



S.A. Nos.412 & 413 of 2011

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2025

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. Nos.412 & 413 of 2011

S.A.No.412 of 2011

Bangarammal (died)

S.Babu

(2nd appellant is recorded as
legal heir of deceased 1st appellant
viz., Bangarammal vide order of
court dated 26.07.2019 made as
per memo dated 26.07.2019 is
recorded)

**... Appellant in
both S.A.s**

Vs.

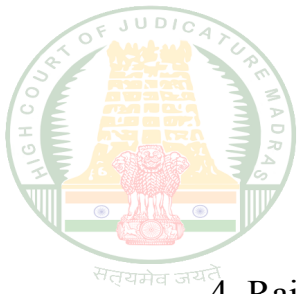
Salammal (deceased)

1. Rukmani

2. Menaka

3. Pitchai (deceased)

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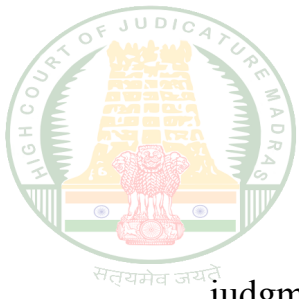
4. Rajee
5. Rathinam
6. Ravi
7. Saraswathi
8. P.Sathishkumar
9. R.Santhoshkumar
10. R.Dinesh Kumar

(Respondents 7 to 10 brought on record
as LR's of the deceased 3rd respondent
vide order of court dated 02.01.2019
C.M.P.No. 15294 to 15296 of 2018)

.. Respondents in
both S.A.s

PRAYER in S.A.No.412 of 2011 : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 07.01.2010 passed in A.S.No.90 of 2005 on the file of Addl. District and Sessions Judge, (Fast Track Court-III), Chennai reversing the judgment and decree dated 21.07.2004 passed in O.S.No.8851 of 1988 on the file of VIII Asst. City Civil Court, Chennai.

PRAYER in S.A.No.413 of 2011 : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 07.01.2010 passed in A.S.No.197 of 2005 on the file of Addl. District and Sessions Judge, (Fast Track Court-III), Chennai reversing the common



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judgment and decree dated 21.07.2004 passed in O.S.No.3820 of 1991 on the file of VIII Asst. City Civil Court, Chennai.

For Appellants in
both S.A.s

: Mr.V.Manohar for
Mr.K.Balaji

For Respondents in
both S.A.s

: Mr.K.S.Madhavan
for R1, R7 to R10

Mr.K.Selvaraj for
R2, R4 & R6

R3 and R5 - died

COMMON JUDGMENT

The appellants herein are the plaintiffs in the suit in O.S.No.8851 of 1988 and defendants in O.S.No.3820 of 1991. Before the trial court, the original plaintiff Bangarammal and her son Babu filed the suit in O.S.No.8851 of 1988 against the respondents/defendants for the relief of declaration to declare title of 2nd plaintiff, delivery of possession and for permanent injunction along with other reliefs. Thereafter, the respondents herein filed a suit in O.S.No.3820 of 1991 for the relief of permanent injunction against the defendants/appellants herein.



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2. In both suits, parties and suit properties are one and the same.

Therefore, before the trial court, both suits were tried jointly. Both parties adduced oral and documentary evidence. On considering the same, the trial judge framed issues and finally held that the suit filed by the appellants in O.S.No.8851 of 1988 was decreed as prayed for and the suit filed by the respondents in O.S.No.3820 of 1991 is dismissed.

3. Challenging the said findings, the respondents herein preferred appeals in A.S.Nos.90 and 197 of 2005 before the Addl. District and Sessions Judge, Fast Track Court No.III, Chennai. The learned first appellate judge jointly heard both parties and rendered a common judgment. The learned first appellate judge analysed the evidence on record independently and framed separate points for consideration and finally allowed both the appeals. Accordingly, the suit filed for the relief of declaration filed by the appellants herein was dismissed and the suit for permanent injunction filed by the respondents herein was allowed. Challenging the said findings, the respondents in both appeals preferred these Second Appeals.



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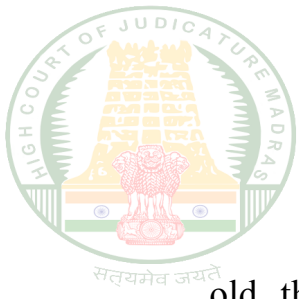
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4. For the sake of convenience, the parties are arrayed as per the ranking in the suit in O.S.No.8851 of 1988

5. Brief facts of the case is as follows :-

According to 1st plaintiff Bangarammal, the suit property bearing Door No. 67, Kothawalchavadi, Saidapet, Chennai along with house and ground originally belonged to one Thayarammal, from her, she purchased the property through a sale deed dated 29.10.1946. Eversince she was in possession and enjoyment of property as absolute owner. While so, on 20.03.1986 she settled her property in favour of her son Babu/2nd plaintiff out of love and affection. Thereafter, he enjoyed the property as absolute owner. The 1st defendant Salammal is the wife of 1st plaintiff's brother Jayaraman. The 1st plaintiff Bangarammal had one brother viz., Jayaraman. He died leaving behind his wife Salammal and children. They are the defendants 2 to 7. On considering the pitiable condition of defendants, they were permitted to occupy the portion of suit property at Door No.67, Kothavalchavadi, Saidapet, Chennai and since the building became very

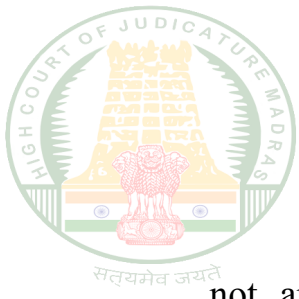
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old, they were requested to vacate and deliver vacant possession. Though they have agreed, but they refused to vacate the premises and also attempted to put up construction, for which they are not entitled. Hence, the plaintiffs have filed the suits for the relief of permanent injunction. Thereafter, the defendants 2 to 7 have filed a suit in O.S.No.3820 of 1991 for the relief of permanent injunction restraining these plaintiffs Bangarammal and her son from interfering with their possession. Both suits were tried jointly for the relief of permanent injunction against each other. After completion of trial, against the findings rendered in the suits, the appeals in A.S.Nos.187 and 122 of 1992 were preferred by the plaintiffs therein, but the first appellate court while disposing both appeals by common judgment set aside the judgment and decree passed in both suits and remanded back the same to the trial court for fresh disposal by joint trial on merits by directing both parties to take steps to amend the plaint and to file additional written statement and to let in oral evidence. Thereafter, suits were restored. I.A.No.18610 of 1996 was filed by adding prayer for recovery of possession along with original prayers in O.S.No.8851 of 1988 and another suit in O.S.No.3820 of 1991, but it was



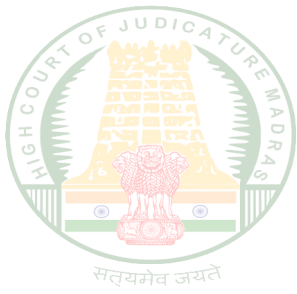
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not amended by the plaintiffs therein as per the order of the court.

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Accordingly, both suits were tried jointly before the trial court.

6. The suit in O.S.No.3820 of 1991 was filed by 1st plaintiff's brother deceased Jayaraman's legal heirs praying for permanent injunction stating that the suit property was originally purchased by Jayaraman's father Gajawada Maistry @ Kuppusamy through sale deed dated 29.10.1946 from one Thayarammal. Eversince he along with his son Jayaraman as members of joint family possessed and enjoyed the same. Jayaraman's sister viz., Bangarammal, at her young age got married to one Swamikannu and left the suit property and after the death of the said Swamikannu, she lived with one Samuel, who is a Christian by religion, thereby her legal rights as per Hindu religion was relinquished. Her son born through Swamikannu, Babu/2nd plaintiff was deserted by her. Therefore, grandfather Gajawada Maistry @ Kuppusamy took care of him and he was permitted to reside in the portion of property. Now taking advantage of the same, the 2nd plaintiff fabricated the records and attempted to dispossess the Jayaraman's legal heirs. Therefore, they come forward with the suit for permanent injunction.

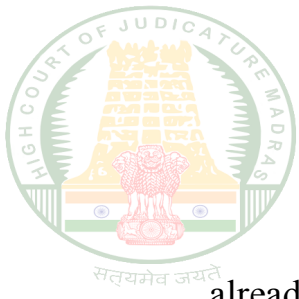


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7. In a comprehensive suit in O.S.No.8851 of 1988, the trial court framed seven issues and the suit in O.S.No.3820 of 1991, the trial judge framed three issues. On the side of plaintiffs, the 2nd plaintiff was examined as P.W.1 and 1st plaintiff Bangarammal was examined as P.W.2 and documents Ex.A1 to Ex.A39 were marked. On the side of defendants, defendants 2 to 4 were examined as D.W.1 to 3 and the documents Ex.B1 to Ex.B4 were marked.

8. By relying the certified copy of sale deed marked as Ex.A1 dated 29.10.1946, the 1st plaintiff Bangarammal claimed right and title over the suit property stating that she purchased the same from Thayarammal out of her own income. This fact was strongly denied by the Jayaraman's legal heirs stating that in the year 1946, Bangarammal was around 15 years old minor, her father Gajawada Maistry @ Kuppusamy had purchased the property in her name, since he was drunkard, thereafter entire property was possessed and enjoyed by Gajawada Maistry @ Kuppusamy as absolute owner jointly along with his son Jayaraman. However, the 1st plaintiff has

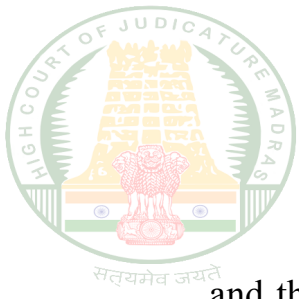


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already left the family and married with one Swamikannu, much earlier in the year 1966. Therefore, she has no right and title over the suit property. After the demise of Gajawada Maistry @ Kuppusamy, his son Jayaraman has enjoyed as absolute owner and he put up construction and residing there, thereby they have denied the plaintiffs' right and title over the suit property.

9. The learned counsel for appellants argue that the first appellate judge failed to appreciate Ex.A1 sale deed and erroneously held that the plaintiffs are not owners of the property considering the Benami Transaction Act and also erroneously held that it is a joint family property of Gajawada Maistry @ Kuppusamy as such is illegal and liable to be set aside. Further, he would submit that Bangarammal purchased the property under Ex.A1 sale deed from her own funds and not being a member of joint family, but without any evidence, the first appellate judge has erroneously concluded that Bangarammal was a minor at the time of purchase of property and wrongly appreciated Sec.11 of Contract Act. Furthermore, he would also submit that as a minor, she is entitled to purchase the property



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and there is no such prohibition. But, the first appellate court erred in law in overlooking the particulars in the sale deed Ex.A1, which clearly discloses that the 1st plaintiff Bangarammal had purchased the property through her own earnings and she put up construction in the remained possession of the property after the demise of her father in the year 1971 and her brother in the year 1986. Bangarammal and her son alone are in possession and enjoyment of suit property, but it was not properly appreciated by the first appellate court. Hence, he prayed to set aside the findings.

10. Considering the facts and circumstances and considering both side submissions, the Second Appeal in S.A.No.412 of 2011 is admitted on the following question of law:-

(a) In the absence of necessary pleadings, materials and relevant particulars and without adverting to the propriety and correctness of the issues framed by the trial court and the evidence let in by the parties, whether the findings of the first appellate court rendered in the common judgment made in both the appeals in A.S.Nos.90 and 197 of 2005



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are contrary to the provisions of The Benami Transactions (Prohibition) Act, 1988 and are perverse, unreasonable and unsustainable in law?

- (b) Whether the assumption of the lower appellate court without any admissible evidence that the 1st appellant/1st plaintiff Bangarammal was a minor on the date of the purchase of entire land of which the suit property in both the suits in O.S.Nos. 8851 of 1988 and 3820 of 1991 formed a portion under the sale deed Ex.A1 dated 26.10.1946 is correct and sustainable in law?*
- (c) Whether the findings of the lower appellate court without any evidence on the part of the defendants/respondents in support of their title and possession to the suit property as put forward by them as against the appellant's title and possession based on the sale deed Ex.A1 dated 26.10.1946, the urban land tax assessment order Ex.A2 dated 06.11.1969, the deed of settlement Ex.A3 dated 20.03.1986, Patta Ex.A17, Tax receipts etc. Exs.A32 to Ex.A34, Ex.A36 and Ex.A39 and the mortgage deed Ex.A20 dated 25.05.1988 are sustainable under law?*



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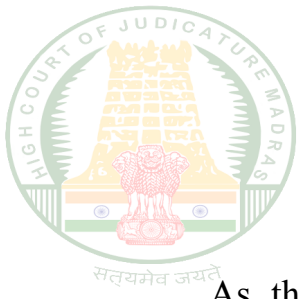
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11. Accordingly, another Second Appeal in S.A.No.413 of 2011 was admitted on the following question of law :_

Whether the plaintiffs/respondents in O.S.No.3820 of 1991 on the revocation of permission granted to them to occupy the suit property in terms of the appellant's lawyer's reply Ex.A16 dated 08.09.1988 being trespassers in unauthorised occupation of the suit property are entitled to be protected under law by the grant of decree for permanent injunction restraining the appellants from interfering with their possession of the suit property?

12. By way of reply, the learned counsel for respondents would submit that in the year 1946, the said Bangarammal was a minor around 15 years, but she gave a false age at the time of filing of suit and she has no other source of income. Since her father Gajawada Maistry @ Kuppusamy was a drunkard, the property was purchased in her name and thereafter, Gajawada Maistry @ Kuppusamy alone possessed and enjoyed the property as absolute owner and he put up some superstructure in the suit property.

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As the 1st plaintiff deserted her son Babu, he was brought up by his grandfather Gajawada Maistry @ Kuppusamy and his wife and his uncle Jayaraman. After the demise of Jayaraman, in the year 1986, his sister, the 1st plaintiff Bangarammal started to cause interference and with ill-motive, she had executed the settlement deed in favour of her son Babu, who was an influenced person in that locality. At his instigation, Bangarammal filed the suit for bare injunction. But, all these years, from the year 1946 onwards, she was never in possession and enjoyment of property and her father Gajawada Maistry @ Kuppusamy and his son Jayaraman was in absolute possession of property and the same was rightly appreciated by the first appellate court, which needs no interference. Accordingly, he prayed to dismiss these Second Appeals as no merit.

13. The point is to be decided whether the 1st plaintiff Bangarammal perfected right and title over the suit property based upon the title deed Ex.A1. Admittedly, the original sale deed of the year 1946 not been produced before this court. The certified copy of sale deed was produced, wherein it is mentioned that on 29.10.1946 for the value of Rs.100/-, as a



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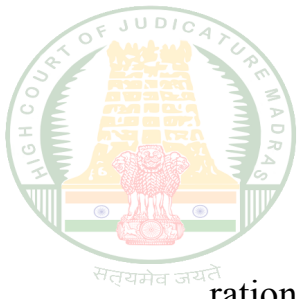
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vacant site, the suit property was purchased in the name of Bangarammal.

According to the contesting defendants, at the time of alleged purchase, Bangarammal was around 15 or 16 year old minor and as her father was a drunkard, the suit property was purchased in her name, but ever since from the purchase, father was in possession and enjoyment of the property as a joint family property along with his son Jayaraman.

14. As per contention of 1st plaintiff, she purchased the property at the age of her 18 years out of her own self-earning. Therefore, the burden is casted upon her to prove that she purchased the property on her own earning and also to prove that she was a major or aged about 18 years at the time of purchase of property, but except the sale deed Ex.A1 and another tax demand order copy Ex.A2 of the year 1969, the 1st plaintiff has not produced any document to prove that she was in possession and enjoyment of property from the year 1946 till the execution of settlement deed of the year 1986. Though she contended that she put up superstructure and paid tax, she has not produced any tax receipt from the year of 1946 to 1986. The tax receipts, electricity demand notice received from corporation,

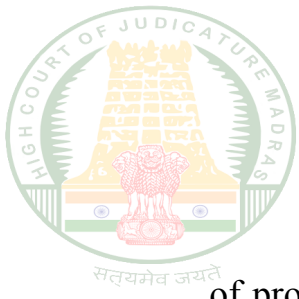
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ration card and other documents produced on the side of plaintiffs is proved that it is the year of 1988 after the settlement. Therefore, absolutely there is no document from the year 1946 to 1986 and nearly about 40 years, there is no document produced on the side of plaintiff that she was in possession and enjoyment of the suit property as absolute owner. Her brother Jayaraman died in the year 1986, after that only she applied for certified copy of Ex.A1 and claimed that she is absolute owner of property as well as executed the settlement deed in favour of her son/2nd plaintiff through Ex.A3 dated 20.03.1986. Moreover, during trial, she herself deposed that she has not paid the tax to the property and also deposed that original sale deed is not produced and it was taken away during flood, but no proof. She also admits that she married to one Swamikanu and begotten a son, 2nd plaintiff. After his demise, she lived with one Samuel. Further she would also deposed that she has not earned separately and she was aged 5 or 10 years and also not able to pay, then how could she collected a sum of Rs.100/- to purchase the property. She also deposed and admitted that since her father was drunkard, the property was purchased in her name. Furthermore, though the 1st plaintiff contended that at the time of purchase



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of property in the year 1986, she was aged about 18 years, but she has not produced any document to prove her right age and even in the settlement deed Ex.A3 executed in favour of 2nd plaintiff, her age was mentioned as 56 years, former wife of Swamikannu and the said document was executed in the year 1986. If her age is 56 years, she would have born in or around 1936. If that being so, in the year of 1946, at the time of purchase of suit property through Ex.A1, she was around only 10 or 12 years. Therefore, her own document Ex.A3 reveals that she was a minor at the time of purchase of property, however, her definite case is that she purchased the property by her own savings, but she being a minor, it is unbelievable, how she purchased the property by paying Rs.100/- in the year 1946.

15. Admittedly, her father was a mason, doing construction work and the family is a poor family and father is the only earning member at that time. Even as per evidence of the 1st plaintiff, it proves that since her father was a drunkard, the property was purchased in her name. Therefore, the 1st plaintiff failed to prove that she purchased the suit property out of her own earnings in the year 1946 and at that time she was a major. On the other hand, the evidence of 1st plaintiff as well as documents relied on her side



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clearly establish that she would have been a minor in the year 1946 and her father purchased the property in her name. This aspect was not properly appreciated by the trial court, but the first appellate court separately analysed her evidence as well as documents and rightly held that 1st plaintiff Bangarammal is not having any separate source of income. Moreover, as per the recitals of Ex.A1 sale deed, it was not mentioned that Bangarammal was represented by her father Gajawada Maistry @ Kuppusamy. Even as per Sec. 11 of Contract Act prohibits minor's transaction, the suit property was not purchased for the benefit of minor and it was purchased for the benefit of the family by her father. Therefore, when the first plaintiff failed to prove that the suit property was purchased by her and she had absolute right over the suit property is not acceptable one. Sec.4(1) of Benami Transaction Act, which reads as follows:-

4. Prohibition of the right to recover property held

benami – (1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.



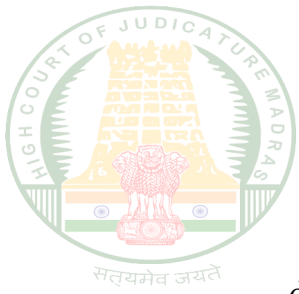
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Therefore, the first appellate court has rightly held that contrary to the said Sec.4(1) of Benami Transaction Act, in which exception under Sec.4(1) of Binami Transaction Act, if the property is purchased for the benefit of daughter, the claim of Binami is not acceptable, but as discussed above, the said property was purchased in the name of Bangarammal only to protect the property, since his father was a drunkard, but not for the benefit of her and the same was also revealed by her own evidence. Furthermore, the first appellate judge also relied on the ratio laid down in the authority reported in *AIR 2004 SCC 4187* in a case between *Valliammal vs. Shanmugam and others*, in which it is held as follows :-

“The question whether a particular sale is a benami or not, is largely one of fact, following six circumstances can be taken as a guide to determine the nature of the transaction:-

(1) The source from which the purchase money came; (2) The name and possession of the property, after the purchase; (3) Motive, if any, for giving the transaction a benami colour; (4) The position of the parties and the relationship, if any between the claimant and the alleged benamidar; (5) The custody of title



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deeds after the sale; and (6) The conduct of the parties concerned in dealing with the property after the sale. The above indicia are not exhaustive and their efficacy varies according to the facts of each case. Nevertheless, the source from which the purchase money came and the motive why the property was purchased benami are by far the most important tests for determining whether the sale standing in the name of one person, is in reality for the benefit of another”

Finally, the first appellate judge held that the suit property was purchased by Gajawada Maistry @ Kuppusamy, father of 1st plaintiff out of his own funds, but in the name of his daughter Bangarammal and the evidence of P.W.1 and P.W.2 also admits that after the purchase, the 1st plaintiff's father Gajawada Maistry @ Kuppusamy was possessed and enjoyed the property. The first appellate judge has framed foremost point for consideration was that whether the suit property was purchased under Ex.A1 by Gajawada Maistry @ Kuppusamy from Thayarammal in the name of Bangarammal. So, the said issue was finally held that Gajawada Maistry @ Kuppusamy

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16. As per the defence of contesting defendants, who are the legal heirs of Jayaraman contested the case stating that during the life time of Jayaraman, he along with his father jointly possessed and enjoyed the suit property and after demise of his father Gajawada Maistry @ Kuppusamy, his son Jayaraman possessed and enjoyed the property and after his demise, they are enjoying the property. Since the 2nd plaintiff was deserted by his mother/1st plaintiff, they have permitted him to occupy the portion of suit property. Since he being an influenced person in the locality, after the demise of Jayaraman, manipulated the records and causing interference. However, the plaintiffs denied the defendants long possession. But, as discussed above, from the year of 1946 to 1986, nearly about 40 years, there is no documents on the side of plaintiffs to prove their continuous long uninterrupted possession of suit property, but during the trial, when the 2nd plaintiff examined as P.W.1 admits that he was living along with his

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grandfather, grandmother and maternal uncle. Further, he would also admits that he was under the care of his maternal uncle. He would also reiterate that from the date of his knowledge, grandfather, grandmother and her uncle were residing in the suit property. Therefore, the evidence of P.W.1 proves that the 2nd plaintiff was under the care of Jayaraman and his grandfather, however his mother Bangarammal lived with one Samuel through whom she got another son Yesaiya. Furthermore, the defendants also contended that the 2nd plaintiff was permitted to reside in the portion of suit property, but after his marriage, he shifted his place and on considering the pitiable condition, he was permitted. Therefore, for more than 40 years, long uninterrupted possession was established by the defendants, which was rightly appreciated by the first appellate court, it needs no interference.

17. Furthermore, the documents relied on by the plaintiffs are after the alleged settlement deed of 1986, which clearly shows that after the demise of Jayaraman, the 2nd plaintiff obtained the alleged settlement deed from the first plaintiff and effected all the revenue records and within two years, in the year 1988, the present suit was filed. Therefore, most of the documents relied on by the plaintiff are after the suit would not support



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them. Furthermore, on perusal of evidence of P.W.2 Bangarammal, she has not definite that she executed the settlement deed in favour of her son Babu. During the cross-examination, she deposed that she has not executed any document in favour of anybody. So, her position was also abused by the 2nd plaintiff. From his conduct, it reveals that the alleged gift deed also not been proved as it is true and valid one by the 2nd plaintiff. Therefore, the findings rendered by the first appellate court with regard to right and title of the defendants is sustainable. Accordingly, the question of law (3) is answered.

18. Moreover, at the time of alleged execution of sale deed in the year 1946, the 1st plaintiff was minor. Therefore, she is not entitled to contract as per Sec.11 of Contract Act. Hence, the alleged sale deed also void, to that effect, the observation made by the first appellate judge also sustainable. Therefore, the right and title of 1st plaintiff has not been proved. Hence, she is not entitled for the relief of declaration and other consequential relief. To that effect, the findings rendered by the first appellate court is sustainable. Accordingly, the question of law in S.A.No.413 of 2011 is answered.

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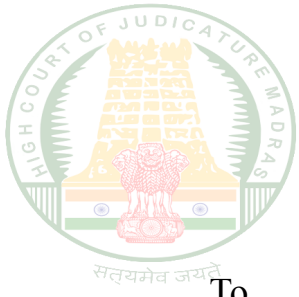
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19. As discussed above, the plaintiff failed to prove that they are the absolute owners of suit property. Therefore, the termination of notice through Ex.A16 dated 08.09.1988 as such is not valid under law nor the defendants have dispossessed. However, they have proved that they are in long uninterrupted possession with all absolute right. Hence, they are entitled for the relief of permanent injunction in O.S.No. 3820 of 1991 as prayed for. Therefore, the findings rendered by the first appellate judge to that effect is sustainable. Accordingly, the both the Second Appeals in S.A.Nos.412 and 413 are dismissed and consequently, the suit filed by the plaintiff in O.S.No.8851 of 198 is dismissed and the suit in O.S.No.3820 of 1991 is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

17.06.2025

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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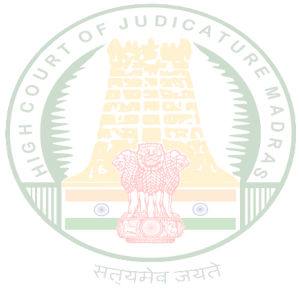
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To
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1. VIII Asst. Judge, City Civil Court, Chennai.
2. Addl. District and Sessions Judge, (Fast Track Court No.III),
City Civil Court, Chennai.
3. Section Officer, VR Section, Madras High Court.



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T.V.THAMILSELVI, J.

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Pre-delivery common judgment in
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