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SA No. 1293 of 1988



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-11-2025

CORAM

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

SA No. 1293 of 1988

AND

SA No. 1294 OF 1988, SA No. 1295 OF 1988

1. T.N.Raja Gounder

2. Kumararaja (died)

3. Sivam K. W/o.T.R.Kumararaja

4.Vengatesh T.K.

5.Ramprasad T.K.

6.Lakshmipriya Kumararaja,
A2 died, A3 to A6 are brought on
record as LRs. of the deceased A2, vide
court order dated 01.12.2023 made in
CMP.No.7489 of 2022 in S.A.No.1293
of 1988(CKJ)

Appellants

Vs

1. R.K.Muthusami(died)

2.A.Shanmugam(died)

3.A.Muthu



4.Pappayee

5.Bakkiam

6.P.Arumugam

7.P.Muthu Gounder (died)

8.Rajammal (died)

memo recorded(USR.No .4817) R8-died, R9 to R11, who are already on record are recorded as LR.s. of the deceased R8 vide court order dated 16/04/2024 made in S.A.No.1293 of 1988

9.M.Murugesan(died)

10.M.Raju(died)

11.M.Senthil Kumar

12.Parvathy

13.Vasuki,

14.Kalaiselvi,

15.Sumathi,

16.Komathy,

17.Naveen,

18.Gobhi,

R2 died, R12 to R15 are brought on



record as LR's of the deceased R2 and R10 died, R16 to R18 are brought on record as LR's of the deceased R10 vide court order dt 01/12/2023 made in CMP.Nos.4725 and 4726 of 2021 in SA.No.1293 of 1988

19.Palaniswamy

20.Jayammal

R7 died, R19 and R20 are brought on record as LR's of the deceased R7 vide court order dated 04/03/2024 made in CMP.Nos.3170, 3176 and 3177 of 2023 in S.A.No 1293 of 1988

21.Saraswathi

22.Sathyamurthy

23.Gokulapriya

R9 died, R21 to R23 are brought on record as LR's of the deceased R9 vide court order dated 05/02/2025 made in CMP No.9658 of 2024 in SA.No. 1293 of 1988.

Respondents

PRAYER

Against the judgment and decree dated 29.07.1988 made in A.S.No.88 of 1986 on the file of the I Additional District Court, Salem reversing the decree and judgment dated 11.04.1986 made in Original Suit No.236 of 1985 on the file of the Sub Court, Sankari



For Appellants : Ms.L.Sweety for
Mr.M.Nallathambi

For Respondents 3 : Mrs.Chitra Sampath, Senior Counsel,
for Mr.S.Kalyanaraman

For Respondents
11, 16 to 18, 21 to 23 : Mr.P.Thiyagarajan

For Respondents
13 to 15 : Mr.P.Ravishankar Rao

For Respondents
19 and 20 : Mr.L.Mouli

R1, R2, R4, R5, R7, R8, R9 and R10 – Died

R6 and R12 - Not ready in notice

SA No. 1294 of 1988

1. P.Arumugam

Appellant

Vs

1. R.K.Muthusami (died)

2.A.Shanmugam

3.A.Muthu

4.Pappaayee

5.Bakkiam



6.Rajammal

7.M.Murugesan

8.M.Raju

9.M.Senthil Kumar

Respondents

PRAYER

Against the judgment and decree of the I Additional District Court, Salem dated 29.07.1988 in Appeal Suit No.89 of 1986 preferred against the judgment and decree of the learned Subordinate Judge, Sankari dated 11.04.1986 made in Original Suit No.304 of 1985.

For Appellant : No appearance

For Respondents 3 : Mrs.Chitra Sampath, Senior Counsel,
for Mr.S.Kalyanaraman

R1, R2, R4 and R5 – Died

R7 to R9 - Not ready in notice

SA No. 1295 of 1988

1. T.N.Raja Gounder

Appellant(s)

Vs

1. A.Shanmugam

2.A.Muthu



3.R.K.Muthusami Gounder(died)

4.Pappayee W/o late Appavoo Gounder

5.Bakkiam D/o Late Appavoo Gounder

6.Rajammal(died)

7.M. Murugesan

8.M.Raju

9.M. Senthil Kumar

R6 died, R7 to R9 already on record are recorded as LR's of the deceased R6.

Memo recorded vide court order dated 26/04/2024 made in SA.No.1295 of 1988

Respondent(s)

PRAYER

Against the judgment and decree dated 29.07.1988 in Appeal Suit No.90 of 1986 on the file of the I Additional District Court, Salem reversing the decree and judgment dated 11.04.1986 made in Original Suit No.305 of 1985 on the file of the learned Subordinate Judge, Sankari.

For Appellant : Ms.L.Sweety for
Mr.M.Nallathambi

For Respondents 2 : Mrs.Chitra Sampath, Senior Counsel,
for Mr.S.Kalyanaraman

R1, R3, R4 and R5 – Died

R7 to R9 - Not ready in notice



COMMON JUDGMENT

These three second appeals, having arisen out of a common judgment, have been heard together and disposed of by this common judgment.

2. O.S.No.236 of 1985 came to be filed seeking for the following reliefs:

“To declare the plaintiffs and the fourth defendant are entitled to the suit property and the title to the same with them.

To grant permanent injunction restraining them in any way interfering with the plaintiffs possession and direct the defendants 1 to 3 to pay the Court and grant such other relief or reliefs.”

3. O.S.No.304 of 1985 came to be filed seeking for the following reliefs:

“To restrain the defendants and their men in any way interfering with the peaceful possession and enjoyment of the suit property by the plaintiffs by means of permanent injunction.

Awarding costs of the suit”

4. O.S.No.305 of 1985 came to be filed seeking for the following reliefs:

“To grant permanent injunction restraining the defendants and their men from unlawful trespassing upon the suit property or otherwise interference with the plaintiffs possession of the suit property.

Awarding costs of the suit”



5. The lead case is OS.No.236 of 1985 on the file of the Subordinate Court at Sankari. Originally, it was presented as O.S.No.564 of 1983 before the Subordinate Court at Salem. Subsequently, another suit was presented in O.S.No.643 of 1983, on the file of the District Munsif Court at Tiruchengode. Thereafter, it was transferred to the file of Sub Court at Salem and renumbered as O.S.No.572 of 1984. Yet again, it was transferred to the file of the Sub Court, Sankari and renumbered as O.S.No.304 of 1985. This was a suit for permanent injunction filed by the plaintiffs in O.S.No.236 of 1985 against their alleged lessee. It sought to restrain the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit properties. Another suit had been filed in O.S.No.683 of 1983 on the file of the District Munsif Court at Tiruchengode. This was a suit for permanent injunction restraining the defendants from unlawfully trespassing upon the suit property or otherwise interfere with the possession of the property by the plaintiff. This suit too, was subsequently transferred to the Sub Court, Salem and numbered as O.S.No.574 of 1984. Thereafter, it was yet again, transferred to the file of the Subordinate Court at Sankari and numbered as O.S.No.305 of 1985. The plaintiff in the last suit is the first defendant in O.S.No.236 of 1985.

6. The learned Subordinate Judge, Sankari tried the three suits together. In and by way of a judgment dated 11.04.1986, he dismissed O.S.No.236 of 1985 and O.S.No.304 of 1985, and decreed the suit in O.S.No.305 of 1985. The plaintiffs, being aggrieved by the said judgment



and decree, preferred three appeals to the learned District Judge at Salem.

These appeals were received as A.S.No.88 of 1986, A.S.No.89 of 1986 and A.S.No.90 of 1986. The learned I Additional District Judge, in and by way of a judgment dated 29.07.1988, allowed all the appeals. Consequently, he decreed O.S.No.236 of 1985 and O.S.No.304 of 1985 as prayed for with costs. He dismissed O.S.No.305 of 1985 with costs.

7. Aggrieved by the reversal of the decrees, three second appeals were presented before this Court in S.A.Nos.1293 to 1295 of 1988.

8. The Hon'ble Mr.Justice T.N.Vallinayagam set aside the judgment of the lower appellate court and restored the judgment of the trial court by allowing the second appeals on 18.02.1997. The respondents in the second appeals preferred Civil Appeals to the Supreme Court in Civil Appeal Nos.7774-7776 of 1997. The Supreme Court, by a judgment dated 10.09.2003 allowed the appeals and remitted the same to this court for fresh disposal. Hence, these appeals are again before this court.

9. For the sake of convenience, the parties will be referred to as the plaintiffs and the defendants, keeping in mind, their respective ranks in O.S.No.236 of 1985.

10. It is the case of the plaintiffs that the suit schedule mentioned property consists of three tiled houses. They originally belonged to one Raja



Gounder. The said Raja Gounder married one Pavayee Ammal @ Nallammal.

The couple had three children, namely,

- (i) Senguttu Nalliah Gounder;
- (ii) Appavu @ Nallaiah Gounder; and
- (iii) Chinnayan @ Raja Gounder.

11. The father, Raja Gounder, passed away in the year 1906 and his three sons succeeded to the estate. The aforesaid three persons executed a sale deed for the suit property and the other properties in favour of one, Peria Gounder and his brother, Muthuraja Gounder on 17.08.1906. The sale was for valid consideration of Rs.500.00. Pursuant to the sale, the vendors also handed over possession of the property to the purchasers. The purchaser, Muthuraja Gounder passed away in 1941 leaving behind his son, Appavu, the first plaintiff to succeed to his estate. Peria Gounder had two children, namely, Raja Gounder and Muthu Gounder (fourth defendant). Peria Gounder passed away in 1952.

12. During the lifetime of Peria Gounder and Muthu Raja Gounder, they retained the suit property and sold the other landed properties which came into their hands, to third parties. The family of the original vendor, Raja Gounder purchased the same from such third parties.

13. Raja Gounder died as a bachelor on 21.10.1981. He bequeathed all his immovable properties to the second plaintiff, R.K.Muthusamy, by way



of a registered 'WILL', dated 05.07.1981. The plaintiffs pleaded that the first plaintiff, Appavu Gounder is entitled to 1/2th share and the second plaintiff, R.K.Muthusamy is entitled to 1/4th share and the fourth defendant, Muthu Gounder is entitled to other 1/4th share.

14. The first plaintiff claimed that he is residing in door No.170. and his cousin, Raja Gounder, (the bachelor), had let out the door Nos.171 & 171-A in the year 1972 to one, Natesan, who was in occupation till the year 1982. Door No.171-A had become dilapidated, and a shed alone was left. The fourth defendant, Muthu Gounder went away to Madras and settled there. Consequently, he did not join the plaintiffs 1 and 2 to file the suit. Hence, he was arrayed as the fourth defendant.

15. The first defendant is one, T.N.Raja gounder. The second defendant, Kumararaja is his son. The third defendant, P.Arumugam is a tenant of theirs. As the defendants 1 to 3 attempted to interfere with the peaceful possession and enjoyment of the plaintiffs, the plaintiffs were constrained to present the suit for declaration of title and for permanent injunction.

16. Summons were served on the defendants. The first defendant filed a written statement and it was adopted by his son, the second defendant. The first defendant accepted that the original owner of the property was his grandfather, Raja Gounder. He also accepted the relationship between Raja



Gounder, Pavayee Ammal and the birth of three male children to them. He also accepted that a sale deed had been executed on 17.08.1906 by the legal heirs of Raja Gounder, in favour of Muthuraja Gounder and Peria Gounder, the ancestors of the plaintiffs and the fourth defendant. According to him, the sale deed was sham and nominal and no consideration was paid for the same. As the document was not meant to be acted upon, it was not given effect to. He urged that title to the properties did not pass by virtue of that document and the possession was also not delivered.

17. The first defendant further pleaded that the vendors' family continued to remain in possession and thereafter, the defendants were in possession of the same. Consequently, the defendants had perfected their title by adverse possession. He pleaded that the revenue records stood in the name of his father, Appavu @ Nalliah Gounder and thereafter, in his name. He urged that he is the one, who has been paying the house tax for the said property as its owner, after his father's death. In effect, the plea being that, despite the sale deed having been executed by his father and his senior and junior paternal uncles in favour of Peria Gounder and Muthuraja Gounder, their family continued to be in possession of the properties. He alleged Natesan, who the plaintiffs pleaded was their tenant, was in fact his tenant, and it was the first defendant, who had leased the properties to several third parties. On these pleadings, he sought for dismissal of the suit.



18. Insofar as O.S.No.304 of 1985 is concerned, as pointed out earlier, it is a suit for bare injunction. After having traced their title as they did in O.S.No.236 of 1985, the plaintiffs pleaded that the third defendant, Arumugham, who is the sole defendant in O.S.No.304 of 1985, attempted to trespass into the property on 18.06.1983. Immediately, the first plaintiff lodged a complaint with the police. Thereafter, Arumugham demanded the plaintiffs to sell the property to him. When the plaintiffs refused, Arumugham, on 17.10.1983, attempted to trespass into the property. With great difficulty, the plaintiffs prevented such trespass. Instead of being a law abiding citizen, Arumugham, who has a large number of supporters, started proclaiming that he will trespass into the property and dispossess the plaintiffs. Fearing that this incident might take place at any time, the plaintiffs came forward with a suit for injunction.

19. Arumugham, on being served with summons, filed a written statement. He pleaded that he is a lessee under the first defendant in O.S.No.236 of 1985, namely, T.N.Raja Gounder. He alleged that the plaintiffs have no right, title, or interest over the property. He pleaded that he is running a Timber business and Tiles Godown, under the name and style of "N.Palaniappa Goundar and Sons". He pleaded he was using the vacant land in the suit property for the purpose of business to store timber and tiles. He took a stand that he was paying the house tax for door No.170 and 171, for and on behalf of his landlord, T.N.Raja Gounder. He added that he was not aware of the existence of door No.171A. He denied that the first



plaintiff is residing in door No.170, and that the remaining portion of the property was in occupation of Natesan. He denied the allegation of attempt to trespass on the ground that there was no necessity for him to trespass, as he is in possession of the property. On the contrary, he alleged that the plaintiffs had attempted to dispossess him and damaged the goods stored in the suit property, for which he lodged a complaint on 24.10.1983. On account of this ill motive of the plaintiffs, he pleaded that he had suffered a loss to the tune of Rs.30,000/-. Based on these pleas, he sought for dismissal of the suit.

20. The first defendant in O.S.No.236 of 1985 has also presented a suit in O.S.No.305 of 1985. This too, was a suit for bare injunction. In this suit, he pleaded that there are three tiled buildings in the suit property. The municipality assessment for the said property is No.2333 and the electricity service connection No.2477, and that both these stands in his name. He urged that the three tiled buildings were constructed by his father, Appavu @ Nalliah Gounder. He had put one, Arumugham into possession of the property and that he is the absolute owner of the same. In addition to occupying a portion, he pleaded that he had leased out the property to several third parties, namely, Palaniappan, Arumugam Chettiar, A.Natesan Mudaliar and Arumugam. He alleged that the defendants (who are the plaintiffs in O.S.No.236 of 1985) are neighbours at Rajagoundampalayam and there was some bad blood between both of them. On 28.10.1983 and 30.10.1983, the plaintiffs in O.S.No.236 of 1985 had attempted to trespass



into the suit property. With the help of neighbours and his lessee, the first defendant thwarted their attempt. Since the plaintiffs in O.S.No.236 of 1985 were holding out that they will dispossess the first defendant, he came forward with the suit in O.S.No.305 of 1985.

21. The plaintiffs and the first plaintiff's sons, who were arrayed as defendants in O.S.No.305 of 1985, filed a written statement. Apart from reiterating their pleadings in O.S.No.236 of 1985, they pleaded that the first defendant had been a Village Munsif in Tiruchengode, and enjoyed active support of the police and other Government & Municipal officials. They pointed out that, by abusing his position, he had transferred the municipal records and electricity service connection in his name. They pleaded that there was no necessity for them to trespass into the property on 28.10.1983, or on 30.10.1983, as they were the absolute owners of the property. They categorically pleaded that they were in possession of the same and sought for dismissal of the suit.

22. On the basis of these pleadings, the trial court framed the following issues:

In O.S.No.236 of 1985

- “(1) Whether the plaintiffs are entitled for declaration and injunction?
- (2) Whether the sale deed dated 17.08.1906 is a sham and nominal transaction?
- (3) Whether the plaintiffs are in possession of the property?



(4) Whether the 1st defendant has perfected his title by adverse possession?

(5) Whether the 2nd defendant is an unnecessary party to the suit?

(6) Whether the suit is in time?

(7) To what relief?

In O.S.No.304 of 1985

(1) Whether the plaintiff is entitled to for permanent injunction?

(2) To what relief?

In O.S.No.305 of 1985

(1) Whether the plaintiff is in lawful possession of the property?

(2) Whether the plaintiff is entitled for injunction?

(3) To what relief?

23. The plaintiffs, apart from examining themselves, examined three other witnesses. In all, PW1 to PW5 were examined. They exhibited 25 documents, namely Ex.A1 to Ex.A25. The first defendant entered witness box as DW1 and examined four other witnesses, including the defendant in O.S.No.304 of 1985 viz., P.Arumugham, as a witness on his side. In all, the defendants examined five witnesses. The defendants marked Ex.B1 to Ex.B57. Pending the suit, the Trial Court appointed an Advocate Commissioner. He filed three documents, a report, list of inventories and a plan. They were received as Ex.C1 to Ex.C3.



24. The learned Trial Judge held that the sale deed dated 17.08.1906 is a sham and nominal document and consequently, came to a conclusion that the plaintiffs cannot claim any right, title, or interest over the property. He also held that the plaintiffs had not proved that they were in possession of the property at any point of time and that the first defendant had demonstrated with overwhelming evidence that he and his tenants are in possession of the same and consequently, answered the issue of possession against the plaintiffs. He further held that the first defendant had perfected his title by adverse possession. On the basis of these findings, he came to a conclusion that the plaintiffs are not entitled to any relief. Consequently, as pointed out above, he dismissed O.S.No.236 of 1985 and O.S.No.304 of 1985 and decreed O.S.No.305 of 1985.

25. When the matter was carried to the lower appellate court, the learned Judge framed the following issues for consideration under Order XLI Rule 31 of the Code:

“The points that arise for consideration in A.S.No.88/1986 as follows:

(1) Whether the sale deed dated 17.08.1906 by Pavayee alias Nallammal and her sons was a sham and nominal one?

(2) Whether R1 has title acquired or otherwise?

(3) Whether the applicants have title and possession?



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The points that arise for determination in A.S.No.89/1986 are as follows:-

(1) Whether the appellants have title and possession?

(2) Whether the tenancy alleged by the respondent is true?

(3) Whether T.N.Raja Gounder has title and possession?

The points that arise for determination in A.S.No.90/1986 are as follows:

(1) Whether the sale deed dated 17.08.1906 by Pavayee alias Nallammal and her sons was a sham and nominal one?

(2) Whether R1 has title acquired or otherwise?

(3) Whether the appellants have title and possession?"

26. After re-appreciation of the entire evidence, he came to a conclusion that the sale deed executed on 17.08.1906 was for valid consideration, and is not a sham and nominal one. He pointed out that municipality registers cannot be relied upon for the purpose of deciding the possession. He reached this conclusion on the finding that when the plaintiffs approached the municipality for the records, they had intimated that the documents had been destroyed. The reason being under the rules connected with the then Panchayat Act, house tax demand register should be maintained only for five years. Curiously enough, the very same municipality issued copies of registers, which they had earlier stated were



destroyed, to the first defendant. He held that the possession was with the plaintiffs, and that they have the title and possession of the same, and that the first defendant had not acquired title by adverse possession.

27. When the defendants preferred Second Appeals before the Court, the following substantial questions of law were framed for consideration:

“(i) Whether the plaintiffs could establish their possession from 1906 till the date of suit to claim the relief of injunction?

(ii) Who is in possession right from 1906 till the date of suit?

(iii) Whether the defendants' prescribed title by adverse possession?”

28. I heard Ms.Sweety representing Mr.M.Nallathambi for the appellants, Ms.Chitra Sampath, learned Senior Counsel for Mr.S.Kalyanaraman, Mr.L.Mouli, Mr.P.Thiyagarajan and Mr.Ravishankar Rao for the respondents.

29. Ms. Sweety argued as follows:

(i) The sale deed dated 17.08.1906 is a sham and nominal document;

(ii) The plaintiffs have not produced any document to show their possession after execution of the sale deed;

(iii) The plaintiffs did not produce any document to show that the revenue records were transferred in their name after the alleged sale;



(iv) The original of Ex.A1 was in the custody of the defendants/appellants and not produced by the plaintiffs;

(v) The defendants have produced documents to show their continuous possession from 1925 to 1983 and thereby, the defendants have proved their title by prescription, even assuming Ex.A1/Ex.B2 is a document that confers title on the plaintiffs;

(vi) The Municipal records under Ex.B8 stand in the name of the 1st defendants and his father, which is correlated by Ex.B12. Ex.B16 to Ex.B20 and Ex.B21 to Ex.B30 point out that the defendants are in possession and enjoyment of the property;

(vii) The possession is further proved by the electricity service card that has been produced by the defendants;

(viii) The lease deed entered into between the tenant Arumugam and the first defendant indicates that the property had been leased by the defendant in favour of the said Arumugam. She relied upon Ex.B49 to Ex.B54 to the same effect.

30. In fine, her arguments is that the defendants have custody of the documents and, since they have been enjoying the property by leasing out the same, when read together with the municipal records, it is evident that the defendants are the ones, who are in possession and hence, the judgment and decree of the lower appellate court should be set aside. In the alternative, she adds that the appellants have prescribed title by adverse possession.



31. Insofar as the appeal against Arumugam is concerned, she points out that the plaintiffs admit to the tenancy between Arumugam and themselves, but plead that Arumugam is a stranger. On Ex.A16 to Ex.A21, she urges that the documents were filed through PW5, the son of the first plaintiff and that he is incompetent to speak about the same.

32. Per contra, the learned counsel for the respondents submitted as follows:

(i) Ex.A1/Ex.B2 is not a sham and nominal document but one executed for valid consideration and had come into force.

(ii) There is no pleading as to how the defendants came into possession of the property after the execution of Ex.A1 / Ex.B2;

(iii) The document under Ex.A1/Ex.B2 cannot be a sham and nominal document, when it had been acted upon as is evident from Ex.A18, Ex.A19, Ex.A20 and Ex.A21;

(iv) Revenue & municipality receipts will not confer title. It was only on 15.07.1982, the defendant had made an application to the municipality for mutating the revenue records in his name. Ex.B31 to Ex.B33 relied upon by the defendants do not relate to the suit property;

(v) The defendants have not prescribed title by adverse possession;

(vi) The lower appellate court had analysed the issues threadbare and therefore, there is no necessity for this court to re-appreciate the evidence. They add this Court cannot re-appreciate the evidence as sought for by the



appellants in exercise of powers under Section 100 of the Code of Civil Procedure.

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33. In particular, Mrs.Chitra Sampath appearing for Mr.Kalyanaraman urges that Ex.A16 to Ex.A21 prove that the sale deed in Ex.A1/Ex.B2 was acted upon. She points out that when the defendants plead that the document relied upon by the plaintiffs is a sham and nominal transaction, they ought to have filed a separate suit or at least, a counter claim seeking for declaration to that effect. For this point, She relies upon the judgment of the Supreme Court in ***Vishwanath Bapurao Sabale v. Shalinibai Nagappa Sabale, (2009) 12 SCC 101.***

34. Mr.L.Mouli urges that the combined reading of Ex.A1 with Ex.B1 would point out that the property had been alienated only for settling dues incurred by the family of the defendant's ancestors and hence, the document on its own showing cannot be treated as sham and nominal. He states that the appellants cannot plead adverse possession, as the date on which the possession became adverse to the plaintiffs, has not been pleaded. He states that the appellants ought to have filed a suit for declaration of title by adverse possession and cannot set up a defence in a suit for title filed by the plaintiffs. Finally, he states that Section 90 of the Evidence Act comes to the rescue of the respondents as Ex.A1/Ex.B2 is of an ancient origin as required by that Section.

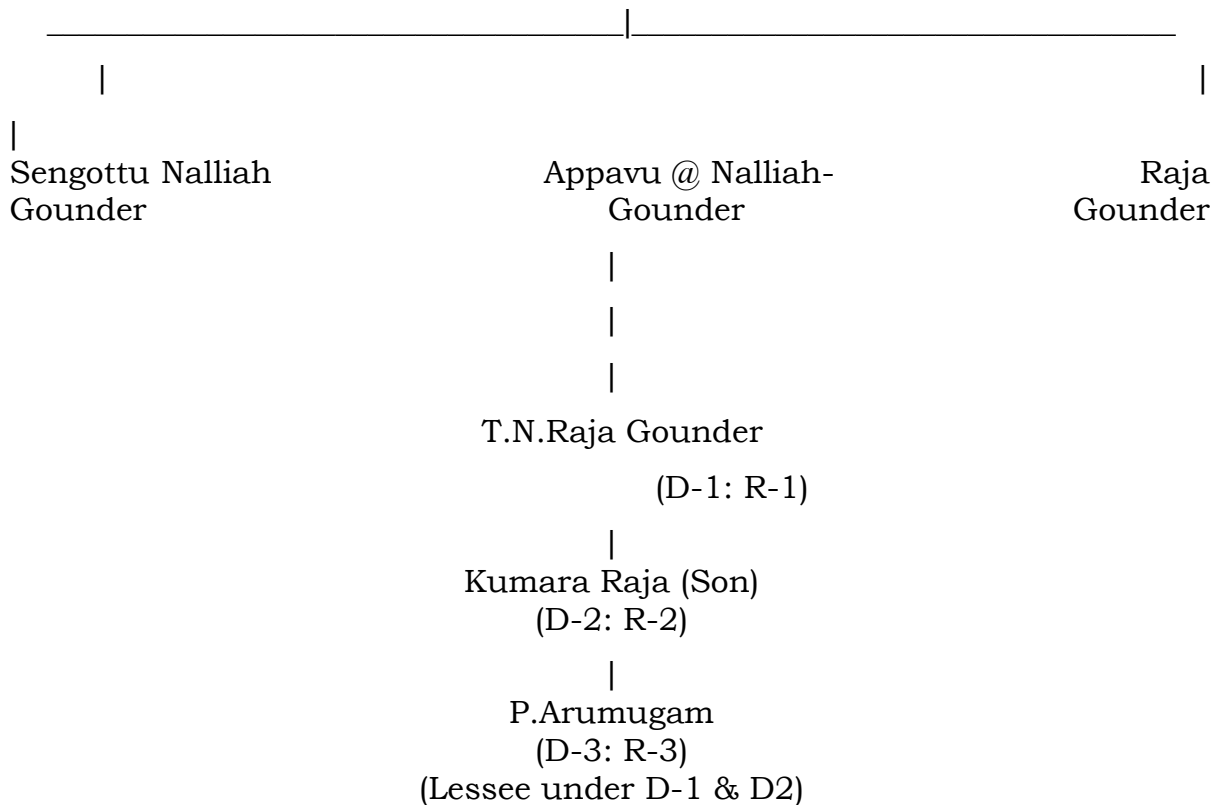


35. I have carefully gone through the papers and have paid my anxious consideration to the submissions made by both sides. The facts have already been set forth in detail and hence, I am not reiterating the same. As the facts, issues and questions of law are intertwined, they are taken up together.

36. For the sake of appreciation, the admitted genealogy of the parties are set forth hereunder:

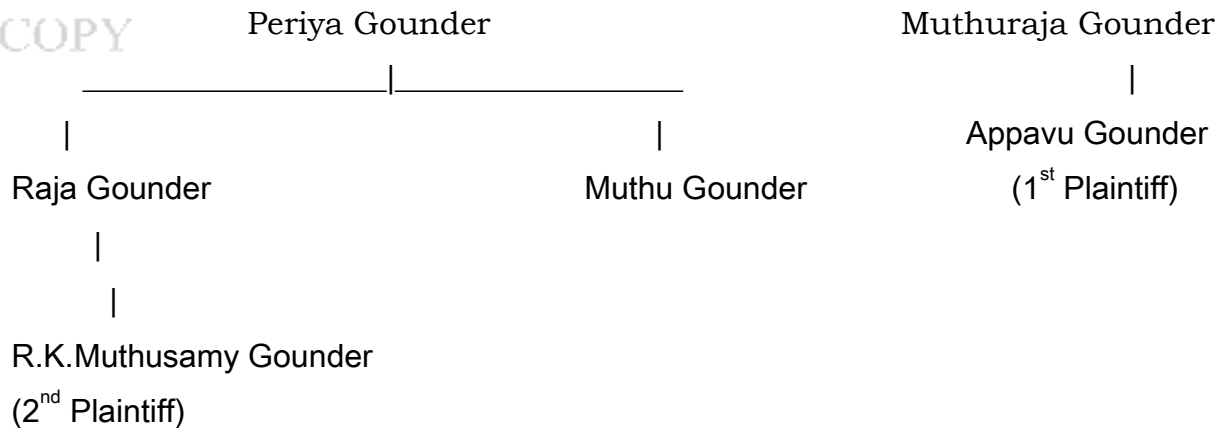
Genealogy Tree of the Vendor's Family

Raja Gounder – Pavayee Ammal



**Genealogy Tree of the Vendee's Family**

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37. The factum of execution of sale deed on 17.08.1906, Ex.A1 / Ex.B2 is not in dispute between the parties. The plea of the defendants is that the document is a sham and nominal one.

38. When can a document be said to be sham and nominal? A document will be sham "if it ostensibly creates rights/obligations, which are not intended to be acted upon by the parties to the deed". It is pursuant to a secret arrangement with an ulterior motive of securing an undisclosed advantage to the owner. It should be a product of collusion between the parties to the document to achieve an illegal objective. (See, **V.M. Salim v. Fathima Muhammed, (2011) 15 SCC 756**).

39. Though by usage, the term "sham and nominal" are used together, they have different legal connotations. A "sham transaction" is one that is



not intended to be acted upon by the parties. The document executed by the parties is pursuant to a secret arrangement with an ulterior motive.

Whereas, a “nominal transaction” is one where an apparent owner, often referred to as a Benamidar, holds a property for the benefit of the real owner and no title was intended to pass to the nominal purchaser. In either case, title never passes on to the person, whose name is shown in the deed. When it relates to a sale deed, the sale lacks real consideration and has no intention of transferring ownership. It is normally a contract that serves as a camouflage to deny the benefits. The three principle ingredients to such transactions are:-

- (i) no consideration is paid;
- (ii) title is not intended to be passed; and,
- (iii) it was not meant to be acted upon.

Hence, the burden of proof lies on a person claiming that the document is sham and nominal to prove the same.

40. Remembering these principles, let me now approach the case at hand. As long as the original vendors were alive, no suit or claim was made by them that the document was a sham and nominal one. It was for the first time, nearly after 80 years, after the execution of the document in 1983, that the disputes arose between the parties regarding the deed. The very property was the subject matter of several transactions after the execution of Ex.A1/Ex.B2. The original purchasers, namely, Periya Gounder and Muthuraja Gounder had, in exercise of their ownership, created a mortgage



in favour of Papayee Ammal. This was by way of a registered document in Document No.3608/1907, marked as Ex.A17. The document was executed on 31.10.1907.

41. A perusal of Ex.A17 shows that Muthuraja Gounder and Periya Gounder had acquired the property, which they were mortgaging, by way of a document on 17.08.1906, in document No.2793/1906. Ex.A1 / Ex.B2 is that document. This points out that the predecessors in title of the plaintiffs had not only asserted their title by purchase, but had also mortgaged the same in exercise of their ownership.

42. Yet again, this property had been dealt with by way of another document in Doc. No.2390/1912 marked as Ex.A18. On 15.07.1912, ten persons had executed the document, to which the predecessors in title of the plaintiffs, were also parties. Within a couple of days, another document also came to be executed by the aforesaid 10 persons in Doc.No.2391/1912 on 17.07.1912. If not for Ex.A1 / Ex.B2, the purchasers, Periya Gounder and Muthuraja Gounder could not have executed Ex.A18 & Ex.A19. They did so in the capacity of owners of the schedule mentioned properties.

43. The next document, which throws much light on the nature of sale deed dated 17.08.1906 is Ex.A20. This was a document to which Appavu @ Nalliah Gounder, the father of the first defendant was a party. This is in document No.367/1917 dated 05.03.1917. To this transaction also, the



aforesaid 10 persons were parties. On 02.06.1917, another document was entered into between the parties, namely, the first defendant's father and the 1st plaintiffs' father in document No.1501/1917. By this document, the purchasers, under Ex.A1/Ex.B2, transferred a portion of the property in favour of the father of the first defendant. This document was exhibited as Ex.A21.

44. I have referred to these documents because, if Ex.A1/Ex.B2 were to be treated as a document not conveying title or as sham and nominal, then there would have been no necessity for the father of the first defendant to purchase portions of the property conveyed earlier under Ex.A1 / Ex.B2, which he is said to have ostensibly alienated in favour of the predecessors in title of the plaintiffs.

45. When these documents were pointed out to Ms.Sweety, she urged that no person connected with the documents was examined and it was PW5, who had exhibited the same. On the face of it, the submission is untenable. This is because the documents, at the time of their marking before the court, were already more than 7 decades old. It is not the case of the defendants that the parties to the documents were alive and they had been kept away from the witness box. The documents are registered deeds executed between the predecessors in title of the plaintiffs and therefore, the plaintiffs are competent to exhibit the same.



46. Apart from Ex.A17 to Ex.A21, another fact which looms large against the defendants is the content of Ex.A1/Ex.B2, read with Ex.B1. The sale consideration for Ex.A1/Ex.B2 was Rs.500/-. Consideration was to be paid in the following manner:

- (i) Rs.180/- to the creditor who had obtained a decree,
- (ii) Rs.300/- to settle the dues of another creditor, and
- (iii) Rs.20/- paid in cash to the vendors.

47. The first defendant has produced Ex.B1, which is a suit register of O.S.No.120 of 1903. This was a suit presented by one, Arunachalam Chetty, against the grandmother, father and uncles of the first defendant. The suit was one based on a promissory note. The suit came to be decreed on 25.03.1903. The decree holder had put this decree into execution in REP.No.715 of 1904.

48. The Executing Court had passed a direction to attach the movables of the father of the first defendant and his brother. The movables had also been sold for a sum of Rs.25/- and part satisfaction was recorded. After having suffered several proceedings, the decree holder recorded full satisfaction of the decree to an extent of Rs.170-0-0. Thereafter, the cattle and movables belonging to the judgment debtor / predecessors of the defendants were directed to be released by the Executing Court, pursuant to an order in REA.No.1211 of 1906. This order was passed on 30.08.1906.



49. As rightly pointed out by the counsel for the legal heirs of the second plaintiff, the amount paid to the decree holder in O.S.No.120 of 1903 tallies with the amount set forth in Ex.A1/Ex.B2. The demand by the Trial Court that the plaintiffs ought to have proved the payment of Rs.500/- after 80 years is putting an impossible burden on the plaintiffs. The plaintiffs had produced a sale deed in the favour of their predecessors, which is a registered document and has a ring of genuineness attached to it. The burden of proof lies very heavily on the defendants 1 and 2, who had taken a stand that the document is a sham and nominal one.

50. To expect a party to prove the payment of consideration, after a lapse of 80 years cannot but be termed as an impossible task. The finding of the trial court in this regard is perverse. It is not the role of the courts to demand that parties perform impossibilities. The trial court had not appreciated the scope of Ex.B1 and Ex.A1/Ex.B2 in the correct perspective. This aspect had rightly been interfered with and set right by the lower appellate court. I should point out here that the sale deed, which had been executed for the purpose of extinguishing the liability in the money decree, had in fact achieved that purpose, because the decree itself came to be satisfied, a mere 13 days thereafter on 30.08.1906.

51. In the earlier portion of the judgment, I had pointed out that a sham document must be preceded by a secretive arrangement, in order to



bring about a document, which is not intended to convey title, with an ulterior motive of securing an undisclosed advantage of the owner. None of these conditions are satisfied in the present case.

52. Going through the records, I am able to conclude that the father of the first defendant, along with his siblings represented by their mother, had executed a sale deed transferring the title for the purpose of repayment of antecedent debts, which were incurred by the family and the debts were also referred to in the very sale deed. It was not a case where the document was entered into for the purpose of keeping the property away from the creditors of the family, but the sale deed was entered into for the purpose of receiving funds in order to discharge the creditors. This is clear from Ex.B1. As none of the requirements of a sham transaction have been satisfied in the facts and circumstances of the present case, I am of the view that the defence that has been taken by the first defendant should be termed as a sham one.

53. The aforesaid discussion leads me to the conclusion that not only was the sale deed executed and acted upon, but also supported by consideration. Hence, I am not in a position to agree with the submissions of Ms.Sweety to the contrary.

54. The argument of Ms.Sweety is that the revenue records, that have been produced by the first defendant points out that the first defendant and before him, his father, had been in continuous possession and enjoyment of



the property and therefore, the plaintiffs are not entitled to the relief of injunction. Entries made in the municipal records cannot confer title. This is too fundamental a position of law, and the judgment need not be burdened with authorities for the said purpose. If the case of the appellants is to be accepted, then it must be clear and categorical that there were only door Nos.170, 171 and 171A in the Bungalow Street, Tiruchengode. On the contrary, the evidence of DW1 would point out that on the same road, both, for the property under the occupation of the tenants of the first defendant, as well as the property of the plaintiffs, the door Nos.170 and 171 were given. This is clear from the evidence of DW1. The relevant portions are extracted hereunder:

“uh\$H ft[z;ld;ghisaj;jpy; 35 tUv&khf FoapUe;njd;/
ehd; 1980 mf;nlhgh; khjk; Xa;t[bgw;nwd;/ jhth brhj;jpy;
nlhh; ek;gh; 171A vd;w Foir ,Ue;jJ/ ,J enlrd; (PW3)
fl;odhh;/ nlhh; ek;gh; 171A fl;olj;jpw;Fk; vdf;F ghj;jpak;
,y;iy/ RthjPdKk; ,y;iy/ Ex.B3 brhj;Jf;Fk; jhth brhj;Jf;Fk;
xnu rh;nt ek;gh;/ xnu thp tpjpg;g[jhd;/ Ex.B3 epyj;jpd;
ePsk;. mfyk; 52 1-2 x 41 1-2 rJuoahFk;/ S.No.87/2 -y;
bkhj;j tp!;jPuzk; Rkhh; 2 Vf;fh; MFk;/ jhth brhj;Jk; Ex.B3
brhj;Jk; xnu epykhf ,Ue;njd;/ ABT MgP!; fl;olk; fl;oajw;F
Ex.B3 go tHf;F bjhlug;gl;IJ/ me;j tHf;fpYk; Door No.171/A



vdf;F ghj;jpag;gl;lJ ,y;iy vd;W vjph;thjk; brhy;y tpLjiy

Mnadd;/ ABT MgPRf;F Door No.171 MFk;/ jhth brhj;Jf;Fk;

Door No.171, 171.”

This shows that the plaintiffs and the defendants were in occupation of different properties in the same survey number, with door numbers overlapping.

55. I should point out here that it is under Ex.A21, that the father of the first defendant had purchased the property from the father and the senior paternal uncle of the first plaintiff. Unity in door numbers alone cannot be a ground to come to a conclusion that the defendants are in possession of the suit schedule mentioned property.

56. It is here I have to consider the nature of avocation carried on by the first defendant and his father. The father of the first defendant was the Hereditary Village Munsif. He was succeeded by the first defendant. The revenue records of the village were available with them till 1981. Till the State of Tamil Nadu abolished the posts of Hereditary Village Officers, records were being kept and maintained only by the family of the first defendant with respect to Tiruchengode Village hereditarily. Same door numbers having been given for the properties situated in the same survey number, I am able to come to a conclusion that the first defendant and his



family members were not in enjoyment and possession of the suit property.

It also indicates that the village records were not maintained in a manner required by law; i.e., separate door numbers for separate properties.

57. I will now turn to the plea of adverse possession that has been raised by Ms.Sweety. The concept of adverse possession is based on a latin maxim '*neque vi, neque clam, neque precario*'. This translates into "neither by force, nor secretly, nor by permission". This latin maxim is commonly used by courts is "*nec vi, nec clam, nec precario*". In order to establish the principle of adverse possession, a party will have to satisfy the three requirements, namely, *nec vi* - without force, *nec clam* - without secrecy and *nec precario* - without permission. In ordinary parlance, it is understood as open, hostile and continuous use, as if it were their own, in denial of the true owner's title. The first respondent, apart from the municipality receipts, has not been in a position to show that the possession by him has been open, hostile, and continuous. These are the basic requirements for the plea of adverse possession.

58. Here is a case where a document had been executed on 17.08.1906. It is a registered document. Therefore, there is a presumption that it has been validly executed. I have already discussed the heavy burden, that has been placed on the defendants to prove the document as sham, has not been discharged. I have further found that the deed has been supported by consideration and acting on the sale, the first defendant's



father had entered into a registered transaction with respect to the properties covered under Ex.A1 / Ex.B2. Hence, the plaintiffs have proved that the document is valid, in addition to the initial presumption of validity of the document in their favour. I have already held that no evidence has been let in by the defendants to prove the three necessary ingredients of adverse possession. Hence, this plea of Ms.Sweety too, fails and it is rejected.

59. Ms.Sweety then referred to the documents pointing out that the plaintiffs were residing elsewhere and not in the suit schedule mentioned property. It is not necessary that a person, who owns a property, should be residing in the same at all point of time. What a court is concerned with is legal and lawful possession. The legal and lawful possession having been proved by the plaintiffs, for the fact that the first plaintiff is residing elsewhere, does not mean that he loses the ownership which has passed down to him from his father.

60. Ms.Sweety drew my attention to the finding of the trial court and pleaded that the fourth defendant, at no point of time, had shown any interest in the litigation. I have to agree with her submission that the fourth defendant had not shown any interest in the litigation. In fact, he has remained *ex parte*. For the reason that the fourth defendant had remained *ex parte*, does not improve the case of the first defendant. The plea of the plaintiffs, as stated above, is that 1/2 share belongs to the first plaintiff,



1/4th share belongs to the second plaintiff, and the remaining 1/4th share belongs to the fourth defendant. The fourth defendant, having received the summons and being satisfied that the plaintiffs are fighting on his behalf, has remained *ex parte*. In other words, the fourth defendant had not decided to contest the suit. This would not mean that the fourth defendant has given away his right. All that it implies is that the fourth defendant has no objection for a decree having been passed in the suit in favour of the plaintiffs.

61. At this stage, like a drowning man clutching at a straw, Ms.Sweety attempted to challenge the “**WILL**” that had been executed by Raja Gounder, the cousin of the first plaintiff, in favour of R.K.Muthusamy. She referred to the plaint and the written statement filed by the co-defendants. She pleaded that it is doubtful as to whether R.K.Muthusamy is a legatee of the “**WILL**” executed by Raja Gounder on 05.07.1981.

62. The first defendant is not a member of the family of Periya Gounder and Muthuraja Gounder, the original vendees. The first defendant does not have any right to oppose the “**WILL**” that is said to have been executed by Raja Gounder in favour of the second plaintiff. Even assuming that the “**WILL**” is not genuine, the 1/4th share of the property that would have come to Raja Gounder would not have been transferred to Muthuraja Gounder and consequently, from him to the respondents 19 and 20. A person, who has no interest in the property of Raja Gounder, cannot take a



stand that the “**WILL**” is not enforceable. If at all one had an issue, it would have been the fourth defendant. As found supra, the fourth defendant was served with summons and he did not oppose the claim made by Muthusamy Gounder, the second plaintiff that he is the beneficiary of the “**WILL**” written by Raja Gounder. Therefore, this plea of Ms.Sweety too, stands rejected.

63. I will now turn to the submission of Mrs.Chitra Sampath, that it is not open to a party to plead that a document is sham and nominal, unless and until he files a suit for cancellation or declaration or makes a counter claim to that effect. A suit for cancellation of a document falls under Section 31 of the Specific Relief Act. The said section reads as follows:

*“31. **When cancellation may be ordered.**—(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.*

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.”

64. A casual glance at this provision would show that the relief of cancellation is permissible, and not obligatory. This is because the Section



itself states that the person “may sue”. Therefore, if the first defendant had succeeded in proving that the document is sham or nominal, it would be a document which is inoperative. The effect of finding a document is sham or nominal is that, no title would have passed from the vendors in favour of the vendees and therefore, the family of vendors would continue to enjoy the property as such. When the Parliament itself states that the relief is obligatory, the courts are empowered to ignore the document which is a nullity, Therefore, I am not inclined to agree with the submission of Mrs.Chitra Sampath.

65. Insofar as the plea that the defendants should have filed a suit for cancellation or declaration, is concerned, I have the following to state – normally, a transaction binds the party, if he is a party to the transaction or if he is an *eo nomine* to the said document. In such kind of situations, as pointed out by Justice Wadsworth in **Vellaya Konar Vs. Ramaswami Konar, (1939) 2 MLJ 400**, the party necessarily has to sue to have it set aside. As to when a party must seek declaratory relief has been laid down by the learned Judge as follows:

“When the plaintiff seeks to establish a title in himself and cannot establish that title without removing an insuperable obstruction such as a decree to which he has been a party or a deed to which he has been a party, then quite clearly he must get that decree or deed cancelled or declared void in toto...”



66. This is because under a document, title would have passed. A plea that a document is a sham and nominal one, is an attempt by the said party to prove that the document has no legal effect at all. In the case of sham and nominal transactions, title has not passed to the transferees. The law will not uphold the ostensible title conferred by those instruments. If he is able to convince the court on this plea, the court has to treat it as inoperative, and dispensing with requirement of filing a specific declaration to have it set aside as such. Even if such declarations are sought for, they are best superfluous. (See, **Kaka Hajee Md Ishaque Sahib v. Kaka Md. Saddiq Sahib, (1969) 82 LW 622**).

67. In fact. Five Judges of this Court have considered as to when a specific prayer for cancellation or declaration is necessary in **C.R. Ramaswami Ayyangar v. C.S. Rangachariar, 1940 (51) LW 11**. The Special bench held as follows:

“Where the plaintiff was not bound under the substantive law by which he was governed to sue for a declaration or cancellation in respect of any of the said transactions and a prayer for declaration of cancellation would in such cases, even if the plaint contained one, be one for a purely incidental, but unnecessary relief.”

68. Thus, while dealing with sham or nominal transaction that have no legal effect, it is sufficient for a party to establish their inoperative



nature, without seeking for a formal declaration to have it set aside. This is because, the courts will treat such transactions as nullity without requiring to grant a declaration to that effect. Under section 34 of the Specific Relief Act, the grant of declaratory relief is discretionary. If a party is able to convince the court that the transaction falls within the category of sham and nominal, the court can record the same and hold it to be inoperative, without taking on itself the burden of declaring it so.

69. Earlier, the Privy Council was presented with a similar issue in ***Petha Perumal Chetty v. Muniandi Servai, (1908) 18 MLJ 277***. The question placed for determination was whether a suit to recover properties, which had been transferred by benamidar in the name of another person, is governed by Article 91 of the erstwhile Limitation Act, 1877. The Privy Council observed as follows:

“the conveyance of the 11th June 1895, being an inoperative instrument, as, in effect, it has been found to be, does not bar the plaintiff's right to recover possession of his land, and that it is unnecessary for him to have it set aside as a preliminary to his obtaining the relief he claims.”

70. Following this judgment, this court and the Bombay High Court have consistently held that it is not necessary to have the document set aside, where the transaction is a sham and nominal. See,

(i) ***K. Subraya Chetti v. Nagappa Chetti, AIR (1927) Mad 805 at 812***



(ii) **Krishnaswami Aiyangar v. Kuppu Ammal, AIR 1929 Mad 478,**

479 at 479;

(iii) **Muhammad Nazir v. Zulaikha Bibi, AIR 1928 All 267;**

(iv) **Sangawa Kom Gurubasappa v. Huchangowda bin**

Huchangowda Gowdar, AIR 1924 Bom 174

71. Further, all that I have to refer is the view of this Court in **Sahul Hameed Rowther v. K.P.C. Mohideen Pichai, (1948) 61 LW 270 : AIR 1948 Mad 451**. Justice Horwill, speaking for himself and Justice Bell, held as follows:

“We have been referred to many cases, of which Swaminatha Iyer v. Rukmini Ammal. AIR 1920 Mad 88 and Pethaperumal Chetti v. Muniandi Servai 35 I.A. 98 (P.C.), may be cited as examples, in which it has been held that when a transaction is sham and nominal there is no need to have the transaction formally set aside, and that it can be ignored.

...

In all the cases to which we have been referred and in which this, question has arisen it has been uniformly held, as pointed above, that it is not necessary to set aside a transaction which does not effect any transfer of title at all. If so, then the transaction and the document evidencing it are not insuperable obstacles to the granting of the plaintiff's prayer.”

Thus, if a transfer was inoperative and a mere paper transaction, it would



not require to be set aside.

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72. In fine, I am of the view that the defendants are entitled to take a defence that the document is sham and nominal, and they need not file a suit separately for the purpose of such declaration or seek for its cancellation. If this proposition requires a judgement, it is in ***Kewal Krishan v. Rajesh Kumar, Civil Appeal No.6989-6992 of 2021*** dated 22.11.2021 **[2021 INSC 765]**. Speaking through Justice Abhay S.Oka, the Supreme Court held that if a document is sham and nominal, it can be ignored and need not be challenged by claiming a declaration, as the said plea can also be set up in collateral proceedings, and a party need not file a separate suit.

73. I will now turn to the authorities that have been cited by Ms.Sweety. For the scope of Section 100 of the Code of Civil Procedure, she had referred to a judgment in ***Surain Singh v. Mehenga, (1996) 2 SCC 624***. She pleaded that where there is a reversal in finding of the lower appellate court, the High Court can independently look into the evidence and come to a conclusion.

74. In order to maintain the second appeal, a party would have to adequately define the substantial questions of law that are involved in the case. Once this court comes to a conclusion that such substantial questions of law are involved, it takes the appeal on file. Once the appeal is before the



court, the second appellate court, as per Section 107 read with Section 108 of the Code of Civil Procedure, looks into the appreciation of law and facts by the courts below. In this very case, when the matter went to the Supreme Court, while setting aside the judgment and remitting it for fresh consideration, the Supreme Court had directed this court to examine whether any substantial questions of law arise for consideration between the parties and, thereafter, dispose of the appeal.

75. As the litigation has been pending before the courts for more than 37 years, I have heard the parties at length on the substantial questions of law that have been framed and as directed by the Supreme Court in Civil Appeal Nos.7774-7776 of 1997 dated 10.09.2003. I have analysed the pleadings, evidence, findings and the positions of law argued by the counsels. It is in complete compliance to the principles laid out in this verdict.

76. Ms.Sweety then referred to a judgment of this court in ***Valliammal v. Pachaiammal, (1996) 1 LW 310***, to plead that this court has held that if the plaintiffs have lost their title to the suit property, the defendant would be entitled to succeed on the plea of adverse possession. This judgment too, does not help Ms.Sweety's case as I factually found the defendants did not satisfy the essential conditions of open, hostile and continuous possession of the property.



77. Ms.Sweety, then takes me to the judgment of the Supreme Court in **Sree Meenakshi Mills Ltd. v. CIT, AIR 1957 SC 49** to urge that this court has to see whether a transaction is genuine or sham. She submits that the point for decision would be, not who paid the consideration but whether any consideration was paid at all.

78. In the previous paragraphs, I have found that a sum of Rs.500/- was paid in 3 different ways:-

(i) Rs.180/- to the judgment creditor (Arunachalam Chetty) in the suit in which the properties of the vendors (the father, the siblings and the grandmother of the first defendant) were involved;

(ii) Rs.20/- by cash; and

(iii) Rs.300 to the other creditors.

Therefore, this judgment too, does not come to the rescue of Ms.Sweety.

79. Finally Ms.Sweety referred to the judgment in **Avadh Kishore Dass v. Ram Gopal, AIR 1979 SC 861** to plead that she has filed the relevant municipal records and hence, this judgment of the Supreme Court comes to her rescue. Let me analyse this case in detail.

80. **Avadh Kishore's** judgment arose out of a suit presented under Section 92 of the Code of Civil Procedure against one, Avadh Kishore Dass.



The plaintiff pleaded that the suit schedule mentioned property was a public religious endowment belonging to the temple of Shri Thakur Ram Jankiji Maharaj @ Shri Thakurji Maharaj. The claim of the plaintiff was that the properties had been endowed by King Mohamad Shah in favour of one, Swami Sewa Das for the specific purpose of constructing and maintaining a temple and allied activities. This endowment had been made in the 14th century. The said endowment had been confirmed in favour of the successor Mahant Shri Mahesh Das, by Prince Mulla Hafis in the year 1526. Subsequently in 1785, the rulers of Gwalior granted another Sanad in favour of the then Mahant Rattan Das. The village came under the control of the British Government in 1843 who took over half the village, while the remaining half continued to be with the endowment. During the revenue settlements of the year 1845, the land revenue was assessed in respect of the entire endowed asset of the temple at 50%, while the remaining 50% was declared as *Muafi* or land exempted from tax or duty. The records that were maintained by the endowment were destroyed during the First War of Independence in 1857. As the defendant projected that he was the Mahant and that the properties belonged to him, it was pleaded that the claim of the plaintiff was untenable and hence, he should be removed as a trustee. During the course of trial, as the original documents had been destroyed as aforesaid, the plaintiffs relied upon the settlement records that had been prepared during the colonial British era to support their claim. One such document was Wajib-ul-arz.



81. Relying on the said document, the trial court, as well as the High Court decreed the suit, against which, the appeal arose before the Supreme Court. The Supreme Court too, relying upon Wajib-ul-arz, came to a conclusion that the plea of the defendant that the property was a personal grant was untenable, and rejected the plea. Hence, it has to be discussed as to what is Wajib-ul-arz.

What is Wajib-ul-arz?

82. Wajib-ul-arz is a village administration paper. It is a record that used to be prepared during the settlement proceedings in the year 1864. It was a memorandum directed to be prepaid by Regulation VII of 1822, wherein, it was a prima facie evidence of custom recorded in it unless and until it has been formally altered. It was a key document during the British colonial land revenue system. Wajib-ul-arz had an important significance, when the area was ruled by the State of Avadh. It had since been superseded by modern laws. It is an administrative record of existing practice and not a legislative document that creates new rights or liabilities. The courts have held that the agreements recorded in Wajib-ul-arz are legally binding only for the duration of the land settlement in which they were recorded (See, **Chhote Khan v. Mal Khan, 1954 SCR 60**).

83. Following the annexation of the Avadh by British in 1856, the land settlement underwent major restructuring, which included preparation of



administrative records for each village separately and were not centralised.

These records were created to formalise the property relations and to establish revenue collection mechanisms in the new colonial administration.

By virtue of that record, the customs prevailing in the said village, and the rights and liabilities hereditarily existing in the village were recorded. It is primarily a documentation of existing practices, rather than a record which declares the creation of new rights.

84. Wajib-ul-arz contains recording of customs relating to:-

- (i) easementary rights,
- (ii) water rights,
- (iii) agreements amongst the village's landlords, and residents and
- (iv) permission rights.

85. In ***Raja Rajinder Chand v. Sukhi, AIR 1957 SC 286***, the Supreme Court held that Wajib-ul-arz cannot be used to establish land owner's claim to sovereign right and ownership of such revenue land. The court emphasised that the document's role is to record the existing customs and not create new rights or grant away State property. Wajib-ul-arz is accepted as evidence on customary law but must still be interpreted in the light of relevant Land Revenue Act. It observed that though Wajib-ul-arz does not create a title, it gives rise to a presumption in its support, which prevails unless the presumption is properly displaced.



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86. In **Safdar Hussain v. Muhammad Azam Khan, PLD 2009 Lahore 347**, while discussing the procedure for preparation of Wajib-ul-arz, the Court held as follows:

“Wajibul Arz, prepared by a public servant, at the time of settlement, carries statutory presumption of correctness attached to it. Wajib ul Arz, describes the rights and liabilities among the villagers inter se, such as enjoyment of proceeds of common land and rights of grazing of common land etc.”

87. The practice of Wajib-ul-arz had been followed in the parts of British India & in present day, (both sides of the border) Punjab and Madhya Pradesh. The areas covered by this document is now covered by their respective State Land Revenue Codes, such as, Madhya Pradesh Land Revenue Code. This shows that the nature of the document dealt with by the Supreme Court in **Avadh Kishore**'s case was a document prepared with careful survey and scrutiny.

88. As pointed out above, Wajib-ul-arz was dealt with in Punjab, i.e., to say on both sides of the present border. The Courts in Peshawar too, had an occasion to deal with the nature and evidentiary value of its document. In **Mst. Bhag Bhari etc v. Mst Bhagan and another, PLD 1954 Lahore 356**, the court observed as follows:



“Entries in a Wajib-ul-arz may be of two kinds. They may be statements of local custom or usage or they may be recitals of agreements. As statements of custom or usage they are strong evidence of the existence of such custom or usage but they have only an evidentiary value. Agreements incorporated in the Wajib-ul-arz are however binding but only on the parties to the agreements, and even in such cases it is open to a party to prove that in fact no such agreement was entered into though the task would be difficult.”

89. The Supreme Court of Pakistan also had an occasion to deal with this document. In ***Haji Qudrat Ali v. Government of N.W.K.P., Peshawar, 1993 SCMR 381***, the Supreme Court of Pakistan held as follows:

“This is the village administration paper; it contains a specification of village customs, rules of management and everything affecting the government of the estate, the distribution of profits, irrigation, and rights in the waste.”

“The wajib-ul-arz, or village administration paper, should be a record of existing customs regarding rights and liabilities in the estate.”

“The paper declaring the customs and containing the Code of rules for the future management of the manor (called now the administration paper) is always considered a most important document.”

“The state of the customs respecting rights and liabilities on the estate shall be in narrative form; it shall be as brief as the nature of the subject admits, and shall not be argumentative, but shall be confined to a simple statement of



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the customs which are ascertained to exist. The statement shall be divided into paragraphs numbered consecutively, each paragraph describing as nearly as may be separate custom.”

90. Yet again, the Peshawar High Court, Abbottabad Bench dealt with this nature of document. This was in ***Muhammad Younas v. Malik Muhammad Javed, CR.No.152-A of 2017*** dated 18.09.2018. Justice Syed Muhammad Attique Shah held as follows:

“Wajib-ul-Arz is a basic document prepared by a public servant at the time of settlement on the basis of usages, local customs and agreements between the proprietary body of village, which carries statutory presumption of correctness, and determines the rights, duties and liabilities of the villagers inter se and further provides mechanism for the management of the common land (Shamilat Deh) by the proprietary body of the Village.”

91. A municipality record cannot be given the same treatment as Wajib-ul-arz. Tax receipts can certainly not been compared with a Wajib-ul-arz. This is more so, because during the relevant time, the records were maintained by the first defendant and his father, who were imposed with this duty, being the village munsifs.

92. Therefore, the attempt of Ms.Sweety to compare the house tax receipts and municipality records and puff it to the level of a document in the nature of Wajib-ul-arz, cannot be countenanced by this court and has to be rejected.



93. In the light of the above discussion, I am of the clear view that the substantial questions of law framed by the appellants do not arise for consideration. All the three appeals are dismissed. The common judgment and decree of the learned I Additional District Judge, Salem in A.S.No.88 of 1986, A.S.No.89 of 1986 and A.S.No.90 of 1986 dated 29.07.1988 in reversing the decree and judgment dated 11.04.1986 passed in O.S.No.236 of 1985, O.S.No.304 of 1985 and O.S.No.305 of 1985 on the file of the learned Subordinate Judge, Sankari is hereby confirmed. Costs throughout.

12-11-2025

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Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No



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To

1. The I Additional District Judge, Salem

2. The Subordinate Judge, Sankari



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V.LAKSHMINARAYANAN J.
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SA No. 1294 of 1988 &
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