

S.A.(MD)No.1065 of 2007

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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JUDGMENT RESERVED ON : 21.08.2025

JUDGMENT PRONOUNDED ON : 29.08.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A.(MD)No.1065 of 2007

1.S.N.Janardhanan

2.Chitra

3.Sumathy

4.Muthukumaran

....Appellants/Appellants/Plaintiffs

Vs

1.Gandhigram Trust
by its Managing Trustee
Gandhigramam, Dindigul Taluk

2.Gandhigram Rural Institute
By its Vice-Chancellor
Gandhigramam, Dindigul Taluk

...Respondents/Respondents
/Defendants

PRAYER: Second Appeal is filed under Section 100 of C.P.C, against the judgment and decree dated 30.07.2003 made in A.S.No.121 of 2002 on the file of the Principal Subordinate Court, Dindigul which confirmed the judgment and decree dated 10.04.2001 made in O.S.No.793 of 1999 on the file of the II Additional District Munsif Court at Dindigul.



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For Appellants : Mr.G.Ramanathan
For Mr.A.Rajaram

For Respondents : Mr.AR.L.Sundaresan
Additional Solicitor General of India
Assisted by Mr.MA.P.Thangavel

JUDGMENT

The plaintiffs in a suit for declaration of title and recovery of possession have filed the present second appeal challenging the concurrent findings.

(A)Factual Matrix:

2.As per plaint averments, the suit schedule properties were the absolute properties of one Chellamuthu Chettiar by way of a registered sale deed in his favour dated 09.10.1911 which is marked as Ex.A1. He had died in the year 1930 intestate, leaving behind his three sons, Nagursamy Chettiar, Nagalingam Chettiar and Muthukamu Chettiar. It is further averred in the plaint that Nagursamy Chettiar and Muthukamu Chettiar have executed a registered release deed in favour of Nagalingam Chettiar on 23.11.1932 which is marked as Ex.A2. Thereafter, the suit schedule properties are the exclusive properties of Nagalingam Chettiar who had passed away in the year 1942 when the first plaintiff was five years old. Therefore, it devolved upon the first plaintiff and his three children who are arrayed as plaintiffs 2 to 4.



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3.It is further averred in the plaint that the after execution of release deed on 23.11.1932, Nagursamy Chettiar and Muthukamu Chettiar have executed a registered sale deed in favour of the first defendant on 11.02.1949 which is marked as Ex.A3. This came to the knowledge of the plaintiff through their aunt Saraswathi Ammal in the year 1997. The plaintiffs had issued a legal notice on 04.02.1998 under Ex.A8 for which a reply was sent by the first defendant on 06.07.1998 under Ex.A9. According to the plaintiffs, their uncles do not have any right over the property and they have colluded with the first defendant and sold the property. The first defendant is not a bonafide purchaser for valuable consideration. The document dated 11.02.1949 is a void transaction. The uncle of the plaintiffs namely Nagursamy Chettiar and Muthukamu Chettiar are not entitled to act as guardian for the first plaintiff in view of the fact that his mother Sankarammal was alive. Therefore, the said transaction dated 11.02.1949 is a fraudulent transaction. Hence, he prayed for declaration of title and recovery of possession.

4.The first defendant had filed a written statement admitting the fact that the suit schedule properties were originally owned by Chellamuthu Chettiar as his joint family property. The defendants disputed the release deed executed by Nagursamy Chettiar and Muthukamu Chettiar on 23.11.1942 and claimed that it is a sham and nominal document and it never came into effect.



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According to the defendants, the said document is void in the eye of law. He further contended that the property did not belong to the first plaintiff alone but it was a joint family property consisting of paternal uncle, Nagursamy Chettiar and Muthukamu Chettiar.

5.The defendants had further contended that a portion of the property that was purchased by the first defendant under Ex.A3 was sold in favour of the Government of Tamil Nadu. It was further contended that the other portion was sold to the second defendant on 26.03.1959 under Ex.A4. The portion in the possession of the Tamil Nadu Government has now been sub-divided as S.No.415/1A and the portion of the second defendant is sub-divided as S.No.415/1B. In such circumstances, without impleading the Government of Tamil Nadu as a party, the suit is bad for non-joinder of necessary party. The defendants had further contended that the transaction dated 23.11.1932 is not a void transaction and there is no collusion between the vendor of the first defendant. The defendants claim that they are bonafide purchasers for a valuable consideration.

6.The defendants had further contended that the plaintiffs were aware of these transactions in the year 1980 itself and they have not chosen to question the same. The property has been in possession of the defendants openly, adversely to the knowledge of the plaintiffs for more than the statutory period. The defendants prescribed title to the property by adverse



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possession as well. The defendants had further contended that the properties have undergone remarkable changes and they have put up two cow sheds, office room and other buildings in the portion of the property immediately after purchase. The Government has also put up sheds in their portion. The plaintiffs acquiesced and estopped under law to dispute the rights and title of the defendants. The defendants further questioned the averments of the plaintiffs that he became aware of Ex.A3 sale deed only in the year 1997.

7.Pending suit, an Advocate Commissioner was appointed at the instance of the defendants in I.A.No.681 of 2000. The Advocate Commissioner has filed a report to the effect that the staff quarters and office building of the defendants are located. The plaintiffs had filed an objection to the commissioner's report to the effect that the defendants have not taken steps to locate the suit property with the help of surveyor. Therefore, their counsel had left the locality at the time of inspection. They have also disputed the physical feature noted by the Advocate Commissioner.

8.The first plaintiff was examined as PW1 and one of the villagers was examined as PW2. The Research Officer of the second defendant was examined as DW1.

9.The trial Court while considering the validity of Ex.A3 sale deed dated 11.02.1949 had found that the suit schedule properties had been released by Nagursamy Chettiar and Muthukamu Chettiar in favour of the



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father of the first plaintiff namely Nagalingam Chettiar under Ex.A2 on 23.11.1932 itself. In such circumstances, the paternal uncles of the first plaintiff do not have any right over the suit schedule property. The trial Court further found that when the mother of the first plaintiff was alive, the paternal uncles cannot act as a guardian. Even assuming that if they act as a guardian, his role is only that of a defacto guardian. The defacto guardian would not be entitled to deal with the properties of a minor. Besides, there is no recital in Ex.A3 that the property is being sold for the benefit of the minor. In such circumstances, the trial Court arrived at a finding that Ex.A3 document is not a legally valid document.

10.The trial Court further found that the first defendant is in possession of the property from the year 1949 onwards. Though it is claimed by the plaintiff that he became aware of Ex.A3 sale deed only in the year 1997, in the legal notice issued by him under Ex.A8 dated 04.02.1998, it is stated that the plaintiff became aware of Ex.A3 sale deed 10 years back. The trial Court further found that the plaintiff has not chosen to examine his aunt who is said to have informed the plaintiff about Ex.A3 sale in the year 1997 in order to establish the fact that he could know about Ex.A3 sale deed only in the year 1997. The plaintiff had miserably failed to prove that he had knowledge about Ex.A3 sale deed only in the year 1997.



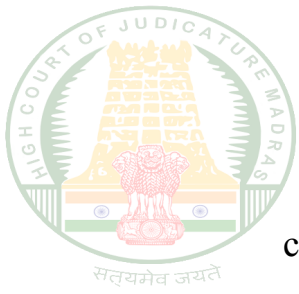
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11.The trial Court further found that the suit having been filed in the year 1999 is clearly barred by limitation and proceeded to dismiss the suit on the ground that the defendants have acquired prescribed title by adverse possession. Challenging the same, the plaintiffs have filed A.S.No.121 of 2002 before the Principal Subordinate Court, Dindigul. The First Appellate Court was pleased to concur with the findings of the trial Court with regard to the fact that Ex.A3 document is a void document. However, proceeded to dismiss the appeal on the ground that the suit has been barred by limitation. The First Appellate Court further found that the first plaintiff has attained majority in the year 1951. However, he has chosen to file the present suit only in the year 1999 and therefore, the suit is barred by limitation. Challenging the concurrent findings, the present second appeal has been filed by the plaintiffs.

12.The above second appeal was admitted on the following substantial questions of law:

“1.Did not the Courts below erred in holding that the respondents derived title hostile to the first appellant by adverse possession, when there is no specific case or pleading on the part of the respondents, as prescribed under the Code of Civil Procedure?

2.Did not the Courts below erred in concluding that the respondents are the true owners, when Ex.A3 sale deed has been



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concluded as not valid and void, on which document alone the respondents claimed their right, title and interest?”

(B).Submissions of the learned counsel appearing on either side:

13.The learned counsel for the appellants submitted that after execution of Ex.A2 release deed in the year 1932, his paternal uncles would not have any right over the property. Therefore, they cannot execute Ex.A3 sale deed in favour of the first defendant in the year 1949. That apart, when the mother of the first plaintiff was alive, the paternal uncles cannot even act as a guardian. Even assuming that he acted as a defacto guardian for a minor, they do not have right to alienate the property without obtaining prior permission from the Court. In such circumstances, the said document is a void document.

14.The learned counsel for the appellants further submitted that the trial Court as well as the appellate Court have arrived at a concurrent finding that Ex.A3 sale deed in favour of the first defendant is a void document. Therefore, the plaintiff has established his title over the suit schedule property. In such circumstances, the burden shifts upon the defendants to establish that they have prescribed title by adverse possession. However, the Courts below have dismissed the suit by erroneously fixing the burden of proof upon the plaintiffs.



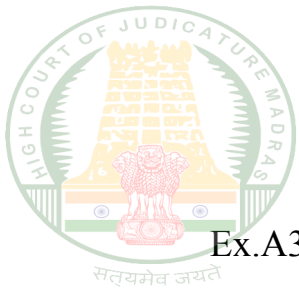
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15.He relied upon a decision of the Hon'ble Supreme Court reported in **(2007) 2 MLJ 657 (SC) (M.Durai Vs. Madhu and others)** and the judgement of the Division Bench of our High Court reported in **(2006) 3 MLJ 465 (A.Vedanayagam (tmt.) and others Vs.Annakili and others)** in support of his contention.

16.The learned counsel for the appellants has also relied upon a decision of the Hon'ble Supreme Court reported in **(2006) 7 SCC 570 (T.Anjanappa and others Vs.Somalingappa and another)** and contended that mere possession, however long it may be, it will not result in conferring title upon the person in possession, unless the person in possession has denied the title of the true owner. The learned counsel had further submitted that there is no specific pleading in the written statement claiming adverse possession. In such circumstances, the Courts below ought not to have considered the submissions of the defendants that they have prescribed title by adverse possession.

17.When the Courts below have concurrently found that Ex.A3, is a void document, thereafter the Court ought not to have dismissed the suit of the plaintiffs claiming declaration of title and recovery of possession.

18.Per contra, the learned Senior Counsel appearing for the respondents submitted that the first plaintiff is shown as eo-nominee party in



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Ex.A3 sale deed. Therefore, within a period of three years on attaining majority, he should have challenged the document. Without challenging the said document, the present suit for declaration of title is not maintainable. The learned Senior Counsel further submitted that the alienation of the property has taken place in the year 1949. The first plaintiff has attained the age of majority in the year 1956. However, he claims that he became aware of this void transaction only in the year 1997. Whenever, a plaintiff claims extension of limitation period, the burden would be upon him to establish that he did not have any knowledge about Ex.A3 sale deed. However, the plaintiff has not been able to establish the fact that he was not aware of the sale deed till 1997.

19.The learned Senior Counsel has relied upon Section 3 of the Transfer of Property Act and the sale deed under Exs.A3 and A4 are the registered documents of the year 1949 and 1959. The plaintiffs claim that they became aware of the document in the year 1997. As far as the registered documents are concerned, the plaintiff is deemed to have knowledge about these documents as soon as they are registered. Unless the plaintiff is guilty of gross negligence, he could not have missed the registered documents. Therefore, the suit having been filed by the plaintiff in the year 1996 at the age of 61 is clearly barred by limitation.



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20.The learned Senior Counsel had further submitted that knowing fully well that the plaintiff would not be in a position to seek cancellation of Exs.A3 and A4 has omitted to pray for cancellation of these documents and has cleverly prayed for declaration of title and recovery of possession, in order to circumvent the law of limitation. Hence, he prayed for dismissing the second appeal.

21.Heard both sides and perused the material records.

(C).Discussion:

22.The first plaintiff's grandfather is the absolute owner of the property. After his death, it has devolved upon his three sons namely Nagursamy Chettiar, Nagalingam Chettiar and Muthukamu Chettiar. Nagursamy Chettiar and Muthukamu Chettiar have executed a registered release deed in favour of Nagalingam Chettiar (father of the first plaintiff under Ex.A2 on 23.11.1932). Nagalingam Chettiar had passed away in the year 1942. These facts are not in dispute.

23.While the mother of the first plaintiff (wife of Nagalingam Chettiar) was alive, the paternal uncles of the first plaintiff (brother of Nagalingam Chettiar) have executed a registered sale deed in favour of the first defendant on 11.02.1949 under Ex.A3. As rightly pointed out by the trial Court as well as the appellate Court, the sale deed having been executed by the defacto guardian is void in the eye of law. In such circumstances, the



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question of challenging the said document by the first plaintiff could not arise.

24.After the suit property was purchased by the first defendant under Ex.A3 in the year 1949, a portion has been sold to the second defendant under Ex.A4 in the year 1959. The Court can also take a judicial notice of the fact that the first defendant institution was started in the year 1946 which was later declared to be a deemed university from the year 1976. The Advocate Commissioner has specifically found that the office building and the staff quarters are located in the suit schedule properties. In such circumstances, the contention of the plaintiff that he was not aware of 1949 sale deed is unbelievable.

25.The first plaintiff had attained majority in the year 1956. Only thereafter, the first defendant has executed a sale deed in favour of the second defendant for a portion of the property in the year 1959. Though the plaintiff claims that he became aware of this transaction only in the year 1997 through his aunt, he has not chosen to examine her. In the legal notice issued in the year 1998, the first plaintiff claims that he became aware of the document 10 years back which is quite contrary to the plaint averments.

26.The issue that now arises for consideration is what is the period of limitation for a minor to seek declaration of title over the property which was sold out during his minority?.



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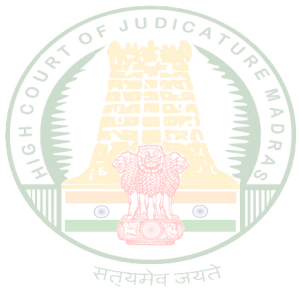
27.Our High Court in a judgment reported in **(1977) 2 Mad LJ 382**

WEB CO (Chinnaiah Kownder Vs.Kattayya Kownder) in Paragraph No.4 has held as follows:

“4....Therefore, though prima facie, under Art.65 read with S.6(1) of the Limitation Act, a suit for recovery of possession could be filed by the minor within 12 years from the date when he attained the age of majority in case where the transaction was void by reason of S.8, such a suit will have to be filed three years of attaining of the age of majority and the minor could not claim the extended period of 12 years. The period of limitation therefore for recovery of possession by a minor in respect of a void transaction is 12 years from the date of sale or three years after he attained the age of majority whichever is longer.....”

28.The Hon'ble Supreme Court in a judgment reported in **(2006) 5 SCC 353 (Prem Singh and others Vs. Birbal and others)** in paragraph No.28 has held as follows:

“28.If a deed was executed by the plaintiff when he was a minor and it was void, he had two options to file a suit to get the property purportedly conveyed thereunder. He could either file the suit within 12 years of the deed or within 3 years of attaining majority. Here, the plaintiff did not either sue within 12 years of the deed or within 3 years of attaining majority. Therefore, the suit was rightly held to be barred by limitation by the trial court.”



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29.The Hon'ble Division Bench of our High Court in a judgment

reported in **AIR 1963 Mad 213 (V.Rajaram Vs. Ramanujam Iyengar and others)** has held as follows:

“.....But where the alienation is made of endowed property by the trustee or manager without disclosing that he was acting in that capacity but claiming such properties as his personal properties the alienations would certainly be void as the very act of the alienation was in derogation of the trust. Irrespective of the. period of limitation itself within which the suit had to be filed for recovering property alienated by a trustee or manager treating it as his personal capacity, if the alienee has remained in possession for 12 years from the date of alienation he acquires title to the property by adverse possession. That conclusion is based upon the principle that a person in possession without lawful title always acquires title by adverse possession provided the other requisites for establishing adverse possession are present. In a case where a person purchases property from the manager of a choultry treating the property as the personal property of that individual (manager) he certainly professes to hold the property not as a alienee from the manager but as alienee from the individual. In that case adverse possession starts from the very date of the alienation where transfer of possession. was had. A suit to recover possession of such property after the alienee had perfected title by adverse possession would fail on the ground that the defendant had acquired title by adverse possession.....”



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30.A cumulative reading of the judgments cited supra, will clearly indicate that the period of limitation for recovery of possession by a minor in respect of void transaction is 12 years from the date of sale or 3 years after he attained the age of majority whichever is longer. For a person in possession pursuant to a void document, adverse possession starts from the very date of alienation. A suit for recovery of possession filed by a quondam minor, after the alienee had perfected title by adverse possession, had to fail on the ground that the defendants had acquired title by adverse possession._

31.In the present case, the defendants in Paragraph Nos. 8 and 9 have specifically pleaded about the adverse possession and they have also pointed out that the constructions put up by them. The plaintiff has not been able to establish that he became aware of this construction or possession of the defendants only in the year 1997. The Advocate Commissioner has also confirmed the existence of the building in the suit schedule properties which are 40 years old. Therefore, the defendants have discharged their burden in establishing the plea of adverse possession. In such circumstances, the trial Court as well as the appellate Court have rightly arrived at a finding that the suit for declaration of title and recovery of possession is clearly barred by limitation.



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(D). Conclusion:

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32.In view of the above said deliberations, both the substantial questions of law are answered as against the appellants. The judgment and decree of the Courts below are confirmed. The second appeal stands dismissed. No costs.

29.08.2025

Index : Yes / No
Internet : Yes / No
NCC : Yes/No
msa

To

1.The Principal Subordinate Judge
Dindigul

2.The Additional District Munsif
Dindigul

3.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai



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R.VIJAYAKUMAR,J.

msa

Pre-delivery Judgment made in
S.A.(MD)No.1065 of 2007

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