



S.A.(MD)Nos.571 & 600 of 2007

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved on : 13.08.2024

Judgment Delivered on: 23.08.2024

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.(MD)No.571 of 2007 &
M.P.(MD)No.1 of 2007 & 1 of 2011 and
S.A.(MD)No.600 of 2007 &
M.P.(MD)No.2 of 2007, 2 of 2013 & 1 of 2011

S.A.(MD)No.571 of 2007:

Thirumeni alias Packiyawathi

... appellant/appellant/3rd defendant
Vs.

- 1.Sivasubramanian
- 2.Pappathiammal @ Pappu Ammal (died)
- 3.Arunachala Thevar (died)
- 4.Kasiviswanathan
- 5.Sakthivel Chettiar (died)
- 6.Mirunaliniammal (died)
- 7.Thulasidasan Nayar (died)
- 8.Chandra Leela Brownin
- 9.Velaiya
- 10.Esakki (died)
- 11.Sivasubramanian
- 12.Balasubramanian
- 13.Petchimuthu (died)
- 14.Ayyadurai (died)
- 15.Mayandi Thevar (died)
- 16.Shanmuga Thevar (died)



S.A.(MD)Nos.571 & 600 of 2007

- 17.Renganathan (died)
18.Chitrai
19.Paramasivan Chettiyar (died)
20.Madasamy (died)
21.Murugan
22.Thankapandi
23.Maruthanayagam
24.Mookammal
25.Sivasubramanian alias Selvam (died)
26.Venkat
27.Murugan
28.Kannan
29.Vanamamalai
30.Muthukrishnan
31.Selvakumar
32.Sivagnanammal (died)
33.Avudaithai
34.Subbukutti @ Subbammal
35.Shanmugavel
36.Murugan
37.Velammal (died)
38.Thangaraj Nadar (died)
39.Vasigara Thilagar

(Respondents 5, 20 to 22 and 33 are exparte in the lower Court and respondents 8 to 19, 24 to 29 are exonerated in the lower Court notice to the above respondents are dispensed with)

- 40.Pushpam (died)
[R40 died and her LRs R41 & R42 already on record]
41.Sulochana
42.Chitra
(R40 to R42 are brought on record as LRs of the deceased R10)
43.C.Muthaiah
44.C.Balakrishnan
45.Ariyammal



S.A.(MD)Nos.571 & 600 of 2007

46.Lakshmi

(R43 to R46 are brought on record as LR's of the deceased R32)

47.Rajeshwari

48.Jeyakanchanamurugeswari

49.Amuthavasukidevi

50.Jeyalakshmi

51.Puveneshwari

52.Venkatasubramanian (died)

53.Karthikeyan

54.Ezhilarasi

(R47 to R54 are brought on record as LR's of the deceased R38)

55.Sanmugavel

56.Periya Raja

57.Muthulakshmi

58.Suvarana Sundari

(R55 to R58 are brought on record as LR's of the deceased R37)

59.Pandeshwari

60.Asmithajeyajothi

61.Minor Amithajeyajothi

(rep. through her Natural Guardian and mother Pandeshwari, R59)

... Respondents/Respondents/Respondents

[R59 to R61 are brought on record as LR's of the deceased R52]

[Memo Dt.25.04.2023 in USR No.14467 is recorded as R10, 32, 38, 37 & 52 died and their Lrs brought on records as per the order of this Court dated 24.04.2023 made in the second appeals]

[R2 died and her LR's R9 & R10 already on record]

[R40 died and her LR's R41 & R42 already on record]

[R2, 3, 5, 6, 7, 13, 14, 15, 16, 17, 19, 20 & 40 died and no steps need be taken]

[R8 and 18 exonerated before the 1st Appellate Court]



S.A.(MD)Nos.571 & 600 of 2007

PRAYER: The above Second Appeal is filed under Section 100 C.P.C. against the judgment and decree dated 13.12.2005 and made in A.S.No.194 of 2005, on the file of Principal Sub Court, Tirunelveli, confirming the judgment and decree dated 30.12.2004 in O.S.No.708 of 1985, on the file of I Additional District Munsif, Tirunelveli.

For Appellants : Mr.H.Lakshmishankar
For Respondents : Mr.R.Viduthalai, Senior Counsel for
Mr.T.Selvan (R1 & R4)
Mr.K.Esakki (R9 & R11)
Mr.A.Arumugam (R23)
Mr.S.Yasar Arapath (R48 to R50, 53 & 54)
Mr.J.Bharathan (R39)
Mr.P.R.Prithiviraj (R44 to R46)
Mr.S.Annal Ranjani (R21, 22 & R55)
Mr.R.J.Karthick (for R36)
No appearance for 12, 24, 26 to 31
33 to 35, 41 to 43, 47, 51, 56 to 61
R2, R3, R5 to R7, R10, R13 to R17, R19, R20-
R32, R37, R38, R40 & R52 – Died
RR8, 18 exonerated

S.A.(MD)No.600 of 2007:

S.Marudhanayagam

... Appellant

Vs.

1.K.Sivasubramanian
2.Pappathiammal @ Pappu Ammal
3.Arunachala Thevar
4.Kasiviswanathan
(Respondents 2 to 4 are represented by
Power Agent first respondent herein)
5.Thirumeni alias Packiyawathi
6.Sakthivel Chettiar
7.Mirunaliniammal



S.A.(MD)Nos.571 & 600 of 2007

- 8.Thulasidasan Nair
- 9.Chandra Leela Brownin
- 10.Velaiya
- 11.Esakki (died)
- 12.Sivasubramanian
- 13.Balasubramanian
- 14.Petchimuthu
- 15.Ayyadurai
- 16.Mayandi Thevar
- 17.Shanmuga Thevar
- 18.Renganathan
- 19.Chitrai
- 20.Paramasivan Chettiar
- 21.Madasamy
- 22.Murugan
- 23.Thanikapandi
- 24.Sivasubramanian alias Selvam
- 25.Venkat
- 26.Murugan
- 27.Kannan
- 28.Vanamamalai
- 29.Muthukrishnan
- 30.Selvakumar
- 31.Sivagnanammal (died)
- 32.Avudaitthai
- 33.Subbukutti @ Subbammal
- 34.Shanmugavel
- 35.Murugan
- 36.Velammal (died)
- 37.Thangaraj Nadar (died)
- 38.Vasigara Thilagar
- 39.Sulochana
- 40.Chithra
- [R39 & R40 are brought on record as LRs of deceased R11]
- 41.C.Muthaiah
- 42.C.Balakrishnan
- 43.C.Ariyamman



S.A.(MD)Nos.571 & 600 of 2007

44.Lakshmi

[R41 to R44 are brought on record as LR of deceased R31]

45.Shanmugavel

46.Periya Raja

47.Muthu Lakshmi

48.Suvarna Sundari

[R45 to R48 are brought on record as LR of deceased 36]

49.Rajeshwari

50.JeyaKanchana @ Murugeswari

51.Amutha Vasukidevi

52.Jeyalakshmi

53.Puveneshwari

54.Venkatasubramanian (died)

[R49 to R54 are brought on record as LR of deceased R37]

55.Pandeshwari

56.Asmitha Jeyajothi

57.Minor Amitha Jeyajothi

58.Karthikeyan

59.Ezhilarasi

... Respondents

[R55 to R59 are brought on record as LR of deceased R54]

[Respondents 6, 9, 15, 19, 20, 24 to 28
are exonerated in the lower Court and
respondents 7, 8, 12, 21, 22, 23, 32, 37, 38 are
set exparte in the lower Court, hence, notice to
the above respondents are dispensed with]

[Memo dated 20.04.2023 in USR No.13800 is recorded
as R11, 31, 36, 37 & 54 died and their LR are brought
on record vide order dated 24.04.2023]

PRAYER: The above Second Appeal is filed under Section 100 C.P.C. against the judgment and decree dated 13.12.2005 and made in A.S.No.75 of 2005, on the file of Principal Sub Court, Tirunelveli, confirming the judgment and decree dated 30.12.2004 in O.S.No.708 of 1985, on the file of I Additional District Munsif, Tirunelveli.

For Appellants : Mr.G.Prabhu Rajadurai for
Mr.Raja Karthikeyan



S.A.(MD)Nos.571 & 600 of 2007

For Respondents : Mr.R.Viduthalai Senior Counsel for
Mr.T.Selvan (R1 to R4, R10, R12 & R19)
Mr.D.Nallathambi (R13 & R14)
Mr.S.Kumar (R15)
Mr.S.Annal Ranjani (R22, R23, R45 to R48)
Mr.S.Kadarkarai (R29 & R30)
Mr.T.R.Jeyapalam (R38)
Mr.S.Sundarapandian (R41)
Mr.Yasar Arapath (R50 to R52, R58 & R59)
Mr.P.R.Prithiviraj (R42 to R44)
Mr.R.J.Karthick (R35)
No appearance for RR5, 18, 25 to 28, 32 to 34,
38, 39, 40, 49, 53, 55 to 57.
RR11, 31, 36, 37 & 54- Died
RR7, 8, 12, 21, 32, 37 & 38- Dispensed with

COMMON JUDGMENT

Second Appeal (MD) No.571 of 2007 is filed as against the judgment and decree dated 13.12.2005 on the file of the Principal Sub-Court, Tirunelveli, in A.S.No.194 of 2005, which was filed as against the judgment and decree dated 30.12.2004 in O.S.No.708 of 1985 on the file of the Additional District Munsif Court, Tirunelveli.

2. Second Appeal (MD) No.600 of 2007 is filed as against the judgment and decree dated 13.12.2005 on the file of the Principal Sub-Court, Tirunelveli, in A.S.No.75 of 2005, which was filed as against the



S.A.(MD)Nos.571 & 600 of 2007

judgment and decree dated 30.12.2004 in O.S.No.708 of 1985 on the file of the Additional District Munsif Court, Tirunelveli.

3. The plaint averments in O.S.No708 of 1985 are as follows:

The suit properties are ancestral properties of one Late Sivanu Thevar, who died intestate leaving behind his four sons, namely, Kandasamy Thevar, Velayutha Thevar, Sudalaimuthu Thevar and Shanmuga Thevar as his legal heirs. The suit properties form part of "Inam Estate" of Uthamapandiakulam. Pattas were granted by the Settlement Tahsildar, Kovilpatti under the Tamil Nadu Inam Estate (Abolition and Conversion into Ryotwari) Act, 26 of 1963. After the demise of the said late Sivanu Thevar, the plaintiffs and other heirs of the said Sivanu Thevar are jointly enjoying the properties making division according to their convenience without any partition by metes and bounds of the suit properties. The plaintiffs and the defendants 11 to 18 and 29 have represented the branch of Velayuthathevar, the second son of Sivanu Thevar and the defendants 11 to 18 and 29 have not cooperated with the plaintiffs and hence, they are impleaded as the defendants. The defendants 19 to 21 represented the branch of Kandasamy Thevar, the elder son of Sivanu Thevar. The defendants 22, 23 and 24 represented the branch of Sudalaimuthu Thevar,



S.A.(MD)Nos.571 & 600 of 2007

the third son of Sivanu Thevar. The 25th defendant represented the branch of Shanmuga Thevar, the fourth son of the late Sivanu Thevar. Velayutha Thevar, who died intestate 20 years back. The defendants 1 to 10 alienated a portion of the suit properties. The various sale deeds are not valid and not supported by consideration and also not binding on the plaintiffs. The first defendant purchased the portion of the properties from the fourth defendant on 29.10.1981. The defendants 3, 4 and 5 purchased a portion of the suit properties from the 13th defendant on 19.08.1966. The above said sales are void and illegal. The defendants 27, 28 and the father of the defendant 26 purchased the portion of the suit properties on 13.09.1967 from the defendants 23 and 24 and the father of the defendant 22. The 10th defendant purchased a portion of the suit properties on 28.11.1967 from the father of the defendants 19 and 20. The defendants 6 to 9 purchased a portion of the suit properties under Exs.R5 to R7, as mentioned in the order of the Settlement Tahsildar. The plaintiffs 1 to 5 as well as the defendants 11 to 18 and 29 are entitled to 1/4th share representing the branch of Velayutha Thevar. The defendants 11 to 18 are entitled to 14 Acres and 4 Cents. The plaintiffs are entitled to 9 Acres 96 Cents. The defendants 4, 5 and 13 sold the properties, which they are not entitled to and in excess of their share and



S.A.(MD)Nos.571 & 600 of 2007

they are trying to re-sell the properties to the third parties. As the grand-daughters of Velauthathevar were given marriage by giving cash and jewels according to their wishes, they are not demanding any share. The plaintiffs and the defendants are in joint constructive possession of the suit properties in spite of allegations. The plaintiffs filed the suit for partition and separate possession of their respective shares in the suit properties. The plaintiffs and the defendants 11 to 18 and 20 are entitled to 1/4th share in the suit properties.

4. The second defendant had filed written statement and the same had been adopted by the first and third defendants and defendants 35 to 41. The defendants submit that the schedule mentioned properties was originally classified as "Inam properties". The schedule mentioned properties originally belonged to one Kaliappa Chettiar and his sons Shakthivel and third defendant, who had purchased a portion of the schedule mentioned properties from one Gomathi Ammal, under sale deed dated 19.08.1966 for a sum of Rs.2,400/- and also under another registered sale deed on 10.12.1966 for Rs.1,000/- from one Sivasami Thevar. The defendants further stated that the suit schedule mentioned properties is situated at Uthamapandiyankulam and the same was taken by the Government under



S.A.(MD)Nos.571 & 600 of 2007

the Tamil Nadu Inam Estate (Abolition and Conversion into Ryotwari) Act 26 of 1963. Subsequently, the Settlement Tahsildar attached to Kovilpatti, conducted an enquiry and issued joint patta. Aggrieved by the same, the defendants had filed an appeal before the Tamil Nadu Inam and Abolition Tribunal. The Tribunal / Principal Sub Court, remanded the matter to the Settlement Tahsildar. The Tahsildar declared that the land is classified as "Tharisu" land and Government had accepted the taxes for the schedule mentioned properties.

5. Again, the same defendants had filed an appeal before the Inam Tribunal. The Inam Tribunal has issued order dated 17.04.1974 to issue Patta to the defendants for the schedule mentioned properties, except Survey No.47. Against the said order passed by the Inam Tribunal, no one filed any appeal or revision or review. As such, the Tribunal's order dated 17.04.1974 had become final. Patta No.7 was issued in the name of th 3rd defendant. The 2nd defendant had purchased a share from Kaliappa Chettiar, under sale deed dated 29.10.1981. The first defendant has purchased the share of Shakthivel Chiettiar under sale deed, dated 15.09.1982. Chinnathambi died intestate and his share had been inherited by his two brothers viz., Maruthanayagam and Shanmuga Thevar, who had succeeded the properties. The schedule



S.A.(MD)Nos.571 & 600 of 2007

mentioned properties are items 1, 2, 3, 4, 6 and 7 and the defendants 1, 2 and 3 are jointly enjoying the said properties. Except the defendants 1, 2 and 3, no one has right over the said properties. Further, the said Maruthunayagam and Shanmuga Thevar are necessary parties, but without impleading them, the suit is not maintainable. The defendants 1, 2, 3 have leased out the properties and are getting income from it. Besides, they also grow trees (Velkaruvai). As such, as the sale deed stands in the name of the defendants 1 to 3 and the Late Chinnathambi, they are lawful owners, since the sale deeds are valid. As such, the sale deeds are binding on the plaintiffs.

6. The sale deed in the name of 10th defendant is not valid. Besides, the defendants 6, 10 and 25 have expired. Knowing the same, the plaintiffs have not disclosed the facts. The defendants 1 to 3 and Maruthunayagam and Shanmuga Thevar have filed a civil suit in O.S.No.630 of 1985 before the Court. Knowing the same, the plaintiffs have filed the above suit. Hence, the defendants prayed to dismiss the above suit.

7. The 7th and 8th defendants have filed written statement and resisted the plaint. The defendants submitted that the schedule mentioned properties had been taken over by the Settlement Tahsildar, Kovilpatti, who issued joint Patta under the Inam Abolition Act. As such, the plaintiffs cannot



S.A.(MD)Nos.571 & 600 of 2007

partition the schedule mentioned properties. Further, an appeal has also been filed against the proceedings of the Settlement Tahsildar and the Tribunal remanded the same to the Tahsildar. Subsequently, the Tahsildar passed orders and issued joint Patta. Against the issuance of joint patta, no appeal has been filed. As such, the Patta proceedings have become final.

8. The defendants 31 to 33 have submitted that the prayer of the plaintiffs claiming 1/4th share is not maintainable. The schedule mentioned properties belonged to Sivanu Thevar, who had not arranged to settle the properties to anyone. As such, his 4 sons viz., Kandasamy Thevar, Velayutha Thevar, Sudalaimuthu Thevar and Shanmuga Thevar are legal heirs. As such, each of the legal heirs of Late Sivanu Thevar are entitled to receive 1/4th share. Shanmuga Thevar i.e., fourth son of Late Sivanu Thevar had also expired. As such, Sivaganthammal, Ramachandra Thevar, Subbukutti and Kalyaniammal are the legal heirs of Shanmuga Thevar. As such, they are entitled to receive 1/4th share. Sivaganthammal had executed settlement deed of her share to and in favour of her son, Shanmugavel. Subbukuttiammal had executed a settlement deed in favour of her son Murugan. Kalyaniammal had expired after leaving her only daughter Avudaithai as her legal-heir. Velamma, wife of Shanmugavel had obtained



S.A.(MD)Nos.571 & 600 of 2007

1/4th share under a sale deed dated 21.09.2001. Shanmuga Thevar's second son has been impleaded as 25th defendant herein and he is entitled to receive share out of 1/4th share which belongs to Shanmuga Thevar. While the suit was pending, Ramachandra Thevar had expired. As such, the defendants are entitled to receive the share, since they are the legal heirs of Ramachandra Thevar. Thus, Ramachandra Thevar is entitled to get 1/16th share and the defendants 31, 32 and 33 are entitled to receive the same.

9. 34th defendant had filed written statement and opposed the case of the plaintiff(s). The defendant submits that the properties does not belong to Sivanu Thevar. Besides, the genealogy of Late Sivanu Thevar is not correct. The plaintiffs and Late Sivanu Thevar and other legal heirs are not enjoying the properties jointly. As such, the schedule mentioned properties cannot be partitioned. This defendant had purchased the properties from Kaliappa Chettiar and Shanmuga Thevar under separate sale deed. This defendant had also remitted Tax to the Government. The Tahsildar, Kovilpatti had issued joint Patta in the name of the father of this defendant viz., the second defendant and Bakkivavathy, Kaliyappa Chettiar, Sakthivel Chettiar, Sivasuppu Thevar and Chinnathambi Thevar, excepting 4th and 5th items of the schedule mentioned properties. The Patta for the fourth item of



S.A.(MD)Nos.571 & 600 of 2007

properties had been issued in the name of above mentioned six persons and Isaac Durai. The father of this defendant and 5 others filed appeal to remove the Isaac Durai, as he is not a necessary party in the appeal and the same was allowed. The father of this defendant had purchased the properties under two separate sale deeds, dated 27.01.1967 and 29.10.1981 and the defendants are enjoying the same. This defendant cultivates the land and is growing trees (Velkaruvai).

10. The 42nd and 43rd defendants have filed written statement stating that before filing the suit, the plaintiffs had executed a sale deed relating to properties comprised in Survey No.36. Some defendants had also sold the properties in favour of these defendants. The 2nd, 5th, 3rd, 4th plaintiffs and 13th defendants have executed sale deed to and in favour of these defendants of an extent of 2.45 acres of land(s) comprised in Survey No.36. The 25th defendant had executed a sale deed to and in favour of Muthukrishnan. The 26th defendant and his mother had executed sale deed dated 15.07.1985 of an extent of 1.25 acres comprised in Survey No.36. The 27th defendant had executed a sale deed dated 15.11.1985 of an extent of 1.25 acres, comprised in Survey No.36. Ayyadurai Pandian had executed a sale deed to and in favour of Muthu Krishnan of an extent of 82 cents comprised in Survey No.



S.A.(MD)Nos.571 & 600 of 2007

36. As such, these defendants had secured the properties through the said sale deeds. Hence, these defendants pray to declare preliminary decree in their favour.

11. The defendants 44 to 49 stated that the properties belongs to Sivanu Thevar and that his sons viz., Kandhasamy Thevar, Velayutha Thevar, Sudalaimuthu Thevar and Shanmuga Thevar are his legal heirs. After the death of Sivanu Thevar, the properties had been divided into 4 equal shares and they are jointly enjoying the said properties. One of the sons of Sivanu Thevar, viz., Shanmuga Thevar died intestate, leaving behind his three daughters and one son as his legal heirs. Other defendants have no right except the legal heirs of late Sivanu Thevar. Some of the defendants have purchased properties from the legal heirs of Sivanu Thevar. As such, the defendants have no right to claim the properties under the Tamil Nadu Inam Abolition Act. The defendants 44, 46 and the mother of defendant 45 and 25th defendants are jointly enjoying the suit schedule mentioned properties. The defendants 44, 46 and Kalyani Ammal and 25th defendant / Ramachandra Thevar are entitled to receive 1/16 share each. The 44th defendant Sivagnanammal had executed a settlement deed in favour of her son 47th defendant dated 30.10.2001 pertaining to the land comprised in



S.A.(MD)Nos.571 & 600 of 2007

Survey No.46. Likewise, the 46th defendant executed settlement deed in favour of 48th defendant, dated 13.05.2002. The daughter of Kalyaniammal i.e., 45th defendant had executed a sale deed to and in favour of 49th defendant dated 21.09.2001. As such, the defendants 47, 48 and 49 are jointly enjoying the said properties as owners. The third parties cannot claim any civil rights over the schedule mentioned properties. Hence, the defendants prayed to declare that they are the absolute owners of the properties.

12. The 45th defendant had filed written statement and the same was adopted by the defendants 46 and 48. These defendants admit that the properties originally belong to Sivanu Thevar. After his death, his 4 sons succeeded the properties jointly. Shanmuga Thevar's 3 daughters and sons had succeeded 1/4th share each after his death. As such, the defendants or other parties have no right or possession over the schedule mentioned properties. These defendants had not received any notice before the Patta was issued in favour of some parties. The share of Shanmuga Thevar was executed in favour of these defendants, as per ratio of shares. The defendants denied that the 49th defendant had executed sale deed in favour



S.A.(MD)Nos.571 & 600 of 2007

of Velamal. The 47th defendant and Shanmugavel are cousin brothers.

Both the 47th and 49th defendants had obtained signature in the blank papers from these defendant. Besides, they have also received money. The defendants 47 and 48 have obtained general Power of Attorney from the 45th defendant and the same was cancelled subsequently.

13. The 50th and 51st defendants have filed written statement and submitted that the Settlement Tahsildar had issued Patta in favour of Isaac Durai / 10th defendant relating to the land comprised in Survey No.46. The same was confirmed by the Tribunal. Therefore, the Revenue Authorities have also issued Patta in favour of Isaac Durai. Further, the plaintiffs had not mentioned details regarding schedule mentioned properties to prove that it belongs to Sivanu Thevar and his sons. The 10th defendant has been enjoying the properties since 1967. These defendants have purchased the properties from the 10th defendant of an extent of 6.25 acres and 18 acres, through sale deeds, dated 10.01.1986. From the date of purchase, these defendants have been remitting the Tax, besides growing Trees. Therefore, the plaintiffs' suit is invalid. These defendants further submit that the 10th defendant / Isaac Durai expired 15 years ago and his legal heirs have not



S.A.(MD)Nos.571 & 600 of 2007

been impleaded. As such, the suit abated on the death of 10th defendant.

Therefore, the suit in respect of 4th item of properties is not sustainable under the suit. After purchase of the said properties by the defendants, the land(s) were sub-divided as 46/2 and 46/3 and separate Patta was also obtained. The third defendant had filed Department Appeal before the Revenue Authorities and the same was dismissed. The defendants 1 to 3, Maruthunayagam and Shanmuga Thevar had filed suit in O.S.No.650 of 1986 against the defendants and the same was dismissed. Subsequently, appeal was filed, which was also dismissed. Thereafter, Shanmuga Thevar had also filed another suit in O.S.No.237 of 1992 and the same was also dismissed. Now, some rowdy elements have attempted to interfere with these defendant's properties. Hence, these defendants have obtained direction from this Court to register a criminal case. The third defendant had filed suit in O.S.No.606 of 2002, which was also dismissed. Hence, these defendants 50 and 51 prayed to dismiss the suit pertaining to the 4th item of properties, comprised in Survey No.46.

14. The 7th and 8th defendants had filed additional written statements stating that the properties does not belong to Sivanu Thevar and after his



S.A.(MD)Nos.571 & 600 of 2007

life time, his four sons had not succeeded the properties. Further, the name of the legal heirs of Sivanu Thevar had not been mentioned and they have not been impleaded as necessary parties. These defendants had purchased the properties comprised in Survey No.47, under sale deed dated 29.05.1967. Subsequently, Patta was also issued. Thereafter, the said properties were sub-divided as Survey Nos.47/1 and 47/2. Therefore, the plaintiffs' are not entitled to get any relief as sought for. Further, the Settlement Tahsildar's proceedings have been admitted. The plaintiffs have not mentioned the ratio of shares allotted to parties concerned.

15. The defendants 31 to 33 have filed additional written statement stating as follows:

The plaintiffs have impleaded third parties as necessary defendants, which is not maintainable. Further, the defendants 44 to 49 have no right over the properties and they have not been in possession. The defendants 44 to 49 never claimed any right against the plaintiffs over the schedule mentioned properties.

16. The defendants 44, 47 and 49 have filed additional written



S.A.(MD)Nos.571 & 600 of 2007

statement stating that the contention of the defendants 50 and 51 that they have purchased properties from 10th defendant of an extent of 6 acres and 25 cents and 18 acres respectively, is not true. The 50th and 51st defendants have no legal right over the said properties. The defendants have succeeded the properties through Shanmuga Thevar and his legal heirs. The defendants 50 and 51 have no right to purchase the properties from the so-called erstwhile owner. Hence, the defendants 44, 47 and 49 prayed to dismiss the above suit.

17. From the above said pleadings and the documents, the trial Court has framed the following issues:

(i) Whether the plaintiffs are entitled to receive share from the schedule mentioned properties of an extent of 9 acres and 96 cents ? and

(ii) To what other reliefs are the plaintiffs entitled to ?

The additional issues:

(i) Whether this Court has jurisdiction to entertain the suit ?

(ii) Are the defendants 42 and 43 entitled to get the relief of declaration pertaining to properties in Survey No.36 ?

(iii) Whether the defendants 44, 45, 46, 48 and 49 are entitled to get declaration of their title over the properties ?



S.A.(MD)Nos.571 & 600 of 2007

(iv) Whether the properties of defendants 50 and 51, excluded from the suit schedule mentioned properties ?

(v) Whether the suit is maintainable, since the relief of declaration had not been prayed ?

(vi) Whether necessary parties have not been impleaded in the suit ?

(vii) Whether the suit has been filed beyond limitation ?

(viii) Whether the suit is not maintainable, since the plaintiffs have not mentioned the ratio of shares ?

18. In order to prove the case, on the side of the plaintiffs, the first plaintiff was examined as P.W1 and 23 documents were marked as Exs.A1 to A23. On the side of the defendants, 9 witnesses were examined as D.W1 to D.W9 and 77 documents were marked as Exs.B1 to B77.

19. After trial, the trial Court granted preliminary decree, as the plaintiffs are entitled to 1/5th share in S.Nos.36, 42 and 43 and the defendants 42 to 49 are entitled to 1/16th share.

20. Challenging the above said Judgment and Decree dated 30.12.2004 on the file of the I Additional District Munsif, Tirunelveli, the



S.A.(MD)Nos.571 & 600 of 2007

defendants 50 and 51 had filed an appeal in A.S.No.38 of 2005. The defendant 34 had filed an appeal in A.S.No.75 of 2005. The defendants 7 and 8 had filed an appeal in A.S.No.84 of 2005. The 3rd defendant had filed an appeal in A.S.No.194 of 2005. The defendants 39, 42 and 44 had filed cross appeal in Cross A.S.No.194 of 2005 on the file of the Sub-Judge, Tirunelveli.

21. The learned Principal Sub Judge, Tirunelveli, after hearing the learned counsel appearing on either side in the above appeals, allowed the appeal in A.S.No.38 of 2005 and modified the Judgment and Decree of the trial Court and passed preliminary decree and dismissed the other appeals in A.S.Nos.75, 84 and 194 of 2005. The cross appeal in A.S.No.194 of 2005 was partly allowed in respect of S.Nos.36, 42 and 43 and the Judgment and Decree of the trial Court is set aside and the respondents are entitled to their right of respective share. Besides, the share of the defendants 47, 48 and 49 granted by the trial Court, was confirmed.

22. Aggrieved by the said Judgment and Decree passed in A.S.No.75, 84 and 194 of 2005, the defendants 7 and 9 have filed S.A(MD)No.288 of



S.A.(MD)Nos.571 & 600 of 2007

2006, the third defendant has filed S.A(MD)No.571 of 2007 and the 34th defendant has filed S.A(MD)No.600 of 2007.

23. Since all the appeals arise out of the common Judgment, all the three appeals are taken up together for hearing.

24. On the earlier occasion, while admitting these second appeals on 27.06.2007, this Court has formulated the following substantial questions of law:

i) Whether the findings of the Courts below are vitiated by its failure to consider in the absence of any title deeds on the side of the Respondents No.1 to 4 who are all plaintiffs in the suit, especially when the appellant produced title deeds under Exs.B.36 to B.40, B.42 to B.45 and B.48 ?

ii) Whether the Courts below are right in law in not advertng to specific findings of the Inam Abolition Tribunal under Ex.B1 acknowledging the vendor of the appellants and Kudivaramdhars and on that basis Patta has been granted under Section 12 of the Tamil Nadu Inam Estate (Abolition and Conversion into Ryotwari) Act 1963 ?



S.A.(MD)Nos.571 & 600 of 2007

iii) Whether the Courts below are right in law in granting the relief of a specific extent of a land in the absence of any proper pleadings or evidence on the side of the respondents No.1 to 4?

iv) Whether the Courts below are right in granting a relief in respect of a specific extent of land in the absence of any pleadings and in the absence of relief of declaration of title?

25. On the earlier occasion, this Court had heard the appeals and dismissed the appeals and confirmed the Judgment and Decree passed by the first appellate Court in the appeal suits. Challenging the same, Civil Appeals have been filed before the Honourable Supreme Court. The Honourable Supreme Court, by order dated 11.01.2023, set aside the Judgment of this Court and remanded the matter for fresh consideration. After remand, this Court also directed the appellant(s) to take steps, as directed by the Hon'ble Supreme Court..

26. The learned counsel for the appellants submitted that the allegations of the contesting respondents/plaintiffs are that the properties



S.A.(MD)Nos.571 & 600 of 2007

belonged to the ancestors of the respondents 1 to 4, one Sivanu Thevar, however, the said allegations are not supported by any documentary evidence. The claim of the plaintiffs is merely on the basis of the proceedings under the Tamil Nadu Inam Estate (Abolition and Conversion into Ryotwari) Act, 26 of 1963, without adverting to Exs.B.35 and B.49. The findings of the Inam Abolition Tribunal under Section 35 and 49, as the appellants and their ancestors are Kudivaramthars and all are in possession and are cultivating the lands and granting patta by applying Section 12(1) of the Tamil Nadu Inam Estate (Abolition and Conversion into Ryotwari) Act, 26 of 1963. Exs.B.36, 37 and 46 were not considered by the trial Court as well as by the first appellate Court. As far as Exs.A.11 to A.14, are concerned, in the prior proceedings between the respondents and the third parties, the appellants are not party to that proceedings. Therefore, it will not bind the appellants. The transactions in favour of the defendants 1 and 2 is of the year of 1967 and the same were not challenged till 1985. Therefore, the claim of the contesting respondents/plaintiffs is barred by limitation. The evidence of PW1 is contrary to the averments made in the plaint. It is settled proposition of law that without pleadings, no amount of evidence can be let in and even if it is let in, this Court need not look into



S.A.(MD)Nos.571 & 600 of 2007

that. Ex.B34 clearly establishes that the vendors of the appellants are entitled to share, which devolves upon the appellants. Ex.B.1 is the proceedings of the Inam Abolition Tribunal, wherein the claim of the appellants was accepted and patta was granted and the same was not challenged by the respondents 1 to 4/the plaintiffs in the suit. It is the duty of the plaintiffs to prove their case and contrary to that, the Courts below committed error in law in proceeding, on the assumption that the appellants failed to establish title, especially, when the respondents 1 to 4 have not discharged the burden by producing any cogent and acceptable evidence. When the Inam Abolition Tribunal under the Tamil Nadu Act 26 of 1963 made a finding which becomes final, the same has not been challenged and the respondents 1 to 4 are not entitled to the relief as sought for in the plaint. Both the Courts below accepted the claim of the respondents 1 to 4 on the basis of Settlement Register, in the absence of any title deed, evidently without adverting to the title deed of the appellants. Exs.B.39 and B.40 to 45 and 48 establish the title and possession of the appellants and the same cannot be simply ignored. Ex.A1 has not been properly appreciated by both the Courts below. When it is only through the rights, the recognition of ownership will have to be considered with their pre-existing right under the



S.A.(MD)Nos.571 & 600 of 2007

Tamil Nadu Inam Estate (Abolition and Conversion into Ryotwari) Act, 26 of 1963. The said late Sivanu Thevar who was never shown as a person, was entitled to Kudivaram right on the basis of any grant from the original land holders, the same cannot be considered as the owner of the land. When the rival claim for Ryotwari patta was considered by the authorities under the Tamil Nadu Inam Estate (Abolition and Conversion into Ryotwari) Act, 26 of 1963, the Patta granted by the Settlement Tahsildar is an important document to prove *prima-facie* title and physical enjoyment. The Settlement Patta was granted in favour of the appellants, pursuant to the enquiry, as provided under the Tamil Nadu Inam Estate (Abolition and Conversion into Ryotwari) Act, 26 of 1963 in the presence of all the legal heirs of Sivanaathevar and also in the presence of respondents 1 to 4 and that those persons who are now claiming right in the present suit, have not questioned the same. Since the entire Inam with Estate, vested with the Government, deserving only the pre-existing right of Ryots to get Ryotwari Patta as pillar of soil, there is no scope for the plaintiff(s) to seek partition without first getting a decree declaring the title, after impleading all the persons who were given Ryotwari patta in the settlement proceedings. The Honourable Full Bench of this Court in 1998 (2) L.W 189 (Srinivasan and



S.A.(MD)Nos.571 & 600 of 2007

others Vs. Sri Madhyarjuneswaraswami and others) held that the jurisdiction of Civil Court in spite of granting patta under the Tamil Nadu Inam Estate (Abolition and Conversion into Ryotwari) Act, 26 of 1963, reverted only to entertain the suit for declaration of title and injunction. From the catena of decisions upholding the jurisdiction of the civil Courts in spite of granting Patta under the Tamil Nadu Inam Estate (Abolition and Conversion into Ryotwari) Act 26 of 1963, it cannot be said that the Ryotwari Patta granted under the said Act, carries weight regarding the nature of land and the parties cannot enjoy physical rights, classification of land and other important factors.

27. In the present case, the plaintiffs have not produced any documents of title. The Courts below relied on only Ex.A.1 being the proceedings of the Settlement Tahsildar, as document, recognizing the title of Late Sivanu Thevar. The claim of the plaintiffs and supporting defendants for Ryotwari Patta, was negated by the Settlement Tahsildar and also by the Revenue Authorities, later while granting regular Patta, there is no scope of claiming Inam lands as ancestral properties without any grant. The present suit was filed at an earlier point of time and the appellants



S.A.(MD)Nos.571 & 600 of 2007

herein were not parties in the earlier suit in O.S.No.1285 of 1985 or O.S.No. 650 of 1986. Therefore, the judgment in those two suits, will not bind the appellants while determining the rights of the parties in the present suit. The appellants claimed right only in respect of S.No.47 and the properties covered in S.No.47, which is not the subject matter in the earlier suits and there is nothing on record to justify generalizing the issues. The legal heirs of one Sudalaimuthu Thevar filed a suit for partition in respect of the subject properties in O.S.No.70 of 1988 and the said suit was dismissed. Therefore, the present suit is barred by *res-judicata*. Under Ex.B.47, the claim of the plaintiffs and other defendants through Sivanu Thevar and also Ex.B49, they are not entitled to file the suit for partition. Exs.A.1 to A.23 do not support the case of the plaintiffs to prove their title or their enjoyment in respect of the suit properties. The plaintiffs have failed to establish the title and joint possession in the manner known to law. Therefore, the findings of the Courts below are perverse and the genealogy and the legal heirship, are not also proved. Except the first plaintiff, no independent witness was examined to prove the ancestral character of the properties of the Sivanu Thevar, especially, when the said village is covered in the Inam Land Village and subsequently, under the Inam Abolition Act 26



S.A.(MD)Nos.571 & 600 of 2007

of 1963, the grant was not made either prior to that, or subsequent to that, given either to Sivanu Thevar or his legal heirs for the entire suit properties.

The appellants herein, however, were granted Ryotwari Patta and they have obtained separate Patta from the Revenue Authorities later and they are in exclusive possession and enjoyment of their respective lands for several decades, without any obstruction or interference from anybody, after subdivision of survey numbers. When the plaintiffs and their predecessors' interest have not been questioned, the settlement proceedings, by way of appeal or by separate suit for declaration or title, they are not entitled to file the suit for partition. The appellants have obtained Patta on the basis of the sale deed obtained from the legal heirs of the late.Sivanu Thevar. The grant of Patta in the said proceedings, cannot be taken as the one granted in recognition of title of Late Sivanu Thevar. Ex.B-34 in respect of the suit in O.S.No.83 of 1964, is very clear to prove that Late.Sivanu Thevar was not a person holding any right in the Inam lands in his individual capacity. The several persons shown in the genealogy tree, are not impleaded as parties to the suit/appeals and as the plaint refers only the female heirs of Velayuthathevar, they have not been impleaded, as they are not demanding any share. In the cross examination, the plaintiff admitted the facts that the



S.A.(MD)Nos.571 & 600 of 2007

several heirs of Sivanu Thevar have not been impleaded. Even PW.1 admits in his evidence that the female heirs are not in enjoyment and hence, they are not added as parties. Even DW6 admitted in her cross examination that his sisters were not impleaded, as they are given in marriage. In the suit for partition, all the legal heirs have to be impleaded either as a plaintiff or defendant. The non-joinder of necessary parties, vitiates the suit for partition filed by the respondents 1 to 4. Both the Courts below have not properly appreciated the oral and documentary evidence and the reasons given by the both the Courts below are perverse. Some of the parties have been impleaded based on the admission given by PW1, but some of the parties have not been impleaded. PW1 has categorically admitted that he has not impleaded the female heirs who are not in possession of the land. Similarly, various purchasers and subsequent purchasers who are not in enjoyment, are not impleaded. Therefore, the suit for partition is not maintainable.

28. Further, it is not in dispute that the appellants claim right on the basis of the sale deed dated 29.05.1967 in respect of extent of 15 Acres in S.No.47, as found in Ex.A.1, dated 15.02.1968 and they were in exclusive



S.A.(MD)Nos.571 & 600 of 2007

possession and enjoyment of the land by getting Patta and paying the Kist.

Therefore, the suit for partition is not maintainable as against the appellants, who are strangers to the family and whose title and enjoyment had been upheld in all the earlier proceedings. It is well settled proposition of law that the suit for partition is maintainable only as against co-owners/co-partners or persons who claim under them, whereas, in this case, the suit is against the appellants, especially, when the suit properties are Inam lands and the plaintiffs' predecessors-in-interest were not given the Patta in recognition of the pre-existing rights and as PW1 has stated in his evidence that he claims right under Ex.A.1 being the proceedings of the Inam Tribunal and that he is aware of the fact that Patta was granted in favour of the appellants on the basis of Ex.A.1 and that he knows that Ramesh Colony is there in S.Nos. 47/1 and 47/2 and also when the plaintiffs' witness specifically admits that the appellants are in exclusive possession by developing the properties into a house colony, the suit for partition, nearly after 18 years of settlement proceedings, not maintainable in law. Further, the learned counsel for the appellants submitted that the right and title and exclusive possession and enjoyment of the appellants have been upheld in the settlement proceedings and in the earlier Patta proceedings in the presence of the rival claimants for



S.A.(MD)Nos.571 & 600 of 2007

patta and the plaintiffs have not produced any documents to show either in possession or enjoyment in respect of S.No.47 of the property. There is no evidence to show that the legal heirs of late.Sivanu Thevar are in enjoyment of the lands at any point of time. Therefore, the Court Fees paid under Section 37(1) of the Tamil Nadu Court Fees and Suits Valuation Act, is not maintainable. When there is no dispute that the appellants are in exclusive possession of the lands and their enjoyment claiming independent right denying the right of the any of the heirs of Late.Sivanu Thevar, is adverse to the plaintiffs. Since the legal heirs are out of possession, the suit for partition paying fixed Court Fee under Section 37(2) of the Tamil Nadu Court Fees and Suits valuation Act, is not maintainable. The persons, who are in joint possession, are only entitled to file the suit under Section 37(2) of the said Act. As per Judgments in AIR 1990 Orissa 155 (Kamini Bewa Vs. Srimati Dei and others), 2001(1) MLJ 22 (Kaliammal Vs. Karuppan) and AIR 1994 AP 87 (Nalla Venkateshwarlu Vs. Porise Pullamma and others), the suit is not maintainable. Therefore, under these circumstances, the suit filed is not maintainable.

29. The entire village of Uthama Pandian Kulam was taken over



S.A.(MD)Nos.571 & 600 of 2007

under the Estate Inam Abolition Act and that patta was granted only in favour of the individual Ryots in recognition of their right of enjoyment as Ryots. There are no records to show that the vendors of the appellants claimed rights only under pre-existing right of Sivanu Thevar. The vendors of the appellants had independent right for getting ryotwari patta in respect of S.No.47 and that their right in S.No.47 cannot be negated merely because they had executed another sale deed earlier in respect of a different survey number. The enjoyment of appellants is adverse and that the long and continuous enjoyment without any interruption for more than the statutory period will extinguish the right of everybody claiming title particularly as a legal heir of Sivanu Thevar. Therefore, the suit is barred by limitation. The documents produced by the appellants are clinching evidence to show that the appellants are the registered owners of the properties in S.No.47, at least from 1967 and that there is no oral and documentary evidence to contradict the said position, and therefore, the rejection of the claim of the appellants, is perverse. In all, the documents of sales are executed by the legal heirs of the late Sivanu Thevar, and that the properties were described as their exclusive properties, but none of them claim title through Sivanu Thevar. Exs.B.36 to B.38 and A.22 clearly



S.A.(MD)Nos.571 & 600 of 2007

reveals the same. The conclusions of the Courts below about the rights of Sivanu Thevar, are contrary to the recitals in the registered documents. The plaintiffs have not proved their case on the question of title. The sale deed(s) executed in favour of the appellants, had not been challenged by the other heirs for more than the statutory period. When the appellants have specifically pleaded that the suit is barred by limitation, both the Courts below have not discussed about the same and they have not given any reason, especially, when the appellants were in possession and enjoyment from 1967 as an exclusive owner having been admitted and established through clinching evidence, the plaintiffs have not proved their possession within 12 years prior to that suit. Therefore, the claim of the 21st defendant is barred by limitation and both the Courts below ought to have dismissed the claim of the plaintiffs and other supporting respondents in respect of the properties in enjoyment of the appellants, when they are establishing their claim, right and title from the sale deeds registered from the year 1967. Further, the plaintiffs have not established the title and enjoyment of Sivanu Thevar in respect of the suit properties in its entirety. Therefore, granting decree for partition of an extent of 9.96 acres, is not valid and therefore, the judgement and decree passed by both the Courts below are liable to be set



S.A.(MD)Nos.571 & 600 of 2007

aside. Further, learned counsel for the appellants submitted that the suit is not properly valued for the purpose of jurisdiction and the District Munsif Court has no jurisdiction to entertain the suit.

30. The learned counsel for the respondents 1 to 4 and other supportive defendants, submitted that though the suit properties originally belonged to one Sivanu Thevar, his four sons were allotted the said properties under the Tamil Nadu Inam Estate (Abolition and Conversion into Ryotwari) Act, 26 of 1963. The suit properties are situated at Uthamapandian Kulam village. The settlement Tahsildar has issued Patta in the name of the above four sons of Late.Sivanu Thevar. The plaintiffs and late Sivanu Thevar and his legal heirs, have not divided the suit properties. But the same were divided as per their convenience. The plaintiffs and the defendants 11 to 29 and Velayutha Thevar, the second son of the late.Sivanu Thevar proceeded with the case and defendants 8 to 11 had not extended their co-operation and therefore, they filed the suit for partition and whatever sale deeds executed in favour of the appellants, the same are not binding on the plaintiffs and other legal heirs of late.Sivanu Thevar and the sale deed said to have been executed to and in favour of the defendants 1 to 10, is not valid. Both the Courts below have rightly appreciated the



S.A.(MD)Nos.571 & 600 of 2007

evidence and granted the decree for partition and therefore, there is no merit in the appeals and there is also no substantial question of law involved in these appeals. Further, the learned counsel relied on the Judgment of the Hon'ble Supreme Court of India in **Appeal (Civil) 4306 of 2007 dated 17.09.2007 (Boodireddy Chandraiah and others vs. Arigela Laxmi and others)**. The relevant portion of the said Judgment is extracted hereunder:

“12. The principles relating to Section 100 CPC, relevant for this case, may be summarised thus:-

(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial



S.A.(MD)Nos.571 & 600 of 2007

question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.”

31. Heard both sides and perused the materials available on record.

32. The case of the appellants in S.A(MD)No.571 of 2007 is that the suit properties are not ancestral properties of late.Sivanu Thevar and they have not produced any title to show that ancestral properties of the late.Sivanu Thevar. The suit properties were taken by the Government under the Tamil Nadu Inam Estate (Abolition and Conversion into Ryotwari) Act, 26 of 1963. Subsequently, the settlement Tahsildar, Kovilpatti issued joint Patta in the name of the appellants in the said appeal by the third defendant and others. The statements of the Settlement Tahsildar and the Revenue Authorities concerned are necessary, since they are also maintaining the



S.A.(MD)Nos.571 & 600 of 2007

Government Records pertaining to the subject matter of the lands in order to determine the original factual position of the case.

33. The case of the defendants 7 and 8 is that the land(s) comprised in S.No.47 was sub-divided and the joint Patta was issued in the name of one Rajadurai Chandraleela and the defendants 7 and 8 and the said properties were divided as house-sites/plots and sold to more than 100 persons who have constructed the house over the said land. Now, the said properties is named as Welcome Colony Southern Nager and Ramesh Colony. Therefore, the suit for partition is not maintainable and the plaintiffs are not in possession of S.No.47 and the suit as prayed for, is not maintainable and the Court Fee paid is not correct.

34. The case of the appellant in S.A.No.600 of 2007 is that the suit properties not belonged to the late.Sivanu Thevar. The plaintiffs have not produced any iota of document of title, even in the proceedings of the Inam Abolition Tribunal and it clearly shows that Patta has been issued based on their possession and the plaintiffs have not proved their independent title and no iota of evidence is produced to prove that the suit properties are



S.A.(MD)Nos.571 & 600 of 2007

ancestral properties of late.Sivanu Thevar and after his demise, his legal heirs are enjoying the properties for their convenience without partition. As the legal heirs of late.Sivanu Thevar, Pattas were granted only based on the Inam Abolition Act and the Pattas were not granted, recognizing the title of the ancestors. Therefore, the suit for partition is not maintainable and the plaintiffs have not established that the suit properties are the ancestral properties of the late.Sivanu Thevar. Therefore, the Judgment and Decree passed by the both the Courts below are perverse.

35. The case of the respondents 1 to 4 and supporting defendants, is that the suit properties originally belonged to the ancestors of the Sivanu Thevar. The suit properties are the ancestral properties of the late.Sivanu Thevar and after his demise, his four sons were allotted the said properties and Pattas were granted under the Tamil Nadu Inam Estate (Abolition and Conversion into Ryotwari) Act, 26 of 1963. The Settlement Tahsildhar had issued Patta in the name of the above four sons of late.Sivanu Thevar and the legal heirs of late.Sivanu Thevar have not divided the suit properties, however, they enjoyed as per their convenience. Therefore, now, the legal heirs of one of the sons of Sivanu Thevar, namely, Velayutha Thevar, has



S.A.(MD)Nos.571 & 600 of 2007

filed the present suit for partition and separate possession of their 1/4th share.

Question No.1:

36. Insofar as the first substantial question of law is concerned, though the plaintiffs filed the suit for partition stating that the suit properties are ancestral properties of late.Sivanu Thevar, who has got four sons and the plaintiff is one of the legal heirs of the one of the sons of the Sivanu Thevar, namely, Velyutha Thevar, admittedly, they have not produced any title deed and also admittedly, the village, which covers the issue of properties, is the inam village and subsequently, under the Tamil Nadu Act 26 of 1963 (Inam Abolition Act), the entire land was taken over by the Government. The plaintiffs have not proved any pre-existing title of the ancestors of late.Sivanu Thevar. Even Ex.A1 clearly shows that the appellants are in possession of some of properties and the appellants have also produced the title deed under Exs.B36, 42 to 45 and 48. The plaintiffs also have not challenged those title deeds, but simply they stated that the same will not bind them. The appellants were tracing title from 1967,



S.A.(MD)Nos.571 & 600 of 2007

whereas, the suit was filed only in the year 1985 and even without challenging the right and title of the appellants and within the statutory period, even in this suit also, they simply averred that the same are not binding and ignored the sale deeds executed in favour of the appellants. It is settled proposition of law that the plaintiffs have to prove their case in the manner known to law on their own strength and they cannot take advantage of loop holes left by the defendants. When the plaintiffs are especially claiming title that the suit properties are the ancestral properties, on a perusal of the entire materials, it is seen that they failed to prove that the suit properties are ancestral properties. Admittedly, the village is covered under the "Inam Village" and subsequently, the Inam Abolition Act came into force in the year 1963 and there were also some proceedings in the Inam Abolition Tribunal and in all the proceedings, the Pattas were granted to the plaintiffs and the appellants. When the Pattas were granted under the Inam Abolition Act and the plaintiffs have not proved the pre-existing title, which is the ancestral properties of the plaintiffs, they are not entitled to the suit for partition as prayed for. Admittedly, the plaintiffs have not examined any other witnesses, except the first plaintiff was examined as PW1. He has admitted that they have not produced any title deed. When the suit



S.A.(MD)Nos.571 & 600 of 2007

properties are covered in the "Inam Village", the plaintiffs have not produced any grant, either in favour of late.Sivanu Thever or his ancestors.

When the plaintiffs are claiming title as legal heirs of late.Sivanu Thevar and that the suit properties are their ancestral properties, it is well settled proposition of law that when the plaintiffs filed the suit in particular manner, they have to establish their right and title in the particular manner and not otherwise. Therefore, finding of the Courts below are perverse and hence, the Judgment and Decree passed by the trial Court is liable to be set aside. Accordingly, the first substantial question of law is answered in favour of the appellants.

Question No.2:

37. Admittedly, there is a finding by the Inam Abolition Tribunal under Ex.B1, which acknowledged the vendors of the appellants and also "Kudivarams" and on that basis, the Patta was granted under Section 12 of the Tamil Nadu Inam Estate (Abolition and Conversion into Ryotwari) Act, 26 of 1963. Therefore, when once the Patta was granted and the same was recognized by the competent authority, it is for the plaintiffs to establish that their ancestors have pre-existing right and title and they are not claiming



S.A.(MD)Nos.571 & 600 of 2007

any right under the Inam Abolition Act, or they have pre-existing right, even prior to the said Act 26 of 1963 came into force. Therefore, if they have got any pre-existing right, *de-hors*, the finding of the Tribunal that they have to approach only the civil Court to prove their title, in case there is any dispute in title. When the appellants were granted Patta based on their title deeds, the plaintiffs ought to have challenged the title deeds and they have also not established their pre-existing right and title. In the absence of the same, they are not entitled to file the suit for partition, claiming that the properties are the ancestral properties. The plaintiffs have not established that the suit properties are ancestral properties of late.Sivanu Thevar and no iota of documents and evidence are produced, in that regard and except the first plaintiff (PW1), no witness was examined on the side of the plaintiffs to establish that their ancestors were in possession and enjoyment of the properties as owner of the properties prior to coming into force of the Inam Abolition Act. Therefore, when once Patta was granted under Section 12 of the said Act, it is the duty of the plaintiffs to prove that they have pre-existing right. In the absence of the same, the findings of the Courts below are perverse. Accordingly, the second substantial question of law is answered in favour of the appellants.



S.A.(MD)Nos.571 & 600 of 2007

Question Nos.3 and 4:

38. When the defendants have denied the right and title of the plaintiffs and the plaintiffs have also not produced any title deed, namely, the pre-existing right and title to a specific extent, in the absence of the same, the suit as framed, is not maintainable in respect of the specific extent, in the absence of any pre-existing right and title prior to coming into force of the Inam Abolition Act.

39. The plaintiffs have come to Court with a specific case that the suit properties are the ancestral properties of late.Sivanu Thevar and there were proceedings under the Inam Abolition Tribunal, which found that the appellants are in possession and Patta was also granted to the appellants based on their title through sale deeds, which were not specifically challenged by the plaintiffs and the plaintiffs have not established their ancestral right and title, namely, any pre-existing right and title.

40. Therefore, under the above circumstances, this Court finds that the plaintiffs have not proved their case on their own strength and they



S.A.(MD)Nos.571 & 600 of 2007

cannot take advantage of the loop-holes left by the defendants. Admittedly, the suit properties are covered under the "Inam village" and subsequently, after the Inam Abolition Act of 1963 came into force, Patta was granted to the appellants. Unless the plaintiffs establish their pre-existing right and title to show that the suit properties are ancestral properties of the plaintiffs, with specific documentary evidence, the plaintiffs are not entitled to get the relief as sought for. Therefore, there is no quarrel with the proposition of law as laid down by the Hon'ble Supreme Court in various decisions referred to by the learned counsel for the appellants. However, the present case on hand is only a suit for partition filed by the respondents 1 to 4/plaintiffs, especially, claiming that the suit properties are ancestral properties of late.Sivanu Thevar. Therefore, it is the duty of the plaintiffs first to establish that the suit properties are the ancestral properties of the late.Sivanu Thevar.

41. On a careful perusal of the entire materials available on record, this Court finds that the plaintiffs have not proved that the suit properties are ancestral properties of late.Sivanu Thevar and they have also traced only title from the Patta granted by the "Inam Abolition Tribunal" and not from



S.A.(MD)Nos.571 & 600 of 2007

pre-existing right and title. Therefore, if at all, the plaintiffs are aggrieved, first they have to file a suit for declaration of title before the Civil Court and establish their pre-existing right and title and then only, they can file the suit for partition. Hence, in the absence of any proof of ancestral character / pre-existing right by documentary evidence, the plaintiffs are not entitled to the reliefs as sought for in the plaint. Hence, the Judgment and Decree passed by the Courts below are liable to be set aside and accordingly, the same are set aside.

42. In the result, these Second Appeals are allowed. No costs.
Consequently, connected miscellaneous petitions are closed.

23.08.2024

Neutral Case citation : Yes/No
Index : Yes / No
Internet : Yes
Speaking Order : Yes/no
skn

To

1. The Principal Subordinate Judge, Tirunelveli,
2. The I Additional District Munsif, Tirunelveli.

48/49



S.A.(MD)Nos.571 & 600 of 2007

3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

WEB COPY

P. VELMURUGAN, J

skn

Common Judgment made in
S.A.(MD)No.571 of 2007
and S.A.(MD)No.600 of 2007

Judgment delivered on 23.08.2024