IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.02.2026

PRONOUNCED ON : 18.03.2026

CORAM:

THE HON'BLE MR.JUSTICE **V.LAKSHMINARAYANAN**

S.A.No.550 of 2002

1.B.Natarajan
2.B.Prasannayya
3.B.Sampathkumar ... Appellants

Vs.

1.M.Sidhanandam (Died)
2.Sarvamangala
3.D.Prakash
4.D.Amaranathan
5.Jayajothi Rachutappa @ Baby (Died)
6.Manjula Thiagarajan
7.S.Umapathy
8.S.Subramanian
9.Dr.S.Viswanathan
10.B.Mohan Kumar
11.Lalithambal
12.S.Prabakaran
13.S.Prema
14.S.Asokan
15.S.Sivakumar
16.S.Vijaya
(Respondents 11 to 16 as LRs of

the deceased first respondent vide order of this Court dated 13.08.2019 made in CMP.Nos.14433 & 14434 of 2003)

17.Satheesh Babu

18.Prabu Deva ... Respondents

(Respondents 17 & 18 as LRs of the deceased R5 vide court order dated 23.06.2021 made in CMP.Nos.6364, 6374 & 6375 of 2021 in SA.No.550 of 2002)

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 15.09.2000 in A.S.No.57 of 1989 on the file of the II Additional District and Sessions Judge cum Chief Judicial Magistrate, Dharmapuri at Krishnagiri, partly confirming the judgment and decree dated 21.08.1989 in O.S.No.28 of 1989 on the file of the Subordinate Court, Dharmapuri.

For Appellants : Mr.V.Sekar
for M/s.D.Shivakumaran

For Respondents
7 to 9 : Mr.Arun Anbumani

For Respondent 14 : Mr.A.Sundaravadhanan

R 16 - Refused

R 11 - Died

JUDGMENT

The plaintiffs are the appellants. They assail the judgment and decree of the court of II Additional District and Sessions Judge cum Chief Judicial Magistrate, Dharmapuri at Krishnagiri in A.S.No.57 of 1989 dated 15.09.2000 in partly confirming the judgment and decree of the court of the Subordinate Judge at Dharmapuri in O.S.No.28 of 1989 dated 21.08.1989 and thereby dismissing their suit for declaration of title and for permanent injunction.

2. The plaintiffs are the nephews of the defendants. Originally, the suit was presented before the learned Subordinate Judge at Krishnagiri in O.S.No.66 of 1984. Subsequently, the same was transferred to the file of the learned Subordinate Judge at Dharmapuri and renumbered as O.S.No.28 of 1989.

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

Case according to the plaint:

4. The plaintiffs pleaded that the suit schedule properties, amongst other properties, belonged to one Marula Siddhappa

Chettiar. He was the paternal grandfather of the plaintiffs. The said Marula Siddhappa Chettiar had four sons, namely,

(i) M.Basavaraj;

(ii) M.Sadasivam;

(iii) M.Duraiswami; and

(iv) M.Sidhanandam.

5. The plaintiffs are the sons of Basavaraj. The plaintiffs claimed that Marula Siddhappa Chettiar executed a "WILL" dated 12.08.1948 in his sound and disposing state of mind. By the said "WILL", he bequeathed his properties at Dharmapuri to his four sons. The same was registered. The suit schedule mentioned property and the other properties had been allotted to the plaintiffs' father, M.Basavaraj. He was granted a life estate. The plaintiffs too, were granted life estates and the vested remainder was given to the grandsons of M.Basavaraj.

6. Marula Siddhappa Chettiar died in the year 1949. Post his death, M.Basavaraj took possession of the suit property and other properties that had been bequeathed to him. M.Basavaraj was in possession and enjoyment of the property till his death in the

year 1958. As M.Basavaraj had only a life interest in the suit property, he had no power to alienate the same. Even if he had made any alienation, the same would be invalid and not binding on the plaintiffs. The plaintiffs claimed that they are entitled to the suit property in terms of the "WILL" dated 12.08.1948 and that, they have been in possession and enjoyment of the same. The plaintiffs claimed though they, *inter se*, partitioned their other properties, they kept the suit property in common for their enjoyment.

7. The plaintiffs asserted that they permitted the third defendant to put up a bunk shop in the suit property about 25 years ago. The possession of the third defendant, is for and on behalf of, the plaintiffs. The third defendant has been paying taxes to the municipality on behalf of the plaintiffs and hence, for a complete adjudication of the dispute, the third defendant was made a party to the suit formally.

8. The plaintiffs stated that the defendants 1 and 2 have no right, title, or interest over the suit property and they are not in possession of the same. The first defendant, at the instigation of the

second defendant, started claiming that he was entitled to the suit property and thereby, denying the plaintiffs' title to the same.

9. The cause of action for the suit arose on 25.04.1984, when the first defendant attempted to take forcible possession of the suit property. In this illegal endeavour, he was assisted by his sons. The plaintiffs, with the help of the hird defendant and others, prevented the trespass. The first defendant and his sons went away stating that they would return with men and materials, and take forcible possession. Since the first defendant is a powerful person in that locality, there was an imminent threat that he might take forcible possession of the property. On account of the cloud that had been cast over their title, the plaintiffs came forward with a suit for declaration of title and consequential relief of permanent injunction.

10. Summons were served on the defendants.

11. The first defendant filed a written statement. In the written statement, the relationship between the parties was admitted. The defendants denied that the suit property was a self-acquisition of late Marula Siddhappa Chettiar. He pleaded that

though the document dated 12.08.1948 was titled as a "WILL", in fact, it was not really one. It was a family arrangement executed by Marula Siddhappa Chettiar, with respect to the joint family properties consisting of himself and his four sons. He pleaded that the embargo placed on the alienation of the property by the sharers was necessitated, since it was a requirement of Hindu Law, then prevailing.

12. The first defendant added that the document indicated the manner of division amongst the four sons and as to what each sharer got. The properties came down, not by virtue of any conferment under the "WILL" / document but on account of the partition arrangement contained therein. The first defendant stated that the partition arrangement suggested by the father was accepted and acted upon by all the sons. The first defendant further stated that Marula Siddhappa Chettiar had lots of ancestral properties in Anekal and Chikkanayakana Halli. Out of the income that these properties generated, he invested the same in business at Dharmapuri. The properties in Dharmapuri, Anekal and other places were retained by Marula Siddhappa Chettiar as his share. He provided through the "WILL" that upon his death, these properties

should be divided equally amongst his sons. Hence, it was pleaded that the document, though not valid in law, operated as a partition arrangement between the family members and was accepted and acted upon.

13. The first defendant pleaded that in any event, a condition restraining alienation is void and beyond the powers of the Karta, namely, the father. He added that the testator was highly possessive by nature and did not want the properties to be lost to strangers. He wanted his sons to retain control over to the properties. A few months before the document was executed, discussion on division of the properties commenced and it was discussed threadbare by the Karta, Basavaraj and the defendants 1 and 2. The 3rd defendant did not participate in the discussions as he was a minor.

14. Marula Siddhappa Chettiar wanted the properties to remain within the family. This was well understood by his sons. In case of alienation, the first defendant pleaded that it should be amongst the sharers themselves. The word, 'பராதீனம்' in the document

must be understood as indicating a restraint on the alienation to persons outside the family circle.

15. In the alternative, the first defendant pleaded that the restraint on alienation, as found in the document, was void as the final vesting of the property was in favour of persons not in existence on the date of the document or on the death of Marula Siddhappa Chettiar in 1949. Hence, the first defendant pleaded that the sons took the property with full right of alienation.

16. It was further pleaded that in 1959, the third defendant attained majority. Until that moment, he was under the care and control of Basavaraj, post the death of Marula Siddhappa Chettiar. When the issue of division of the properties retained by Marula Siddhappa Chettiar arose, all the brothers sat together and discussed the same. It was decided that the house left behind by Marula Siddhappa Chettiar, along with other items providing adjacency and approach to the road would be allotted to the third defendant, and in *lieu* of whatever the defendants 1 and 2 lost in those properties, they were allotted the suit property. Pursuant to

this understanding, two documents were executed on 07.09.1952 viz.,

(i) Settlement deed executed by Basavaraj, the defendants 1 and 2 in favour of the third defendant; and

(ii) Settlement deed executed by Basavaraj in favour of the defendants 1 and 2.

On the date of the documents, the settlees were put in possession of the properties. Hence, the defendants 1 and 2 became the owners of the suit properties.

17. The first defendant further stated that sometime in 1969, the second defendant was in urgent need of money. Hence, the first defendant advanced a sum of Rs.9,000/- to him. After receiving the said amount, the second defendant relinquished his interest in the suit property in his favour. A registered document styled as a 'gift settlement' deed was executed on 14.05.1969. On that date, the first defendant was put in possession of the same. Hence, the first defendant became the full and absolute owner of the suit property from that date.

18. Expanding on this plea, the first defendant urged that from 1952 till 1969, he and the second defendant were jointly in possession of the property. After 1969, he was in absolute possession of the same. The first defendant pleaded that as he had been in possession of the property for over 32 years, he had acquired prescriptive title to the suit property. Hence, the suit is barred by time.

19. The first defendant further pleaded that the plaintiffs were never in possession and enjoyment of the property. The third defendant was in possession of a portion of the property since the first defendant permitted him to be in occupation. The third defendant was an employee of the first defendant in his metal business till 1970. Thereafter, he decided to open a bunk shop to have an independent living. It was in those circumstances that the first defendant permitted the third defendant to open a bunk shop in the suit property, with a specific instruction, that the third defendant should vacate the property whenever required.

20. The first defendant stated that the settlement deed executed by Basavaraj on 07.09.1952 is valid and binding on the

plaintiffs and pointed out that the plaintiffs 2 to 4 were not even in existence on the date of execution of the said document. Referring to the plea that the suit property was kept in common, post the partition between the plaintiffs, the defendants asserted that there was no common schedule in the said document for future division.

21. The first defendant further stated that he had put a thorny fence around the suit property. When he demolished his shop in the bazaar street for reconstruction, all the rubble and debris therefrom, amounting to nearly 200 cart loads, were dumped by him on the suit property. He stated that in 1976, he obtained a building licence from the Dharmapuri Municipality to construct a building thereon. An enquiry was conducted by the Municipal Commissioner. During the enquiry, the plaintiffs appeared and submitted that they had no objection to the grant of licence to the first defendant to build on the suit property. As the property is a vacant land, it has not been assessed to any tax so far by the Municipality. Hence, the question of the third defendant paying any tax on his own behalf or on behalf of the plaintiffs does not arise.

22. The first defendant further pleaded that the plaintiffs had fallen in evil days like his brother, the second defendant. The third plaintiff, in fact, had applied to be adjudicated as an insolvent. He pleaded that as he is in possession of the property, there was no necessity for him to trespass into the same. On these pleadings, he sought for the dismissal of the suit.

23. The third defendant, though only a formal party to the suit, filed a written statement. This statement was adopted by the second defendant. The third defendant pleaded that the property belonged to his father, who had executed a valid WILL on 12.08.1948, bequeathing the suit property to his brother, Basavaraj. Basavaraj did not have any more right than a life interest. After the death of Marula Siddhappa Chettiar, Basavaraj was entitled to the suit properties and was in possession of the same till his death in 1958. He stated that on the death of Basavaraj, the plaintiffs had taken possession and were in enjoyment of the property. Reflecting the plaint, the third defendant stated that the plaintiffs had permitted him to put up a bunk shop 25 years ago and he has been paying municipal taxes on behalf of the plaintiffs.

24. The third defendant asserted that the defendants 1 and 2 do not have any right, title, or interest over the property and that he is in permissive possession of the property for and on behalf of the plaintiffs. He pleaded that the suit property and the other properties covered by the "WILL" dated 12.08.1948 were not joint family properties and that they were self acquisitions of his father. Hence, he pleaded that the settlement deed dated 07.09.1952 executed by Basavaraj in favour of defendants 1 and 2; the document executed by Basavaraj and the defendants 1 and 2 in his favour; and the gift deed dated 14.05.1969 executed by the second defendant in favour of the first defendant are null and void and would not bind the plaintiffs. He stated that the defendants 1 and 2 were never in possession of the property.

25. The third defendant pleaded that in the event the court holds that the properties were joint family properties, the defendants and Basavaraj are bound by the terms and conditions contained in the "WILL" dated 12.08.1948. He stated that since the properties are ancestral joint family properties, none of the brothers could have executed a settlement deed and the same are void documents. Hence, the first defendant could not have acquired only

right, title or interest over the properties. He stated that the first defendant, in order to cause loss to the plaintiffs, tried to take forcible possession of the property on 25.04.1984 and that, his attempts had been thwarted by the plaintiffs and the third defendant. In paragraph No.6, he pleaded that he had no objection that the suit be decreed as prayed for.

26. On these pleadings, the learned Trial Judge framed the following issues:

"1. வழக்கில் கூறியுள்ள சொத்துக்களில் வாதிகளுக்கு உரிமைமூலம் உள்ளதா?

2. வழக்கில் கூறியுள்ள சொத்துக்களில் வாதிகள் உடைமையில் இருந்து அனுபவித்து வந்தவர்களா?

3. 1, 2 எதிர்வாதிகள் தாவா சொத்துக்களில் உரிமைமூலம் பெற்றுள்ளார்களா?

4. 1, 2 எதிர்வாதிகள் எதிர்நிலை உடைமை மூலம் உரிமைமூலம் பெற்றுள்ளார்களா?

5. தாவா சொத்துக்களில் அக்கிரமமாக பிரவேசிக்க முயற்சி செய்ததாக கூறியிருப்பது உண்மையானதா?

6. வாதிகள் தங்கள் வழக்குரையில் கோரியுள்ள படி உரிமை விளம்புகை பரிகாரம் பெற அருகதையுள்ளவர்களா?

7. வாதிகள் தங்கள் வழக்குரையில் கோரியுள்ளபடி உறுத்துக் கட்டளை பரிகாரம் பெற அருகதையுள்ளவர்களா? வேறு என்ன பரிகாரம்?"

Additional Issues framed on 12.06.1989 are as follows:

"1. 7-9-1952 - ம் நாள் வாதிகள் தகப்பனார் எழுதி வைத்த செட்டில்மெண்ட் பத்திரம் செல்லத்தக்கதா? அது வாதிகளைக் கட்டுப்படுத்துமா?

2. 14-5-1969 - ம் நாள் 2-ம் எதிர்வாதி 1-ம் எதிர்வாதிக்கு எழுதிக் கொடுத்த செட்டில் மெண்ட் பத்திரம் செல்லத்தக்கதா? அது 2-ம் எதிர்வாதியைக் கட்டுப்படுத்துமா?"

Additional Issue framed on 09.08.1989 is as follows:

"1. 12-8-19482ம் நாள் மருள் சித்தப்பசெட்டியரால் எழுதி வைக்கப்பட்ட ஆவணம் உயில் சாசனமா அல்லது குடும்ப ஏற்பாடா?"

Thereafter, issue Nos.3 and 4 framed at the first instance, were recast as follows:

"1. வழக்கில் கூறியுள்ள சொத்து ஆவணங்கள் மூலமும் எதிர்நிலை உடைமை மூலமும் 1-ம் எதிர்வாதிக்கு உரிமை மூலம் ஏற்பட்டுள்ளதா?"

27. In support of their case, the first plaintiff entered the witness box and examined himself as PW1. He marked Ex.A1 to Ex.A5. On the side of the defendants, the third defendant and the first defendant entered the witness box and examined themselves as

DW1 and DW2 respectively. In addition, the first defendant examined three other witnesses namely DW3 to DW5. The defendants marked Ex.B1 to Ex.B57. The second defendant did not chose to examine himself as a party witness. Hence, he was examined as a court witness. Pending the suit, an Advocate Commissioner was appointed. He submitted a plan and report. They were exhibited under Ex.C1 and Ex.C2.

28. On consideration of the evidences let in before him, the learned Trial Judge came to the following conclusion:

(i) that the suit property and other properties comprised in Ex.A1-"WILL" were joint family properties and that, Ex.A1 was only a family arrangement.

(ii) that the plaintiffs, by virtue of Ex.A18, are estopped from pleading that the properties are not ancestral properties.

(iii) that the settlement deed executed by Basavaraj on 07.09.1952 is void and the first defendant has crystallised his right by adverse possession.

(iv) that the defendants 1 and 2 had been in possession of the property from 07.09.1952 to 14.05.1969 in an open, continuous

and hostile manner to the knowledge of the plaintiffs and hence, they crystallised their right for adverse possession.

Consequently, he dismissed the suit.

29. Aggrieved by the said judgment and decree, the plaintiffs preferred a regular appeal to the file of the II Additional District Judge cum Chief Judicial Magistrate, Dharmapuri at Krishnagiri. This appeal was received as A.S.No.57 of 1989.

30. The first appellate court on re-appreciation of the evidence came to a conclusion that the judgment and decree of the trial court does not require any interference. Consequently, it dismissed the first appeal.

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

32. This court entertained the second appeal. It has been admitted the same on the following substantial questions of law:

> "*(a) Whether the Courts below are right in construing Ex.A1 to be a family arrangement, particularly when it is in the nature of a Will under which a*

dispossession was made of the self acquired properties of Marula Siddhappa Chettiar?

(b) Whether the Courts below are right in upholding Ex.A3 settlement deed, particularly when a coparcenor under the Mithakshara Law has no such power of alienation, unless he is the sole surviving coparcenor and hence, Ex.A3 is legally invalid and cannot be acted upon?"

33. Pending the appeal, the third defendant passed away and his legal heirs were impleaded as R11 to R16. The second defendant's legal heirs were impleaded as R2 to R6 and the first defendant's legal heirs were impleaded as R7 to R9. The second plaintiff Prasanaiyya did not join his brothers in presenting the second appeal. He had been arrayed as a respondent. He too passed away. Subsequently, the fifth respondent in this appeal died and his legal representatives were impleaded as R17 and R18.

34. I heard Mr.V.Sekar in support of the appeal and Mr.Arun Anbumai for the contesting respondents. Mr.A.Sundaravadhanan appeared on behalf of the 14th respondent, one of the legal heirs of the third defendant.

35. After taking me through the pleadings and evidence, Mr.V.Sekar argues that the suit property is a self-acquisition of Marula Siddhappa Chettiar. In the alternative, he urges, if this court concludes that they are joint properties, then the trial court should have construed Ex.A1 as a "WILL" and not as a family arrangement between the parties. He urges that the settlement deeds under Ex.A3, Ex.B7 and Ex.B8, having been executed by Basavaraj and the defendants 1 and 2 with respect to joint family properties, are void and not binding on the plaintiffs. He urges that the courts below did not appreciate the position that a coparcener, under Mitakshara Law, has no power of alienation by way of a settlement deed, unless and until he is the sole surviving coparcener and therefore, the document under Ex.A3 cannot be treated as acted upon. Hence, he urges the questions of law be answered in his favour and the appeal be allowed.

36. Mr.Arun Anbumani argues that none of the settlement deeds executed by Basavaraj and the defendants 1 and 2 have ever been questioned by the plaintiff. He states, Ex.A1 was a family arrangement arrived after a discussion between the Karta - Marula Siddhappa Chettiar, and his major sons, namely, Basavaraj and

defendants 1 and 2. The first and second defendants had taken possession of the property on the date of execution of the settlement deed that is, 07.09.1952,and even if the document is treated to be void, the first defendant having been in possession of the suit property for 32 years and above. Hence, he crystallised his right by adverse possession. He points out that the evidence of the third defendant had been assessed by the Trial court and it found him to be an undependable witness since he gave up his case as stated in the written statement, while in the witness box. Pleading that the property is a vacant land, the counsel urges that possession follows title. He relies upon Ex.B17, Ex.B18, Ex.B20 and Ex.B21 to point out that these documents conclusively proved that the family had treated the property as a joint family property. Finally, he submits being a concurrent finding of facts, he pleads that this court should not interfere with the same in the second appeal.

37. I have carefully considered the submissions of both sides and have gone through the records.

38. As the questions of law are intrinsically connected, I am answering the questions of law framed, including the plea of

adverse possession that has been rejected by Mr.V.Sekar and asserted by Mr.Arun Anbumani, by way of this judgment.

39. The plea of Mr.V.Sekar that the properties were the self acquired properties of late Marula Siddhappa Chettiar and not joint family properties flies in the face of Ex.A1. This document is the sheet anchor of the case of the plaintiffs. In the very document, the testator Marula Siddhappa Chettiar, had stated that he had properties not only in Dharmapuri, but also in Anekal and Chikkanayakana Halli.

40. Apart from Ex.A1, I should refer to the documents relied upon by the courts below in Ex.B17, Ex.B18 and Ex.B20.

41. Ex.B17 was a proceeding initiated by the wife of the third plaintiff for and on behalf of herself and her minor son, seeking maintenance. This suit had been presented before the learned Subordinate Judge at Krishnagiri in O.S.No.129 of 1984. It was her specific case in the plaint that Marula Siddhappa Chettiar had acquired the properties on account of his self acquisitions. The defendants in that suit were the third plaintiff, the fourth plaintiff

and their mother. The relief sought for in that suit was for a declaration that the sale deeds executed by the third plaintiff herein - B.Mohan Kumar in favour of her brother-in-law and mother-in-law, namely, B.Sampathkumar and Girijammal were not binding on the plaintiffs and for delivery of possession of the A and B schedule properties of that proceeding.

42. In O.S.No.129 of 1984, the defendants 2 and 3 namely, the mother-in-law and brother-in-law (fourth plaintiff herein) filed a joint written statement. In the said written statement (Ex.B18), the relevant portions are paragraphs 3 and 4. For ready reference, they are extracted hereunder:

> *"3. It is true that the suit A and B Schedule properties originally belonged to Marulu Siddappa Chettiar. But it is not true to say that they were his self acquired properties. They were his joint family properties. Marulu Siddappa Chettiar had ancestral properties at Chikkanayanahally Village in Tumkur District which were yielding good income. He came to Dharmapuri to do business and the nucleus for the business was the income from the ancestral properties. The income derived from the business was also joint family income of Marulu Siddappa Chettiar and his sons. Marulu Siddappa Chettiar had acquired the*

properties at Dharmapuri from out of the income from joint family business and also from the income from ancestral properties. Hence, all the properties acquired by Marulu Siddappa Chettiar at Dharmapuri were the joint family properties belonging to Marulu Siddappa Chettiar and his sons. They were not his separate properties.

4. It is true that Marulu Siddappa Chettiar had four sons mentioned in para 5 of the plaint, and he had also executed a will on 12.08.1948 in favour of his four sons with respect to the properties. Under the said will, Marulu Siddappa Chettiar purports to bequeath some of the properties to his sons. Since the said properties were the joint family properties, and since Marulu Siddappa Chettiar was the Kartha of the family, the Will executed by him had to be taken only as a family partition or arrangement and as such, the conditions laid down in the will with regard to alienation etc., are not valid and they are to be ignored. Those conditions are not binding upon the sons of Marulu Siddappa Chettiar as they are entitled to get the properties towards their shares without any condition against any alienation. Even if the properties were treated as the self acquired and separate properties of Marulu Siddappa Chettiar, the conditions laid down in the will as stated in para 7 of the plaint are not true and correct and they are not valid ones. It is not true to say that the beneficiaries under the will should of no account alienate the properties allotted

to them, whatever might be the necessity or reason or occasion. The will clearly lays down that any of the beneficiary can alienate the property for the legal necessity like discharge of debts. Subsequent clause in the will that on no account the beneficiaries can alienate the properties will amount only as a pious wish of the testator and it will not in any way affect the prior clause enabling the alienation for legal necessities. Hence, the beneficiaries under the will can alienate the properties for necessities which will bind their male heirs as well. If the will is not taken as a family arrangement or partition, since it is in respect of joint family properties it is is an invalid one and it will not bind any one."

43. This suit did not see the light of trial. It ended in a compromise as is evident from Ex.B20.

44. The first defendant filed a certified copy of the pleadings before the court. I am aware that pleadings by themselves would not operate as an admission. While an admission is a strong piece of evidence, it is by itself not conclusive proof of the matter admitted. It is always open to a person, who is alleged to have made the admission, to explain before the court that the same was made

under a misunderstanding of facts or in circumstances which do not reflect reality.

45. The Evidence Act gives flexibility to a person said to have made an admission to give the context in which the alleged admission had been made and also permits such person to offer an explanation for the statement. Once an admission is brought before the court, the burden of proof shifts onto the maker of the statement to explain it. In the absence of any satisfactory explanation regarding the circumstances, the court is entitled to presume that the admissions made are true. I am conscious of the fact that a court, while treating a previous statement as an admission, is bound to take the statement in its entirety.

46. In this case, the makers of the statement were the fourth plaintiff and his mother, Girijammal. The learned Trial Judge returned a finding that Girijammal was alive on the date of recording of evidence. However, Girijammal was not examined before the court. She would have been the right person to explain the situation, as she would have been alive on the date of death of Marula Siddhappa Chettiar. The plaintiffs did not examine their

mother. I would have been inclined to grant relief to the plaintiffs, if at least the fourth plaintiff, who was the second defendant in O.S.No.129 of 1984, had entered the witness box and explained the circumstances under which Ex.B18 came into force. The fourth plaintiff too, avoided the witness box.

47. In the absence of any explanation given by the plaintiffs regarding Ex.B18, this Court would have to treat the admissions made by the defendants stating that the properties were the ancestral properties of Marula Siddhappa Chettiar as binding on the plaintiffs.

48. I do not want to rest my conclusion on the basis of Ex.B17, Ex.B18 and Ex.B20 alone. Under Ex.B21, the third defendant had filed a debtor petition in I.P.No.15 of 1983. In the said proceeding too, the suit schedule property had not been shown as one of the properties in which the third plaintiff had a share. Furthermore in the partition deed that had been entered into *inter se* the plaintiffs, the suit schedule mentioned property was not shown as part of the family assets of the plaintiffs.

49. A cumulative reading of all these documents indicates that the suit schedule mentioned property and the other properties were not the self acquisitions of Marula Siddhappa Chettiar but were his ancestral assets.

50. An interesting point arises as to the effect of the execution of a WILL by a Karta with respect to a joint family property. Under Mitakshara Law, the Karta had the same share as any other coparcener. It was by virtue of his managerial power that he could alienate the joint family property under certain circumstances. He was merely the manager of the property. The WILL executed by Marula Siddhappa Chettiar under Ex.A1 is dated 12.04.1948. Before Parliament enacted the Hindu Succession Act in 1956, in the State of Madras which includes the present State of Tamil Nadu, the Hindu law in vogue was the Mitakshara Law. Under Mitakshara law, the principle of survivorship applies with respect to coparcenary property. This implies that on the death of a coparcener, his interest automatically passed on to the other surviving members. Thus, nothing was left for a coparcener to bequeath upon.

51. The position of law is no longer *res integra. It* has been explained by the Supreme Court in the classic case in ***M.N.Aryamurthy v. M.D.Subbaraya Setty, (1972) 4 SCC 1***. In that case, a suit had been presented by one Nagappa Setty seeking partition of the property left behind by his father, Lachiah Setty. He claimed a share on the basis of the WILL executed by late Lachiah Setty. A specific issue before the Supreme Court was whether the "WILL" executed by Lachiah Setty was a valid one. The Supreme Court held that under pristine Hindu Law, a coparcener does not have the right to dispose of joint family property by way of a WILL. The reasoning given by the Supreme Court was that a WILL takes effect only on the death of the testator. Under Hindu Law, as pointed out above, the interest in the property immediately passes to the other coparceners by survivorship.

52. I should point out here that it is only by virtue of Section 30 of the Hindu Succession Act, 1956, that any Hindu is permitted to dispose of his undivided interest in a coparcenery by way of testament. In the present case, the WILL, having been executed in the year 1948, that is, prior to the enactment of Hindu

Succession Act, 1956, cannot be treated as a valid WILL disposing of the coparcenary property.

53. A reading of the document in Ex.A1 shows that Marula Siddhappa Chettiar had divided the properties in Dharmapuri into several schedules. He had allotted specific schedules to each of his sons and had also retained certain properties which are to be divided after his death, and those too, in equal moieties. The evidence tendered by the first defendant, as well as the statement made by the plaintiffs in OS.No.129 of 1984, points out that the family had treated the WILL as a form of family arrangement and not a WILL in itself.

54. Treating it as a family arrangement, we turn to the next interesting point on Ex.A3, Ex.A7 and Ex.A8. These are three settlement deeds executed by the sons of Marula Siddhappa Chettiar amongst themselves. Under Ex.A3, Basavaraj, the father of the plaintiffs, had settled certain properties in favour of Duraisamy and Sadhasivam, defendants 1 and 2 herein. Under Ex.A7, Basavaraj, Duraisamy and Sadhasivam executed a settlement deed in favour of the third defendant. Under Ex.A8, the brothers executed

a similar settlement deed. If the properties are joint family properties as concluded, then a settlement deed in respect of specific physically demarcated portions of the joint family property could not have been executed by Basavaraj in favour of another member of the family. This is because, unless and until the properties have been partitioned by metes and bounds, a settlement deed with respect to a specific physically demarcated portion of joint family property is void.

55. A corparcener only has an undivided interest in the joint family property. He has an interest in every part of the joint family property. A coparcener does not own any specific portion of the joint family property, unless and until, a partition occurs. For a settlement covering joint family property to be valid, it must be executed with the consent of all the coparceners. If a member of a coparcenary executes a deed with respect to a specific portion without the consent of the other coparceners, the beneficiary of such a deed cannot take possession of that portion. The only remedy available is to file a suit for partition. I do not have the luxury of travelling back in a time machine to set right the mistake committed by Marula Siddhappa Chettiar and his sons in executing

a WILL and settlement deeds with respect to their ancestral assets. Therefore, I have to consider the effect of such documents.

56. Now, I will refer to the position of law that prevails when a settlement deed has been executed, as in the present case, with respect to joint family property. The position of law has been settled by the Supreme Court in more than one verdict. Hence, I would refer only to one.

57. It is the case of ***Thamma Venkata Subbamma v. Thamma Rattamma and Others, (1987) 3 SCC 294***. The case arose under the following circumstances:

There were two brothers by name Rami Reddy and Veera Reddy. Rami Reddy, Veera Reddy and the children of Veera Reedy formed a joint family. They were governed by Mitakshara Law. On 04.05.1959, Rami Reddy executed a settlement deed gifting his entire undivided coparcenary interest in favour of his brother, Veera Reddy. He reserved a life interest for himself and also called upon his brother Veera Reddy to maintain his wife, post his death. Rami Reddy died in January 1965 and Veera Reddy died in March 1965.

58. The deaths in quick succession led Rami Reddy's wife, Thamma Venkata Subbamma, to file a suit for partition and separate possession. She also sought cancellation of the gift deed executed by her husband and for recovery of the said share. In the alternative, she prayed for maintenance. The learned Trial Judge decreed the suit as prayed for. On appeal, the Andhra Pradesh High Court reversed the decree and held that the gift deed was operative. It dismissed the relief of partition but maintained the decree for maintenance. Aggrieved by the same, Thamma Venkata Subbamma preferred a Special Leave Petition to the Supreme Court.

59. The Supreme Court was called upon to decide whether the gift by a coparcener of his undivided share in a Mitakshara coparcenary to another coparcener, without the consent of the remaining coparceners, is valid or void in law. Justice M.M.Datt, speaking for himself and Justice S.Natarajan, held that an undivided coparcenary interest cannot be gifted without the consent of the other coparceners. He referred to the judgment in ***Rottala Rungunatham Chetty v. Pulicat Ramasami Chetti, ILR 27 Mad 162,*** to hold that an undivided share gifted by a coparcener is void

in toto. The view expressed by the Supreme Court directly applies to the facts of the present case.

60. The property, being ancestral properties in the hands of Marula Siddhappa Chettiar, on his death, his coparcenary interest devolved upon his four sons and their children who were alive on that date. Hence, Basavaraj could not have executed a settlement deed in favour of defendants 1 and 2; nor could all of them have jointly executed a settlement deed in favour of the third defendant. The documents under Ex.A3, Ex.A7 and Ex.A8, applying the judgment of the Supreme Court, would have to be declared as void.

61. This takes me to the next position as to what is the effect of a settlement deed, which narrates that possession had been handed over by the settlor to the settlee on the date of execution of the deed. It is not in dispute that under Ex.A3, Basavaraj had stated that he had handed over possession of the property to defendants 1 and 2. The parties are Hindus and hence, they are not required to prove the handing over of possession as would have been in the case, if they were of Islamic persuasion.

62. The Supreme Court had laid down the position as to the effect of settlement deed narrating delivery of possession in the document itself. This was in the case of ***Renikuntla Rajamma v. K.Sarwanamma, (2014) 9 SCC 445***. In that case, the defendant had executed a registered gift deed in favour of the plaintiff, reserving to herself a life estate in the suit property and also the right to collect rents during her lifetime. On the very same day on which she executed the gift deed, she also executed a revocation deed. Hence, the donee instituted a suit seeking a declaration that the revocation is null and void.

63. The learned Trial Judge found the gift to be valid and declared the revocation deed to be ineffective. On appeal, the District Judge concurred with the said finding and so did the High Court of Andhra Pradesh. The donor preferred an appeal to the Supreme Court. It was urged before the Supreme Court that Sections 122 and 123 of the Transfer of Property Act, 1882, mandate proof of delivery of possession.

64. Justice T.S.Thakur, speaking for himself and V.Gopala Gowda and C.Nagappan JJ., held that Section 123 of the Transfer of

Property Act mandates that the transfer of immovable property by way of gift requires a registered instrument but does not require delivery of possession of the immovable property gifted as an additional requirement for the gift to be valid and effective. The Court pointed out that the legislature expressly required delivery only with respect to movable property and not with respect to immovable property. It further held that once a registered instrument is executed, attested by two witnesses and accepted during the lifetime of the donor, the gift is complete. In clear terms, the Supreme Court declared that Section 123 of the Transfer of Property Act supersedes the rule of Hindu Law demanding delivery of possession. Applying this judgment to the facts of this case, it is clear that when the document under Ex.A3 states that delivery of possession was given to the first and second defendants by Basavaraj, this Court has to conclude that they had taken possession of the property on 07.09.1952.

65. This takes me to the next interesting point as to the effect of a person taking possession of a property under a void document. The conclusion arrived at so far is that the property is a joint family property and hence, the WILL executed is not valid.

Similarly, the settlement deeds executed in respect of specific portions by Basavaraj and the defendants 1 and 2 are also void.

66. For this proposition, I refer to the judgment of the Supreme Court in ***Collector of Bombay v. Municipal Corporation of the City of Bombay, 1951 AIR 469***. The dispute was over a piece of land occupied by the Municipal Corporation of Bombay for over seven decades, without payment of any rent or land revenue to the Government. The Municipal Corporation of the City of Bombay had taken possession of an area in Bombay called the Crawford Market under a legally invalid Government grant. In 1865, the Government of Bombay had resolved to hand over seven acres of land belonging to the Crown to the predecessors of the Municipal Corporation of Bombay. This was to be without any rent. Possession was delivered. The Corporation, after taking possession, had expended substantial sums in filling, levelling and constructing market buildings. It occupied the land free of rent for over seven decades. During all these time, no formal grant as required by law was executed by the Crown in favour of the Municipal Corporation.

67. The Collector of Bombay issued a notice to the Municipal Corporation expressing his intention to assess the land revenue in terms of the Bombay City Land Revenue Act II of 1876. Relying upon the 1865 resolution, the Corporation resisted the same. Despite this resistance, the Collector proceeded and fixed assessment for the property. Immediately, the Corporation filed a suit seeking a declaration of perpetual exemption. The suit was dismissed. On appeal, the Division Bench of the Bombay High Court reversed the decree, holding that the Government was not entitled to assess the land.

68. Aggrieved by the same, the Collector preferred an appeal to the Federal Court. After the creation of the Supreme Court, the appeal was heard by it. The Court, by majority, held that although the 1865 resolution was not in accordance with law and was invalid and unenforceable, since the Corporation and its predecessors have been in open, continuous, and hostile possession of the property for over 60 years, such possession took the colour of an intended perpetual rent-free grant. The Court also held that since the grant was invalid and the Municipal Corporation had taken possession, adverse possession commenced from its inception

and matured into prescriptive title on the expiry of the statutory period.

69. Patanjali Sastri, J. was the sole dissenter. He contended that adverse possession would not extinguish the Crown's prerogative to tax and that part performance could not override statutory formalities. Justice Chandrasekhara Aiyar, in his separate judgment, concurred with the majority and held that the Corporation had crystallised title by adverse possession.

70. Applying this judgment to the facts of the present case, defendants 1 and 2 had taken possession of the property on 07.09.1952, under a void document. Hence, adverse possession commenced from that date. 17 years thereafter, i.e., on 14.05.1969, the second defendant executed a gift settlement deed in favour of the first defendant. By executing this document, the first defendant became the absolute owner of the suit property.

71. Though certain pleas had been raised that when the defendants attempted to put up a construction, the plaintiffs and the third defendant had not objected, all these are irrelevant since

the suit was filed only in the year 1984, by which time the defendants had been in continuous possession of the property to the exclusion of the others, for 32 years and above.

72. I am of the view that the trial court as well as the lower appellate court had applied the correct positions of law to the facts before them. The suit rightly deserved to be dismissed. In the light of the above discussion, the questions of law are answered as hereunder:-

Answer for Question of Law (a)

The courts below were right in holding that Ex.A3 is a family arrangement. Ex.A1 cannot be treated as a WILL because a Karta under pristine Hindu Law could not have bequeathed joint family property by way of a WILL

Answer for Question of Law (b)

The settlement deed under Ex.A3 is void, but it would not make a difference to the case because defendants 1 and 2 had taken possession under the document and adverse possession

commenced on the date on which they took possession of the property under the void document.

73. In fine, the second appeal deserves only one order and that of dismissal. Accordingly, the second appeal is dismissed. The judgment and decree dated 15.09.2000 passed in A.S.No.57 of 1989 on the file of the learned II Additional District and Sessions Judge cum Chief Judicial Magistrate, Dharmapuri at Krishnagiri is hereby confirmed. Costs throughout.

18.03.2026

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Neutral Citation : Yes/No

To

1.The District Munsif, Nannilam

2.The Additional Subordinate Judge at Nagapattinam

3.The Section Officer, VR Records,

V.LAKSHMINARAYANAN, J.

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S.A.No.550 of 2002

18.03.2026