

**(2012) 11 MAD CK 0280**

**Madras High Court**

**Case No:** S.A. No. 1256 of 2008

Lakshmiammal and Others

APPELLANT

Vs

Nagammal and Others

RESPONDENT

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**Date of Decision:** Nov. 2, 2012

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27
- Hindu Minority and Guardianship Act, 1956 - Section 1, 11

**Citation:** (2013) 1 RCR(Civil) 777

**Hon'ble Judges:** P.R. Shivakumar, J

**Bench:** Single Bench

**Advocate:** P. Valliappan, for the Appellant; D. Rajagopal, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

P.R. Shivakumar, J.

This second appeal was filed initially by Lakshmiammal, the 4th defendant in the original suit and the legal representatives of the deceased 3rd defendant Sundaram, namely Adhi Ramani and Meena Sangeetha. During the pendency of the second appeal, by an order dated 13.4.2010 made in M.P. No. 2 of 2010, V.P. Maragatha Mani who purchased the property from appellants 1 to 3 was impleaded as the 4th appellant. Respondents 1 to 7 were the plaintiffs 2 and 4 to 9. Respondents 8 and 9 are the legal representatives of the deceased third plaintiff Mylathal. Respondents 10 to 14 were defendants 6 to 10 in the original suit. Original Suit No. 3654 of 1996 was filed by Ayyanna Thevar, the sole plaintiff against Alamelu, Muthuswamy and Sundaram, the original defendants 1 to 3 for a declaration that he was the absolute owner of the suit property, namely northern most portion of S. No. 279 in Ramanathapuram Village, Coimbatore City having an extent of 78 = cents, for a direction directing the defendants to deliver vacant possession of the said property and for grant of a mandatory injunction for the removal of the building put up in the above said property by the defendants. Since during the pendency of the suit, the

original plaintiff Ayyanna Thevar died, his legal representatives Nagammal, Mylathal, Subramani, Srinivasan, Daivathal, Malarveni, Damodaran and Vasanthamani were impleaded as plaintiffs 2 to 9. Similarly, on the death of the first defendant Alamelu, her legal representatives Lakshmiammal, Ramaswamy Thevar, Veluswamy, Kumar, Chandra and Manoharan were impleaded as Defendants 4 to 9. On the death of second defendant Muthuswamy, besides recording Defendants 4 to 9 as his legal representatives, 10th defendant Dhandapani was also impleaded as one of his legal representatives. During the pendency of the suit, the 5th defendant Ramaswamy also died. No further steps were taken since his legal representatives were already existing defendants. For the sake of convenience the parties are referred to in accordance with their ranks in the suit and wherever necessary further descriptions are also made.

2. The suit was filed by the original plaintiff Ayyanna Thevar based on the following contentions:

The suit property originally belonged to one Arunachala Thevar, Son of Sonai Nanja Thevar having purchased the same under a registered sale deed dated 17.4.1905 registered as Document No. 550 of 1905 in Office of the Registrar, Coimbatore. The said Arunachala Thevar divided the said property into southern half and northern half each measuring 1.57 acres and again divided the northern half into two portions each measuring 78 = cents. On 18.9.1910, the said Arunachala Thevar executed a gift settlement deed bearing Document No. 1732 of 1910 in favour of his two daughters Kuppayammal and Unnamulaiammal in respect of northern most part of the suit survey field having an extent of 78 = cents. On the same day, 78 = cents immediately lying on the south of the property settled on Kuppayammal and Unnamulaiammal was given to his other daughter Lakshmiammal under a gift settlement deed bearing Document No. 1731 of 1910. Thus, the northern half of the suit survey field having an extent of 1.57 acres became the property of Unnamulaiammal, Kuppayammal and Lakshmiammal. Out of the two donees under Document No. 1732 of 1910, namely Kuppayammal and Unnamulaiammal, Kuppayammal died on 10.11.1932 leaving her daughter Rajammal as her only heir and the original plaintiff Ayyanna Thevar is the son of said Rajammal. The other donee Unnamulaiammal also died on 15.8.1950. Treating Ayyanna Thevar as her only heir, Unnamulaiammal also conveyed her interest in the house property belonging to her, which is not the subject matter of the suit, to the plaintiff since her two sons Nalappa and Thiruppathi died long back leaving no heir. Thus, the share of Unnamulaiammal also became the property of the original plaintiff Ayyanna Thevar. The Lakshmiammal, who got the southern half of the northern portion of the suit survey field as gift under Document No. 1731 of 1910, had a son by name Venkatachala Thevar, who is no more. The first defendant Alamelu is the widow of Venkatachala Thevar and second defendant Muthuswamy and third defendant Sundaram are the sons of the said Venkatachala Thevar. As such, they are entitled to the southern half of the northern part of the suit survey field. By mistake and

confusion, a portion of the northern most part belonging to the plaintiff was assumed by the first defendant Alamelu to be her property and she put up a Kalyana Mandapam in the said portion two years prior to the filing of the suit. Hence, after issuing a notice calling upon the first defendant to remove the construction put up on the property of the plaintiff or in the alternative to give the southern half of the northern part of the suit survey field to the plaintiff, which evoked a response in a reply notice containing untenable and false contentions, the original plaintiff Ayyanna Thevar was constrained to approach the trial Court for the above said reliefs.

3. The suit was resisted on the basis of the written statement and additional written statement filed by the first defendant Alamelu which were adopted by the Defendants 2 and 3. The fourth defendant who came to be impleaded on the death of the second defendant also contested the suit on the basis of the above said written statement. Besides a general denial of the plaint allegations, the other allegations made in the written statement and additional written statement, in brief, are as follows;

i) One Arunachala Thevar was the absolute owner of 3.14 acres comprised in S. No. 279, Ramanathapuram Village, Coimbatore. The said Arunachala Thevar along with his wife sold an extent of 1.57 acres to one Kandasamy Thevar, who was none other than their son-in-law, for a sum of Rs. 1000/- under a registered sale deed dated 29.4.1912 registered as Document No. 1471 of 1912. Under the said sale deed, Kandasamy Thevar took possession of the property purchased by him pursuant to which mutation was effected in the revenue records. He was in possession and enjoyment of the said property till he died in 1922. The first defendant Alamelu is the daughter-in-law of the said Kandasamy Thevar. On the death of Kandasamy Thevar, his only son Venkatachala Thevar got the property as his sole legal heir and was in possession and enjoyment of the same cultivating the said property till he died in the year 1986. Out of the 1.57 acres, Venkatachala Thevar himself, during his life time, sold 91 cents to third parties and the balance extent was left by him to the defendants 1 to 3, namely his wife and sons, to succeed. The Defendants 1 to 3, as absolute owners, are in possession and enjoyment of the said extent of 66 cents that remained after sale made to third parties by Venkatachala Thevar. They obtained sanction from the municipal authorities for putting up a Kalayana Mandapam and completed the construction of the Kalyana Mandapam in 1993 itself. The original plaintiff, who was very much aware of such a development being made, kept quite and has come forward with a speculative suit on the ill-advice of the rivals of the said defendants.

ii) Lakshmiammal, who is the daughter of the first defendant Alamelu has filed a suit for partition in O.S. No. 182 of 1997 on the file of the II Additional Subordinate Judge, Coimbatore wherein the suit property was also shown to be one of the subject matters of the said suit for partition. Since the said Lakshmiammal

(subsequently impleaded as 4th defendant) has not been made a party to the suit, the present suit is bad for non-joinder of necessary party.

iii) One Ms. Kanagarathinam has been made as third defendant in the said suit for partition O.S. No. 182 of 1997. The said Kanagarathinam died on 23.11.1996 leaving Ramasamy Thevar (husband), Velusamy (son), Kumar (son) and Ms. Chandra (daughter) as her legal heirs. The said persons are also necessary parties and in order to avoid multiplicity of proceedings both the suits should be tried together and the plaintiff should be directed to implead the parties in the partition suit as necessary defendants in the present suit.

4. The following issues and additional issues were framed by the trial Court:

Issues:

- 1) Whether the plaintiffs are entitled to the relief of declaration as sought for in the plaint?
- 2) Whether the plaintiffs are entitled for recovery of the possession of the suit property as a vacant site?
- 3) Whether the plaintiffs are entitled to the mandatory injunction as sought for?
- 4) To what other relief?

Additional Issues:

- 1) Whether the suit property has been correctly valued and whether correct amount of Court fee has been paid?
- 2) Whether the Court fee paid by the plaintiffs is correct?
- 3) Whether this Court (trial Court) has jurisdiction to try the suit?

5. Based on the said issues and additional issues framed by the trial Court, the parties went for trial in which one witness was examined as P.W. 1 and 9 documents were marked as Exhibits A-1 to A-9 on the side of the plaintiffs. One witness was examined as D.W. 1 and 34 documents were marked as Exhibits B-1 to B-34 on the side of the defendants.

6. The learned trial Judge heard the arguments advanced on both sides, considered the evidence adduced on both sides in support of their respective cases and upon, such consideration, came to be conclusion that the plaintiffs had not proved their case and hence, they were not entitled to any one of the reliefs sought for in the plaint. Accordingly, the learned trial Judge dismissed the suit with costs of the defendants 1 to 3 by judgment and decree dated 7.3.2007. As against the decree of the trial Court dated 7.3.2007 dismissing the suit, the surviving plaintiffs and the legal heirs of the deceased plaintiffs preferred an appeal in A.S. No. 54 of 2007 on the file of III Additional Subordinate Judge, Coimbatore. Since during the pendency

of the appeal, the third defendant Mylathal died, her legal representatives were impleaded as appellants 9 and 10 in the appeal before the appellate Court. The learned lower appellate Judge after hearing, allowed the appeal, reversed the finding of the trial Court, set aside the decree passed by the trial Court and decreed the suit as prayed for without costs granting the relief of declaration, mandatory injunction for the removal of the construction and direction to handover vacant possession after removal of the superstructure. One month time was granted for compliance with the direction granting the relief of mandatory injunction for the removal of the superstructure and to handover vacant possession after such removal. The said decree of the lower appellate Court is challenged in the second appeal.

7. The second appeal was originally filed by the fourth defendant and the legal heirs of third defendant who figured as appellants 1 to 3. Since the suit property was purchased by the 4th appellant after the filing of the second appeal, on a miscellaneous petition bearing M.P. No. 2 of 2010, she was impleaded as appellant No. 4. The second appeal was admitted on the following substantial questions of law;

1) Whether the lower appellate Court erred in decreeing the suit when the defendants had prove their title and possession over the suit property by adducing documentary evidence?

2) Whether the lower appellate Court is correct in law in concluding that Exhibit B-35 sale deed is not valid since minor's property was sold without obtaining permission of the Court, especially when the said minor had not challenged the document within three years on attaining majority?

3) Whether the decree granted by the lower appellate Court could be sustained in view of the lack of pecuniary jurisdiction of the trial Court to entertain the suit?

4) Whether the lower appellate Court is correct in law in concluding that the deceased plaintiff Ayyanna Thevar had right over the suit property, especially when Exhibit A-4 does not relate to the suit property and Unnamalai Ammal had not exercised any right over the suit property.

8. The arguments advanced by Mr. P. Valliappan, learned counsel for the appellants and by Mr. D. Rajagopal learned counsel for the respondents were heard. The materials produced in the form of typed-set of papers were also perused. This Court paid its anxious consideration to the same.

9. A simple case has been projected as a complicated one by the lack of understanding on the part of the parties and also the Courts below, especially the lower appellate Court. It is an admitted fact that the entire extent of 3.14 acres comprised in old S. No. 279 of Ramanathapuram Village, Coimbatore originally belonged to one Arunachala Thevar, who purchased it under a sale deed dated

17.4.1905 registered as Document No. 550 of 1905 on the file of the Registrar Office, Coimbatore. There is no dispute regarding the southern half of the said property having an extent of 1.57 acres and the same is also not the subject matter of the suit. The northern half of the said survey number extending 1.57 acres as such also is not the suit property. According to the plaint averments, the northern half of the suit survey number was again divided into two halves, one on the north and one on the south, each one extending 78 = cents and the plaintiff claims declaration of title and other reliefs in respect of the northern half of the said 1.57 acres. The northern most portion having an extent of 78 = cents alone has been shown to be the suit property, in respect of which declaration of title and mandatory injunction and recovery of possession have been prayed for by the plaintiffs. The plaintiffs claimed title to the suit property based on a gift settlement deed dated 18.9.1910 executed by the above said Arunachala Thevar registered as Document No. 1732 of 2012 in favour of his daughters Kuppayammal and Unnamulaiammal. The original plaintiff Ayyanna Thevar had traced his title to the said Kuppayammal and Unnamulaiammal. On the other hand, the contesting defendants traced their title to the suit property based on a sale deed dated 29.4.1912 executed by the above said Arunachala Thevar and his wife in favour of Kandasamy Thevar, the father-in-law of the first defendant. According to them, after such purchase, Kandasamy Thevar was in possession and enjoyment of the entire extent of 1.57 acres forming the northern half of the suit survey field and after his death, his son Venkatachala Thevar got the same. The said Venkatachala Thevar, during his life time sold 91 cents out of 1.57 acres and the balance 66 cents was left by him to be succeeded to by his wife and sons, namely the defendants 1 to 3 as his legal heirs. It is pertinent to note that both, the plaintiffs' side and the defendants' side, projected their claim based on title. It is not the case of the contesting defendants that they had perfected title to the suit property by adverse possession. The plaintiffs claim title by virtue of a gift settlement deed executed by Arunachala Thevar dated 18.9.1910 registered as Document No. 1732 of 1910 in favour of his daughters Kuppayammal and Unnamulaiammal, whereas the contesting defendants claim title to the very same suit property on the basis of a sale deed dated 29.4.1912 bearing Document No. 1471 of 1912 executed by the very same Arunachala Thevar in favour of one Kandasamy Thevar, the father-in-law of the first defendant/the paternal grandfather of the defendants 2 and 3.

10. When rival claims are made by two parties based on documents, the Court has to consider which one of the documents are true and even if both the documents are true, whether any one of the document was not given effect to or superseded by a subsequent document. In this case, the claim of the plaintiffs is based on the gift settlement deed dated 18.9.1910. A certified copy of the gift settlement deed dated 18.9.1910 executed by Arunachala Thevar in favour of his daughters Kuppayammal and Unnamulaiammal bearing document No. 1732 of 1910 has been produced as Exhibit A-3. The claim of the plaintiffs is based on the said gift settlement deed. The

contesting defendants claim title in respect of the suit properly by virtue of a sale deed dated 29.4.1912 bearing Document No. 1471 of 3 912, certified copies of which have been marked as Exhibits A-9 and B-1.

11. As pointed out supra, the entire extent of 3.14 acres comprised in S. No. 279 had been purchased by Arunachala Thevar, Son of Sonai Nanja Thevar under a sale deed dated 18.4.1905, a certified copy of which has been marked as Exhibit A-1. Out of the entire extent of 3.14 acres, an extent of 78 = cents forming the northern most part was given as gift by the said Arunachala Thevar to his daughters Kuppayammal and Unnamulaiammal under the original of Exhibit A-3. Similarly, 78 = cents which lies immediately on the south of the property settled on Kuppayammal and Unnamulaiammal under the original of Exhibit A-3 was gifted by the said Arunachala Thevar to his other daughter Lakshmi Ammal under the original of Exhibit A-2. The suit is not concerned with 1.57 acres forming the southern half of the suit survey number. The property which was the subject matter of the original of Exhibit A-2 gifted to Lakshmi Ammal by Arunachala Thevar is also not the suit property. Only the property which was the subject matter of the gift under the original of Exhibit A-3 is shown to be the suit property. However, the contesting defendants claim that an extent of 1.57 acres forming the entire northern half of the suit survey field was purchased by Kandasamy Thevar, the father-in-law of the first defendant/paternal grandfather of the defendants 2 and 3 under a sale deed dated 29.4.1912.

12. It is the contention of the plaintiffs that since the suit property had already been gifted to Kuppayammal and Unnamulaiammal under the original of Exhibit A-3 on 18.9.1910 itself and possession was also taken by those donees, thereafter the donor Arunachala Thevar did not have any right or power in respect of the said property to convey a valid title to Kandaswamy Thevar, the purchaser under the original of Exhibits A-9 and B-1. The learned lower appellate Judge seems to have proceeded on the assumption that the contesting defendants disputed the genuineness of the gift settlement deed relied on by the plaintiffs, a copy of which has been produced as Exhibit A-3. The same has led to the finding of the lower appellate Court that the said document being an ancient document should be presumed to be genuine. At the cost of repetition, it is pointed out that it is not the case of the contesting defendants that the gift settlement deed dated 18.9.1910 was not genuine and on the other hand, they simply contended that their predecessor in title, namely Kandaswamy Thevar derived the title under the sale deeds dated 29.4.1912. During the course of evidence, an attempt was made on behalf of the defendants to contend that the gift settlement deeds dated 18.9.1910, certified copies of which have been marked as Exhibits A-2 and A-3 were not acted upon and possession was not given to the donees under the said documents. The said attempt was made to show that they were sham and nominal documents. The learned trial Judge seems to have accepted the contention of the defendants that those gift settlement deeds were not acted upon and hence, the donees under the said documents did not derive valid title. But, it must be seen that except the ipse

dixit of D.W. 1, who is none other than the third defendant, there is no other evidence to show that the gift settlement deeds dated 18.9.1910, certified copies of which have been marked as Exhibits A-2 and A-3, were sham and nominal documents and they were not acted upon. Though he would have stated that the settlement deeds were executed as sham and nominal deeds, he pleaded absence of personal knowledge regarding the same. However, he has stated that without referring to the settlement deeds and disregarding the settlement deeds, sale was effected in favour of Kandaswamy Thevar under the sale deed dated 29.4.1912 and that, on the basis of the said document, the purchaser and thereafter, his son and after him the defendants 1 to 3 were in possession and enjoyment of the same.

13. Of course, it is true that there is lack of evidence, perhaps due to ignorance regarding existence of a vital document. The defendants had taken a simple stand that they were the owners of the suit property by virtue of the registered sale deed dated 29.4.1912, without detailing how Kandaswamy Thevar got a valid title under the said sale deed in the light of the fact that the suit property had been gifted to Kuppayammal and Unnamulaiammal under the original of Exhibit A-3 two years prior to the sale. But, during the pendency of the appeal before the lower appellate Court, the contesting defendants came forward with an application under Order 41 Rule 27 C.P.C. in I.A. No. 115 of 2008 for reception of a sale deed dated 9.12.1910 under which 1.57 acres forming the northern half of the suit survey field (S. No. 279) which had been gifted by Arunachala Thevar to his daughters Kuppayammal, Unnamulaiammal and Lakshmiammal under the originals of Exhibits A-2 and A-3 had been again purchased by the said Arunachala Thevar from the donees under Exhibits A-2 and A-3 as additional documentary evidence. The lower appellate Court after hearing, allowed the application and by consent, the said sale deed and encumbrance certificate showing the existence of such document were produced and marked as Exhibits P-35 and P-36 respectively. Exhibit P-35 is the original sale deed. The said sale deed was executed by Kuppayammal and Lakshmiammal and by Arunachala Thevar as guardian of Unnamulaiammal in favour of the above said Arunachala Thevar himself. The said document refers to the Sridhana gift settlement deeds dated 18.9.1910 as the document under which the donees were entitled to the property. Such property was sought to be sold under Exhibit P-35 registered sale deed dated 9.12.1910. The same had been registered as D. No. 2372 of 1910 on the file of Sub-Registrar, East Coimbatore.

14. The genuineness of the said document is not in dispute. On the other hand, a contention was made before the lower appellate Court that since Unnamulaiammal was a minor and the sale deed had been executed by Arunachala Thevar himself as guardian of Unnamulaiammal without obtaining prior permission from the Court; the same would not be a valid one and would not be binding on Unnamulaiammal. The said contention was accepted by the lower appellate Court and the lower appellate Court held that Exhibit B-35 was not a valid document; that under Exhibit B-35 no valid title as against Unnamulaiammal had been derived by Arunachala



Thevar and that hence, the said document was ineffective in law and null and void against Unnamulaiammal. The said view expressed by the learned lower appellate Judge is not in consonance with the recognized principle of law. Any alienation by a natural guardian is not void but is only voidable at the option of the minor. The same position has been restated in Section 11 of the Hindu Minority and Guardianship Act, 1956. Section 11 provides an embargo on the power of the natural guardian to alienate the property of the minor without getting prior permission of the Court. Sub-section 2 makes it clear that any contravention of Clauses (a) and (b) of Section 1 will not be void, but shall be voidable at the option of the minor or anybody claiming through such minor. The same should have been avoided within the period of limitation. Limitation for filing a suit for cancellation of such a document is three years from the date of attainment of majority by such minor. In this case, though Exhibit B-35 sale deed came to be executed by Arunachala Thevar on behalf of Unnamulaiammal as her guardian, no steps were taken to cancel the sale within three years after the date of her attaining majority. Thereafter, the transfer effected under the sale deed became unassailable. A minor, on whose behalf a sale deed is executed, should take steps for the cancellation of the sale or for getting a declaration that the sale is not binding on such minor, within three years from the date of such minor attaining majority. If it is not done, then the sale becomes thereafter unassailable.

15. In the present case, admittedly no steps were taken either by Unnamulaiammal within three years on her attaining majority or anybody on her behalf during her minority. No one claiming through Unnamulaiammal had taken steps to avoid the sale within three years after her attaining majority. As such, the transfer of title effected under Exhibit B-35 became unassailable even by Unnamulaiammal after the lapse of three years from the date of her attaining majority. It should also be noted that the other two daughters of Arunachala Thevar, namely Kuppayammal and Lakshmiammal were majors on the date of Exhibit B-35 and they signed the document as parties. The plaintiff is the daughter's son of Kuppayammal. Therefore, the alienation made under Exhibit B-35 cannot be challenged by the plaintiff and the same shall be binding upon him.

16. On what basis the original plaintiff Ayyanna Thevar claimed derivation of title to the suit property so far as the share of Unnamulaiammal is concerned, is not made so much clear in the pleadings of the plaintiff. The plaintiff would say that Unnamulaiammal had conveyed her interest in her house property to the plaintiff and the plaintiff was also treated as the only heir of Unnamulaiammal since Nalappa and Thiruppathi, the two sons of Unnamulaiammal, had died long back without issues. When did Nalappa and Thiruppathi, the sons of Unnamulaiammal, die has not been clarified. If it was so, how the plaintiff alone became entitled to the property of Unnamulaiammal also has not been clarified. It is not the case of the plaintiffs that Unnamulaiammal had left any Will by which he was made the sole legal heir. Exhibit B-35 is dated 9.12.1910. Her age on that date was noted as 12

years. Damodharan, the 8th plaintiff while deposing as P.W. 1, has stated that Unnamulaiammal died on 15.8.1950. Long after her attaining majority she died. Till her death, she did not take steps to get Exhibit B-35 cancelled so far as her property is concerned. This vital aspect was not considered by the lower appellate Court which resulted in the erroneous and perverse finding of the lower appellate Court holding that the sale made under Exhibit B-35 was not a valid sale. The non-mentioning of Exhibit B-35 sale deed in the sale deed dated 29.4.1912, certified copies of which have been marked as Exhibits A-9 and B-1, the absence of necessity to get a sale deed by Kandasamy Thevar also in respect of the property which had been already gifted to his wife Lakshmi Ammal, the fact that another property was sold by Unnamulaiammal to the plaintiff Ayyanna Thevar under a sale deed dated 4.7.1947, a copy of which has been marked as Exhibit A-4 and the failure to make necessary pleadings in the written statement and the proof affidavit of D.W. 1 regarding the existence of Exhibit B-35 sale deed, were the reasons cited by the learned appellate Judge for holding that the sale under Exhibit B-35 was not valid. The said approach made by the learned appellate Judge is patently erroneous.

17. Of course, a party shall not be allowed to take the opponent by surprise by producing evidence regarding a fact without making a plea. In this case, the appellants are not the plaintiffs. The plaintiff who has come forward with the suit should either succeed or fail based on the strength of his own case and cannot take advantage of the weakness of the defence case. The suit was filed based on the alleged title derived under the original of Exhibit A-3 settlement deed. The defendants relied on Exhibit A-9/Exhibit B-1 sale deed dated 29.4.1912, as the document under which their predecessor in title derived title. Of course, the executor of both the documents was one and the same person. Defendants simply pleaded ignorance regarding the settlement deed Exhibit A-3. They took a firm stand that by virtue of Exhibit A-9/B-1 sale deed dated 29.4.1912 they were entitled to the suit property. Only in order to show how the vendor under Exhibit B-1 became entitled to the suit property, the sale deed marked as Exhibit B-35 was produced. It is obvious from the evidence and facts of the case that the defendants were not aware of the existence of Exhibit B-35 at the time of filing the written statement and at the time of leading evidence before the trial Court. Only during the pendency of the appeal, they came to know that such a document was in existence and Exhibit B-36 encumbrance certificate was also obtained to show the existence of Exhibit B-35. The defendants had taken a definite plea that the vendor under Exhibit B-1 had got title to the suit property and by virtue of the sale made under the original of Exhibit B-1, Kandasamy Thevar became entitled to the suit property. Only in order to show that the gift settlement deeds made under the originals of Exhibits A2 and A3 were not intended to be acted upon and that was the reason why a sale deed under Exhibit B-35 came to be executed by the donees in the very same year in favour of the donor, Exhibits B-35 and B-36 have been produced. From the same, two inferences are possible 1) The settlement deeds, namely the originals of Exhibits

A-2 and A-3 were not intended to be acted upon and that is the reason why a sale deed was obtained in the very same year from the donees under the said deeds in favour of the donor; and 2) though the gift settlement was acted upon, the donees under the gift settlement deeds have reconveyed the property in favour of the donor by way of an absolute sale under Exhibit B-35. In either case, there cannot be any doubt regarding the view that Arunachala Thevar got a valid title to the suit property under Exhibit B-35 which he sold in turn to his son-in-law Kandasamy Thevar under the original of Exhibits A-9 and B-1. The finding recorded by the lower appellate Court that the sale under Exhibit B-35 was not valid deserves to be interfered with.

18. The mere absence of reference to Exhibit B-35 in the original of Exhibits A-9 and B-1 will not make the transfer made under Exhibit B-35 invalid. The learned lower appellate Judge has also unnecessarily referred to the absence of necessity to get a sale deed in favour of Kandaswamy Thevar, when part of the property had already been owned by Lakshmiammal, wife of Kandaswamy Thevar. Suppose the sale deed was obtained in favour of Lakshmiammal, it could be validly stated that there was no necessity to get a sale deed in her favour since she had already got the property by way of settlement under Exhibit A-2. But it was Kandaswamy, the husband of Lakshmiammal, who purchased the property from Arunachala Thevar under Exhibit A-9/B-1. That will presuppose that the title derived by Lakshmiammal under the original of Exhibit A-2 had come to an end and the vendor under Exhibit B-35, namely Arunachala Thevar had regained title. As such, the observation made by the learned appellate Judge is nothing but an attempt to put the cart before the horse. Hence, the reasoning assigned by the lower appellate Judge is also bound to be discountenanced.

19. The learned lower appellate Judge referred to the sale under Exhibit A-4 and asked a question "How Unnamulaiammal could have sold a property under Exhibit A-4, if at all a sale had taken place under Exhibit B-35? as the third reason for holding that the sale under Exhibit B-35 was not valid. Exhibit A-4 is a xerox copy of a sale deed dated 4.7.1947. Ayyanna Thevar claimed that he purchased house property under the sale deed from Unnamulaiammal. Even assuming that the original plaintiff was the purchaser under the said document, there is nothing to show that the property conveyed under Exhibit A-4 was part of the suit property or part of the property which Unnamulaiammal and Kuppayammal got as sridhana settlement under Exhibit A-3. It is also not the case of the plaintiff that the property purchased by him under Exhibit A-4 forms part of the suit property which Unnamulaiammal and Kuppayammal got by way of a Sridhana settlement under the original of Exhibit A-3. Therefore, it is quite obvious that the property dealt with under Exhibit A-4 is a different property and it has nothing to do with the suit property.

20. In this regard, the defendants have taken a clear stand that the entire property comprised in S. No. 279 extending 3.14 acres was owned by Arunachala Thevar having purchased the same under a sale deed dated 17.4.1905 bearing Document No. 550 of 1905; that 1.57 acres of the said land forming the northern half was sold by the said Arunachala Thevar in favour of Kandaswamy Thevar, the father-in-law of the first defendant/paternal grandfather of the defendants 2 and 3 under Exhibit A-9 and Exhibit B-1 deed dated 29.4.1912; that subsequently Venkatachala Thevar, the son of Kandaswamy Thevar sold 91 cents out of 1.57 acres purchased by Kandaswamy Thevar and that in the balance 66 cents, the defendants 1 to 3 have constructed a kalayana Mandapam and the construction was completed in 1993. The defendants have come forward with a clear case that they claim title by virtue of Exhibit A-9/B-1 sale deed dated 29.4.1912 and they have also produced documents to show that mutation had been made in the revenue records and that all along the property was held and enjoyed by the Kandaswamy Thevar and after him, by the defendants 1 to 3. When their claim of title was challenged and sought to be defeated based on the contention that the settlement deeds dated 18.9.1910, copies of which have been marked as Exhibits A-2 and A-3, were prior in point of time and hence, no valid title could have been conveyed by Arunachala Thevar, the defendants without taking a plea of adverse possession, have chosen to produce Exhibits P-35 and P-36 to show that the vendor of Kandaswamy had got a valid title to be conveyed to Kandaswamy Thevar under Exhibit B-1/A-9.

21. Of course, it is true that out of three vendors under Exhibit B-35, Unnamulaiammal was a minor and on her behalf the sale deed was signed by Arunachala Thevar, the purchaser himself. The said sale, as pointed out supra, so far as the share of Unnamulaiammal was concerned, was only a voidable transaction and Unnamulaiammal has not taken steps to avoid it within three years from the date of her attaining majority. Exhibit B-1 sale took place on 29.4.1912. At that point of time, she was aged about 12 years. So within 6 more years i.e., in 1918 she would have attained majority. She had three more years to avoid the transaction. She did keep quiet even thereafter. No steps were taken by her for the cancellation of the sale under Exhibit B-35. Till the filing of the present suit, no steps were taken for cancellation of the said sale deed so far as the share of Unnamulaiammal is concerned. As such the transaction which was voidable became absolute by the end of 1919. Thereafter, it became unassailable. Without properly considering the same, the learned appellate Judge has erroneously proceeded to hold that sale under Exhibit B-35 was invalid and void. Therefore, this Court holds that second substantial question of law is to be answered in favour of the appellants and answers accordingly.

22. The contesting defendants have also proved their title and possession of the suit property by adducing sufficient oral and documentary evidence. In fact, the possession of the suit property by the contesting defendants is admitted by the plaintiffs. That is the reason why the suit has been filed for declaration, mandatory

injunction for the removal of the superstructure and for possession. The defendants have also produced Exhibits B-2 and B-3, certified copies of the sale deeds dated 25.6.1916 and 5.1.1971 to show that the remaining extent of 1.57 acres was also purchased by Kandaswamy Thevar from Arunachala Thevar and Nallappa Thevar and his wives Kuppayammal and Thangammal. By producing Exhibits B-1 to B-3, the defendants have proved that the entire extent of 3.14 acres comprised in S. No. 279 had been purchased by Kandaswamy Thevar. After the death of Kandaswamy Thevar, patta had been issued in the name of his son Venkatachala Thevar, which is evidenced by Exhibit B-7 and the kist receipts evidencing payment of Kist for the said property have been produced as Exhibits B-4 and B-5. The defendants have also produced Exhibit B-6 mortgage deed to show that the said Venkatachala Thevar obtained loan by mortgaging the property with Pelamedu Agricultural Co-operative Bank. It has also been proved by the defendants by various documents produced as Exhibits B-9 to B-14 that a part of the property comprised in the said survey number has been laid out into house-sites and sold to various persons and the areas earmarked for roads have been gifted to the local body. Exhibits B15 to B26 have been produced to show that after obtaining due permission from the local body, the construction of Kalyana Mandapam was started in 1988 and completed in 1993. There are also other documents to show that mutation of name has been made in the name of Venkatachala Thevar in respect of the suit property. Especially Exhibit B-31 was produced to show that for the entire 3.14 acre comprised in S. No. 279 patta had been issued in the name of Venkatachala Thevar and that Adangal entries had been made in his name. All those documents clearly establish that the suit property has been in possession and enjoyment of the defendants. Hence, the lower appellate Court has committed an error in decreeing the suit disregarding such documentary proof produced by the contesting defendants to prove their title and possession over the suit property. Accordingly, the first substantial question of law is also decided in favour of the appellants.

23. A question of pecuniary jurisdiction was also raised by the defendants contending that the value of the Kalayana Mandapam had not been taken into account in valuing the reliefs and that hence, the trial Court did not have the pecuniary jurisdiction to entertain the suit. This is nothing but a technical plea. The plaintiffs filed the suit on the ground that the property was a vacant land and the same had been encroached upon by the first defendant. Hence, as per the revenue classification as Nanja land, the land was valued for the reliefs of declaration and recovery of possession. So far as the mandatory injunction is concerned, the plaintiffs did not claim any right in respect of the superstructure and therefore, the adoption of notional value cannot be found fault with. If such an approach is made, it can't be said that the valuation made by the plaintiff was not correct and the trial Court did not have the pecuniary jurisdiction to entertain the suit. Accordingly, this Court holds that the trial Court had the pecuniary jurisdiction to entertain the suit and the suit could not have been dismissed on the ground of absence of pecuniary

jurisdiction. The third substantial question of law is answered accordingly.

24. As pointed out while discussing 2nd Substantial Question of law, Exhibit A-4 does not relate to the suit property. The original plaintiff himself has not claimed that any portion of the suit property was purchased by him from Unnamulaiammal. On the other hand, he had stated that another property (house property) had been purchased by him from Unnamulaiammal and such a property was not the subject matter of the suit. When such is the case, the learned lower appellate Judge mistook the transfer made under Exhibit A-4 to be a transfer made in respect of the suit property or otherwise in respect of the property covered under Exhibit A-3 and arrived at an erroneous conclusion that the original plaintiff Ayyanna Thevar had valid title and right over the suit property. The said finding is not only erroneous but also perverse. The said finding is liable to be set aside. The 4th substantial question of law is answered accordingly in favour of the appellants.

25. Though this Court has held that the suit was well within the pecuniary jurisdiction of the trial Court in view of the fact that the 1st, 2nd and 4th substantial questions have been answered in favour of the appellants, the second appeal is bound to succeed, with the result that the decree passed by the lower appellate Court shall be set aside and the decree of the trial Court dismissing the suit shall be restored. In the result, the second appeal is allowed and the decree of the lower appellate Court, namely II Additional Subordinate Judge's Court at Coimbatore dated 9.4.2008 made in A.S. No. 54 of 2007 is set aside. The decree of the trial Court, namely the Court of III Additional District Munsif, Coimbatore dismissing the suit in O.S. No. 3654 of 1996 dated 7.3.2007, is restored. The cost of the appellants in this Court and the Courts below shall be paid by the contesting respondents, namely Respondents 1 to 9.