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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2025

CORAM

THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

**SA No. 538 of 2005
& CMP No. 8279 of 2005**

1.Ramuammal(died),w/o.Elumalaichettiar
Avvaipudu Street,Panruti and 11
Others

2. MURUGAN,(Died)
S/o.Elumalai Chettiar, Avvaipudu
Street,panruti

3.Venkatesan,s/o.Elumalaichettia
Avvaipudu Street,panruti

4.Mahalakshmi,w/o.Pandurangan
Avvaipudu Street,panruti

5. SANTHI,(died)
W/o.Pandurangan,avvaipudu
Street,panruti

6.Sasikala,w/o.Ponnambalam
Avvaipudu Street,panruti

7. THIRIPURASUNDARI
W/o.Rajaram, Avvaipudu
Street,panruti



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8. Vanisri, w/o. Baskaran
Avvaipudu Street, panruti

9. Sheela, w/o. Karthikeyan
Avvaipudu Street, panruti

10. PANDURANGAN
Vanniyar St, Varakkalpattu,
Cuddalore Dt.

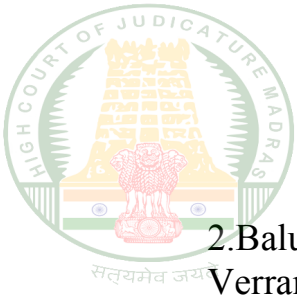
11. RAMADEEPIKA
VANNIYAR ST,
VARAKKALPATTU,
CUDDALORE DT..... a5 died, a10
and 11 brought on record as legal
heirs of the deceased a5 vide court
order dated 14/07/2022 made in cmp
nos 15977, 15979 and 15980 of 2021
in sa 538 of 2005(cvkj)

12. ZEALATCHOUMY
W/o.late Murugan, NO.26, Avvai
Pudu St, Panruti, Cuddalore Dist. (A2
Died, A12 is brought on record as
LRs of the deceased A2, vide court
order dated 02.12.2024 made in
Cmp.No.8345/2024 in
SA.No.538/2005 (TVT SJ)

Appellant(s)

Vs

1. PAVUNU @
PAVUNAMBAL(died).
W/o.Ramalingam, Perumalkoil Street,
Kurijipadi, Cuddalore Taluk



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2.Balu,s/o.Raju Padayachi
Verranam Project Vaikkai,
L.N.Puram, Panruti Taluk

3.Malliga,
D/o.Pavunu @pavunambal Ammal,
Res At, No.5, Vellazar St,
Kurinjipadi, Cuddalore Tk And Dist

4.Velmurugan,
S/o.Pavunu @pavunambal Ammal,
Res At, No.5, Vellazar St,
Kurinjipadi, Cuddalore Tk And Dist

5.Babu,
S/o.Pavunu @pavunambal Ammal,
Res At, No.5, Vellazar St,
Kurinjipadi, Cuddalore Tk And Dist

6.Selvi, W/o.Kaliyamurthy,
D/o.Pavunu @pavunambal Ammal,
Res At, No.5, Vellazar St,
Kurinjipadi, Cuddalore Tk And Dist

Respondent(s)

SA No. 538 of 2005

Appellant 2 To 8 Lrs Of The Decesed As Per Memo Dated 29.07.2021 (presented At Court) Vide Court Order Dated 04/08/2021 Made In Sa.538 Of 2005(aqj) Rr3 To 6 Brought On Record As Lrs Of The Deceased R1 Viz Pavunu Vide Court Order Dated 25/8/2021 Made In Cmp.Nos.12043, 12046 And 12047/2021 In Sa 538/2005(aqj).



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PRAYER: This Second appeal has been filed under Section 100 CPC, to allow the second appeal, set aside the judgement and decree dated 28.01.2005 passed in A.S No. 27 of 2004 on the file of the Subordinate Judge, Panruti confirming the judgement and decree dated 23.07.2004 passed in O.S No. 122 of 2004 on the file of District Munsif Court, Panruti

SA No. 538 of 2005

For Appellant(s): N.C.Ramesh, Senior counsel.
For Mr.S.Ganesh
assisted by G. Dhyaneshwar

For Respondent(s): Hema Sampath, Senior Counsel
For M/s.R.Meenal R1 - Died

JUDGEMENT

Challenging the concurrent findings of the Subordinate Court, Panruti and District Munsif Court, Panruti, in A.S No. 27 of 2004 and O.S No. 122 of 2004, respectively, the legal heirs of the deceased first defendant preferred this second appeal. The respondents herein are the legal heirs of the deceased first plaintiff and second plaintiff in the original suit. Before the Trial Court original plaintiffs namely Pavunambal and Babu filed the suit for the relief of declaration and delivery of possession with other consequential relief against the first defendant, and the second defendant being the brother already relinquished his right in their favour, added as formal party to the suit proceedings. The said suit was contested by the first



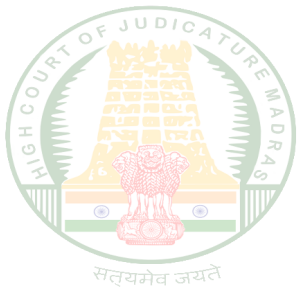
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defendant stating that neither the plaintiff nor the Angammal said to be an original owner of the suit property has no right and title over the property and he claimed absolute right over the property based on the Court Auction sale on 21.09.1970 in E.P No. 373 of 1970 in OS No. 831 of 1967. Ever since, he became the absolute owner of the suit property and he possessed and enjoyed the same as lawful owner thereby disputed the plaintiffs' claim. On hearing both sides, the Trial Court decreed the suit in favour of the plaintiffs, against which, the first defendant preferred an appeal and the same was dismissed by affirming the findings of the trial court. While pending proceedings first plaintiff and the first defendant died leaving behind their legal heirs, Now their legal heirs of the first defendant preferred this second appeal.

2. This Court admitted the appeal on the following substantial questions of law:

i. Whether the 3rd party purchaser in a Court Auction can be deprived of their right especially when the interest in the auctioned property continues to be protected ?

ii. Whether the first appellant court is correct in granting relief by going beyond the pleadings and beyond what is prayed for in the suit ?



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iii. Whether the first appellate Court is correct in holding that the vested right of the judgement debtor in the suit property which was sold in Court auction to the deceased first defendant in the suit, passes to the Class-II legal heirs of the judgment debtor?

iv. Whether the Courts below are correct in holding that the suit filed by the plaintiffs is not hit by principles of Res judicata under Section 11 of the Code of Civil Procedure, when there is a categorical finding rendered in the earlier suit filed by the Court Auction purchaser to the effect that the 1st defendant had purchased the vested interest of Palani Padayachi ?

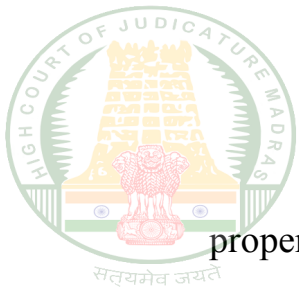
3. The brief facts of the case are as follows:

The case of the plaintiff is that the suit property is absolutely belongs to their mother Angammal as per the settlement deed dated 22.05.1933 executed by her husband Raju Padayachi, who pre deceased, after his death she became the absolute owner of the suit property. While so, on 01.01.1977, she executed a registered Will in favour of the plaintiff and the second defendant with sound state of mind to that effect produced the certified copy of the registered Will. Thereafter, the plaintiff became the absolute owner of the suit property, the first defendant who is adjacent land



owner of the suit property trespassed into the property taking advantage of the plaintiff's absence. Hence, he filed the suit. Second defendant is the brother of the plaintiff, who already relinquished his right orally in favour of the plaintiff hence he added as a formal party. The plaintiff prayed to declare the right and title over the suit property and also seeking directions for delivery of possession of the property with consequential relief. The second defendant not contested the case, the first defendant alone contested the case.

4. The first defendant submitted that by suppressing the real facts plaintiffs filed the present suits. The contention of the defendants is that he was not aware of the alleged settlement deed said to be executed by Raju Padayachi on 25.05.1933. Further, contended that Raju Padayachi through his wife had only one son namely Palani Padayachi. One Dhanusu Chettiar, filed the suit in OS No. 831 of 1967 on the file of the District Munsif Court, Cuddalore against the said Palani Padayachi on the basis of pro note for the relief of recovery of money and the said suit was decreed in favour of the Dahanusu Chettiar, and thereafter, the said suit property was auctioned through Court Auction in EP No. 373 of 1970. In that auction, present defendant/Elumalai chettiar was participated and purchased the suit



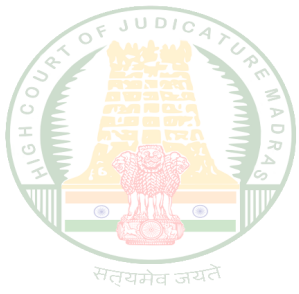
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property through Court auction, which was confirmed in the year 1970 and the sale was confirmed by issuing sale certificate/Ex.B7. Thereafter, when the present defendant attempted to take possession of the suit property which was under the occupation of some tenants, who are under the control of Angamal wife of Raju Padayachi, hence he issued notice to vacate the property but some tenants refused to vacate the property. Thereafter, the said Angammal issued notice on 07.01.1971 claiming right and title over the suit property, wherein she stated that she has right over the suit property based on the compromise decree in OS No. 118 of 1963, wherein life interest was given to her. Thereafter, defendant came to know that alleged settlement deed dated 22.05.1933 was superseded by the compromise decree in OS No. 118 of 1963 which was filed by one Mangatha/third wife of Raju Padayachi against Angammal, Palani Padayachi and others. As per the said compromise decree life interest was given to the Angammal and absolute right was given to her son Palani Padayachi. Thereby she had only life interest and the vested remainder on her son Palani Padayachi. Hence, this defendants gave a reply notice to her and filed the suit in OS No. 519 of 1971 against the said Angammal and her tenants for declaration and recovery of possession. In the said suit, it was held that Angammal had life



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interest in the property what was sold to the defendant was only vested remainder title of the judgement debtor/Palani Padayachi and the said findings was confirmed in A.S No. 188 of 1977 by the Sub Court cuddalore. Thereby, till the life time of Angammal he was restricted not to claim any right and interest in the suit property, after lifetime of the Angammal this defendant became the absolute owner. On 30.04.1977 the said Angammal died so the defendant title became absolute as a Court auction purchaser of the suit property. Therefore, the angammal has no right to execute the Will in favour of the plaintiff on 01.01.1977 alleged and also the settlement deed dated 22.05.1933 has also been superseded by compromise decree entered between the parties in OS No. 118 of 1963. Further, this defendant specifically denied that the plaintiff and the first defendants are not children of the Raju Padayachi and Angammal nor they were in possession of the suit property at any point of time, as owner this defendant took possession of the suit property and enjoyed the property from 03.04.197, after the death of the Angammal, who was life interest holder. Therefore, the plaintiff come forward with the false claim as if he trespassed and took over the possession of the property. Hence, he prayed to dismiss the suit.



WEB COPY 5. On considering the oral and documentary evidence, the Trial Court

framed six issues and held that originally suit was filed in OS No. 175 of 1995 and thereafter transferred to the Trial Court and renumbered as OS No. 122 of 2004. During the pending suit before the Trial Court both the defendants died their legal heirs were impleaded as parties however the defendants 7, 8 & 9 remains exparte. First plaintiff was examined as P.W.1, first defendant/Ramu ammal was examined as D.W.1. As per the settlement deed executed by Raju Padayachi in favour of his wife Angammal she became the absolute owner of the suit property thereby she executed a Will on 01.01.1977 in favour of the plaintiff and attesor of the Will was examined as P.W.2, who deposed that he put his thumb impression thereby Will was proved. Trial Court held that as per the settlement deed stands in the name of the Angammal, who is the absolute owner of the suit property but for the debt borrowed by her son Palani Padayachi suit property was brought for auction even during the life time of the Angammal as such not valid one nor with knowledge of the said Angammal. Apart from that house in the suit property also dismantled. As on date, it is vacant site the first defendant who is the adjacent owner illegally trespassed and enjoyed the



property. Therefore, the plaintiff derived his title and right over the suit

property, thus they are entitle for declaration as well as possession.

Accordingly, decreed the suit.

6. Challenging the findings of the Trial Court, the first defendant preferred an appeal in A.S No. 27 of 2004 on the file of the Subordinate Court, Pandruti. The first appellate Court independently analysed the oral and documentary evidence framed the following issues

I. Whether the plaintiffs are the absolute owners of the suit property.

ii. Whether the Will executed by the Angammal dated 01.01.1977 is true and valid

iii. Whether the appellant/defendant prescribed the title based upon the Court Auction sale.

7. The First appellate Court observed that plaintiffs are not the children of the Raju Padayachi and his wife Angammal. On the other hand, one Palani Padayachi son of the Angammal and Raju Padayachi, after the demise of the said Raju Padayachi his wife Angammal married one Sanganathan through him they begotten the present plaintiff, but to disprove the same plaintiff not adduced any contra evidence to establish they born through Raju Padayachi and Angammal but the first appellate Court held



that Palani Padayachi is the only son for Angammal and Raju padayachi.

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Furthermore, settlement deed/Ex.A1 Raju Padayachi executed at the time of the marriage in favour of his wife Angammal/second wife, which is more than 30 years old document it does not require any proof. As per the terms, after marriage if Angammal died earlier, absolute ownership devolves upon the Raju Padayachi vice versa and if at all during the life time any necessity arose to sell the property both parties jointly entitle to convey the property with the terms of settlement document executed on 28.02.1962, the said Raju Padayachi was died but there was a dispute in the marriage, another wife of the Raju Padayachi namely third wife Mangathal filed the suit for partition in OS No. 118 of 1963 before the Munsif Court, Cuddalore against the second wife Angammal and his son/Palani Padayachi and first wife, in the said suit there was a compromise was entered between the parties as per the terms the settlement deed stands in the name of the Angammal/Ex.A1, which was Superseded by the terms of the compromise decree stating that Angammal was permitted to enjoy the property till her life time and absolute right was given to her son Palani Padayachi and for the said compromise Angammal also agreed thereby held that she has no right over the property. But she executed a Will during her life time on 01.01.1977 in



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respect of suit property in favour of the plaintiffs and the second defendant

equally also she gave reason not to give property to her son Palani

Padayachi. Indeed she has no right to execute the Will thereby Will is not

valid. The Trial Court concluded that Will relied by the plaintiff is not true

and Valid one. Further the plaintiff also not proved his continuous

possession and enjoyment of the property. As per Ex.B7 /Sale certificate of

the year 1970 original defendant Elumalai took the property through

Auction thereafter he enjoyed the property to that effect he produced the

documents/ Ex.B13 to Ex. B17. Thereby he also not proved that he is in

uninterrupted possession of the property from the date of the Auction and

in respect of plea of resjudicata the first appellate judge held that in OS No.

519 of 1971 filed by the first defendant claiming declaration against

Angammal and others said suit was dismissed stating that during the life

time of the Angammal he would not claimed any right over the property.

Against which, appeal AS No. 188 of 1973 was preferred same also been

dismissed. Therefore till the life time of the Angammal, Elumalai Chettiar

has no right over the property. After her death her son became absolute

owner therefore at that time of the alleged auction the judgment debtor

Palani Padayachi has no right over the property. So also, the Auction



purchase made by the first defendant also not valid one. Since Palani Padayachi died prior to his mother she became the absolute owner of the property after the death of her son. Therefore, she is entitled to execute the Will in favour of the plaintiff. Though the father of the plaintiff differs even then they are legal heirs of the Angammal. Accordingly, plaintiff are the legal heirs of Angammal therefore, they are entitle for the relief of declaration and affirmed the findings of the Trial Court. The first appellate Judge held that Auction purchase made by the first defendant against one Palani Padayachi who has no right and title at the time of auctioning the property. Therefore, the said auction is not valid one and not bind the plaintiff . Accordingly, appeal was dismissed by the first appellate Court. Challenging the same present appeal was filed by the legal heirs of the original first defendant.

8. The learned counsel for the appellant submitted that both the courts below erroneously held that Angammal is a absolute owner of the suit property by ignoring the terms of the compromise in OS No. 118 of 1963 as well as subsequent Court auction in OS No. 831 of 1967 through the said court auction original defendant Elumalai Purchased the suit property. Besides, the Court below failed to consider that plaintiff and second



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defendant are not a son and daughter born through Raju Padayachi and Pounammal, in fact, the said Raju Padayachi and Pounammal had only son Palani padayachi, thereby, the plaintiff and second defendant are not born to them. Further the first appellate Court ignoring the evidence of D.W.1 as well as D.W.2 and D.W.3 and also failed to take note of the legal proposition as the vested right of the Palani Padayachi was sold through Court auction to Elumalai Chettiar and the rights of the auction purchaser to be protected but ignoring all the legal proposition, and also the first appellate Court granted the relief beyond the pleadings by giving findings that the auction purchase made by the Elumalai Chettiar would not bind the plaintiff as such is perverse and liable to be set aside. Further, he argued that the Angammal had no right to bequeath the suit property nor prescribe any title based on the settlement deed as claimed by the plaintiff since the said settlement deed was superseded by the compromise decree held in the family but without appreciating the above legal aspects suit was decreed in favour of the plaintiff as such is erroneous.

9. By way of reply, the learned counsel for the respondent argued that at the time of court auction purchase made by the original defendant Elumalai Chettiar the suit property was not absolutely belongs to the



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judgement debtor/Palani Padayachi who had only vested right and the life interest was given to her mother/Angammal, who was alive while executing the Court auction but the Court was not aware that the Palani padayachi have only vested right in respect of the suit property. Thereby, Court auction purchase would not bind the Angammal and the same was confirmed in OS No. 519 of 1971 filed by the Elumalai Chettiar/Court auction purchaser, against the said Angammal for recover of possession which was dismissed by the Trial Court by holding that Palani Padayachi had only vested right and till the life of the Angammal she is entitled to enjoy the property thereby Elumalai was not get possession of the property. Therefore, already court auction purchaser have no right over the property which was decided in earlier suit. Hence, the Elumalai has no right to claim right and title over the property. Therefore, Elumalai was not in possession of the property through Court of law but Angammal possessed and enjoyed the property till her life time. So, executed a Will in favour of the plaintiff same was rightly appreciated by the courts and granted relief in favour of the plaintiff. Further, the learned counsel relied the judgement reported in the case of M.Jeyamar Vs. M. Joseph reported in 2019 5 L.W page 810 argued that as per the compromise decree life interest was given to the



Angammal and absolute right was given to her son Palani Padayachi, the said Palani Padayachi pre deceased his mother Angammal after his death she became the absolute owner of the suit property she is entitled to write a Will in favour of the plaintiff and the same was rightly appreciated by the Court below which needs no interference. Hence, he prayed to dismiss this appeal.

10. Heard the submissions of the learned counsel for the appellants and respondents and perused the materials available on record.

11. Considering the fact that the suit property was originally belongs to the Raju Padayachi, he had three wives first wife Anjumani Ammal she had no issues hence he married second wife Angammal, who begotten Palani Padayachi, at the time of marriage Elumalai executed a settlement deed in favour of the second wife Angammal in the year 1933 which was marked as Ex.A1 with the terms that after the marriage both are empowered to enjoy the suit property, if any of them died earlier one became the absolute owner of the property. While so, in the year 1962 her husband Raju Padayachi died. After that his third wife/Mangathammal filed suit in OS No. 118 of 1963, before the District Munsiff Court, Cuddalore, against the



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first wife Anjumani Ammal, Angammal and her son Palani Padayachi, the said suit was entered into compromise and as per clause No. 10 of the said compromise/Ex.B8 the said Angammal was entitled for life interest in respect of the suit property herein and vested remainder on her son Palani Padayachi said compromise was arrived in the year 1966 before that Palani Padayachi executed a pro note in favour of Thanusu Chettiar in the year 1964, who filed the suit in OS No. 831 of 1967 on the file of the District Munsif Court, Cuddalore, for recovery of money against the Palani Padayachi the said suit was decreed in favour of the Thanusu Chettiar, who filed EP No. 373 of 1970 to execute the decree, suit property was brought into auction, in that auction Elumalai Chettiar husband of the appellant herein was a successful bidder and auction was confirmed on 23.10.1970 sale certificate also issued to that effect sale certificate was marked as Ex.A8. Thereafter, when Elumalai attempted to take possession of the property tenants raised objection so also Angammal. Hence, he filed the suit in OS No. 519 of 1971 for recovery of possession but the same was dismissed by the Trial Court by holding that Elumalai was purchased vested right of the judgment debtor Palani Padayachi but he has no right in the property during the life time of first defendant/ Angamal. Accordingly, suit



was dismissed. Against which he preferred an appeal the same was also dismissed. All the above facts clearly indicates that during the life time of the Angammal property was auctioned in order to execute the decree passed against the Palani Padayachi, the suit property was brought under auction sale, however at that time Palani Padayachi had only vested right in the said property. At this juncture, the learned counsel submitted that vested right of the Palani Padayachi was sold to the auction purchaser and it is a settled proposition of law that vested right cannot be attached and sold to that effect he relied the following judgements.

i. Usha Subbarao vs. B.N. Vishveswaraiah reported in 1996 5 Scc 201.

8. For the purpose of determining the date of vesting of the interest in the bequest it is necessary to hear in mind the distinction between a vested interest and a contingent interest. An interest is said to be a vested interest when there is immediate right of present enjoyment or a present right for future enjoyment. An interest is said to be contingent if the right of enjoyment is made dependent upon some event. or condition which may or may not happen. On the happening of the event or condition a contingent interest becomes a vested interest. The Transfer of Property 1882 as well as [The Indian Succession Act, 1925](#) recognise this distinction between a vested interest and a contingent interest. Vested interest has been thus defined in [Section 19](#) of The Transfer of Property Act, 1882 :

"[Section 19](#). Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the A



vested interest is not defeated by the death of the transferee before he obtains possession.

Explanation.- An intention that an interest shall not be vested is not to be inferred from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives or from a provision that if a particular event shall happen the interest shall pass to another person."

Contingent interest is defined in [Section 21](#) of the said Act in the following terms :

"[Section 21](#), Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, of if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible.

Exception,--Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent."

In the [Indian Succession Act](#) provision with regard to date of vesting of a legacy when payment or possession is postponed is contained in [Section 119](#) which provides as "[Section 119](#). Date of vesting of legacy when payment or possession postponed.-- Where by term terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the will, become vested in the legatee on the testator's death, and shall pass to the legatees's representatives if he dies before that time and without having received the legacy, and in such cases the legacy is from the testator's death said to be vested in interest.



Explanation: An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives or from a provision that; if a particular event shall happen, the legacy shall go to another person."

ii. Rajes Kanta Roy vs. Shanti Debi reported in 1957 SCR 77.

The objection in this form is obviously untenable and has not been urged in any of the courts below. Indeed, if under the trust deed the judgment-debtor has a beneficial interest, it is not disputed that such beneficial interest would be attachable provided it is a vested interest and not a contingent interest. The judgment of the executing court, however, shows that what was dealt with there is the contention that the interest under the trust deed was a mere expectancy as opposed to a vested interest. The Court held that the interest which the judgment-debtors had in the property by virtue of the deed of trust was not a mere expectancy. On appeal to the High Court, none of the grounds set out in the appeal memorandum thereto relates to this question. The High Court, however, dealt with the matter on the footing that the question is whether the interest of the judgment-debtor under the deed of trust is a vested as opposed to a contingent interest. It does not appear to us that question in this form should have been allowed to be raised. Its determination may well depend upon the question whether as a fact the contingency suggested has disappeared by virtue of subsequent events. However, since the point has been allowed to be raised and the decision of the High Court is given on the footing of the matter being solely one of construction of the document, we proceed to consider it.

iii. Mohal Lal Vs. Gopal Lal reported in ILR 1940 All. 360

2.. On the construction of the Will, that Sita Ram was intended to take a vested and transmittable interest on the death of the testator, though his possession and enjoyment were



postponed until the death of Mst. Janaki.

WEB COPY iv. Balwant Singh Vs. Joti Prasad reported in ILR 1918 40 All 692:

14. It has been held in several cases that an agreement depriving an adopted son of his right to take possession of the property of the adoptive father is not prohibited by the law and such an agreement, has been given effect to. See, for example Kali Das v. Bijai Shankar (1891) I. L. R., 13 All., 391, and Visalakshi Ammal v. Sivaramien (1904) I. L. R., 27 Mad., 577. But we have not been referred to any case in which it has been held that the interest of an adopted son under such a conditional adoption is exactly similar to the interest of a contingent collateral Hindu reversioner. The latter kind of interest has been held to be a mere chance of an heir apparent succeeding to an estate, and as such has been held to be non-transferable. Irrespective of the construction which we have put on the terms of the deed of adoption, we are of opinion that it has not been shown that the interest created in favour of Chaudhri Balwant Singh under the conditional adoption in question was a mere possibility of succession to the Landhaura Estate after the death of Rani Dharam Kunwar. In our opinion, both according to the interpretation of the deed of adoption and the law, a vested right was created in his favour, and merely his right of enjoyment and possession was postponed till after the death of the lady. Such being the case, we are of opinion that the transfer of taluqa Naogaon in favour of the decree-holders under the sale-deed, dated the 3rd of March, 1911, was unaffected by the provisions of "Section 6 (a) of the Transfer of Property Act.

v. Sundar Bibi Vs. Lal Rajendra Narain Singh reported in ILR 1925

47 All 496.

19. The learned Judge of the Court below seemed to be of opinion that because there was a possibility that Rajendra Narain-Singh might not be alive at the termination of the life estate in favour of Lat Bahadur and that in that event the estate would go over to his heir according to the rule of male lineal primogeniture, the interest which was created by this document was a contingent interest. In our



opinion that is not so. It is clear from the terms of this document that, in the first instance, a life interest was created in favour of Lal Bahadur Singh and necessarily the further interest which arose under the document was bound to take effect from the death of Lal Bahadur Singh. The death of Lal Bahadur Singh is not an-uncertain event. It is of course uncertain at what time Lal Bahadur Singh will die but Lal Bahadur Singh's death is an event which must happen and, consequently, the further interest which was created under this document is necessarily a vested interest and not a contingent interest. The question whether Rajendra Narain Singh may not be alive at the time of the death of Lal Bahadur Singh and so may not receive this estate in possession does not affect the question at all. This is clear from a reference to the provisions of [Section 19](#) of the Transfer of Property Act.

Vi. P. Ram Mohan Vs. Lalitha Raghuraman reported 1975 SCC

Online Mad 111:

In a recent judgment rendered by both of us on 29th November, 1974 in Somasundaram Vs. Rajammal, A.S 522 of 1970 summary of the judgment reported in 1975 TNLJ 9 – we have held that there cannot be a vacuum or interregnum where there is a life estate followed by an absolute estate, because the residue must rest somewhere and that what is differed is only the possession of the properties would be postponed but not the vested interest created under the document. In the instant case, Ram Mohan and Raghuraman had both acquired a vested interest in the properties immediately on the date of execution of Ex.A1, but only their right to possession of the properties had been postponed by the intervention of the life estates.

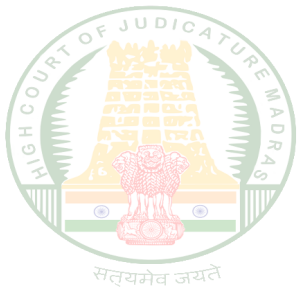
Vii. In U Zoe V. Ma Mya May reported in AIR 1930 Rang 184:

In the second case a Hindu adopted son, who by virtue of his adoption became sole heir to his adoptive father's estate, but whose adopted mother had under a settlement a life interest in that estate, purposed to sell certain properties comprised in the estate, and the question was raised whether the transfer of his



interest in that property was prohibited by the provisions of Section 6(a) of the Transfer of Property Act, which says that the chances of an heir-apparent succeeding to an estate cannot be transferred. The obvious answer to that question was that the adoptive son was not an heir-apparent but an actual heir since his father had died, and that his interest in his father's estate was not a chance of succession but actual ownership of the property, subject to the widow's right under the settlement. It appears therefore that the decision in that case does not go far towards supplying an answer to the question which arises in the present case. The third case was one in which under a compromise decree it was provided that a younger brother should hold certain properties for his life and that on his death the properties should pass absolutely to the elder brother or his heir. The question arose whether the rights of the elder brother, in the property could be attached and brought to sale in execution of a decree against him and that it was held that those rights were vested and not contingent and so were transferable and attachable and saleable in execution. Respondent's learned advocate has referred to the case of Sumsuddin v. Abdul Husein [[1907] 31 Bom. 165: 8 Bom. L.R. 781.], where a daughter, who was one of three heirs-apparent of her father accepted from her father a sum of money representing her share of his estate and executed a deed whereby she purported to release to him all her "rights and claims" in respect of his estate, and it was held that, because she was merely an heir-apparent and, while her father was alive, had merely an expectation, the transfer of her supposed "rights and claims" was prohibited by Section 6(a) of the Transfer of Property Act and was invalid. It is difficult to see how the decision in that case helps towards the decision of the present case where respondent has what as admittedly a vested interest in the estate although she has no present right to obtain either the profits or the corpus.

5. It seems to me clear that the respondent's right under the settlement in this case is more than an expectancy of succession



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by survivorship and it is in fact admitted that she has a vested interest and not merely a contingent or possible right. It appears therefore that S. 60(1)(m), of the Code does not apply to the case and as it is not suggested that there is any other provision of law which would prevent the attachment and sale of respondent's right in the Elands, I would set aside the order of the lower Court and reject her objection to the attachment and sale of her interests in the lands.

12. Considering the ratio laid down in the case of *Rajes Kanta Roy vs. Shanti Debi* reported in 1957 SCR 77, wherein it is held that vested interest of the judgment debtor cannot be attached by the Court. Consequently right of the auction purchaser also to be protected to that effect he relied the judgment of the case in *Valji Khimji and Company Vs. Official Liquidator of Hindustan Nitro Product (Gujarat) Limited and Others* reported in (2008) 9 SCc 299. The ratio laid down in the above referred case shows that the right of the auction purchaser is to be protected and the sale became absolute that the sale certificate was issued after sale in favour of the Elumalai Chettiar under Order 21 Rule 92 CPC as such sale became absolute, under the said circumstances the right of the auction purchaser is to be protected the above authorities referred by the appellant supporting their defence. It is pertinent to mention here that sale stands in the name of the Elumalai Chettiar which was not set aside by any Court of law. In the present case, there is no prayer with regard to set aside the



auction sale made by the Elumalai Chettiar/first defendant. Further, the first appellate Court without such prayer granted relief in favour of the plaintiff also unwarranted which is liable to be set aside. Accordingly, question of law 1 & 2 is answered.

13. The plaintiff claimed right over the property based on the Will executed by the Angammal derived the right and title as per the settlement deed executed by her husband Raju Padayachi, as discussed above said settlement deed superseded by the subsequent compromise decree held in the family in which said Angammal also one of the party. Therefore, through alleged settlement deed she has no right and title over the suit property. Utmost she was given life interest in the suit property till her life time as per the terms of the compromise indeed absolute right was given to her son and right also not been contingent one and therefore vested remainder given in favour of the Palani Padayachi would shows that he was given absolute right over suit property and limited possessory life interest in the suit property was given to Angammal but during the life time of the Angammal her son Palani Padayachi pre deceased. Therefore, as a legal heirs of her son Palani Padayachi, Angammal claimed herself as absolute over the property. It is pertinent to mention that during the life time of the



Palani Padayachi his vested interest over property was auctioned by the Court wherein Elumalai chettiar purchased the suit property though the Angammal had life interest which was came to an end after her demise since already Elumalai Chettiar entered into shoes of the Palani Padayachi he became absolute owner after the demise of the Angammal that was the observation made by the Trial Court while disposing the suit filed by the Elumalai in OS No. 519 of 1971 So also 188/1973 wherein right, title and possession of the Elumalai Chettiar already confirmed. Therefore, Angammal got only possessory right over the suit property. Therefore, the present plaintiff who claims to be a legal heir of Angammal have no right and title over the suit property in view of the judgment passed in O.S No. 519 of 1971. Therefore, present suit is barred by principle of resjudicata. As it is related to the same property directly involved in earlier suit. Accordingly, question of law 4 is answered.

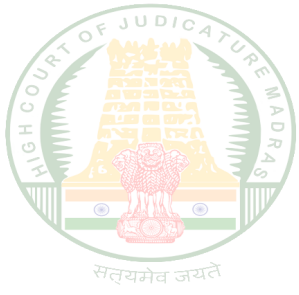
14. As per the evidence of D.W.1 to 3, plaintiffs are not born to Angammal and Raju Padayachi, Palani Padayachi is the only son of Angammal after demise of Raju Padayachi and Angammal had relationship with one Sampantham begotten children. But to prove the legal heir of Raju Padayachi, Angammal has not produced any material evidence and same



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was observed by the court below. In spite of that suit decreed in their favour as such is totally erroneous perverse and liable to be set aside. Eventually, during the time of the Palani Padayachi suit property was auctioned at that time vested right of the said Palani Padayachi was purchased by Elumalai Chettiar, after the demise of the Angammal he became the absolute owner of the suit property. Therefore, neither Angammal nor the plaintiff have title over the suit property but the Court below failed to appreciate settled legal proposition granted relief in favour of the plaintiff as such is illegal and liable to be set aside. Accordingly, question of law 3 is answered.

15. So also there is no cause of action to file the present suit already plaintiff filed popper suit OS No. 30 of 1986 which was dismissed but again filed the suit for same cause of action which is hit by resjudicata. Moreover, the alleged Will dated 01.01.1977 was executed after Court auction sale dated 21.09.1970 and also during her life time Angammal has not claimed right based on the settlement deed. After demise of the Angammal, Elumalai Chettiar Court auction purchaser became absolute owner and also there is no cause of action for the present suit which is liable to be set aside. Accordingly, suit is dismissed as no merits.



16. In the result, this appeal is allowed. No Costs Consequently,

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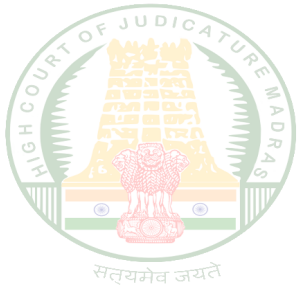
17.04.2025

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To

1. The District Munsif Court, Panruti.
2. The Subordinate Judge, Panruti.
3. The Section Officer, V.R. Section, High Court, Madras.

T.V.THAMILSELVI J.



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SA No. 538 of 2005
& CMP No. 8279 of 2005

17.04.2025