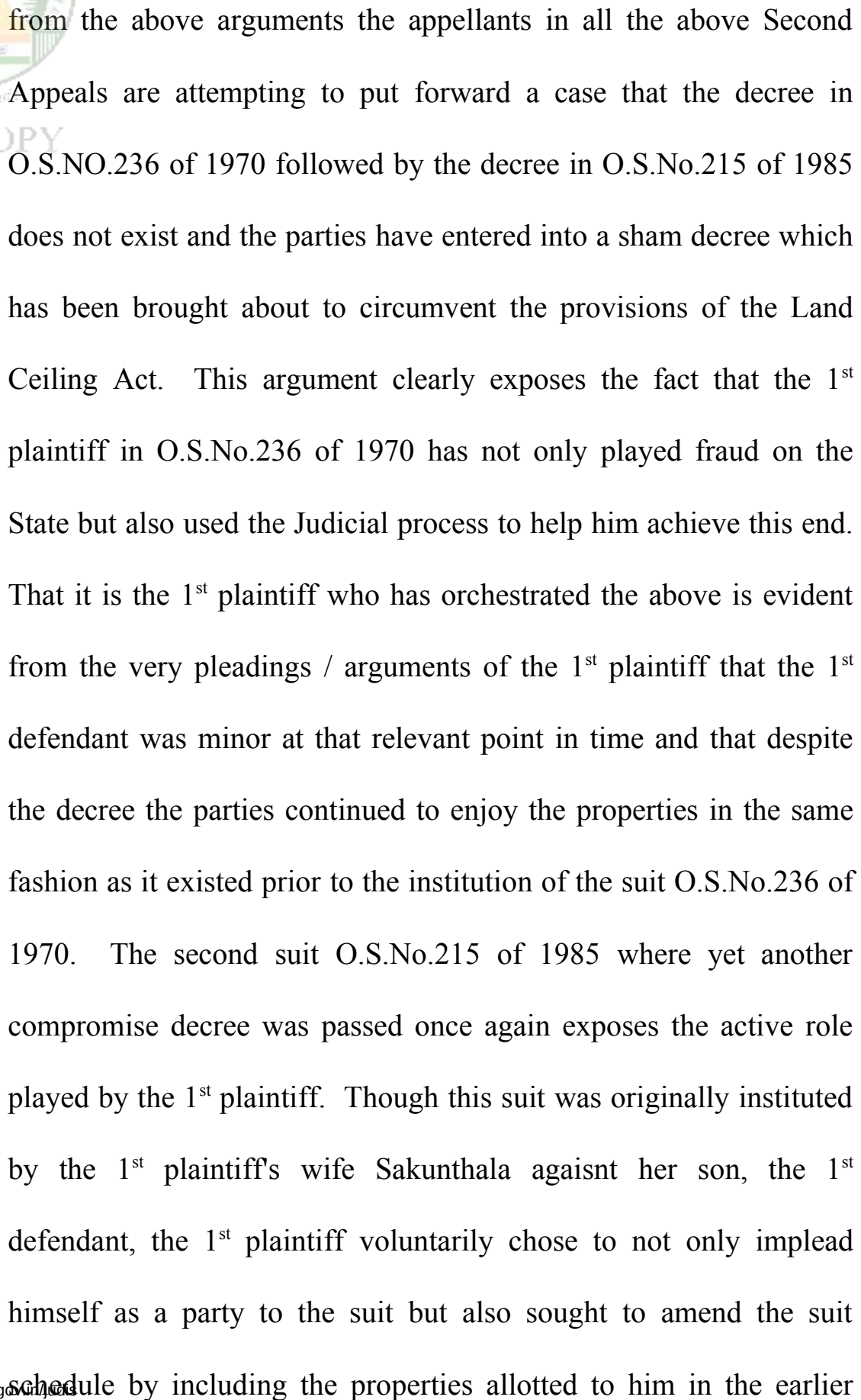
d) Whether the 5th defendant is entitled to be allotted the property under equity?

98. From the pleadings and the evidence on record, it is clear that a suit O.S.No.236 of 1970 had been filed by the first defendant against the first plaintiff for a partition in which the parties had agreed to compromise and resolve the disputes and thereafter, the terms of the compromise had been reduced into writing and a decree came to be passed in terms of the said compromise. According to the first plaintiff, the compromise was effected only to circumvent the provisions of the Tamil Nadu Land Ceiling Act and to avoid surrendering the surplus lands to the Government. The plaintiff would contend that though a compromise had been entered into, he continued to be in possession and enjoyment of the properties. However, the evidence that has been let in by the parties would prove otherwise and the statement false. The records would show that the first plaintiff had twice amended the decree in O.S.No.236 of 1970, one immediately and one 13 years thereafter, i.e. 1970 and



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1983, thereby reiterating and confirming the compromise decree in O.S.No.236 of 1970. Under Exs.B5 to B8, B.34 to B.36 and B.74, the first plaintiff has alienated portions of the property which has been allotted to him under the compromise decree in O.S.No.236 of 1970 and in the sale deed, a reference has been made to the decree in O.S.No.236 of 1970. Not stopping with that, it is also seen that in the affidavit filed to implead himself as a party in O.S.No.215 of 1985, i.e. I.A.No.595 of 1986, Govindaraj has admitted to the partition between himself and his son, the first defendant through the decree of Court in O.S.No.236 of 1970. This admission has been made 15 years after the compromise decree in O.S.No.236 of 1970. Not only has the first plaintiff alienated the properties, but the first defendant has also alienated such of the portions as had been allotted to him, which is evident from Exs.A27, A28, A38 to A41, Exs.B68 and B69. Therefore, it is crystal clear that the decree had been acted upon. Therefore, to now contend that the decree in O.S.No.236 of 1970 has not acted upon is absolutely false. The first defendant also marked Exs.B12 to B24 to show their possession of the properties in question. Having entered into such a compromise and acted upon the same the first plaintiff cannot renege on the same. Therefore





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decree in O.S.No.236 of 1970. The pleading would reflect that the suit O.S.No.215 of 1985 was also instituted to circumvent yet another Ceiling Act that was in the anvil.

99. Now the question that would arise is whether such a person can now try to set the clock back to the position prior to the suit O.S.No.236 of 1970. In other words can he be permitted to raise the defense that a decree to which he is a party and which is brought about to circumvent the law cannot be enforced. Whether the state's failure to proceed with the acquisition of the surplus lands would strengthen the case of the 1st plaintiff particularly when the proceeding had been brought about to deprive the state of the lands held by the 1st plaintiff and his family in excess of the Ceiling limit.

100. A Second Appeal arising out of more or less similar facts had been considered by his Lordship Justice S.S.Subramani in the Judgement reported in **1998 (I) CTC 314 – N.Rajammal (died) and another Vs. P.Maragathammal and 28 others**. This was a case where with a view to escape the provisions of the Tamil Nadu Land Ceiling Act ([Fixation of Ceiling on Land\) Act, 1961](#), and also to



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avoid surrendering surplus lands to the Government, a father had brought about the partition deed between himself and his daughters.

However, despite such a machination, a portion of the partition deed was held to be a void document as it was brought about to defeat the provisions of the Tamil Nadu Land Ceiling Act. The appeal and revision filed by the father, Appasami ended against him. Thereafter, Appasami passed away leaving behind him surviving his daughters. One of his daughters, thereafter filed a suit for partition against her sisters. A contention was raised that the partition deed which had been executed in the year 1970 by the father for the specific purpose of circumventing the Land Ceiling Act had not been acted upon. The defense to this argument was that the plaintiff was estopped from putting forward the contention since she is a party to the document.

101. The learned Judge discussed at length the scope and object of the Act, the relevant provision of the Act. Section 22 of the Act which is extracted below was pressed into service by the defendants therein to contend that the partition effected by void.



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commencement of this Act. but before the notified date, any person has transferred any land held by him by sale, gift (other than gift made in contemplation of death), exchange, surrender, settlement or in any other manner whatsoever except by bequest (or has effected a partition of his holding or part thereof the Authorized Officer within those jurisdiction such land, holding, or the major part thereof is situated may, after notice to such person and other persons affected by such transfer or partition and after such enquiry as he thinks fit to make, declare the transfer or partition to be void if he finds that the transfer or partition, as the case may be, defeats any provisions of this Act".

102. The learned Judge had therefore framed a question for consideration as follows:

“Whether the partition deed dated 30.9.1970 is void for all purposes, whether it is valid as between the parties to the transaction.

Incidentally, a question may arise as to whether



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*the document is valid only to the extent it defeats
the provisions of the Tamil Nadu Land Ceiling
Act”*

103. The above question therefore called for an interpretation of Section 22. The learned Judge relying on the various Judicial pronouncements relating to interpretation of an enactment as held by the Hon'ble Supreme Court held that as between the transferor and transferee the transaction remains intact. The learned Judge considered the arguments put forward by the learned senior counsel for the appellants that the documents, which was projected as a partition deed, cannot be so construed since the daughter had no pre-existing right to the property and therefore, the document in question is void for all the purposes.

104. In paragraph 28 of his judgment the learned Judge has answered the argument as follows:

*“28. If Ex.A-1 cannot amount to a partition
since the daughters are not co-sharers, and the
ownership is also conferred on them, what is the*



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legal effect of that document. It can only be a gift.

For, a right in praesenti is created. A person who

had no antecedent right is conveyed ownership by

virtue of this document though it may not be a gift

which was validity under [Sec.21-A](#) of the Tamil

Nadu Land Reforms (Fixation of Ceiling on Land)

Act”.

Ultimately, the learned Judge has gone on to state that the plea that the document is a void document can be taken only by the authority and the parties are interse bound by the agreement.

105. Juxtaposing the facts of the above case to the case on hand, Ex.A1 in the above referred case has to be substituted by the compromise decree in O.S.No.236 of 1970. Therefore, applying the ratio laid down in the aforesaid case, the 1st plaintiff in O.S.No.582 of 2001 and the persons claiming under him are clearly bound by the compromise entered into in the suit O.S.No.536 of 2001.

106. The first plaintiff has further pleaded that the first

defendant was a minor at the time of the execution of the



compromise decree and therefore the decree has been obtained by practicing fraud on the Court and on that ground also, the decree is void. A similar plea of fraud had been taken in an earlier judgment of the Bombay High Court reported in **1940 ILR Bom 160 [Shripadgouda Venkangouda Aparanji Vs Govindgouda Narayangouda Aparanji]**. The Division Bench had observed that where there is a pleading of collusive decree, such a decree can be impeached not by the parties to the decree but by innocent persons claiming under them or by strangers. However, the parties who have practice fraud on the court cannot impeach the judgment on the ground that it was collusively procured. The Bench observed as follows:

“That is a clear authority for the proposition that a party to the decree cannot complain of any fraud practised by himself and another upon the Court. In other words, a party could not be permitted to take advantage of his own baseness or permitted to defeat a judgment by showing that in obtaining it he had practiced an imposition on the Court. It



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would indeed be otherwise if one of the parties and the Court were deceived by the fraud of another. In such a case, as I have pointed out, the jurisdiction of the Court to set aside a decree cannot be denied provided the alleged fraud is established, and there is no excessive delay in bringing the action after the discovery of fraud. “

Therefore, the arguments of the first plaintiff that the decree in O.S.No.236 of 1970 has not been acted upon and is tainted by the collusion / fraud cannot be countenanced. That apart if the compromise decree is sought to be questioned on the ground of fraud and that it is not lawful. The same cannot be questioned in a subsequent suit as per the provisions of Order XXIII Rule 3 A of the Code of Civil Procedure. Therefore, the substantial questions of law (a) and (c) as re-framed by this Court is answered against the appellants.

107. The substantial question of law (b) relates to the

registration of the compromise decree passed in O.S.No.215 of



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1985. It is the case of the appellants that the compromise decree in O.S.No.215 of 1985 confers a right in the property for the first time upon the first defendant and therefore, the same has to be necessarily registered and failure to register the same does not cloth with any right to the properties. A reference is made to section 17(2)(vi) of the Registration Act. The same would read as follows:

*“ (vi) any decree or order of a Court 2
[except a decree or order expressed to be made
on a compromise and comprising immovable
property other than that which is the subject-
matter of the suit or proceeding.”*

Therefore, a reading of the provision would show that a property which is not the subject matter of a suit or a proceeding but which is included in the compromise decree would come within the purview of the exception contained in Clause 2 (vi) of Section 17 of the Registration Act. In the case on hand, though O.S.No.215 of 1985 was originally filed only against the first defendant with reference to different set of properties, however the first plaintiff has chosen voluntarily to implead himself in the said suit and also to bring in all the properties that had been allotted to him in the suit



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under the decree in O.S.No.236 of 1970. The compromise had been effected after these properties had been included and the schedule amended to include these properties as the subject matter of the suit. Therefore, the same would not fall within the exception (vi) to sub Section 2 of Section 17 of the Registration Act and does not require registration.

108. The appellants have placed emphasis on the Judgement reported in *1995 (5) SCC 709 – Bhoop Singh Vs. Ram Singh Major and others* in support of their argument that where right, title and interest is created for the first time under the decree or order and the value of the immovable property is over Rs.100/- the same has to be compulsorily registered. That was a case where a declaratory suit was filed and the defendants in the written statement had admitted the plaintiff's claim. On this basis a decree in favour of the plaintiff come to be declared. Thereafter, one of the legal heirs of the plaintiff had filed another suit for partition on the strength of the earlier declaratory suit. A defense taken was that the decree was not registered. The suit was dismissed, confirmed in First Appeal as well as the Second Appeal. This Judgment was challenged before



the Hon'ble Supreme Court. The learned Judges after considering the provisions of Section 17 of the Registration Act had observed as follows:

“13. In other words, the court must enquire whether a document has recorded unqualified and unconditional words of present demise of right, title and interest in the property and included the essential terms of the same; if the document, including a compromise memo, extinguishes the rights of one and seeks to confer right, title or interest in praesenti in favour of the other, relating to immovable property of the value of Rs.100/- and upwards, the document or record or compromise memo shall be compulsorily registered.

17. It would, therefore, be the duty of the court to examine in each case whether the parties have pre-existing right to the immovable property, or whether under the order or decree of the court one party having right, title or interest therein agreed or suffered to extinguish the same and created right, title or interest in

preasenti in immovable property of the value of Rs.100/-



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or upwards in favour of other party for the first time, either by compromise or presented consent. If latter be the position, the document is compulsorily registrable.”

109. Ultimately summarised their finding at paragraph No.18 as follows:

“18. The legal position qua clause (vi) can, on the basis of the aforesaid discussion, be summarised as below :

(1) Compromise decree if bona fide, in the sense that the compromise is not a device to obviate payment of stamp duty and frustrate the law relating to registration, would not require registration. In a converse situation, it would require registration.

(2) If the compromise decree were to create for the first time right, title or interest in immovable property of the value of Rs.100/- or upwards in favour of any party to the suit, the decree or order would require registration.

(3) If the decree were not to attract any of the



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clauses of sub-section (1) of [section 17](#), as was the position in the aforesaid Privy Council and this Court's cases, it is apparent that the decree would not require registration.

(4) If the decree were not to embody the terms of compromise, as was the position in *Lahore case*, benefit from the terms of compromise cannot be derived, even if a suit were to be disposed of because of the compromise in question.

(5) If the property dealt with by the decree be not the "subject matter of the suit or proceeding", clause (vi) of sub-section (2) would not operate, because of the amendment of this clause by Act 21 of 1929, which has its origin in the aforesaid decision of the Privy Council, according to which the original clause would have been attracted, even if it were to encompass property not litigated.

110. In the Judgement in **2008 (13) SCC 102** –

<https://www.mhc.tn.gov.in/jud> **K. Raghunandan and others Vs. Ali Hussain Sabir and others**, the



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Hon'ble Supreme Court was called upon to consider the effect of a decree in respect of the suit passage which was not the subject matter of the suit but which was included in the compromise. The learned Judges considering the provisions of Section 17 of the Registration Act held as follows:

“If a right is created by a compromise decree or is extinguished, it must compulsorily be registered. Clause (vi) is an exception to the exception. If the latter part of Clause (vi) of Sub-section (2) of [Section 17](#) of the Act applies, the first part thereof shall not apply. As in this case not only there exists a dispute with regard to the title of the parties over the passage and the passage, itself, having not found the part of the compromise, we do not find any infirmity in the impugned judgment.”

111. In a more recent Judgement of the Hon'ble Supreme Court reported in **(2020) 10 SCC 250 – Gurcharan Singh and others Vs. Angrez Kaur and Another**, the learned Judges considering Bhoop Singh's case and other Judgements as also the



provisions of Section 17 of the Registration Act held as follows in paragraph no.22:

“Reverting back to the facts of the present case, it is clear that the Suit No. 556 of 21.09.1994 filed by the appellants against Bhajan Singh relates to the suit property described in plaint and decree was passed only with regard to suit property A to D. The decree dated 09.01.1995 was, thus, expressly covered by expression “any decree or order of a Court”. When legislature has specifically excluded applicability of clause (b) and (C) with regard to any decree or order of a Court, applicability of [Section 17\(1\)\(b\)](#) cannot be imported in [Section 17\(2\)\(v\)](#) by any indirect method. We, thus, are of the considered opinion that decree and order dated 09.01.1995 did not require registration and were fully covered by [Section 17\(2\)\(vi\)](#), which contains exclusion from registration as required in [Section 17\(1\)](#). High Court as well as First Appellate Court erred in coming to the conclusion that decree dated 19.01.1995 required registration and due to not



registered is null and void.

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112. Therefore, from an analysis of the above Judgements it is clear that both the comprise decree in O.S.No.236 of 1970 and the compromise decree in O.S.No.215 of 1985 would squarely fall with the exception provided in Section 17 (2) (vi) of the Registration Act as the comprise was entered into only in respect of properties that were the subject matter of the respective suits. Therefore, substantial question of law (b) is also answered against the appellants.

113. Coming to the substantial question of law (d) regarding the counter claim by the 5th defendant. When the property was sold by the first plaintiff to Raghupathi, the first plaintiff no longer had any right to the property as it had already been allotted to the share of the first defendant under the compromise decree in O.S.No.215 of 1985. Consequently, the subsequent sale by the said Raghupathy in favour of the fifth defendant will not grant him any right to the property. Therefore, the judgment of the lower appellate Court rejecting the claim of the 5th defendant has to necessarily be upheld.



Consequently, the substantial question of law (d) is also answered in favour of the respondents. Consequently, the second appeals are dismissed and the judgment and decree of the lower appellate Court is confirmed. There shall be no order as to costs.

11.06.2024

Index : Yes/No
Internet : Yes/No
Speaking Order / Non Speaking Order
kan/srn/shr

To

1.The Principal District Judge,
Tiruppur.

2.The Additional Subordinate Judge,
Tiruppur.



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P.T. ASHA, J,

kan/srn/shr

Pre-Delivery Judgment in
S.A.Nos. 251, 289 & 552 of 2022 &
S.A.No. 100 of 2023

11.06.2024