
(2010) 03 MAD CK 0229

In the Madras High Court

Case No : S.A. No. 101 of 2001 and C.M.P. No. 1779 of 2008

Angathal (Deceased) and Shanmuga Sundaram

APPELLANT

Vs

Poomalai Gounder

RESPONDENT

Date of Decision : 10-03-2010

Acts Referred:

Citation : (2010) 03 MAD CK 0229

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : C.R. Prasanan, for the Appellant; K.S. Sundar, for the Respondent

Final Decision : Allowed

Judgement

S. Tamilvanan, J.—The Second Appeals have been preferred against the common judgment and Decree, dated 24.03.2000 made in A.S. No. 155 of 1998 and A.S. No. 156 of 1998 on the file of the Principal District Judge, Coimbatore, confirming the common judgment and Decree, dated 10.07.1998 made in O.S. No. 58 of 1996 and O.S. No. 59 of 1996 on the file of the District Munsif, Mettupalayam.

2. The suit in O.S. No. 58 of 1996 was filed by the first Respondent herein against the deceased first Appellant, Angathal and her husband Arukutti Gounder, seeking declaration of title, recovery of possession of the suit property and for rendition of accounts. The suit in O.S. No. 59 of 1996 was filed by the deceased Angathal and Arukutti Gounder, husband of Angathal against the Respondent, Poomalai Gounder and six others, seeking permanent injunction restraining the Defendants therein and their men from interfering with the peaceful possession and enjoyment of the suit property.

3. It is made clear for the sake of convenience and easy understanding, considering the earlier suit, that the term Plaintiff, Plaintiff's document or Plaintiff's witness and the term Defendant, Defendant's document or Defendant's witness refer to would denote only the term in the suit in O.S. No. 1604 of 1992, which was subsequently renumbered as O.S. No. 59 of 1996 and

also the appeal relating to the said suit, if the suit number, witness or the document is not specifically mentioned in this judgment.

4. In the suit in O.S. No. 58 of 1996, "A" schedule of property is stated as 2.77 acres of punja land in S. No. 918, Kumarapalayam village, Mettupalayam Taluk, "B" schedule of property, an extent of 18 cents, out of a total extent of 5.90 acres of land in the said survey number. In the suit in O.S. No. 59 of 1996, the schedule of property is stated as S. No. 918 in Kumarapalayam village, Mettupalayam Taluk, an extent of 2.95 acres, out of 5.90 acres of land with a well and 5 HP motor pumpset and electric service connection fitted in the well. The details of the electric service connection is also stated in the schedule of property.

5. After the trial, the suit in O.S. No. 58 of 1996 filed by Poomalai Gounder was decreed as prayed for and the suit filed in O.S. No. 59 of 1996, by the deceased Angathal and Arukutti Gounder was dismissed. Aggrieved by which, appeals in A.S. No. 155 of 1998 and A.S. No. 156 of 1998 were preferred. Learned Principal District Judge, Coimbatore, by his common judgment, dated 24.03.2000, confirmed the common judgment rendered by the trial court and dismissed both the appeals. Aggrieved by which, the second appeals have been preferred.

6. The said Arukutti Gounder died prior to the filing of the appeals, Angathal, wife of Arukutti Gounder was already on record, hence, his son was impleaded as the second Appellant. Subsequently, Angathal was reported dead, hence, the only contesting Appellant is Shanmuga Sundaram, as their only legal heir.

7. Both the second appeals were admitted by this Court on the following common substantial questions of law:

1. Whether in law the Courts below erred in holding that Ex. B.1 required registration overlooking that conferment of status and possession of the first Appellant, recognition of her possession for the past 18 years prior to its execution, by recording it by way of Ex. B. 1 does not require recognition as per the dictums reported in 1998 (2) L.W. 678 and 2000 II CTC 574?

2. Whether in law, the Courts below erred in overlooking that the Plaintiff, who had accepted his signature in Ex. B.1 had not discharged burden of proving his case that Ex. B.1 was not a genuine document, as laid down in the judgment reported in Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and Others,

8. Poomalai Gounder, the Respondent in S.A. No. 101 of 2001 and the first Respondent in S.A. No. 102 of 2001, who filed the suit in O.S. No. 58 of 1996 has stated that himself (Poomalai Gounder), his brother Subramaniya Gounder, deceased Angathal (first Defendant) and one Valliammal were the children of late Palani Gounder, who died in the year 1990 and the said relationship is not in dispute. According to himself (Poomalai Gounder), his brother Subramaniya Gounder and their father Palani Gounder had partitioned their family properties,

by way of a registered partition deed, dated 28.11.1991. As per the partition deed, Poomalai Gounder became the absolute owner of the suit property described in the "A" schedule, an extent of 2.77 acres of land situated in S.F. No. 918 in Kumarapalayam Village. An extent of 18 cents in S.F. No. 918 in Kumarapalayam Village described as "B" schedule property, that was allotted to the share of Palani Gounder, his father to be enjoyed by him till his life time and he was given absolute right and title in respect of "B" schedule of property and after the death of his father Palani Gounder, the Respondent Poomalai Gounder became the absolute owner of "A" and "B" schedule properties.

9. According to Poomalai Gounder, the second Defendant Arukutti Gounder, husband of his sister Angathal had owned no properties in his native place, hence, he came over to his wife's native place and both Angathal and Arukutti Gounder were taken care of by Poomalai Gounder and father, Palani Gounder. Palani Gounder was being helped by his daughter Angathal and her husband and after the death of Palani Gounder, Poomalai Gounder called upon Angathal and Arukutti Gounder to vacate both the items of properties, however, they were postponing delivery of possession under some pretext or other, finally the suit in O.S. No. 1604 of 1992 was filed by them against Poomalai Gounder and his children, based on the patta issued in favour of Angathal.

10. According to the Respondent, Angathal and her husband, who were living with Palani Gounder had managed to get the documents from Palani Gounder and make out a case to suit their convenience. According to Poomalai Gounder, Angathal and Arukutti Gounder had no right in the suit properties and as they failed to vacate and hand over the possession of the property, the suit in O.S. No. 58 of 1996 was filed by Poomalai Gounder for declaration of title, delivery of possession and for rendition of accounts.

11. In the suit in O.S. No. 59 of 1996, Angathal and Arukutti Gounder as Plaintiffs, have stated that the property belonged to Angathal, as the same was allotted to her share and patta was issued in her name and she was regularly paying kists to the revenue department as owner of the property. In support of her contention, she filed Ex. B.2, Patta, Ex. B.3, copy of adangal, Ex. B.4 (series), kist receipts, electricity consumption card, family card and other documents to show her continuous possession and enjoyment of the suit property.

12. Poomalai Gounder, the Respondent herein, as P.W.1 before the trial court has admitted the fact that the deceased Angathal, the first Defendant in the suit in O.S. No. 58 of 1996 was his sister. His father, Palani Gounder had 2 sons, he is one among the sons and the only daughter alive was Angathal. His father, Palani Gounder died in the year 1990. According to him, the superstructure was put up in the property by his father. He has admitted the fact that his father was residing with Angathal and her husband, since Poomalai Gounder had been doing agricultural work at Thekampatti, another Village. The first Respondent, Poomalai Gounder as P.W.1 during his cross-examination has admitted his signature

available in Ex. B.1, Panchayat Muchalika, dated 14.06.1987 and admittedly, he has not stated that the same was obtained by his sister, Angathal or her husband under threat or coercion. He has further admitted that the panchayat muchalikha was signed by him.

13. Angathal, the first Plaintiff in O.S. No. 59 of 1996, who examined herself as D.W.1 has deposed that the suit property named "Mantharai Thottam" was given to her 10 years prior to her deposing evidence with the consent of her father, Palani Gounder and the same was recognised by Poomalai Gounder, the first Respondent, under Ex. B.1 and she denied the partition alleged by the first Respondent herein. Angathal as D.W.1 has admitted the fact that Arukutti Gounder, her husband, the second Defendant in the suit in O.S. No. 59 of 1996 had no property, hence, she was brought to the suit village along with her husband from his native place, Pachapalayam for about 32 years prior to the date of her deposing evidence by her father, Palani Gounder and her father was residing in the suit property along with his sister, Angathal and Arukutti Gounder till his life time. Originally patta stood in the name of her father, subsequently, that was changed in the name of Poomalai Gounder, the first Respondent herein. After Ex. B.1, panchayat muchalika, dated 14.06.1987, executed by Poomalai Gounder, the first Respondent, recognising the right of Angathal has specifically stated that his sister Angathal is entitled to address the Tahsildar for change of patta in the name of Angathal, the first Appellant herein. Subsequently, patta was issued in her name by Tahsildar.

14. Mr. K.S. Sundar, learned Counsel for the Respondent in S.A. No. 101 of 2001 and the Respondents in S.A. No. 102 of 2001 submitted that Ex. B.1 is inadmissible in evidence, on the ground that it was not a registered document. Per contra, Mr. C. Prasannan, learned Counsel for the Appellants submitted that Ex. B.1, being a family arrangement does not require any compulsory registration.

15. It is seen that Subbaiya, son of one Rangaiya Gounder, who had been one of the attestors to Ex. B.1 was examined as D.W.2. According to him, he had been invited along with other panchayatdars by Palani Gounder, Poomalai Gounder and Angathal for the purpose of executing Ex. B.1. According to him, the contents of the document was read out to both the parties, Angathal affixed her left hand thumb impression, then Poomalai Gounder, the first Respondent signed and other persons signed as witnesses to the document, Ex. B.1. Another Attestor to the document, Ex. B.1, K. Subbaiya, son of one Karuppa Pannadi has also deposed a similar evidence with regard to the execution and genuineness of Ex. B.1, signed by Poomalai Gounder, the first Respondent herein.

16. Learned Counsel for the Appellant relied on the decision rendered by Full Bench of the Hon"ble Supreme Court in Kale and Others Vs. Deputy Director of Consolidation and Others, and submitted that a family arrangement reduced into writing and signed by parties, need not be a registered document, which is binding on the parties to the document. Referring various earlier decisions of the

Hon''ble Apex Court, has held in the decision referred to above that a document which is in the nature of memorandum of an earlier family arrangement, that was filed before the Court need not be a registered document and therefore, the same can be used in evidence to prove the family arrangement and if proved, which would be binding on the parties to the document. It is made clear by the Hon''ble Apex Court that a family arrangement reduced into writing and signed by both the parties does not require any registration, when the factum of the family arrangement is established.

17. In *Ram Charan Das Vs. Girjanandini Devi and Others*, , the Hon''ble Supreme Court has held as follows:

Courts give effect to a family settlement upon the broad and general ground that its object is to settle existing or future disputes regarding property amongst members of a family. The word "family" in the context is not to be understood in a narrow sense of bring a group of persons who are recognised in law as having a right of succession or having a claim to a share in the property in dispute... The consideration for such a settlement, if one may put it that way, is the expectation that such a settlement will result in establishing or ensuring amity and good will amongst persons bearing relationship with one another. That consideration having been passed by each of the disputants the settlement consisting of recognition of the right asserted by each other cannot be permitted to be impeached thereafter.

18. In *Digambar Adhar Patil Vs. Devram Girdhar Patil (died) and another*, , the Hon''ble Supreme Court has held that under the Hindu Law, it is not necessary that a partition should be effected only by a registered partition deed. Even a family arrangement is enough to effect partition between coparceners and to confer right of separate share and enjoyment thereof. In the said decision, it was held that the entries made in the Record of Rights regarding the factum of partition, is a relevant piece of documentary evidence in support of the oral evidence given by the Respondent therein and his brother to prove the factum of partition, though he could not give the date and year, in which the partition was effected.

19. In *Lakshmi Ammal and Others Vs. Chakravahthi and Others*, , the Hon''ble Supreme Court has held that it is not necessary that the parties being members of a family and claiming right in the property are in law entitled to some share, when the basic requirements for family arrangement are fulfilled and such a deed must be held to be a valid document to establish the family arrangement.

20. In *Maturi Pullaiah and Another Vs. Maturi Narasimham and Others*, , the Hon''ble Apex Court has held that although conflict of legal claims in praesenti or in future is generally a condition for the validity of family arrangements, it is not necessarily so. Even bonafide disputes, present or possible, which may not involve legal claims, will suffice. Members of a joint Hindu family may, to maintain peace or to bring about harmony in the family, enter into such a family

arrangement. If such an arrangement is entered into bonafide and the terms thereof are fair in the circumstances of a particular case, Courts will more readily give assent to such an arrangement than to avoid it.

21. It is seen that the Substantial Questions of law raised by the Appellants are based on the ruling Ayyakannu Padayachi and 3 Ors. v. Boorasamy and Anr. reported in Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and Others, .

22. This Court in the decision, Ayyakannu Padayachi and 3 Ors. v. Boorasamy and Anr. reported in 1998 2 LW 678, following the judgment of Arumughachary Nadar v. Deivanaiammal reported in 1998 (1) LW 507 and C.S. Kumaraswamy Gounder v. Aragagiri Gounder and Anr. reported in AIR 1974 Mad 239, has held that there was record of understanding reached between the parties earlier, pursuant to a panchayat, hence, it could be stated as a record of agreement reached between the parties, after earlier negotiations. Therefore, the document does not require registration, as the same would be recording of the earlier family arrangement made between the parties.

23. In the decision, Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and Others, , Full Bench of the Hon"ble Apex Court has held as follows:

11...An admission is the best evidence that an opposing party can rely upon and though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous.

It has been held that admission is the best piece of evidence. Here, in the instant case, Poomalai Gounder, the Respondent has admitted that he is a signatory to Ex. B.1 and admittedly, he has signed in all four pages of the document, only his sister, Angathal, the other party to the document has affixed her left hand thumb impression. It has been established by the Appellants/Plaintiffs in O.S. No. 59 of 1996, by way of examining the attestors, Ex. B.1 that the Respondent herein has voluntarily executed the said document.

24. In the light of the various decisions of the Hon"ble Apex Court and this Court, it is a well settled proposition of law that a family arrangement need not be registered and if the family arrangement is established, that is binding on the parties to the arrangement. In the instant case, Ex. B.1, panchayat muchalika was executed by Angathal, the deceased first Appellant/first Plaintiff in O.S. No. 59 of 1996 and the first Defendant in O.S. No. 58 of 1996 and Poomalai Gounder, the first Respondent herein/Plaintiff in O.S. No. 58 of 1996 and the first Defendant in O.S. No. 59 of 1996. It is an admitted fact that both are sister and brother, being the daughter and son of Palani Gounder and it is between a brother and sister with regard to the property left by their father and hence, it is a family arrangement, which requires no registration for its validity.

25. Poomalai Gounder, who was examined before the trial court as P.W.1 has admitted in his cross-examination that he has signed Ex. B.1, dated 24.06.1987.

The four signatures available in the document were shown to him and he has specifically admitted that the signatures were affixed by him. He has also admitted that the suit property was originally belonged to Palani Gounder, father of himself and Angathal.

26. Angathal, who was examined as D.W.1 has deposed that the suit property was the self-acquired property of Palani Gounder and she was in possession and enjoyment of the property for about 32 years, prior to the date of her deposing evidence and patta was also issued in her name, 10 years prior to the date of her deposing evidence. The patta relating to the suit property was issued in the name of Angathal and marked as Ex. B.2. Certified copy of the Adangal was marked as Ex. B.3 and the kist receipts for the payment of kist made by Angathal, five in number were marked as Ex. B.4 series. She has stated that 5 HP motor was installed by her in the property for the purpose of irrigation and for which, the electric service connection stands in her name. In support of her contention, she has produced electric consumption card (3 in number) and the receipts (9 in number) for the payment of consumption charges, issued by the Tamil Nadu Electricity Board as Exs. B.5 and B.6 series and the family card shows that she had been residing at the suit property and the family card issued by the authority was marked as Ex. B.7. In the garden land, she constructed a house, which stands in the name of her husband, Arukutti Gounder, the second Defendant in O.S. No. 58 of 1996. The motor pump set installed in the well was originally in the name of her father, Palani Gounder, for which she has produced the supporting document and then it was transferred in her name long back.

27. The oral and the aforesaid documentary evidence would establish that Angathal had been in possession and enjoyment of the suit property and that was recognised by the revenue authority by issuance of patta, electric service connection, installed in her name in the suit property and she has been paying the electricity consumption charges and after her death, being her son, the second Appellant is in possession and enjoyment of the property.

28. It has been held by oral and documentary evidence that Angathal and her husband, Arukutti Gounder were in possession and enjoyment of the suit property. According to her, only at the instance of her father, Palani Gounder, the family arrangement was made and accordingly, properties were allotted to Palani Gounder's two sons, including Poomalai Gounder and also his daughter, Angathal, the first Appellant/Plaintiff in O.S. No. 59 of 1996. As per her evidence, herself and her husband were cultivating the suit land for about 32 years from the period, while her father Palani Gounder was alive and living with her. Before the village panchayat, the family arrangement was signed by Poomalai Gounder voluntarily and she affixed her left hand thumb impression in the document in the presence of attesting witnesses.

29. The suit in O.S. No. 59 of 1996 was an earlier suit filed by Angathal and her husband, Arukutti Gounder, which was originally numbered as O.S. No. 1604 of 1992 on the file of the District Munsif Court, Coimbatore against the first

Respondent, Poomalai Gounder and others seeking permanent injunction restraining them from interfering with the peaceful possession and enjoyment of the property.

30. The Plaintiffs in O.S. No. 59 of 1996 Angathal and Arukutti Gounder have stated that they owned the property, 20 years back and continuously in the possession and enjoyment of the same. From 12.07.1992, the Defendants in the suit were interfering with the peaceful possession and enjoyment of the property by Angathal and Arukutti Gounder. As per the plaint averments, the first Appellant's father, Palani Gounder owned the property and he was living with her till his death, which is not in dispute and she has further stated that she got title to the property and patta was also issued in her favour. On the side of the Appellant/Plaintiff, Angathal herself was examined as D.W.1, apart from examining three other witnesses and also filed the supporting documents, Exs. B.1 to B.16.

31. In the written statement filed by the Respondent herein before the trial court, he has raised a defence that there was a partition deed between himself, his father Palani Gounder and brother Subbanna Gounder on 28.11.1981. As per the partition deed, he became the absolute owner of the suit property. However, he has not disputed the possession and enjoyment of the suit property by the Appellants/Plaintiffs and prayed for the dismissal of the suit in O.S. No. 59 of 1996. Subsequently, the Respondent herein filed the suit in O.S. No. 58 of 1996, that was originally numbered as O.S. No. 193 of 1993 on the file of the Subordinate Judge, Coimbatore, seeking declaration of title with regard to the suit property, recovery of possession and mesne profits. In support of his contention, the Respondent, Poomalai Gounder, who is the Plaintiff in O.S. No. 58 of 1996 examined himself as P.W.1 and marked only a certified copy of a partition deed, dated 28.11.1981 between Palani Gounder, the first Respondent Poomalai Gounder and his younger brother Subbanna Gounder. The document has been disputed by the first Appellant/Angathal and Arukutti Gounder, as Plaintiffs in O.S. No. 59 of 1996 and Defendants in the suit in O.S. No. 58 of 1996.

32. In order to prove the execution and the genuineness of the document, Ex. A.1, the Respondent Poomalai Gounder could have examined any attester to the document or any other witness. His evidence and marking the aforesaid certified copy of the document, Ex. A.1 are not sufficient to establish his claim. He has not even chosen to examine Subbanna Gounder, his brother to establish the execution of the original of the document, Ex. A.1. Admittedly his sister Angathal was not a party to the document, however, the court below has given a finding that Angathal has failed to examine Subanna Gounder or another sister and decreed the suit filed by Poomalai Gounder and that was confirmed by the appellate court. It is a settled proposition of law that the parties relying on a document has to prove the genuineness and the validity of the document, such burden cannot be shifted on the other side.

33. In the written statement filed by the Appellants/Plaintiffs in O.S. No. 59 of 1996 as Defendant in O.S. No. 58 of 1996, it has been specifically stated that panchayat muchalika was entered into by the first Plaintiff, Angathal and her brother, the first Respondent/first Defendant, Poomalai Gounder on 14.06.1987, that was reduced into writing in the presence of respectable elders of the village and the suit property was allotted by mutual consent of Angathal and Poomalai Gounder and they signed in the presence of witnesses. The said document has been marked as Ex. B.1, as family arrangement, the execution and the genuineness of the document has been established by the Appellants/Plaintiffs.

34. It is a settled proposition of law that the Plaintiff, who has sought the relief, has to prove the suit claim and the Plaintiff cannot pick holes in the defence raised by the Defendant and get a decree. The Respondent herein, who is the Plaintiff in O.S. No. 58 of 1996 has not established his claim that he is entitled to declaration of title, recovery of possession and mesne profits in respect of the suit schedule property. However, the Plaintiffs in O.S. No. 59 of 1996, seeking bare permanent injunction as against Poomalai Gounder, the first Respondent herein and others have to establish that the first Appellant, Angathal was in legal possession and enjoyment of the suit property on the date of filing of the suit and the right recognised by the Respondent, as per Ex. B.1, and as such entitled to get injunction against the Respondent and others.

35. The second Appellant herein are the legal heirs of Angathal and Arukutti Gounder, the Plaintiffs in O.S. No. 59 of 1996, who was brought on record after the demise of Angathal and Arukutti Gounder. It is a settled proposition of law that a person, who is in possession and enjoyment of the property can seek injunction against all the persons, except the true owner and the person, who is in legal possession and enjoyment of the property can seek injunction, even against the true owner, not to evict him, except under due process of law.

36. As the suit in O.S. No. 58 of 1996 is for declaration of title, recovery of possession and mesne profits, Poomalai Gounder, the Respondent/Plaintiff in O.S. No. 58 of 1996, who seeks the relief, has to establish his title to the property and his claim to recover possession of the property. If title is not established, he would not be entitled to the relief of recovery of possession and mesne profits, when the property is not enjoyed by him. In the instant case, it has been admitted that Angathal and her husband Arukutti Gounder were in possession and enjoyment of the suit property, even prior to the date of filing of both the suits and subsequently, after their death, the second Appellant herein, as their legal heir is in possession and enjoyment of the property. The document, Ex. A.1 is a certified copy produced by Poomalai Gounder, Respondent herein, who is the Plaintiff in O.S. No. 58 of 1996, however, he has not proved the document, as per procedure known to law. On the other hand, the Appellants/Plaintiffs in O.S. No. 59 of 1996, apart from marking Ex. B.1, Panchayat muchalika and other documents, Ex. B.2 to Ex. B.16 have established the documents. Admittedly, Ex. B.1 is the vital document signed by Angathal, first Appellant/Plaintiff in O.S. No.

59 of 1996 as well as Poomalai Gounder, the Respondent herein and the Plaintiff in O.S. No. 58 of 1996.

37. Though the nomenclature, Ex. B.1 is panchayat muchalika, as it relates to Angathal (sister) and Poomalai Gounder (brother) in allotting the property belongs to their father, learned Counsel for the Appellants argued that Ex. B.1 is a family arrangement. Even the Respondent, Poomalai Gounder has admitted his signatures available four in number in Ex. B.1. As per this document, Angathal and her brother, Poomalai Gounder executed the document Ex. B.1 in the presence of panchayatdars on 14.06.1987, when their father, Palani Gounder was alive, in the presence of panchayatdars. Hence, based on the evidence, Ex. B.1 has to be construed only a family arrangement, reduced into writing.

38. In order to decide a document as family arrangement, 1) the parties to the document must be members of the family and 2) the subject matter must be of their family property. In the instant case, the parties to the document, Angathal and Poomalai Gounder are admittedly sister and brother and the property belongs to their father.

39. The first Appellant/Plaintiff, Angathal has deposed that the panchayat muchalika, Ex. B.1 was voluntarily made by herself and her brother Poomalai Gounder in the presence of panchayatdars. In the document, Ex. B.1, the first Appellant had she affixed her left hand thumb impressions and her brother Poomalai Gounder affixed his signatures in all the pages and that was attested by witnesses. In order to prove the execution and genuineness of Ex. B.1, two attestors to the document were examined as D.W.2 and D.W.3 before the trial court. Poomalai Gounder, the Respondent herein has also admitted his signatures that are available in Ex.B.1. The first Respondent, Poomalai Gounder has further stated in the cross-examination that he had been residing in the house at Thekkampatti village for about 25 years prior to his deposing evidence on 04.12.1997 and her sister Angathal was residing in the suit property for about 10 years prior to the date of his deposing evidence, along with father, Palani Gounder and her husband and that he executed deed, Ex.B.1 in favour of his sister Angathal. It is not in dispute that no other property was allotted in favour of the first Appellant, Angathal in the family partition, except the suit property, under Ex. B.1.

40. Learned Counsel appearing for the Appellants submitted that Ex. B.1, panchayat muchalika is only a family arrangement, since the parties are brother and sister and the property was their family property owned by their father. According to him, Ex. A.1, copy of the alleged partition deed is not binding on the Appellants/Plaintiffs in O.S. No. 59 of 1996, since the first Appellant, Angathal was not a party to the document and further, the genuineness and validity of the document, Ex. A.1 has not been established by the Respondent, who was the Plaintiff in O.S. No. 58 of 1996, seeking declaration of title, recovery of possession and other consequential relief, based on the document. Merely marking a certified copy of the document, does not prove the genuineness and

validity of the document, unless the same is admitted by the other side.

41. It is made clear that D.W.2 and D.W.3, attestors to Ex.B.1 have categorically stated that prior to the execution of Ex.B.1, Angathal and her brother Poomalai Gounder and their father, Palani Gounder had requested them to convene a village panchayat meeting and at their request, panchayat muchalike, Ex.B.1 came into existence, wherein Angathal affixed her left hand thumb impressions and Poomalai Gounder put his signatures voluntarily in Ex.B.1, in the presence of the aforesaid witness and other witnesses. D.W.4 has deposed that Palani Gounder, father of Angathal and Poomalai Gounder had also came to the panchayat.

42. It is not the case of the Poomalai Gounder that his signatures were obtained from him in Ex.B.1, under threat, coercion or undue influence. The evidence of Poomalai Gounder, P.W.1 shows that he has voluntarily signed the document. His contention that his signatures were obtained in blank non-judicial stamp papers is only an after thought, which cannot be accepted. Having accepted the signatures put by him in Ex.B.1 and not pleaded threat, coercion or undue influence and having been silent till his sister, Angathal filing the suit for permanent injunction, the Respondent was keeping quite. A party to the document is estopped from raising a contrary statement against the document.

43. As the panchayat muchalika relates to the ancestral property of Angathal and Poomalai Gounder and both are parties to the document, though nomenclature is stated as panchayat muchalika, as contended by the learned Counsel for the Appellant, it is only a family arrangement, reduced into writing and signed by both the first Appellant and the first Respondent in the presence of witnesses. As per Ex.B.1, Palani Gounder, son of Silambanna Gounder, father of both the parties had also been present, as stated by the witnesses, Ex.B.1. As per this document, the Respondent herein had admitted that Angathal and her husband were in possession and enjoyment of the property for about 18 years and paying kists, electrical consumption charges, but only the patta stood in the name of Poomalai Gounder and he had agreed even to change the patta in the name of his sister Angathal and he declared that his sister could enjoy the property as that of her own property with all rights. As he had agreed to change the patta in her name, in view of the family arrangement, subsequently, patta was also changed in the name of Angathal.

44. As it is a family arrangement, as contended by the learned Counsel appearing for the Appellants, registration is not mandatory. Hence, the document was also marked by the court below, without any objection. Having executed Ex.B.1, family arrangement reduced into writing, the Respondent, Poomalai Gounder is estopped from raising any plea contrary to the averments of the said document. After recognizing the right of Angathal, under Ex.B.1, dated 14.06.1987 stating that she was in possession and enjoyment of the property for about 18 years, on the date of the document, he cannot turn round, raise a defence based on Ex.A.1, that was not even established and acted upon by the

parties.

45. The Respondent herein, who was the Plaintiff in O.S. No. 58 of 1996 seeking declaration of title, recovery of possession and mesne profits has not established his claim by proving the alleged partition, as per the original of Ex.A.1. Admittedly the long possession and enjoyment of the properties by the deceased Angathal and Arukutti Gounder, the document, Ex.B.1, which was signed by Angathal and Poomalai Gounder, the first Respondent herein and subsequently, the second Appellant is in possession of the property, as their legal heir would establish the rights of the surviving second Appellant. The claim of the Respondent herein, is based on Ex.A.1, which has not been established, as per procedure known to law. Therefore, the courts below could have found that Poomalai Gounder, the Plaintiff in O.S. No. 58 of 1996 has not established the claim to seek declaration of title, recovery of possession and mesne profits and on that ground, his suit in O.S. No. 58 of 1996 could have been dismissed by the courts below.

46. As discussed earlier, the document marked as Ex.B.1 is a family arrangement between the first Respondent, Poomalai Gounder and his sister, the first Appellant Angathal, whereby the first Respondent has categorically admitted the fact that the first Appellant was enjoying the suit property for number of years and she has the right as the owner of the property, the Respondent has no right in the property. The first Appellant, Angathal was entitled to get patta transfer in her name, as per Ex.B.1 and accordingly, patta was also transferred in her name.

47. In the light of various decisions of the Hon"ble Apex Court, the family arrangement reduced into writing, signed by both the parties needs no registration and the document is admissible in evidence. As per the said document, the first Appellant was in possession and enjoyment of the property as if she owned the property exclusively for about 18 years. In such circumstances, the first Respondent is legally estopped from raising a contrary plea against his own statement made under Ex.B.1. It is not the case of the Respondent that the aforesaid statement was obtained either by way of fraud or coercion and therefore, I am of the view that the concurrent finding of the Court below is perverse, as the same is against the evidence and legally not sustainable. Hence, I am of the view to answer for both the substantial questions of law in favour of the Appellants and against the Respondents herein in the appeals.

48. It is a settled proposition of law that if the findings of the court is against the evidence or without supported by evidence, it has to be construed only as a perverse finding. In the instant case, the concurrent findings of the court below is against the evidence adduced by the Appellant herein. It has been established that the Appellants/Plaintiffs in O.S. No. 59 of 1996 are continuously in possession and enjoyment of the property and the first Appellant, Angathal, being the daughter of Palani Gounder had right to the property and that has been recognised by the Respondent, under Ex.B.1, being a family arrangement,

which needs no registration is a valid document and also binding on the first Respondent and others claiming rights through him. The second Appellant herein is only the legal heir, entitled to claim right, that was available to the first Appellant.

49. The courts below could have legally held that the Plaintiffs in O.S. No. 59 of 1996 were entitled to injunction and after the death of the said Plaintiffs, the second Appellant herein as legal heir is in possession and enjoyment of the suit property and that was recognised by the first Respondent, by way of executing Ex.B.1, as such the Appellant is entitled to get permanent injunction against the Respondent, as prayed for.

50. In the result, both the second appeals are allowed and the impugned judgments passed in O.S. No. 58 of 1996 and O.S. No. 59 of 1996 confirmed in A.S. No. 155 of 1998 and 156 of 1998 are hereby set aside and the suit in O.S. No. 59 of 1996 is decreed as prayed for and O.S. No. 58 of 1996 is dismissed. However, considering the relationship of the parties, there shall be no order as to costs. Consequently, connected C.M.P. No. 1779 of 2008 is closed.