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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27-07-2026

PRONOUNCED ON : 11-11-2026

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

SA No. 125 of 2018
CNR:{HCMA010140302018}
AND
CMP NO. 2784 OF 2018

Case QR

1. Shanmugam,
   S/o Murugeasan,

2. Karunakaran
   S/o Kanjamalai

3. Pandian
   S/o Chockalingam

4. Ganesan (died)

5. Palanivel
   S/o Subramanian

   (All Are Residing At East Street,
   Allivillagam Village,
   Sirkali Taluk
   Nagapattianm District.)

6. Sarathambal
   S/o.Late Ganesan

7. Narayanan
   S/o.Late Ganesan

8. Seetha
   D/o.Late Ganesan

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9. Lakshmi
D/o.Late Ganesan

(A4 died, A6 to A9 are brought on record as LRs of the deceased A4 vide court order dated 20.08.2024 made in CMP.Nos.18140, 18139, 18141 of 2024 in S.No.125/2018 (RSVJ))

..Appellants

Vs

Chndrasekaran
S/o Raman,East Street,
Allivillagam Village,
Sirkali Taluk
Nagapattinam District.

..Respondent

To set aside the judgement and decree passed in AS.No.20 of 2017 dated 07/10/2017 on the file of the court Addl. Subordinate judge, Mayiladuthurai in confirming the judgement and decree passed in OS.No.321 of 2004 dated 04/02/2017 on the file of the court of District Munsif, Sirkali.

For Appellants : Mr.A.Muthukumar

For Respondent : Mr.B.Jawahar

Judgment

The defendants are the appellants.

2. For the sake of convenience, the parties shall be referred to as per their ranks in the suit.

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3. The plaintiff presented O.S.No.321 of 2004 on the file of the District Munsif Court at Sirkali seeking permanent injunction. His claim was that he had purchased the suit schedule mentioned property on 06.06.2000 from one Kalimuthu Ammal and her son, Nagarajan. There was a minor mistake in the boundary to the property. Hence, the vendor and vendee got a rectification deed executed on 16.09.2004. He claimed that the defendants were attempting to interfere with his possession. Therefore, he came forward with the suit.

4. According to the plaintiff, his vendors were the beneficiaries of the settlement deed dated 04.04.1953. The settlors claimed the property through one Mottai Padaiyatchi, who had purchased the same by way of a document dated 26.10.1928.

5. Summons were served on the defendants. The defendants filed a written statement denying the title of the plaintiff. According to them, on the basis of the partition deed dated 27.11.1947, the suit schedule mentioned property fell to the share of their grandfather, one Narayanasamy and his five sons, namely, Veerasamy, Subbu, Thiruvengadam, Chockalingam and Arumugam. Subsequently, the sons of Veerasamy, Chockalingam and Thiruvengadam entered into a partition deed on 10.08.1976 and the properties fell to the share of the defendants. They claimed that they also had patta to the suit property and therefore, the plaintiff is not entitled to the relief of injunction.

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6. The learned District Munsif, who tried the suit, decreed it as prayed for on 16.06.2008. Aggrieved by the same, the defendants preferred a regular appeal in A.S.No.70 of 2008 to the file of the learned Additional Subordinate Judge at Mayiladuthurai. In and by way of a judgment dated 06.11.2008, the regular appeal came to be dismissed.

7. Aggrieved by the same, the defendants preferred a second appeal to this Court in S.A.No.678 of 2009. By way of judgment dated 02.11.2015, this court came to a conclusion that as the defendants have questioned the title of the plaintiff to an extent of 4 cents, the appropriate remedy for the plaintiff is to seek for declaration of title. As the plaintiff had failed to do so, this court came to a conclusion that the suit for permanent injunction is not maintainable without a prayer for declaration of title. The substantial question of law was answered in favour of the defendants. Instead of pushing the parties for separate litigation, this court deemed it appropriate to remit the matter to the trial court to enable the plaintiff to amend the suit seeking declaration of title along with the relief of permanent injunction. Consequently, the judgment and decree of the courts below were set aside. The plaintiff was permitted to amend the suit to include the prayer for declaration of title. The trial court was directed to receive the additional written statement from the defendants and to frame additional issues and to permit additional evidences, if any and dispose of the suit.

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8. Post the remand, the plaintiff filed an application to amend the plaint seeking declaration of title. This was in I.A.No.189 of 2016. This application was opposed by the defendants. By an order dated 13.06.2016, the learned Trial Judge allowed the amendment application. He received the additional statements from the parties. Thereafter, the learned Trial Judge framed the following issues:

"1.வழக்கு தாக்கல் செய்தபொழுது வாதி தாவா சொத்தின் அனுபவத்தில் இருந்தாரா?

2. வாதி வழக்கில் கோரியுள்ளவாறு நிரந்தர உறுத்துக்கட்டளைப் பரிகாரம் பெறத்தக்கவரா?

On 27.07.2016, the learned Trial Judge framed the following additional issues:

"1.வாதி வழக்கில் கோரியுள்ளவாறு தாவா சொத்துக்கு வாதி உரிமையாளர் என்று விளம்பல் பரிகாரம் பெறத்தக்கவரா?

2. வேறு என்ன பரிகாரம் தரப்பினர்களுக்கு கிடைக்கத்தக்கது?"

On 20.09.2016, the learned Trial Judge framed the following additional issues:

"3.எதிரிடை அனுபவம் மூலம் தாவா சொத்தின் உரிமை மூலத்தை பிரதிவாதிகள் அடைந்துள்ளார்களா?

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4. வாதி இவ்வழக்கை சரியானபடி மதிப்பீடு செய்துள்ளாரா?"

On 06.01.2017, the learned Trial Judge framed the following additional issue:

"5.நிரந்தர உறுத்துக்கட்டளை பரிகாரம் ஏற்கனவே இருக்கின்ற நிலையில் விளம்புகை பரிகாரம் கோரியுள்ளது காலவரையறையால் பாதிக்கப்பட்டுள்ளதா?"

9. On the side of the plaintiff, he examined himself as PW1 and three other witnesses as PW2 to PW4. On the side of the plaintiff, they marked Ex.A1 to Ex.A16. On the side of the defendants, the second defendant examined himself as DW1 and also examined three other witnesses as DW2 to DW4. On the side of the defendants, Ex.B1 to Ex.B16 were marked.

10. On consideration of the oral and documentary evidences, the learned Trial Judge came to a conclusion that the suit for declaration of title is not barred by limitation. The plaintiff's title document precedes the title document of the defendants and therefore, decreed the suit as prayed for.

11. Aggrieved by the same, the defendants preferred an appeal in A.S.No.20 of 2017 to the file of the learned Additional Subordinate Judge at Mayiladuthurai. He also received the additional document let in by the

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defendants. He concurred with the views of the learned Trial Judge and dismissed the appeal.

12. Aggrieved by the same, the present second appeal.

13. This second appeal was admitted on the following substantial questions of law on 19.02.2018:

"a) Whether the cause of action for the relief of declaration arose when the defendants denied the plaintiff's title and set up title in them in their written statement filed in 2004, whether the relief of declaration sought for after 12 years is not barred by limitation?

b) When the recitals in Ex.A14, the plaintiff's parent title deed, show that the executant had not title on that date as no sale certificate was issued to him, whether the courts below erred in law in ignoring the same by holding that the plaintiff's predecessor in interest had derived title under it?

c) Whether the Court auction purchaser gets title to the property when no sale certificate was issued to him?

d) Whether the Courts below erred in law in holding that the plaintiff has title to the suit property when Ex.B1 cannot

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be brushed aside and in the absence of sale certificate and delivery accounts for Ex.A14?

e) When the defendants have produced Ex.B2 to Ex.B7 and Ex.B9 to Ex.B13, whether the Courts below erred in law in ignoring the same.?"

14. I heard Mr.A.Muthukumar for the appellants and Mr.B.Jawahar for the respondent.

15. After narrating the facts, Mr.A.Muthukumar urged that the plaintiff relies upon a sale certificate which had not been produced before the court. Consequently, he urged that this court must to come to a conclusion that possession had not been taken in the execution proceedings. He added that no revenue records stand in the name of the plaintiff and his predecessors and this creates a serious doubt over the validity of the title document produced by the plaintiff. He urged that unless and until the sale confirmation order is produced, all the documents, on the basis of which the plaintiff claims, would have to go.

16. Mr.A.Muthukumar further points out that the defendants have produced a partition deed whereunder the suit schedule mentioned property has been shown in the schedule to the deed. He urged that this court should come to the conclusion that the said property would not have been included in the

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partition deed if the defendants had not been in the possession thereof. He invited my attention to Ex.B12, patta, to point out that it stands in the name of the defendants 1 and 3.

17. Inviting my attention to the first substantial question of law, Mr.A.Muthukumar pointed out that when the defendants had filed a written statement as early as December 2004 denying the title of the plaintiff, the amendment for declaration of title in the year 2016 is hopelessly barred by limitation. He argues that no court can extend limitation. The scope of the order passed in S.A.No.678 of 2009 was only permitting the plaintiff to amend the plaint and since the claim was already barred by limitation, the plaintiff cannot rely upon the same.

18. Mr.A.Muthukumar relies upon Section 105 of the Code of Civil Procedure (hereinafter referred to as "CPC) to argue that he need not prefer an appeal against the order allowing amendment in I.A.No.189 of 2016 and that he can always urge the invalidity of the said order while preferring an appeal against the decree. Relying upon the judgment of the Supreme Court in ***Corporation of Madras and Another v. M.Parthasarathy and Others, (2018) 8 MLJ 208 (SC)***, he argues that the learned Appellate Judge, having allowed the application under Order XLI Rule 27, should have remanded the matter for fresh disposal and failure to do so would vitiate the judgment. Hence, he urges

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that the substantial questions of law be answered in his favour and the appeal be allowed. In support of his contention, he cites the following judgments:

(i) ***Pattam Khader Khan v. Pattam Sardar Khan, (1996) 5 SCC 48***; and

(ii) ***United Finance Corpn. v. M.S.M. Haneefa, 2017 (2) CTC 223 (SC)***;

19. Per contra, Mr.B.Jawahar argues that the plaintiff has proved the title to the properties right from 1928 till the date of presentation of the plaint. Therefore, there is no question of interference by this court in second appeal. He urges that all the factual aspects have been properly appreciated by the courts below and no substantial questions of law, as urged by the appellants, arise for the consideration.

20. Turning to the documents filed by the defendants, he points out the discrepancies in the extent in each of the documents. He points out that the boundaries in the documents also do not tally and therefore, the plea that boundaries will prevail over extent cannot be pressed into service in this particular case. He adds that under Ex.B1, it is claimed that the predecessors of the defendants had purchased the property but the title deed had not been produced.

21. Inviting my attention to the grounds of appeal before the lower appellate court in A.S.No.20 of 2017 as well as the grounds of appeal in this

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second appeal, Mr.B.Jawahar points out that there are no grounds challenging the order allowing the amendment. Therefore, he urges Section 105 does not apply. Insofar as the plea of the suit being barred by limitation, he argues that the plea of doctrine of relation back applies and by virtue of the amendment being allowed by the court on 13.06.2016, the relief of declaration of title relates back to the date of presentation of the plaint in October 2004 and therefore, the suit is in time. He rejects the reliance placed upon Ex.B12, stating that it is a mere revenue document and argues as to how 11 cents of land is found therein, when there are no title deeds of the defendants to claim the said extent. He submits that, being a suit with respect to the vacant land, possession follows title. He states that this appeal is without merits and that the judgment and decree of the courts below are unimpeachable and that the appeal be dismissed.

22. By way of response, Mr.A.Muthukumar urges that as he has raised the plea of limitation, that takes care of the challenge to amendment also.

23. I have carefully considered the submissions made on either side. I have gone through the records.

24. Let me give the gist of the case of the plaintiff and the defendants.

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25. According to the plaintiff, the suit property was the subject matter of sale in SC.1296/1926 on the file of the Sub Court, at Mayiladuthurai. One Sabapathy Pillai participated in the court auction. He was the successful auction purchaser. The said Sabapathy Pillai executed a sale deed in favour of one Mottai Padayatchi on 26.10.1928. Mottai Padayatchi and his brother, Pavadai Padayatchi entered into a document of release on 04.01.1951. The suit property was released in favour of the Mottai Padayatchi. The sons of Mottai Padayatchi, namely Somasekaran and Muthusamy, executed a deed of settlement giving life estate to their mother, Pottu Ammal and their sister, Kalimuthu Ammal, with the absolute estate vesting in the name of Nagarajan, the son of Kalimuthu Ammal. This document was executed on 04.04.1953. Kalimuthu Ammal accelerated her life interest and joined Nagarajan and executed a sale deed in favour of the plaintiff on 06.06.2000. As the boundaries were not properly set forth, a rectification deed was executed on 16.09.2004. The plaintiff claimed that as the defendants attempted to interfere with the possession, he came forth with the suit for permanent injunction. As pointed out earlier, he succeeded in both the courts below but lost before this court in S.A.No.678 of 2009, albeit with a liberty to amend the plaint into one for declaration of title.

26. It is the defendants' case that the defendants' grandfather Narayanasamy Padayatchi and his five sons and other family members entered into a deed of partition on 27.11.1947. The suit schedule mentioned property

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was allotted in favour of the branch of Narayanasamy Padayatchi. Thereafter, by way of another document under Ex.B13 dated 10.08.1976, the property fell to the share of Pandiyan. Pandiyan was in possession and enjoyment of the property. They also claimed that they had mutated the revenue documents in their favour and are in possession of the same.

27. Being a suit for declaration of title, the issue would have to be decided by preponderance of probabilities. Before moving forward, I would like to recollect the principles of preponderance of probabilities that applies to civil proceedings. The principles are set forth hereunder:

(i) The requirement is which event or fact pleaded by a party is more likely to be true than the other. It refers to a greater likelihood of one event or fact over another.

(ii) The fact is considered proven when the evidence establishes that its occurrence is more likely than not.

(iii) It is a test whereunder the court weighs evidence so as to see which side presents a more probable case.

(iv) In civil disputes, the plaintiff, bearing the burden of proof, needs to demonstrate before the court that his version is more plausible than that of the defendants.

(v) It is the duty of the court in such cases, to evaluate the conflicting probabilities and finally, choose the most probable scenario.

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28. Let me consider each and every point that has been raised by the learned counsel.

29. If I agree with the plea of limitation, then the necessity to go into the other pleas does not arise. Therefore, let me first consider the scope of Section 105 of CPC and the doctrine of relation back.

30. Section 105 of CPC holds that it is not necessary for a party to challenge every single interlocutory order by way of a revision or an appeal. The party, who is aggrieved by a decree, is entitled to challenge the interlocutory order passed by the trial court, while preferring an appeal against the decree, pointing out the error, defect or irregularity in the interlocutory order as a ground of objection in the memorandum of appeal. The purpose of Section 105(1) is to prevent piecemeal revisions and appeals and thereby ensure that the trial court proceeds without any interruption or delay. Section 105 directs that, unless and until the CPC permits an order to be appealed, as found under Section 104 or Order XLIII Rule 1, no independent appeal lies against an interlocutory order. This basically reiterates the settled principles of civil law that an appeal is a creature of the statute and there is no inherent right for a party to prefer an appeal or an inherent right in a court to entertain an appeal.

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31. In case, an interlocutory order is passed and a party do not prefer an appeal earlier against the said order, the Code provides a remedy even in such situations. It holds that once a decree is passed, an aggrieved person can challenge the interlocutory order by including it as a ground of objection in the memorandum of appeal. Not every interlocutory order is capable of being challenged under Section 105(1) of CPC. Error, defect or irregularity in the interlocutory order must be of such a nature that it would be directly influence the merits of the decree. A few examples are amendment of pleadings, belated admission or rejection of a document or improper admission of additional evidence. Purely procedural orders, such as granting or refusal of adjournment, would not fall under the said category.

32. The exception to this rule is Section 105(2). This carves out an exception to Section 105 (1). If an appellate court was to remand the matter to the trial court for fresh disposal, and the party does not appeal against the order of remission, then he or she is precluded from disputing the correctness of the remand order in an appeal filed against the decree. As the amendment in this case falls under the category specified under Section 105(1), it would have certainly been open to the appellants to challenge the validity of the amendment, while preferring an appeal to the learned Additional Subordinate Judge, Mayiladuthurai.

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33. I have gone through the grounds of appeal in A.S.No.20 of 2017 as well as the grounds of appeal in this second appeal. Nowhere have the appellants challenged the validity of the order passed in I.A.No.189 of 2016 dated 13.06.2016 as a ground of objection. Unless and until the requirement of Section 105(1) is specifically complied with, it is not open to Mr.A.Muthukumar to argue that the order passed in an interlocutory application ought to be interfered with while preferring an appeal against the decree. This is because, the very Section that he relies upon demands that the error, defect or irregularity in the order should be set forth as ground of objection in the memorandum of appeal. The reason is not too far to see. When an appeal is preferred against the decree and summons were served on the respondents, a copy of the grounds are annexed along with the summons. If no objection is set forth, the respondents would be under the impression that the appellants are not challenging the validity of the interlocutory order so passed.

34. The provision under Section 105(1) of CPC is not a “hide and seek” provision for the appellants to surprise their opponent by raising the plea which had not been raised earlier at all. Therefore, the attempt of Mr.Muthukumar to raise a plea invoking Section 105(1) is rejected.

35. Furthermore, the permission to file an amendment application was granted by this court in SA.No.678 of 2009 dated 02.11.2015. In paragraphs 11

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and 12 of the said order, this court had specifically granted liberty to the plaintiff to amend the plaint. The defendants did not challenge the liberty granted by this Court before the Supreme Court. The learned Trial Judge, being bound by an order passed by this court, granted the said relief of amendment.

36.This takes us to the plea of doctrine of relation back while dealing with the amendment of pleadings. In simple terms, doctrine of relation back means, when a court allows a party to amend the pleadings, the amendment is treated as if it was filed on the date the plaint was originally presented rather than the date on which the application for amendment came to be allowed. This doctrine creates a legal fiction that the amendment to the pleadings act retrospectively from the date of presentation of the pleadings, be it with the plaint or the written statement. The purpose of this doctrine is to protect the parties from the law of limitation.

37. If a suit had been originally presented within the period fixed for limitation under the Limitation Act, the subsequent amendment should not be thrown out for being time barred, even after the original period of limitation had expired. This position of law has been explained by the Supreme Court in ***Sampath Kumar v. Ayyakannu and Another, 2002 INSC 386***. The Supreme Court pointed out that an amendment once incorporated relates back to the date of the suit. It declared that it is open to the court allowing the amendment, in

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appropriate cases, to pass an order that the amendment will not relate back to the date of the suit but to the extent permitted by it, by holding that the application for amendment would apply only on the date on which the application seeking amendment was filed. (Also see, ***Siddalingamma v. Mamtha Shenoy, (2001) 8 SCC 561***).

38. A perusal of the order passed by the trial court in I.A.No.189 of 2016 on 13.06.2016 indicates that the trial court permitted the amendment simpliciter. It did not hold that the amendment will operate only from the date of filing of the application. That being the situation, by applying the doctrine of relation back, this court has to conclude that the amendment seeking declaration of title relates back to the date of presentation of the plaint namely 04.10.2004 and not as urged by Mr.A.Muthukumar that it should be made applicable only from 13.06.2016. If the defendants were aggrieved by the said order, they should have either challenged it by way of a revision or as argued by Mr.B.Jawahar should have set it forth as a ground of objection in the grounds of appeal. Not having done that and having participated in the trial proceedings as well as in the regular appeal, it will be travesty of justice to permit Mr.A.Muthukumar to take up this plea at the second appellate stage.

39. I now turn to the argument of Mr.A.Muthukumar that raising a plea that the suit is barred by limitation implies that he is challenging the amendment

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also. Yet again, I am not in a position to countenance the said argument. This is for the reason that if the suit for declaration of title has been filed in the year 2004 and if it was so barred on that date, the suit would have to be dismissed as barred by limitation. With the plaintiff having purchased the property in the year 2000 and his possession having been interfered of in the year 2004, the cause of action for him to approach the court arose only then. Therefore, the presentation of the suit in October 2004 cannot be held to be barred by time.

40. Even keeping aside the rectification deed dated 16.09.2004 that has been projected by the plaintiff, Ex.A1 had come into force on 06.06.2000 and the suit filed on 04.10.2004 cannot be said to be beyond the period of 12 years, the essential period for it to be held as barred by time. It is not necessary that the plaintiff has to approach the court everyday to get a declaration. He needs to do so only when there is a cause of action. The plaintiff alleges that the defendants attempted to interfere with his possession on 17.08.2004 and presented the suit soon thereafter. Hence, I am not in a position to conclude that the suit is barred, by limitation.

41. Let me now turn to the next aspect.

42. The earliest title deed of the plaintiff is a registered document under Ex.A14 dated 26.10.1928. Under the said document, one Sabapathy Pillai, who

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had purchased several items of the property in a court auction sale in SC.1296/1926 on the file of the Subordinate Court at Mayavaram (presently, known as Mayiladuthurai), alienated the same by way of a registered sale deed in favour of one Mottai Padayatchi. The suit schedule mentioned property is found in item No.4 of the sale deed.

43. It is the plea of Mr.Muthukumar that no sale certificate had been issued to Sabapathy Pillai. Conceding to such an argument would be unfair. The very unfairness of this argument is to expect a party to produce a document which has come into effect nearly 100 years before in the present proceedings. It would not have been in the imagination of either vendor or the purchaser when they entered into a transaction on 26.10.1928 that 98 years later, a stranger to the said transaction would demand the production of the sale certificate. I do not want to rest my reasoning only on this aspect.

44. The hollowness in the argument of Mr.Muthukumar would be immediately evident. He urges that, on the basis of the following statement, there is an indicator that the sale certificate had not been issued to the vendor Sabapathy Pillai. The words he relies upon are as follows:

"இதற்கு ஆதரவாக கோர்ட்டு ஏல சர்டிவிக்கட்
உன் சிலவின் பேரில் நான்வாங்கிக்கொடுத்துவிடுவேன்."

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A reading of this gives an impression that a sale certificate had in fact been issued by the court but Sabapathy Pillai would have to get a copy of the same on the expenses being incurred by the purchaser, Mottai Padayatchi. Nowhere the document states that Sabapathy Pillai was not declared as a successful auction purchaser. It merely states that the document is subject to a mortgage that had been created in favour of one Rajagopalasami on 28.04.1918.

45. While the plaintiff had not produced the document dated 28.04.1918, the defendants had taken efforts to produce the same before the court. This is under Ex.B14. Ex.B14 produced by the defendants vouchsafe that one Sivavadivelu Poosi, for the loans obtained by him, had executed a mortgage on 28.04.1918. Ex.B14 shows that several properties had been mortgaged under the said document and the property situated in S.No.63/1 was one amongst them.

46. It is clear from Ex.A15 that Mottai Padayatchi and his brother, Pavadai Padayatchi entered into a release deed on 04.01.1951, whereunder Pavadai Padayatchi had released the suit property in favour of his brother. Soon thereafter, under Ex.A2 dated 04.04.1953, the sons of Mottai Padayatchi namely, Somasundaram and Muthusamy Padayatchi, settled the property in the names of their mother, Pottu Ammal, their sister, Kalimuthu Ammal and nephew, Nagarajan. Ex.A2 makes it clear that the life estate would be enjoyed

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by Pottu Ammal and Kalimuthu Ammal with the vested reminder in favour of Nagarajan.

47. The next registered document after 04.04.1953 is the sale deed executed in favour of the plaintiff on 06.06.2000. There is an evidence on record to point out that the plaintiff, Chandrasekaran is a neighbour of his vendors, namely, Nagarajan and Kalimuthu Ammal. Similarly, the defendants also are the neighbours of the vendors.

48. This court is able to see a continuous chain of documents running for more than 75 years in the family of Mottai Padayatchi, the descendants of whom are the vendors of the plaintiff. As pointed out above, as this court has to balance the probabilities in the case of the plaintiff and the defendants, let me now turn to the documents projected by the defendants.

49. Ex.B1 is the document on which the defendants rely upon. This is a partition deed entered between the family of Narayanasamy Padayatchi and his sibling, Kumara Padayatchi. Insofar as the suit survey number is concerned, the extent mentioned therein is 6 cents. According to the defendants, this property was again dealt within their family under Ex.B13, namely, the partition deed entered into by the legal heirs of Narayanasamy Padayatchi on 10.08.1976. In the said document, the extent of property goes down to 4 cents.

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Mr.A.Muthukumar has been kind enough to produce the document produced by the defendants before the lower appellate court. This does not, in my view, assist the defendants for a simple reason that even as per the document, the extent concerned with was only 3 cents.

50. I am in agreement with Mr.B.Jawahar that the defendants have miserably failed to explain how from 3 cents from the document produced before the lower appellate court, the share of the defendants increased to 6 cents and thereafter, was reduced to 4 cents. Yet again, a perusal of Ex.B1 indicates that the property, which was divided in 1947, had been purchased by Narayanasamy Padayatchi. When the grandfather is said to have purchased a property, it is the duty of the defendants to produce the said document before the court. Unfortunately, the defendants have not produced the same. There are no title deeds, either for Narayanasamy Padayatchi or his father, Muruga Padayatchi, produced during the course of the proceedings in order to defeat the claim of the plaintiff.

51. Furthermore, as rightly contended by Mr.B.Jawahar, the schedule of property given under Ex.B13 does not tally with the rough sketch produced by the defendants themselves, which is enclosed in page 23 of the typed set of papers. If this court has to apply the principle of preponderance of probabilities, on one hand this court has Ex.A14, Ex.A15, Ex.A2 and Ex.A1 showing that the

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plaintiff and his vendors have been in possession of 11 cents throughout and on the other hand, this court has Ex.B1 and Ex.B13 and the document produced before the lower appellate court showing varying extents thereby, casting a huge doubt over the documents produced by the defendants.

52. I should now turn to the argument of Mr.A.Muthukumar that the revenue document produced by the defendants indicates that they are in possession of the property and therefore, at least the relief of permanent injunction should not be granted in favour of the plaintiff. The above discussion indicates that at no point of time, the defendants were in enjoyment of 11 cents. Ex.B12 is a patta in which the names of the first and third defendants are found. It is a joint patta. It has been granted for the entire 11 cents of the property. When the title deeds of the defendants do not indicate that they have ever been in possession of 11 cents of property, either in 1929, 1947, or 1976, it is beyond one's understanding as to how the defendants were able to secure a patta for an extent more than the extent found in the registered documents. There is absolutely no link between the documents produced by the defendants and the revenue document. When all the other registered documents are all of a lesser extent, it is surprising that the revenue department had parted with a certificate that the defendants are in occupation of 11 cents.

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53. I merely have to recollect the principles settled by the Supreme Court that mutation or inclusion of a name in a revenue record does not confer or take away the title vested in a person (See, ***Prahlad Pradhan v. Sonu Kumhar, (2019) 10 SCC 259***). They merely reflect the person from whom the Revenue Department is entitled to collect the dues of the State.

54. I now turn to the authorities cited by Mr.A.Muthukumar.

55. The first of the judgments relied upon by Mr.A.Muthukumar is ***Pattam Khader Khan***'s case. The case arose under the following circumstances:

(i) One Pattam Rasool brought forth a suit for partition and separate possession with respect to the property situated at Nellore. The preliminary decree was passed on 07.01.1977. During the course of final decree proceedings, an Advocate Commissioner, who visited the suit property, submitted a report that the property is incapable of division. Consequently, the final decree court ordered sale of property by way of a public auction. In the auction held on 07.08.1984, Pattam Sardar Khan, the son of the plaintiff, participated in the same and was successful. On 07.08.1984, the sale was confirmed. A sale certificate was issued on 09.11.1989. Immediately, Pattam Sardar Khan filed an application for delivery of possession.

(ii) The appellant before the Supreme Court, Pattam Khader Khan objected that the application under Order XXI Rule 95 of the Code of Civil

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Procedure is barred by limitation as it had not been filed within one year from the date of confirmation of the sale. The executing court sustained the objection. Consequently, Pattam Sardar Khan preferred a revision to the High Court of Andhra Pradesh. The High Court allowed the revision and held that the application was in time. Aggrieved by the same, civil appeals were filed before the Supreme Court.

(iii) The issue that the Supreme Court was called upon to decide was whether an application under Order XXI Rule 95 of the Code should be filed only when the sale certificate is issued or within one year from the date of confirmation of the sale. The Supreme Court held that the issuance of sale certificate is a ministerial act that evidences the already perfected title. Sale certificate neither creates title nor affects the timeline fixed under Article 134. In terms of the said Article, an application under Order XXI Rule 95 has to be filed within one year when the sale becomes absolute and allowing limitation to run from the date of sale certificate would undermine the legislative intent. Consequently, the appeals were allowed and the application filed under Order XXI Rule 95 was held barred by time.

56. This judgment is a precedent for the proposition that the limitation for filing an application under Order XXI Rule 95 of the Code starts when the sale is confirmed and made absolute and not from the date the sale certificate is issued. It is also an authority for the proposition that a sale certificate is only a

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ministerial act and the sale gets confirmed on the occurring of events under Order XXI Rule 92.

57. The reliance upon this judgment by Mr.A.Muthukumar for the purpose of urging that, as the sale certificate on the basis of which Ex.A14 was executed not having been produced, the sale itself cannot be treated as valid, is entirely misconceived. Ex.A14 records that the sale had been held and that sale certificate will be procured and given later. When the Supreme Court has held that sale certificate is not a judicial act but a ministerial act, to argue that the lack of production of the sale certificate vitiates the title of the auction purchaser is a misreading of the said judgment.

58. To the same effect is the second judgment relied upon in ***Haneefa***'s case. In that case too, an application was filed under Order XXI Rule 95 of the Code after a period of one year from the date of confirmation of sale. The court held that as the sale had not been made absolute till the proceedings challenging the auction sale had concluded, the application for delivery of possession filed on 30.08.2003, after the revision had been disposed of on 09.07.2003, was in time. For this judgment too, the reason stated for the inapplicability of ***Pattam Khader Khan***'s case to the facts of the present case applies.

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59. The last judgment relied upon is ***Parthasarathy***'s case. The dispute arose from and out of the four civil suits presented by the respondent, Parthasarathy and others against the Corporation of Chennai. The plaintiffs sought permanent injunction against the Corporation asserting their title over the land on the basis of sale deeds and patta. This suit was contested by the Corporation claiming title to the properties and also urging that the patta, on the basis of which the plaintiff had presented the suits, had been cancelled. The learned Trial Judge clubbed all the suits together and dismissed the suits with costs. Aggrieved by the same, the plaintiffs preferred regular appeals to the VIII Additional City Civil Court, Chennai along with an application under Order XLI Rule 27 of the Code of Civil Procedure. The learned First Appellate Judge allowed the application under Order XLI Rule 27 and marked additional documents as Ex.P16 to Ex.P20. Placing reliance upon the additional evidences so tendered, the appeals were allowed. Aggrieved by the same, the Corporation of Chennai preferred second appeals to this court. The second appeals were dismissed on 09.10.2002. Hence, Civil Appeals before the Supreme Court.

60. The issue presented before the Supreme Court was whether the first appellate court was right in allowing the application under Order XLI Rule 27 of the Code and immediately deciding the case on merits without giving an opportunity to the respondents therein to rebut the evidence. The Supreme Court held that the manner of disposal of the appeals and the applications were

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improper. It held that the opposing side must be given an opportunity to let in rebuttal evidence. It found that the court had an option either to remand the matter under Order XLI Rule 23-A or under Order XLI Rule 25 and that not having been followed, the judgments were set aside and all the suits were remanded to the trial court for fresh disposal.

61. This judgment is an authority for the proposition that a party cannot be taken by surprise by the appellants by producing fresh evidence at the appellate stage and the appellate court cannot decide the appeal on the basis of the additional documents without giving an opportunity to challenge and rebut the fresh evidence so tendered.

62. In the present case, it was the appellants herein, who had filed the application under Order XLI Rule 27 of the Code. The learned Judge had received the document and found that the additional evidence was not in any way going to help the case of the appellants. It was not the case of the respondent herein having filed an application under Order XLI Rule 27 and the same having been relied upon to dismiss the appeal. On the contrary, the factual situation indicates that the appellants herein had filed an application and had obtained an order in their favour in the said application and the appellate court came to the conclusion that the document filed does not assist their case. The document having been received, if at all anyone would have a grievance, it

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would be the respondent herein. The appellants cannot have a grievance that the procedure followed by the lower appellate court is erroneous.

63. I should add that the lower appellate court ought to have followed the procedure under Order XLI Rule 28. Yet, it does not make a difference to the result, as the court had found that the document is of no assistance to the case of the appellants herein. This court too, has gone through the additional document presented before the lower appellate court. It is of the year 1929 and as found earlier, the extent of the property dealt with therein is only 3 cents. The extent of the property involved in the present case is 11 cents. As to how the vendor, under the additional document, came into possession of the property has not been substantiated. In any event, Ex.A14 is of the year 1928, which is nothing but a registered document executed much before the additional document presented by the appellants. Hence, this judgment too, is of no assistance to the case of the appellants.

64. In the light of the above discussions, the substantial questions of law are answered against the appellants. The second appeal is dismissed. The judgment and decree passed in A.S.No.20 of 2017 dated 07.10.2017 on the file of the Additional Subordinate Court, Mayiladuthurai and the judgment and decree passed in O.S.No.321 of 2004 dated 04.02.2017 on the file of the District

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Munsif Court, Sirkali are confirmed. The respondent will be entitled to the costs in the appeal. Consequently, the connected miscellaneous petition is closed.

11-11-2026

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

To

1. The District Munsif Court, Sirkali

2. The Additional Subordinate Court, Mayilduthurai

3. The Section Officer, VR Section, Madras High Court.

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V.LAKSHMINARAYANAN J.

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SA No. 125 of 2018
AND
CMP NO. 2784 OF 2018

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