
(2010) 04 MAD CK 0380

In the Madras High Court

Case No : A.S. No's. 595 and 614 of 2008 and M.P. No. 3 of 2009 in A.S. No. 595 of 2008

Tirupurasundari, C. Venkatachalam, C. Parankusam and D.P. Jaswanthi

APPELLANT

Vs

C. Nagarajan and Others
Vijayalakshmi Vs A. Tripurasundari and Others

RESPONDENT

Date of Decision : 28-04-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, Order 41 Rule 27, 2(15)

Income Tax Act, 1961 — Section 269UL

Specific Relief Act, 1963 — Section 31

Tamil Nadu Court Fees and Suits Valuation Act, 1955 — Section 30(2)

Citation : (2010) 4 CTC 427

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : T.R. Mani, for M.V. Venkateseshan in A.S. No. 595 of 2008 and T.N. Rajagopalan in A.S. No. 614 of 2008, for the Appellant; T.V. Ramanujam, for Sathish Parasaran, Advocate for Respondent Nos. 1 to 3, 5 and 7 in A.S. No. 595/2008 for Respondent Nos. 2, 5 and 7 in A.S. No. 614/2008, Indra Ramesh, Advocate for Respondent No. 3 in A.S. No. 614 of 2008, M.V. Venkatesh, Advocate for Respondent Nos. 8 to 10 in A.S. No. 614 of 2008, Ex-parte-Respondent No. 6 in A.S. No. 595 of 2008 and Respondent Nos. 4 and 5 in A.S. No. 614 of 2008, for the Respondent

Final Decision : Dismissed

Judgement

S. Palanivelu, J.—The following are the allegations contained in the Plaint:

1(a). The suit property belonged to one late Chinni Yella Manda Chetty, who had two sons by name C.Y. Anjaneyalu Chetty and C.Y. Sanjeevi Chetty. Sanjeevi Chetty had two daughters who are Plaintiff and 8th Defendant. Anjaneyalu Chetty adopted 1st Defendant by name C. Nagarajan. Sanjeevi Chetty died on 19.2.1952. His wife is one Visalakshmi Animal. On the authority given to her by her late husband, she took 7th Defendant C.S. Ramakrishna in adoption on

24.8.1953. Chinni Yella Manda Chetty on 14.7.1923 executed a Settlement Deed and a Will. Under the Settlement Deed, he settled "A" Schedule properties to his first son Anjaneyalu Chetty and "B" Schedule properties in the name of Sanjeevi Chetty. He also gave directions to his two trustees Sri Vattam Gopala Chetty and Sri Srirangam Pillai for the benefit of his two minor sons.

1(b). He appointed both of them as executors, giving life interest to his sons and remainder to the sons or grand sons of his sons. He died on 21.9.1923. On 24.5.1928, a Conveyance Deed was executed by the executors in favour of Sanjeevi Chetty with reference to the suit property as per the direction in the Will. Hence Sanjeevi Chetty became absolute owner of the property. On 19.2.1952 he died leaving behind him, his wife Visalakshmi Ammal, Plaintiff and 8th Defendant. C.Y. Anjaneyalu Chetty claimed rights from the estate of Sanjeevi Chetty, denying rights to his widow, daughters and adopted son. Hence, Visalakshmi Ammal filed Suit in C.S. No. 45 of 1954 for herself and on behalf of adopted son/7th Defendant, before the High Court for the Administration of the Estate of Sanjeevi Chetty. Anjaneyalu Chetty and his adopted son/1st Defendant filed C.S. No. 55 of 1954 before the High Court against Visalakshmi Ammal and 7th Defendant with prayers that adoption of 7th Defendant was invalid and for recovery of possession.

1(c). Both the Suits were tried together. The adoption was held valid in the Suit and it was also held that the properties in the Suits revested in Chinni Yella Manda Chetty and after his death in 1923, Sanjeevi Chetty became entitled to one half of the properties and other half would go to Anjaneyalu Chetty and 1st Defendant.

1(d). Two Appeals were filed at the instance of Visalakshmi Ammal and Ramakrishna in O.S.A. No. 24 of 1956 and O.S.A. No. 32 of 1957 before the Division Bench of this Court. The Division Bench confirmed the decree passed by the learned Single Judge. Anjaneyalu Chetty died in 1973. Visalakshmi Ammal was completely kept in the dark and was not treated well by her brother-in-law Anjaneeyala Chetty and she underwent trials and tribulations at his hands. She died on 29.4.1991. The Plaintiff was not aware of the properties left behind by Visalakshmi Ammal and 1st Defendant approached the Plaintiff with reference to some other matters and when the Plaintiff's husband Mr. V. Venkatachalam enquired about the estate of Sanjeevi Chetty, he stated that the Plaintiff, 8th Defendant and 7th Defendant were entitled to a share in the suit property and as his father executed a Trust Deed they lost their claims in the schedule property also. On request he gave to Plaintiff's husband a copy of the settlement deed dated 4.9.1972 and on perusal of that it would be seen that Anjaneeyalu Chetty had created a public trust and appointed trustees. He refused to apprise the Plaintiff about the subsequent proceedings in the Appeal Suits in O.S.A. Nos. 24/56 and 32/57. By virtue of judgment in the Civil Suits, there has been no ouster and the property is vacant site with buildings.

1(e). Advisors of Visalakshmi Ammal were influenced by C.Y. Anjaneyalu Chetty,

who saw to it that no proper instructions were given to the Counsel appeared for Visalakshmi Ammal. He took full advantage of the illiteracy and the active connivance of her advisors made her enter into a compromise which is vitiated by fraud perpetrated by him. It is not binding on the Plaintiff. Even after the said compromise, Visalakshmi Ammal was living in the schedule property. Anjaneyalu Chetty was also allowed to reside in the schedule property in the capacity of co-owner.

1(f). The Plaintiff and the 8th Defendant issued notice dated 31.3.1994 through their Counsel to the 1st Defendant and Defendants 2 to 6 calling upon them to surrender the suit property. In the reply, the First Defendant has not mentioned as to how adoptive father got absolute title to the property. The document dated 4.9.1972 is wholly void. Anjaneyalu Chetty did not inform Visalakshmi Ammal about the said document. The Plaintiff obtained an Encumbrance Certificate for 24 years from 1.1.70 to 18.4.1994, which shows that on 5.11.1970, Anjaneyalu Chetty and 1st Defendant have executed a gift deed. The said document is not binding on the Plaintiff. The possession of one co-owner is on behalf all other co-owners also. During and after the life time of Anjaneyalu Chetty, Visalakshmi Ammal, 7th Defendant and 1st Defendant continued to be the co-owners of the property and the Plaintiff, 7th Defendant and 8th Defendant are entitled to 1/12, 1/3 and 1/12 share respectively and 1st Defendant is entitled to half share in the suit property. The whereabouts of 7th Defendant are not known for about 9 years and he is legally presumed to be dead (in the amended plaint it is alleged that the Plaintiffs and 8th Defendant are entitled to 1/4th share in the schedule property). Hence, preliminary decree for partition of Plaintiff's 1/4th share may be passed.

In the Written Statement filed by 8th Defendant, following are stated:

1(g). This Defendant was born in 1951. The Plaintiff, the sister of this Defendant was born in the year 1936. After this Defendant received Suit summons, she made enquiries with reference to all the affairs and properties of her family. She found that the other members of the family, mediators and self-styled intervening persons had perpetrated a total fraud on the members of the family, who virtually helped Anjaneyalu Chetty. He had prevailed on the mediators and even the Advocate of the Visalakshmi Ammal had succumbed to the pressure exercised by the mediators. At the behest of Anjaneyalu Chetty, the mediators perpetrated fraud on Visalakshmi Ammal, who is illiterate. The Written Statement also contains the particulars of Will and Settlement Deed dated 14.7.1923 as alleged in the Plaint.

1(h). Visalakshmi Ammal would understand and follow only Tamil and Telugu. She learnt to sign her signature in English. Her ignorance was gained by several persons whom she plainly relied and she was incompetent to deal with several properties and faced problems from time to time. The trustees were not able to sell the bungalow at Chetput and made the father of this Defendant to purchase it for the moneys due to him and in the said circumstances he had executed a

registered Sale Deed dated 24.5.1928 in favour of Sanejeeva Chetty conveying the suit property. Hence, the suit property had become the personal property of Sanjeevi Chetty and ceased to be part of the estate of Chinni Yella Manda Chetty.

1(i). Sanjeevi Chetti was indebted to several people and there was pressure on the estate from the creditors and also from Anjaneyalu Chetti. Visalakshmi Ammal filed an Administration Suit for herself and on behalf of the 6th Defendant in C.S. No. 45 of 1954 on the file of High Court. After filing of the said Suit, Anjaneyalu Chetty and his adopted son, the First Defendant filed C.S. No. 55 of 1954 before the High Court against Visalakshmi Ammal and 7th Defendant challenging the adoption and recovery of possession of even all the properties which were in the exclusive possession of Sanjeevi Chetty. Both the Suits were disposed of by a common judgment and the Trial Court decreed that the Plaintiffs were entitled to 1/2 share and the Defendant 1 and 2 were entitled to another 1/2 share and the matter was referred to the official referee to effect partition in C.S. No. 55 of 1954. Adoption of 6th Defendant was held valid and the Visalakshmi Ammal and the minor son-6th Defendant were entitled to a half share.

1(j). Visalakshmi Ammal filed O.S.A. No. 24 of 1956 in which Anjaneyalu Chetty filed cross-objection claiming that Visalakshmi Ammal and her adopted son should not have been granted half share. Questioning the share allotted to Anjaneyalu Chetty, Visalakshmi Ammal filed O.S.A. No. 32 of 1957 in which also Anjaneyalu Chetty filed cross-objections. The Appeals and cross-objections were dismissed. The suit property is absolute property of Sanjeevi Chetty and hence no question of succession to the same as if it was Defendant's grand father's property. Anjaneyalu Chetty so influenced the advisers of Visalakshmi Ammal to see it that proper instructions were not given to the Counsel and correct case was not put before the Court. He took undue advantage of the illiteracy of Visalakshmi Ammal and perpetrated fraud. He also played fraud by making her entering into compromise in both the Suits in April 1961. The compromise is a result of fraud played by Anjaneyalu Chetty by taking away the absolute property of Sanjeevi Chetty. Anjaneyalu Chetty also created a benami trust and it is said to have obtained permission for the development of the properties. The values given in the compromise is a fraudulent one and the values of the properties given to Visalakshmi Ammal had been inflated and the value of the properties taken by Anjaneyalu Chetty were totally deflated.

1(k). None of the parties to the said compromise would be bound by the compromise. The said fraud was discovered recently when the Defendants enquired about the nature of the property and how the transaction was entered into. In view of the fraud, the compromise decree in C.S. No. 45/1954 and 55/1954 are liable to be set aside and it is prayed the Court to set aside the compromise decree, allowing 1/4th share to 6th Defendant. The cause of action for the suit arose in September and October 1996 where the fraud was discovered in September 1996. When the Defendant after receipt of Suit notice

made enquiries and ascertained the correct particulars and Court-fee of Rs. 6,171/- is paid valuing the compromise decree at Rs. 4,11,340/- and also Rs. 300/- for partition of her 1/4th share in the suit property u/s 30(2) of Tamil Nadu Court Fee Act.

2. The averments found in the Written Statement filed by the Defendants 1 to 5 are as follows:

2(a). The Suit as framed is not sustainable in law, which is liable to be dismissed limine insofar as there is no valid, justifiable cause of action surviving the interest of the Vishalakshmi Ammal as the suit property was not left behind as her estate. The Suit is barred by limitation since these Defendants have been in undisputed possession and ownership of the suit properties beyond the period of limitation and on 4.4.1961, pursuant to the compromise entered into between C.Y. Anjaneeyalau Chetty and his adopted son C. Nagarajan, 1st Defendant herein on the one part and Vishalakshmi Ammal and her adopted son C.S. Ramakrishna, 7th Defendant herein on the other part in C.S. No. 55 of 1954, the suit property had become the absolute property of Anjaneyalu Chetty and C. Nagarajan/1st Defendant.

2(b). The Plaintiff who is only claiming title under Visalakshmi Ammal cannot seek to impeach the compromise entered into by Visalakshmi Ammal that too after a lapse of over three decades. It is pertinent to point out that the Plaintiff had already attained majority even in 1961, when the compromise was entered into. Even assuming without admitting that the said facts were not personally made known by these Defendants to the Plaintiff, a reasonable diligence on the part of the Plaintiff would have certainly led to the discovery of all material facts. The averments in the Plaint do not show that the Plaintiff had exercised due diligence in discovering the facts.

2(c). Visalakshmi Ammal and 7th Defendant have lost their right, title and interest in the suit property in view of the fact that prescriptive right has been perfected statutorily by Anjaneyalu Chetty and C. Nagarajan and such explicit legal conduct will bar the Plaintiff from questioning a lost estate over a statutory period. There is no individual right surviving to the successors of the Visalakshmi Ammal and C.S. Ramakrishna and therefore the Suit is barred by Principles of estoppel and res judicata. The Plaintiff is fully aware of the factum of the proceedings initiated by Visalakshmi Ammal in C.S. Nos. 44/54 and 45/54 and the prolonged litigation of these suits along with C.S. No. 55/54 and such knowledge of litigation allotment and enjoyment of the property as and when from 4.4.1961 bars the Plaintiff from challenging these Defendants of their right, title and interest in the suit property. The 1st Defendant denies the allegation of knowledge for the first time through him. The affairs of Visalakshmi Ammal at least after the marriage of the Plaintiff had been effectively controlled and managed by the Plaintiff and her husband, therefore she fully associated with her mother's affairs even during her life time and all case papers relating to C.S. No. 44/54 and 45/54 were available with Visalakshmi Ammal and her daughter, the

Plaintiff is stopped in law from contending knowledge of the affairs only subsequent to her death on 29.4.1991.

2(d). It would be impossible for the Plaintiff to sustain a claim for these Defendants' possession in the suit property. In fact, a reference to the very suit register would have given the indication that the Suit was settled by a Compromise in C.S. No. 55/54 on 4.4.1961 recorded by the High Court. However, these Defendants have filed Counter Affidavits in the Applications taken out by the Plaintiff in Application Nos. 725/94 and 853/94 in the suit, where it had been fully set out how the compromise was effected and recorded by Court while passing the compromise decree on 4.4.1961 had apportioned the property as "A" and "B" Schedule Properties and how "A" schedule properties were given to Anjaneyalu Chetty and his son and "B" schedule property to Visalakshmi Ammal and her adopted son. As far as "A" schedule properties are concerned, the suit property is Item No. 5 and this item has been specifically allotted to Anjaneyalu Chetty. Therefore, the property had become the property of Anjaneyalu Chetty and C. Nagarajan. Being only a successor in interest of Visalakshmi Ammal, the Plaintiff cannot avoid or ignore the legally and vividly passed compromise decree. The items of property allotted to Visalakshmi Ammal had gone to her and she retained the control, custody and possession of those allotted items as her estate. The Plaintiff along with 7th and 8th Defendants as heirs of Visalakshmi Animal succeeded to the estate and have been in possession of the estate jointly and in common on the death of the Visalakshmi Ammal. Having succeeded to the estate of Visalakshmi Ammal, held by her in terms of compromise deed, it is not open to the Plaintiff to question item 5 of "A" Schedule property.

2(e). There is no question of a third party to the deed of settlement executed by Anjaneyalu Chetty on 4.9.1972, claiming a right to challenge the document in any manner. The First Defendant accepted the document and in terms of the document, the Trust is functioning and the Plaintiff herself has proceeded against the trustees. Anjaneyalu Chetty and C. Nagarajan held the property in terms of a partition effected under the compromise decree dated 4.4.1961 and by a release made by the First Defendant in favour of his father, the property was enjoyed by Anjaneyalu Chetty by reason of such exclusive right, title to the property for executing the document dated 4.7.92 in and by which the Trust has come into being and the Trust has taken possession of the property as and from that date. The management of the property by the Trust had also been recorded by Income Tax authorities. Under such circumstances, the Trust had decided for demolition and reconstruction under a promotion agreement with the assistance of Doshi Housing Limited (7th Respondent in A.S. 595 of 2008). The proposal for demolition and permission for development of the property was granted by the Court, Sanction Plan from the Corporation of Madras and Certificate of appropriate authority u/s 269-UL (1) of Income Tax Act were obtained. The Trust has filed the returns in respect of the property as a Trust property. In face of these, a claim by a third party for declaring the said document as void is a

motivated one and there is no legal right, title or interest in the third party in any manner.

2(f). All material facts constituting the cause of action for the suit were all along within the knowledge of the Plaintiff. The pleas made by the Plaintiff that the suit property is in possession of the Plaintiff and the Defendants as co-owners without any ouster of the Plaintiff by the Defendants would fall to the ground once the above mentioned compromise decree is taken into consideration. Plaintiff having come before the Court with material suppression and the Suit having been barred by limitation and the claim of the Plaintiff having been barred by Principles of res judicata and estoppel by conduct and having obtained the estate of the deceased as successor having not included other items of properties the Suit is liable to be dismissed with exemplary cost.

3. After analysing the pleadings, oral and documentary evidence, the learned III Additional Judge, City Civil Court, Chennai, dismissed the Suit with cost. He has also turned down the prayer of the 8th Defendant in her Written Statement for division of 1/4th share in the suit property. Hence both the Plaintiff and 8th Defendant in the Suit were filed these separate Appeals. Pending hearing of these Appeals, 7th Respondent filed an Application under Order 41, Rule 27, C.P.C. to receive a copy of compromise decree dated 4.4.1961 as additional evidence.

[Ranks of the parties are referred to as found in the Suit in O.S. No. 11361 of 1996.]

4. The following points have arisen for consideration in these Appeals:

1. Whether the Application (M.P. No. 3 of 2009 in A.S. No. 595 of 2008) under Order 41, Rule 27 has to be allowed?
2. Whether the allegation that the compromise dated 4.4.1961 in C.S. No. 55 of 1954 is vitiated by fraud has been established?
3. Whether the claims of the Plaintiff and 8th Defendant, in both Appeals have been barred by limitation?
4. Whether the Plaintiff and 8th Defendant are estopped from claiming share in the suit property?

Point No. 1:

5. One Chinni Yella Manda Chetty had two sons C.Y. Anjaneyalu Chetty and C.Y. Sanjeevi Chetty. C.Y. Anjaneyalu Chetty had one daughter. He also adopted 1st Defendant. C.Y., Sanjeevi Chetty had two daughters who are the Plaintiff and 8th Defendant. Sanjeevi Chetty died on 19.2.1952 leaving his wife Visalakshmi Ammal and his daughters. It is stated that on the authority given to her by her husband, Visalakshmi Ammal adopted 7th Defendant on 24.8.1953. It is alleged in the plaint that since his whereabouts are not known for the past more than 9 years he has to be legally presumed to have died and that his share would

devolve upon Plaintiff and 8th Defendant. Presently, the Plaintiff and 8th Defendant are claiming share of 1/4th each in the suit property.

6. Even though Chinni Yella Manda Chetty has executed the settlement deed and Will dated 14.7.1923, they have not been produced before the Court. The transactions or affairs aftermath the above said deeds are not at all in dispute. It is stated that a Conveyance Deed was executed by the executors in favour of Sanjeevi Chetty in respect of suit property on 24.5.1928 making him as absolute owner of the property. Heart burns are alleged to have arisen between Anjeneeyalu Chetty and Visalakshmi Ammal after the death of Sanjeevi Chetty and that misunderstandings occurred between them which led her to file a Suit for Administration of the Estate of Sanjeevi Chetty in C.S. No. 45 of 1954 on the file of this Court. She filed the Suit for herself and on behalf of her adopted son, 7th Defendant. Anjaneyalu Chetty, 1st Defendant and other creditors of Sanjeevi Chetty are Defendants in that Suit. Thereafter, Anjaneyalu Chetty filed a Suit for himself and on behalf of 1st Defendant herein, in C.S. No. 55 of 1954 praying for reliefs that the adoption by Visalakshmi Ammal of 7th Defendant was invalid and for recovery of possession of the properties which had been in the possession of Sanjeevi Chetty in accordance with provisions in Settlement Deed and Will.

7. In the said Suits joint trial was conducted and was held that adoption by Visalakshmi Ammal was valid and that the adopted son was not entitled to claim as named done of the settlement or the Will and the properties in the suit became revested in Chinni Yella Manda Chetty and after his death Sanjeevi Chetty became entitled to one half of the properties disposed of in his favour by the settlement deed and Will dated 14.7.1923 and on his death, Visalakshmi Ammal and adopted son were entitled to half share of the Sanjeevi Chetty and the other half would go to Anjaneyalu Chetty and his adopted son. These are the Plaint pleadings with regard to the prayers, reliefs claimed and granted in the said Suit. Visalakshmi Ammal and 7th Defendant, challenged the above said judgment by filing two Appeals in O.S.A. Nos. 24 of 1956 and 32 of 1957 before this Court and Anjaneyalu Chetty and his adopted son preferred cross-objections. A Division Bench of this Court confirmed the judgment.

8. 7th Respondent in the Appeals, who is 9th Defendant in the Suit, filed an Application to receive an additional document, a copy of compromise decree dated 4.4.1961 passed in C.S. No. 55 of 1954 by this Court. The Petitioner has alleged in the affidavit besides graphically narrating the earlier events as follows:

8(a). The Suit before the Trial Court was dismissed for default as many as three times. The trustees of the Chinni Yella Manda Chetty Anjaneyalu Chetty Charities and the legal heirs of Anjaneyalu Chetty filed C.S. No. 1743 of 1993 seeking for sanction of High Court to promote the property which was the subject matter of a division in C.S. No. 960 of 1994. A judgment was passed on 20.12.1993 granting sanction as sought for. Since, the Petitioner was also a party, since it had entered into a Joint Development Agreement with the trustees to promote the property, it filed Application in the Suit to implead it as party and the same

was ordered.

8(b). Even though 8th Defendant has sought for setting aside the compromise decree in C.S. No. 55 of 1954 dated 4.4.1961, she did not chose to let in either oral evidence or documentary evidence. She has pleaded in the Written Statement that compromise decree was vitiated by fraud. Since the Petitioner had adopted the Written Statement filed by the Defendants 1 to 5, thought fit that no evidence could be required from his side. There is no document on the part of the Plaintiff to prove that she is entitled for 1/4th share in the suit property.

8(c). The Plaintiff has taken a specific stand that Visalakshmi Ammal was allotted the suit property in C.S. No. 45 of 1994. The Petitioner obtained a copy of the compromise decree and filed the same before this Court along with Application to receive it as additional document. The Petitioner was impleaded as party only in the year 2007. Since, this Court had directed the Trial Court to dispose of the Suit within a specified time span, the decree could not be produced before the Trial Court since the burden of proof is squarely on the part of the Plaintiff. There was no need for the Petitioner to produce the said document. The compromise decree if produced, will clearly falsify the case of the Appellant.

8(d). Despite the exercise of due diligence and since the document was not in possession, it could not be filed before the Trial Court. The Trial Court categorically held that the burden of proof is on the Plaintiff. There would be no scope for elaborate argument if the compromise decree is produced as additional evidence before this Court. Production of the document will enable the Court to shorten the litigation and will advance the substantial cause and in the interests of justice the document may be received as additional evidence.

9. In the Counter Affidavit filed by the husband of the Plaintiff, who has been impleaded in this Appeal after the death of the Appellant/Plaintiff in the suit, it is stated that the petition is not maintainable in law or on facts, that the Petitioner was having document at the time of trial and the same was not filed during the course of the trial, that if the same has been marked, the question would have been put on the compromise decree, that on the contrary, if it is allowed to be taken an additional evidence, his chance of cross examination and put questions regarding the compromise decree will be taken away and that the application filed at present seems to be to avoid the cross examination regarding the said document. It is further stated that the allegations that even after the exercise of due diligence and the document could not be produced before the Trial Court is unsustainable and the petition may be dismissed.

10. The learned Senior Counsel Mr. T.V. Ramanujam appearing for the Respondents R1 to R3, R5 and R7 would contend that presently the Petitioner has filed the Application to receive the document only to assist the Court to see the contents of the compromise decree which is being discussed through out in the case, that it is the bounden duty of the Appellants to have produced the

same before the Trial Court, that the Plaintiff/Appellant has not prayed for setting aside the compromise decree, but claimed share in the suit property, that the 8th Defendant/Appellant in A.S. No. 614 of 2008 in her Written Statement has sought for setting aside the compromise decree on payment of Court fee, however, neither the Plaintiff nor the 8th Defendant had chosen to produce a copy of the compromise decree before the Trial Court, that it is not necessary for the Petitioner to produce the same and that even in the absence of the compromise decree, the contesting Defendants could establish their case.

11. The learned Counsel appearing for the Petitioner would adopt the contention put forth as above.

12. Conversely, Mr. T.R. Mani, learned Senior Counsel for the Appellants would argue that in case, if the copy of compromise decree is received by this Court as additional evidence, the suit should have been remanded to the Court below for further enquiry with regard to the same. But this Court is of the opinion that there is no necessity to remand the case, considering the facts and circumstances available in this case. It is incumbent upon the Appellants to have produced the copy of the compromise decree before the Trial Court since they are challenging the same, This Court could not be in a position to advert to the merits of the case in entirety, in the absence of the additional document.

13. The reasons adduced in the affidavit are convincing. This Court is of the view that the additional document is essential for pronouncing judgment in these Appeals. It is also necessary for final adjudication of the rights of the parties with respect to the suit property. Even if the document is marked before this Court, there is no need to remand the case to the Court below since the required oral evidence are already on record, which are sufficient for appreciating the circumstances of the case. It is the bounden duty of the Plaintiff and the 8th Defendant to produce it before the Court below to establish their claim. 8th Defendant did not examine herself before the Trial Court. A careful scrutiny of the oral testimonies would go to show that no further oral evidence is necessary for deciding the rights of the parties. In these circumstances, the Petition deserves to be allowed and the same is allowed. The additional document is marked as Ex. B-3. The point is answered in affirmative.

Point No. 2:

14. Both the Plaintiff and 8th Defendant are pleading in a same tone that the compromise decree dated 4.4.1961 is vitiated by fraud. It is alleged by them that there was love lost between Anjeneeyalu Chetty and Visalakshmi Ammal and during the pendency of the proceedings, through the interveners and advisers of Visalakshmi Ammal who was illiterate, Anjaneyalu Chetty made her to enter into compromise. It is also stated that the value of the properties allotted to the Plaintiff were inflated and that of the properties allotted to Anjeneeyalu Chetty were deflated.

15. A perusal of the compromise decree would show that the family properties

were divided into two schedules viz., "A" Schedule and "B" Schedule. In "A" Schedule there are 6 items of properties and in "B" Schedule, 4 items of properties and it is mentioned that as agreed by both the parties that the Plaintiffs viz., Anjaneyalu Chetty and his adopted son were entitled to "A" Schedule properties and the Defendants, Visalakshmi Ammal and her adopted son shall be entitled to "B" schedule properties and that the Defendants had to deliver possession of item No. 5 in "A" Schedule property i.e., suit property herein, to the Plaintiffs on or before 04.10.1961.

16. In the Memo of Compromise filed by both parties, learned Counsel for both sides have put their signatures but the signatures of the parties are not available. It is contended by the Appellants' side that in view of the absence of the signatures of parties, the compromise is not valid. But the legal position is otherwise. Order 23, Rule 3 of C.P.C. deals with compromise of Suits which reads as follows:

3. Compromise of Suit.-Where it is proved to the satisfaction of the Court that a Suit has been adjusted wholly or in part by any lawful agreement or compromise [in writing and signed by the parties] or where the Defendant satisfied the Plaintiff in respect of the whole or any part of the subject-matter of the Suit, the Court shall order such agreement, compromise satisfaction to be recorded, and shall pass a decree in accordance therewith [so far as it relates to the parties to the Suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the Suit:]

[Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but not adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]

[Explanation-An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule;]

17. The provision in force, earlier to the Amendment Act No. 104/76 dated 1.2.1977, did not contain the terms "in writing and signed by the parties". Hence, it was not the statutory requirement anterior to the advent of amended Act, that the compromise should receive the signatures of the parties. The authority was given to the Counsel appearing for the party to enter into a compromise. Unless any adverse interest attributed to the Counsel on record, the party on a later point of time could not challenge the act of the Counsel who has entered into compromise ignoring the authority or power already given to him. This proposition is well settled and the learned Senior Counsel for the Respondents fortifies his contention by garnering support from a Full Bench decision of the Supreme Court in Jamilabai Abdul Kadar Vs. Shankarlal Gulabchand and Others, , wherein it is held as follows:

22. While we are not, prepared to consider in this case whether an Advocate or pleader is liable to legal action in case of deviance or negligence, we must uphold the actual, though implied authority of a pleader (which is a generic expression including all legal practitioners as indicated in Section 2(15). CPC to act by way of compromising a case in which he is engaged even without specific consent from his client, subject undoubtedly to two overriding considerations: (i) He must act in good faith and for the benefit of his client, otherwise the power fails; (ii) It is prudent and proper to consult his client and take his consent if there is time and opportunity. In any case, if there is any instruction to the contrary or withdrawal of authority, the implicit power to compromise in the pleader will fall to the ground. We need hardly emphasize that the Bar must sternly screen to extirpate the black-sheet amount them, for Caesar's wife must be above suspicion, if the profession is to command the confidence of the community and the Court.

18. The same position has been reiterated in the decisions after the Full Bench decision of the Apex Court. In *Employers in relation to AIR 1975 1632 (SC)*, the Supreme Court after analysing the circumstances, has observed that any lack of authority in the action taken by the Counsel on record could not be seen.

19. In *The Madras Co-operative Printing and Publishing Society Ltd. Vs. O. Ramalingam and Others*, this Court has held that it is well settled that Counsel appearing for a party is always having an implied authority to enter into a compromise on behalf of his party. The only limitation is that if there was any written prohibition or limitation, he will have to act within that prohibition or limitation.

20. Following the above said Full Bench decisions of the Apex Court, this Court in *M.R. Natarajan Vs. Gnanambal Ammal*, held that it is abundantly clear that from the above said decisions that a Vakalath, even though it does not state that a power is given to the Advocate concerned to compromise, had an implied authority to enter into a compromise on behalf of his party. But, if that authority prohibits or lays down certain limitations on the powers of the advocate concerned, the prohibition and the limitation will curtail the authority of the Advocate concerned to that extent, but such prohibition or limitation must be in writing.

21. From the above mentioned, the following points emerge:

1. In order to challenge a compromise entered into by the Counsel on record on behalf of the party, he should have acted on good faith and for the benefit of his client.
2. He should have consulted the client and taken his consent.
3. There should be proof that there was a prohibition or a limitation curtailing power of the Counsel entering into compromise. Had there been any such prohibition or limitation, the Counsel has to act within them. The prohibition or

limitation is required to be put in writing.

22. It is made clear that the above said position existed earlier to the introduction of amendment Act No. 104/1976 in C.P.C. The compromise was effected in 1961. If the above said requirements are satisfied, then there cannot be a challenge on the compromise. Adverting to the facts of the present case, neither in the Plaint nor in the Written Statement of 8th Defendant, it is pleaded touching any of the above said aspects. 8th Defendant did not appear before the Court to adduce evidence. Nothing is available in the pleadings or in the oral evidence of P.W. 1 that the advocate on record for Visalakshmi Ammal did not act in good faith, that there was limitation and prohibition curtailing his power to act, that he did not get consent from Visalakshmi Ammal to enter into compromise and that there was withdrawal of the authority given to the Counsel.

23. In the proof affidavit for chief-examination of P.W. 1, husband of the Plaintiff, he has affirmed that the ignorance of Visalakshmi Ammal was exploited by Anjaneyalu Chetty who induced her and she was made to sign some deeds and without knowing the contents and consequences she signed such documents. In the cross examination, he has stated that during 1961 there was cordial relationship between his mother-in-law (Visalakshmi Ammal) and Anjaneyalu Chetty. There is no convincing evidence to show that there was misunderstandings between Anjaneyalu Chetty and Visalakshmi Ammal. It is pleaded in the Written Statement of 8th Defendant that even the Advocate of the mother of this Defendant had succumbed to the pressure exercised by the mediators and interveners on behalf of the uncle of this Defendant-Anjaneyalu Chetty. But she did not adduce any evidence to establish this pleading. In view of the above circumstances, the contention that fraud was played in obtaining compromise decree could not be countenanced. This point is answered in negative.

Point No. 3

24. The next point which would arise as regards compromise is that the rights of the Plaintiff and 8th Defendant have been barred by limitation. Steps should have been taken within three years from the date of compromise or in three years from the date of knowledge about the compromise. There are abundant evidence on record to show that the Plaintiff was having the knowledge immediately after the compromise was brought about. As far as 8th Defendant is concerned, it is the only allegation in the Written Statement that she came to know about the fraud in compromise in September 1996. The Court had no occasion to decide at what point of time she had the knowledge of compromise, since she was not examined as witness.

25. P.W. 1 in his evidence would depose that he obtained B.Com., M.B.A. and Chartered Accountant degrees, that he married the Plaintiff in 1960 who had studied up to B.A., in Stella Marys College and she completed the Course in the year 1957, that after his marriage, his wife and his mother-in-law Visalakshmi

Ammal informed him about the cases, that he had gone through the judgment particulars, that a few years after his marriage, in 1964 his mother-in-law told him that the compromise decree was passed after getting signature from her fraudulently, that the passing of compromise decree was also known to his wife, that as per the compromise 1/2 share in the suit property was allotted to Anjaneyalu Chetty, hoodwinking his mother in law, that in the year 1964 immediately they have not filed any Suit, that his wife, his mother-in-law had not taken any Criminal proceedings against Anjaneyalu Chetty, after knowing about the compromise decree, and that after getting knowledge about the compromise, he did not take any steps to get the copy of the compromise.

26. From the above said evidence on record, it transpires that immediately after the passing of compromise decree, the fact was known to P.W. 1, his wife, the Plaintiff and Visalakshmi Ammal and up to the filing of the Suit in the year 1994, they have not moved their little finger to challenge the same, so also the 8th Defendant. Since there is candid evidence to show that the parties to the Suit had already knowledge about the passing of compromise decree in the year 1964, it has to be held that the challenge which came to the Court after 30 years is barred by time.

27. In this context, the learned Senior Counsel for the Respondents would cite the authority of Supreme Court reported in Ningawwa Vs. Byrappa and Others, in which it is held that in view of the express language of Article 91 of the Limitation Act which provides that the three years" period runs from the date when the Plaintiff came to know the facts entitling her to have the instrument cancelled or set aside and this view is borne out by the decision of the Judicial Committee in AIR 1934 130 (Privy Council) , in which it was held that the limitation for a Suit to set aside a deed of gift on the ground that it was obtained by undue influence was governed by Article 91 of the Indian Limitation Act, and that three years period runs from the date when the Plaintiff discovered the true nature of the deed and not from the date when he escaped from the influence by which he alleged that he was dominated.

28. In another decision of the Apex Court in Md. Noorul Hoda Vs. Bibi Raifunnisa and Others, , Their Lordships were pleased to observe as regards the point of limitation under Article 59 and 113 of the Limitation Act. The operative portions of the judgment go thus:

Article 59 of the Limitation Act, is a general provision. It would apply to set aside the instrument, decree or contract between the inter se parties. In a Suit to set aside or cancel an instrument, a contract or a decree on the ground of fraud, Article 59 is attracted. The starting point of limitation is the date of knowledge of the alleged fraud. When the Plaintiff seeks to establish his title to the property which cannot be established without avoiding the decree or an instrument that stands as an insurmountable obstacle in his way which otherwise binds him, though not a party the Plaintiff necessarily has to seek a declaration and have that decree, instrument or contract cancelled or set aside or rescinded. The word

"person" in Section 31 of the Specific Relief Act is wide enough to encompass a person seeking derivative title from his seller. Therefore, if he seeks avoidance of the instrument, decree or contract and seeks a declaration to have the decrees set aside or cancelled he is necessarily bound to lay the suit within three years from the date when the facts entitling the Plaintiff to have the decree set aside, fir became known to him.

In the present case when the Petitioner claiming title to the property as owner and the benamidar filed the Sale Deed in the title Suit of R, the benamidar had first known about the passing of the preliminary decree in 1973 and final decree in 1974. Under all these circumstances, Article 113 is inapplicable to the facts on hand. Since the Petitioner claimed derivative title from him but for his wilful abstention from making enquiry or his omission to file the second Sale Deed, an irresistible inference was rightly drawn by the Courts below that the Petitioner had full knowledge of the fact right from the beginning; in other words right from the date when title deeds was filed in the title Suit and preliminary decree was passed on in 1973 and final decree was passed in 1974. Admittedly, the Suit was filed in 1981 beyond three years from the date of knowledge. Thereby, the Suit is hopelessly barred by limitation.

29. In the light of the above judicial pronouncements of the Apex Court, it has to be held that the claim of the Plaintiff and the 8th Defendant have been miserably time barred. It is reiterated that there is no material nor evidence to show that only in September 1996, Plaintiff and 8th Defendant obtained the knowledge of compromise. It is also contended on behalf of the Appellants that no permission was obtained from the Court to enter into compromise on behalf of the minors who are on the array of the parties, from the Court and hence on this score also the compromise has to fail. But this contention should have been placed before the Court within the time limit, since the Plaintiff and Visalakshmi Ammal were aware of passing of compromise decree much earlier to 1964. Their right have been time barred. This point is answered in affirmative.

Point No. 4

30. It is contended by the contesting Respondents that having received the knowledge about the properties allotted in terms of compromise, the Plaintiff cannot maintain the Suit and is estopped from claiming share in the property. Some of the features of the oral evidence of P.W. 1 were referred before this Court to show that in pursuance and terms of the compromise decree, the properties were allotted to Visalakshmi Ammal and she had been enjoying afterwards. A scrutiny of the compromise decree would show that the properties in George Town, Sarveesingapuram, Devaraja Mudali Street and Strotten Muthia Mudali Street, which are enlisted under "B" schedule, were allotted to Visalakshmi Ammal. P.W. 1 has categorically stated that those properties were in the possession of his mother-in-law.

31. When specific questions were put to him as to each of the item, he responds

to them in affirmative. He says that his mother-in-law owned the houses in George Town (No. 21, Southern Row and Western Row of Venkatachalam Lane, China Bazaar Road), Sarveesingapuram, Devaraja Mudali Street and Strotten Muthia Mudali Street,. He further states that the old building situate in N.S.C. Bose road (George Town as mentioned above) was demolished by him and a new construction has been made for which he has been collecting rent. The above said admissions are enough to conclude that the properties allotted to Visalakshmi Ammal in the compromise, were delivered to her and she had been enjoying. By this conduct, she has given effect to the compromise much earlier. Hence, the inescapable conclusion would be that the Plaintiff and 8th Defendant are estopped from claiming right in the suit property which were allotted to Anjaneyalu Chetty by virtue of compromise. This point is answered in affirmative. A careful consideration of the pleadings, evidence and other circumstances would pave way to show that the compromise decree is a valid one which has been given effect to by the mother of the Plaintiff, Visalakshmi Ammal and the claim preferred by the Plaintiff after a period of about 30 years is time barred. Neither the Plaintiff nor the 8th Defendant is entitled to claim interest in the suit properties. No valid ground is made out in these Appeals to interfere with the judgment and decree of the Court below which deserve to be confirmed and they are accordingly confirmed.

In the result, both the Appeal Suits are dismissed. C.M.P. No. 3 of 2009 is allowed. No costs.