



S.A.(MD)Nos.424 to 426 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 12.07.2024

PRONOUNCED ON: 13.12.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD)Nos.424 to 426 of 2017

and

C.M.P.(MD)No.8812 of 2017

S.A.(MD)No.424 of 2017:

A.K.Venkatasubramanian : Appellant/Appellant/Plaintiff

Vs.

1.T.Subbulapuram Saliyar Kula Sabha
represented by its Secretary,
V.Perumalsamy.

2.Jakkampatti Saliyar Kula Sabha,
represented by its Secretary,
S.Ganesan. : Respondents/Respondents/Defendants

PRAYER:- Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 19.04.2017 made in A.S.No.15 of 2015, on the file of the Subordinate Court, Theni by confirming the judgment and decree dated 17.12.2014 made in O.S.No.



S.A.(MD)Nos.424 to 426 of 2017

39 of 2013, on the file of the District Munsif cum Judicial Magistrate,
Andipatti.

For Appellant : Mr.R.Suriyanarayanan

For Respondents: Mr.V.Meenakshi Sundaram
for Mr.D.Nallathambi

S.A.(MD)No.425 of 2017:

A.K.Venkatasubramanian :Appellant/Appellant/2nd Defendant

Vs.

1.T.Subbulapuram Saliyar Kula Sabha
represented by its Secretary,
V.Perumalsamy.

2.Jakkampatti Saliyar Kula Sabha,
represented by its Secretary,
S.Ganesan. : Respondents 1 & 2/Respondents 1 & 2/
Plaintiffs

3.A.S.Krishnamoorthy : 3rd Respondent /3rd Respondent /
1st Defendant

4.The Sub Registrar,
Andipatti,
Andipatti Sub Registrar Office,
Theni District.

5.The District Registrar,
Periyakulam District Registrar Office,
Thenkarai South Agraharam Street,
Periyakulam Town,
Theni District.



S.A.(MD)Nos.424 to 426 of 2017

WEB COPY

6.The Tahsildar,
Andipatti Tahsildar Office,
Andipatti,
Theni District.

7.The District Collector,
Theni District Collector Office,
Theni District.

8.Krishnaveni

9.A.J.Balasubramanian (died)

10.Kalaivani

11.A.S.Subramanian

12.A.V.Ramakrishnan

13.Sundari : Respondents 4 to 13/Respondents 4 to 13/
Defendants 5 to 14

14.Lalitha

15.Balavarshini : Respondents

(R.14 and R.15 are brought on
record as LR's of the deceased 9th
respondent vide Court order dated
16.03.2023 made in C.M.P.(MD)
Nos.361, 363 and 364 of 2022)

PRAYER:- Second Appeal filed under Section 100 of the Code of Civil
Procedure against the judgment and decree dated 19.04.2017 made in



S.A.(MD)Nos.424 to 426 of 2017

A.S.No.16 of 2015, on the file of the Subordinate Court, Theni by confirming the judgment and decree dated 17.12.2014 made in O.S.No. 187 of 2012, on the file of the District Munsif cum Judicial Magistrate, Andipatti.

For Appellant : Mr.R.Suriyanarayanan

For Respondents: Mr.V.Meenakshi Sundaram
for Mr.D.Nallathambi

for R.1

: Mr.M.Rajesh

for R.3, R.8, R.10, R.12 and R.13

: No Appearance

for R.2, R.4 to R.7 and R.11

: R.9 – died – steps taken.

S.A.(MD)No.426 of 2017:

A.K.Venkatasubramanian : Appellant/2nd Respondent/
2nd Defendant

Vs.

1.T.Subbulapuram Saliyar Kula Sabha
represented by its Secretary,
V.Perumalsamy.

2.Jakkampatti Saliyar Kula Sabha,
represented by its Secretary,
S.Ganesan.

: Respondents 1 and 2 /Appellants/
Plaintiffs

3.A.S.Krishnamoorthy : 3rd Respondent /1st Respondent /
1st Defendant



S.A.(MD)Nos.424 to 426 of 2017

WEB COPY

4.The Sub Registrar,
Andipatti Sub Registrar Office,
Andipatti, Theni District.

5.The District Registrar,
District Registrar Office,
South Agraharam Street,
Periyakulam Town,
Theni District.

6.The Tahsildar,
Andipatti Tahsildar Office,
Andipatti Town,
Theni District.

7.Government of Tamil Nadu,
represented by its District Collector,
Theni District Collector Office,
Theni District.

8.Krishnaveni

9.A.J.Balasubramanian (died)

10.Kalaivani

11.A.S.Subramanian

12.A.V.Ramakrishnan

13.Sundari : Respondents 4 to 13/Respondents 5 to 14/
Defendants 5 to 14

(Memo presented before the Court
on 16.03.2023 is recorded as 9th respondent
died and there is no need to take steps to
bring his LRs on record as he supported the



S.A.(MD)Nos.424 to 426 of 2017

appellant vide Court order dated
16.03.2023 made in C.M.P.(MD)
Nos.365, 366 and 367 of 2022)

PRAYER:- Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 19.04.2017 made in A.S.No.15 of 2015, on the file of the Subordinate Court, Theni by confirming the judgment and decree dated 17.12.2014 made in O.S.No. 39 of 2013, on the file of the District Munsif cum Judicial Magistrate, Andipatti.

For Appellant : Mr.R.Suriyanarayanan

For Respondents: Mr.V.Meenakshi Sundaram
for Mr.D.Nallathambi
for R.1

: Mr.M.Rajesh
for R.3, R.8, R.10, R.12 and R.13

: No Appearance
for R.2, , R.4 to R.7 and R.11

: R.9 – died – steps taken.

COMMON JUDGMENT

These three Second Appeals are directed against the common judgment and decrees passed in A.S.Nos.15 of 2015, 16 of 2015 and 17 of 2016, dated 19.04.2017, on the file of the Subordinate Court, Theni, which came to be filed challenging the common judgment and decrees



S.A.(MD)Nos.424 to 426 of 2017

passed in O.S.Nos.187 of 2012 and 39 of 2013, dated 17.12.2014, on the file of the District Munsif cum Judicial Magistrate, Andipatti.

O.S.No.187 of 2012:

2. The plaintiffs Saba have filed the suit to declare that the plaint A and B schedule properties are belonging to the plaintiffs and for consequential permanent injunction restraining the defendants therein from in any manner interfering with the plaintiffs' peaceful possession and enjoyment of the suit properties and in case, if the plaintiffs are found to be not in possession, for recovery of possession and for permanent injunction restraining the official defendants from registering any documents alienating “A” and “B” schedule properties by the defendants 1 to 4 and for mandatory injunction directing the seventh respondent to effect patta changes in respect of “A” and “B” schedule properties and to declare that the settlement deed dated 07.06.2005 in respect of “C” schedule properties is null and void and for mandatory injunction directing the fifth respondent to remove the entry with regard to the settlement deed.



S.A.(MD)Nos.424 to 426 of 2017

WEB COPY

O.S.No.39 of 2013:

3. The second defendant in O.S.No.187 of 2012 has filed the above suit against the plaintiffs in O.S.No.187 of 2012 claiming permanent injunction restraining the defendants therein from in any manner interfering with the plaintiffs' peaceful possession and enjoyment of the suit properties.

4. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in the original suit in O.S.No.187 of 2012.

5. The case of the plaintiffs is that one Ramadoss Swamigal was doing spiritual service and also was giving Siddha treatment, that the said Ramadoss Swamigal had purchased “A” schedule properties with the help of his self-acquisition vide four sale deeds dated 25.02.1924, 18.07.1924, 20.10.1925, 31.08.1927 and obtained patta No.2016, that the lands in S.No.2405/1 and 2405/2 in “B” schedule properties came to be owned originally by one A.V.R.Subramanian Chettiyar, father of the defendants 1, 3 and 4, that the said Subramanian Chettiyar had given his



S.A.(MD)Nos.424 to 426 of 2017

WEB COPY

lands in S.Nos.2405/1 and 2405/2 through oral sale in favour of Ramadoss Swamigal in the year 1928 and also handed over the possession of the said properties and since then Ramadoss Swamigal had been in possession and enjoyment of the said properties along with other properties in “B” schedule, that the said Ramadoss Swamigal executed a sale deed dated 29.12.1944 in favour of the plaintiffs Saba in respect of “A” and “B” Schedule properties, that subsequently Ramadoss Swamigal died and his samathi is in S.No.2406/4 and that the plaintiffs Saba have been doing all rituals and guru pooja is being performed in the samathi of Ramadoss Swamigal continuously.

6. It is the further case of the plaintiffs that the first defendant by alleging that the properties came to be owned by his father A.V.R.Subramanian Chettiyar ancestrally, had executed a settlement deed in favour of his son – second defendant on 07.06.2005, that since the first defendant is not having any right, title or interest over the property, the second defendant cannot get any right through the settlement deed and as such, settlement deed dated 07.06.2005 is legally invalid, that the second defendant with the help of the said settlement deed and with the help of police has been attempting to grab the suit properties and such an attempt



S.A.(MD)Nos.424 to 426 of 2017

WEB COPY

was made on 01.12.2012 and that therefore, the plaintiffs were constrained to file the present suit to claim the reliefs of declaration, permanent and mandatory injunction.

7. The defence of the second defendant is that his grandfather has never made any oral sale in the year 1925 in favour of Ramadoss Samy and he never handed over the suit properties to him, that the alleged sale deed dated 29.12.1944 executed in favour of the plaintiffs by Ramadoss Swamigal is invalid as the said Ramadoss Swamigal was not the absolute owner of the suit properties or having any right or title so as to execute the sale deed, that the second defendant is the absolute owner of the suit properties by virtue of a registered gift settlement deed dated 07.06.2005 and since then he has been in possession and enjoyment of the same, that the suit properties originally belonged to the second defendant's grandfather A.V.R.Subramanian Chettiyar and he was in possession and enjoyment of the same till his life time, that after the life time of Subramanian Chettiyar, the suit properties was devolved on his three sons namely A.S.Krishnamoorthy, A.S.Jeganathan and A.S.Viswanathan, that the first defendant's brothers namely namely A.S.Jeganathan and A.S.Viswanathan had died leaving behind their sons namely



S.A.(MD)Nos.424 to 426 of 2017

WEB COPY

A.V.Subramaniyan, A.V.Ramakrishnan and A.J.Balasubramaniyan, that the second defendant's father and his cousins became the joint owners of the suit properties, that there was an oral partition among the family members and in the said oral partition, the suit properties came to be allotted to the father of the second defendant and thereafter the first defendant's father has executed a gift settlement deed to the knowledge of the other owners, that the revenue records stand in the name of the first defendant and his brother jointly, that the plaintiffs are strangers, that since the plaintiffs have been claiming right over the suit properties and disturbed the possession and enjoyment of the second defendant's predecessors, the second defendant's paternal uncle A.S.Viswanathan initiated civil proceedings before the revenue authority including the proceedings under Section 144 Cr.P.C. before the Executive Magistrate, Periyakulam and in all the previous proceedings it were held that the second defendant's grandfather alone in possession of the property and directed the plaintiffs to approach the civil Court, if at all they are having right over the suit properties, that the plaintiffs have not taken any steps to file the suit within time, but filed the present suit in O.S.No.187 of 2012 which is hopelessly barred by limitation, that the plaintiffs have never in possession and enjoyment of the property and their attempt to



S.A.(MD)Nos.424 to 426 of 2017

enter into the suit properties is illegal and that therefore, the suit is liable to be dismissed.

8. The second defendant in O.S.No.187 of 2012 has filed the second suit in O.S.No.39 of 2013 by raising more or less same pleadings raised in the written statement filed to the suit in O.S.No.187 of 2012. Similarly the plaintiffs in O.S.No.187 of 2012 have filed written statement more or less raising the same pleadings in the written statement filed in the suit in O.S.No.39 of 2013. The learned trial Judge, upon perusing the pleadings of both parties, has framed the following issues:

O.S.No.187 of 2012:

(1) Whether the suit “B” schedule properties have been orally sold to Ramadoss Swamigal by A.V.R.Subramanian Chettiyar?

(2) Whether Ramadoss Sawmigal vide sale deed dated 29.12.1944 sold the suit properties to the plaintiffs Sabas and handed over the possession of the same?

(3) Whether the plaintiffs are entitled to get the reliefs of declaration and consequential permanent injunction in respect of the suit properties?



S.A.(MD)Nos.424 to 426 of 2017

WEB COPY

(4) Whether the plaintiffs are entitled to get mandatory injunction not to register any documents alienating the suit properties?

(5) Whether the plaintiffs are entitled to get the mandatory injunction as claimed?

(6) Whether the plaintiffs are in possession and enjoyment of the suit properties?

(7) To what other reliefs, the parties are entitled to?

Additional Issue:

(1) Whether the suit is barred by limitation?

O.S.No.39 of 2013:

(1) Whether the gift settlement deed dated 07.06.2005 is a valid document?

(2) Whether the plaintiff is in possession of the suit properties?

(3) Whether the suit is bad for non-joinder of necessary parties?

(4) Whether the plaintiff is entitled to the decree of permanent injunction as prayed?

(5) What other reliefs?

Additional Issue:

(1) Whether the suit is bad for non claiming of declaration reliefs?



S.A.(MD)Nos.424 to 426 of 2017

WEB COPY

9. A joint trial of both suits was ordered and the evidence was ordered to be recorded in O.S.No.187 of 2012. During trial, the plaintiffs examined four witnesses as P.W.1 to P.W.4 and exhibited 13 documents as Exs.A.1 to A.13. The second defendant examined himself as D.W.1 and exhibited 13 documents as Exs.B.1 to B.13. Seven witness documents came to be exhibited as Exs.W.1 to W.7. The learned trial Judge, upon considering the pleadings and evidence oral and documentary and on hearing the arguments of both sides, has passed a common judgment granting declaratory relief that the plaintiffs' Sabha is the owner of 20 cents in S.No.2406/1 in “A” schedule and 49 cents in S.No.2407A/1 and eastern 60 cents out of 1.60 Acres in S.No.2406/2 and also declared that the settlement deed dated 07.06.2005 is legally invalid and dismissed the suit with regard to the other reliefs. The learned trial Judge dismissed the suit in O.S.No.39 of 2013. The second defendant has preferred an appeal in A.S.No.15 of 2015 challenging the dismissal of the suit in O.S.No.39 of 2013 and also filed an appeal in A.S.No.16 of 2015 challenging the reliefs granted in favour of the plaintiffs in O.S.No.187 of 2012. The plaintiffs in O.S.No.187 of 2012 have filed an appeal in A.S.No.17 of 2016 challenging the dismissal of the suit with regard to some reliefs.



S.A.(MD)Nos.424 to 426 of 2017

WEB COPY

10. The learned Subordinate Judge, Theni, upon considering the materials available on record and on hearing the arguments of both sides, has passed the impugned common judgment dated 19.04.2017, wherein the appeal in A.S.No.15 of 2015 was dismissed and also dismissed the appeal in A.S.No.16 of 2015, but allowed the appeal in A.S.No.17 of 2016 and thereby modifying the judgment and decree passed in O.S.No. 187 of 2012 by granting the reliefs of declaration and permanent injunction in respect of “A” and “B” schedule suit properties. Challenging the above, the second defendant has preferred the present three Second Appeals.

11. At the time of admission, the following Substantial Questions of Law came to be framed:

In S.A.(MD)No.424 of 2017:

“ 1. Is it correct in holding that the plaintiff has not proved his title vide the gift deed, dated 07.06.2005 and hence cannot maintain the suit for bare injunction, when the possession and enjoyment of the suit properties on the date of suit is criteria for the suit for permanent injunction?



S.A.(MD)Nos.424 to 426 of 2017

WEB COPY

2. Whether the plaintiff, if not proved his absolute right, as a co-owner can maintain a suit for injunction without adding others to protect the suit properties from strangers, the respondents?

3. Whether the plaintiff has to seek the relief of declaration when the respondents seek the same relief earlier in O.S.No.187 of 2012 and hence Judgment and Decree of the Courts below are unsustainable in law?:

In S.A.(MD)Nos.425 and 426 of 2017:

“1. Whether the suit is barred by limitation as the cause of action started originally even in the year 1989, when the patta proceeding is over with a direction to the plaintiff to approach the civil Court?

2. Whether the suit for declaration and injunction is maintainable instead of asking recovery of possession, when the plaintiff is out of possession as held in the earlier patta proceeding?

3. Whether the first Appellate Court is correct in holding that the possession follows title, when admittedly the suit properties is the agricultural lands and patta and other revenue records in the name of the defendant?”.



S.A.(MD)Nos.424 to 426 of 2017

WEB COPY

12. At the outset, for better appreciation, it is necessary to refer the properties shown in both the suits:

In O.S.No.187 of 2012:

“A” Schedule:

In Andipatti:

1. S.No.2406/1 - 20 cents;
2. S.No.2406/4 - 70 cents;
- 3.S.No.2406/5 - 63 cents;

“B” Schedule:

1. S.No.2405/1 - 62 cents;
2. S.No.2405/2 - 60 cents;
3. S.No.2407A/1 - 49 cents;
4. S.No.2404 - Eastern 60 cents out of 1 Acre 60 cents;

“C” schedule:

1. S.No.2407A/2 - 14 cents;
2. S.No.2408A/2 - 7 ½ cents;
3. S.No.2404/2 - 68 cents;
4. S.No.2405/1 - 62 cents;
5. S.No.2405/2 - 24 cents;
6. S.No.2406/1 - 20 cents;



S.A.(MD)Nos.424 to 426 of 2017

7. S.No.2406/2 - 1 cent;
8. S.No.2406/4 - 69 cents;
9. S.No.2406/5 -;63 cents;
- 10.S.No.2406/6 - 7 ½ cents
- 11.S.No.2407/A1 - 50 cents;

In O.S.No.39 of 2013:

In Andipatti:

1. S.No.2404/2 - 60 cents;
2. S.No.2405/1 - 62 cents;
3. S.No.2405/2 - 60 cents;
4. S.No.2406/1 - 20 cents;
5. S.No.2406/2 - 50 cents;
6. S.No.2406/4 - 70 cents;
7. S.No.2406/5 - 63 cents;
8. S.No.2406/6 - 7 ½ cents;
9. S.No.2407/A1 - 49 cents;
- 10.S.No.2407/A2 - 15 cents;
- 11.S.No.2407/BA2 – 3 ½ cents;



S.A.(MD)Nos.424 to 426 of 2017

WEB COPY

13. As already pointed out, the case of the plaintiffs is that Ramadoss Swamigal had purchased “A” schedule properties through four sale deeds under Exs.B.2 to B.5. It is their further case that S.Nos.2405/1 and 2405/2 were sold orally in favour of Ramadoss Swamigal by A.V.R.Subramanian Chettiyar in the year 1928 and since then, the said Ramadoss Swamigal had been in possession and enjoyment of the entire “B” schedule properties. The second defendant has claimed ownership over the suit properties shown in O.S.No.39 of 2013 and whereas the plaintiffs in O.S.No.187 of 2012 have shown the properties alleged to have been settled in favour of the second defendant vide settlement deed dated 07.06.2005 in their “C” schedule.

14. The learned Counsel for the appellant would submit that in Ex.A.1 sale deed, it is mentioned that the lands in S.No.2405/1 – 62 cents and the lands in S.No.2405/2 – 60 cents were sold orally to the vendor Ramadoss Swamigal, that as per Section 54 of the Transfer of Property Act, any property of the value of Rs.100/- and upwards has to be sold only through registered document, that the first respondent has to show that the suit properties were under the value of less than Rs.100/- so as to claim oral sale, but absolutely there is no pleadings and proof relates to



S.A.(MD)Nos.424 to 426 of 2017

the value of the said two documents, that the said Ramadoss Swamigal purchased the property under Exs.A.2 to A.5 during the period between 1924 and 1927 and he executed a sale deed under Ex.A.1 after 20 years, that the first appellate Court on the premises and conjectures by comparing the values of some other properties in Ex.A.1 without any evidence and materials came to a wrong conclusion that the value should have been below Rs.100/- and accepted the oral sale as contended by the first respondent, though there is no pleadings or evidence for the same and that therefore, the oral sale alleged by the plaintiffs cannot be taken as legally valid and as such, the plaintiffs are not entitled to claim any right over the above referred two items of properties shown in “B” schedule. To put it in short, the main contention of the appellant/second defendant is that the oral sale pleaded in the plaint in O.S.No.187 of 2012 in favour of Ramadoss Swamigal by A.V.R.Subramanian Chettiyar has no validity in the eye of law.

15. The learned Counsel for the respondents would submit that two survey numbers measuring 62 cents and 60 cents respectively are traced to oral sale by A.V.R.Subramanian Chettiyar to Ramadoss Swamigal and to confirm this oral sale, there is a documentary evidence on record and



S.A.(MD)Nos.424 to 426 of 2017

that Ex.X.4 which particularly shows the FMB sketch of S.Nos.2405/1 and 2405/2 contiguous to S.Nos.2404 and 2406.

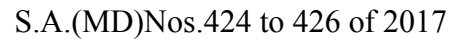
16. It is not in dispute that the land in S.Nos.2405/1 and 2405/2 originally came to be owned by A.V.R.Subramanian Chettiyar, but according to the plaintiffs, the same were orally sold to Ramadoss Swamigal. The first appellate Court, by referring to the value of the properties given in Exs.A.2 to A.5 which are all less than Rs.50/- has proceeded to hold that the properties orally sold in the year 1928 would also be under Rs.100/-. It is pertinent to note that Ramasamy Swamigal in his sale deed under Ex.A.1, dated 29.12.1944, has specifically referred that the said two survey numbers namely S.Nos.2405/1 and 2405/2 were sold to him orally by A.V.R.Subramaniyan Chettiyar. Moreover, as rightly observed by the learned appellate Judge, it is evident from Ex.A.12 that Rajalakshmi Ammal has raised objection to give patta in respect of S.Nos.2405/1 and 2405/2 in favour of the plaintiffs Saba on the ground that the lands were given only for the benefit of Ramadoss Swamigal Trust and not with intention to sell the said properties and considering the above objections raised by the said Rajalakshmi Ammal, it can easily be inferred that she had admitted oral sale made by



S.A.(MD)Nos.424 to 426 of 2017

A.V.R.Subramanian Chettiyar in favour of Ramadoss Swamigal. As rightly observed by the first appellate Judge, the defendants have not produced any document to show that the said properties were given only for the usage of the Trust. As rightly contended by the learned Counsel for the respondents, though the second defendant has alleged that the value of the said two survey lands was more than Rs.100/-, he has not produced any iota of evidence to substantiate the same. Considering the above, the finding of the first appellate Court that the plaintiffs had necessary title to the lands in S.Nos.2405/1 and 2405/2 cannot be found fault with.

17. The learned Counsel for the appellant would further contend that there are total discrepancies relates to the extent of the land in several survey numbers in Exs.A.2 to A.5 and Ex.A.1. Ex.A.2 covers the land in S.No.2406/1 – 71 cents, S.No.2406/3 – 21 cents and S.No. 2406/4-18 cents, but Ex.A.1 contains S.No.2406/4 – 70 cents instead of 18 cents, that Ex.A.3 coveres the land in S.No.2406/2 – 80 cents, but it is not in Ex.A.1, that Ex.A.4 covers S.No.2407 measuring 90 cents, but in Ex.A.1, it is 49 cents in S.No.2407A/1, that Ex.A.5 covers S.No.2404 measuring 60 cents, but in Ex.A.1 it is 49 cents in S.No.2407A/1, that the



18. The learned Counsel would further submit that in a suit for declaration and injunction, the plaintiff has to prove his case on its own merits and should not take the weakness of the case of the defendant, that Ramadoss Swamigal – vendor of the plaintiffs have claimed right and title over the lands under Exs.A.2 and A.5, but the same were all not reflected in Ex.A.1, on the basis of which, the plaintiffs have claimed the reliefs of declaration and injunction.

19. The learned Counsel for the respondents / plaintiffs would submit that Ramadoss Swamigal under Ex.A.2 derived title in respect of



S.A.(MD)Nos.424 to 426 of 2017

S.No.2406/1 – 71 cents, S.No.2406/3 – 21 cents and S.No.2406/4 – 18 cents, totalling 1.10 Acres, that the said Ramadoss Swamigal derived title in respect of S.No.2406/2 – 18 cents under Ex.A.3, that as per Ex.A.4, Ramadoss Swamigal got title in respect of 99 cents in S.No.2407 and eastern side 60 cents out of 1.60 Acres in S.No.2404 under Ex.A.4, that S.No.2406 was subsequently sub-divided into 6 sub divisions, but the same were all not taken note of by the trial Court and that the plaintiffs have rightly traced their title through Exs.A.1 to A.7 and Exs.X.4 and X.6.

20. It is pertinent to note that under Ex.A.1, Ramadoss Swamigal sold 20 cents in S.No.2406/1, 70 cents in S.No.2406/4 and 63 cents in S.No.2406/5, but admittedly Ramadoss Swamigal purchased 70 cents in S.No.2406/1, 21 cents in S.No.2406/3 and 18 cents in S.No.2406/4 under Ex.A.2 and under Ex.A.3, he purchased 80 cents in S.No.2406/2. It is not in dispute that S.No.2406 was sub-divided as 6 sub divisions and are in S.Nos.2406/1 – 20 cents, 2406/2 - 12 cents, 2406/3 – 18 ½ cents, 2406/4 – 69 cents, 2406/5 – 63 cents and 2406/6 – 7 ½ cents totalling 1.90 Acres. As rightly observed by the first appellate Judge, when Ramadoss Swamigal has purchased land in S.No.2406 under Exs.A.2 and

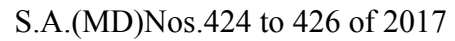


S.A.(MD)Nos.424 to 426 of 2017

WEB COPY

A.3, there were only four sub divisions in the said period, but during the period between 1924-1944, there were six sub divisions. As rightly pointed out by the learned Counsel for the plaintiffs, though Ramadoss Swamigal has purchased 1.90 Acres in S.No.2406 under Exs.A.2 and A.3, he sold 1.53 Acres under Ex.A.1 to the plaintiffs. As rightly observed by the learned appellate Judge, it is evident from Ex.X.3 that the total extent of six sub divisions in S.No.2406 shown as 72.5 Ares. Just because there were subsequent sub divisions and consequent changes in the extent of sub divisions, it cannot be stated that there are total discrepancies in the entire extent. Considering the above, as rightly held by the first appellate Court, the finding of the trial Court with regard to S.Nos.2406/4 and 2406/5 cannot be sustained.

21. It is pertinent to note that the appellant/second defendant has not produced any title deeds to substantiate his claim, except Ex.B.1 settlement deed, but whereas the plaintiffs have produced their sale deed of the year 1944 under Ex.A.1 and the parent title deeds under Exs.A.2 to A.5. It is settled law that revenue records does not confer title and that the entries in the revenue papers, by no stretch of imagination, can form basis for declaration of title in favour of a particular party. It is well



22. It is pertinent to note that according to the plaintiffs, there were Madams in the suit properties and more importantly, samadhi of dross Swamigal is in the suit properties and that the plaintiffs Sabas been conducting all rituals and guru poojs. The second defendant not specifically disputed the above factum. Considering the factum ownership proved by the plaintiffs, the learned appellate Judge has y come to a decision that the plaintiffs are in possession and ment of the suit properties.



S.A.(MD)Nos.424 to 426 of 2017

WEB COPY

23. Now turning to the technical plea raised by the second respondent that the suit is barred by limitation, it is the case of the second defendant that there were dispute and proceedings between the parties before the revenue authorities since 1944, that the revenue authorities have directed the plaintiffs to approach the competent civil Court, but the plaintiffs have filed the above suit only in the year 2012 and as such, the suit is hopelessly barred by limitation.

24. A mere fact that the revenue Court directed the plaintiffs to approach the civil Court cannot by itself considered as ground to start the period of limitation. As already pointed out, the first defendant has executed the settlement deed in favour of the second defendant on 07.06.2005 and according to the plaintiffs, after coming to know about the settlement deed in 2012, they were constrained to file the above suit.

25. The Hon'ble Supreme Court recently in the case of ***N.Thajudeen Vs. Tamil Nadu Khadi and Village Industries Board*** reported in ***2024 Live Law SC 839***, has observed that in a suit for declaration of title, a further relief is sought, limitation period would be governed by the Article governing the suit for such further relief. The



S.A.(MD)Nos.424 to 426 of 2017

WEB COPY

Hon'ble Apex Court has further held that a suit for a declaration of title to immovable property would not be barred so long as the right to such a property continues and subsists and when such right continues to subsist, the relief for declaration would be a continuing right and there would be no limitation for such a suit.

26. In the case on hand, the plaintiffs have claimed the relief of declaration along with consequential permanent injunction in respect of “A” schedule properties and the relief of declaration and consequential permanent injunction or in alternative for possession in respect of “B” schedule properties. As rightly contended by the learned Counsel for the plaintiffs, the suit which came to be filed in 2012 is within time. Hence, the finding of the first appellate Court with regard to the limitation cannot be found fault with.

27. Regarding the appeal in A.S.No.15 of 2017, it is the case of the second defendant that the suit properties came to be owned by his grandfather A.V.R.Subramanian Chettiar ancestrally, that after his death, the first defendant and the sons of his brother have entered into a oral



S.A.(MD)Nos.424 to 426 of 2017

partition and in that oral partition, the suit properties came to be allotted to the share of the first defendant and that subsequently he has executed a settlement deed in respect of the suit properties in favour of the second defendant under Ex.B.1.

28. As already pointed out, the plaintiffs have claimed that two survey numbers in S.Nos.2405/1 and 2405/2 were sold orally by A.V.R.Subramanian Chettiyar and not the other properties and that the other properties came to be purchased by Ramadoss Swamigal. Admittedly, the second defendant has not produced any title deeds to show that the other survey numbers were owned by A.V.R.Subramanian Chettiyar ancestrally or personally. Though the second defendant has alleged that there was oral partition between his father and his cousins, he has not produced any iota of evidence to substantiate the oral partition alleged by him and that the suit properties came to be allotted to the share of his father.

29. As rightly observed by the learned first appellate Judge in Ex.B.1 settlement deed itself, there was reference to the partition agreement alleged to have been entered into between the parties, but the



S.A.(MD)Nos.424 to 426 of 2017

same was not produced before the Court. There is absolutely no evidence to show that there was a oral partition and the same was acted upon by the parties therein. As rightly observed by the Courts below, since the second defendant has miserably failed to prove that the suit properties came to be owned by his father, the question of getting the said properties through Ex.B.1 does not arise at all.

30. Considering the above, the findings of the Court below with regard to the second defendant's claim over the suit properties, cannot be found fault with and this Court is in its entire agreement with the same. Hence the above Substantial Questions of Law are decided against the appellant/second defendant and in favour of the respondents/plaintiffs. Consequently, this Court is of the view that the Second Appeals are liable to be dismissed. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own cost.

31. In the result, all the Second Appeals are dismissed, confirming the common judgment and decrees passed in A.S.Nos.15 of 2015, 16 of 2015 and 17 of 2016, dated 19.04.2017, on the file of the Subordinate



S.A.(MD)Nos.424 to 426 of 2017

Court, Theni, The parties are directed to bear their own costs.

WEB COPY

13 .12.2024

NCC : Yes:No
Index : Yes : No
Internet : Yes : No

SSL

To

- 1.The Subordinate Court, Theni.
2. The District Munsif cum Judicial Magistrate, Andipatti.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.(MD)Nos.424 to 426 of 2017

K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

S.A.(MD)Nos.424 to 426 of 2017

13.12.2024