

# J. Ganapatha vs M/S. N. Selvarajalou Chetty Trust on 25 March, 2025

**Author: Pankaj Mithal**

**Bench: Pankaj Mithal**

2025 INSC 395

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S) . OF 2025  
(@ S.L.P.(C) No(s) . 827 OF 2017)

J. GANAPATHA AND OTHERS

... APPE

VERSUS

M/S. N. SELVARAJALOU CHETTY TRUST  
REP. BY ITS TRUSTEES AND OTHERS

... RESPON

JUDGMENT

S.V.N. BHATTI, J.

1. Leave granted.

2. The Civil Appeal arises from the confirming judgment and the decree dated 08.09.2016 in O.S.A. No. 230 of 2007 of the High Court of Judicature at Madras. The Civil Appeal is at the instance of Defendant Nos. 3 to 6 in C.S. No. 504 of 1998 on the file of the High Court of Judicature at Madras. For convenience, we refer to the parties as arrayed in C.S. No. 504 of 1998.

3. The following circumstances are chronologically noted to appreciate the challenge to the impugned judgments and the decrees:

1929 One Somasundaram Chettiar purchased an extent of 0.75 cents (hereinafter referred to as 'the Plaint Schedule') through a registered sale deed.

Padmini Chandrasekaran D/o late N. Selvarajalou Chetty. Somasundaram Chettiar is the brother in law of the late N. 1952 For resolving the right and title to the property left behind by her father, Padmini Chandrasekaran filed C.S. No. 329 of 1952 on the Original Side of the High Court of Judicature at Madras against N. Somasundaram and another. The original suit was decreed, resulting in the filing of O.S.A. Nos. 49 of 1960 and 60 of 1959 by both the parties to the suit.

Somasundaram offered security of immovable properties, including the Plaintiff Schedule, to realise the decree passed in favour of Padmini Chandrasekaran.

1962 Padmini Chandrasekaran filed C.M.P. No. 4210 of 1962 to sell properties offered as security by Somasundaram Chettiar.

04.05.1962 The court auction sale of the properties offered as security was held, and Padmini Chandrasekaran became the auction purchaser.

30.05.1962 Somasundaram Chettiar, adoptive father of the first defendant, executed the will in Defendant No. 1's favour. 14.06.1962 Somasundaram Chettiar died.

25.09.1963 The Advocate Commissioner executed the sale deed (Exhibit pursuant to the court sale order dated 04.05.1962 in P8) favour of Padmini Chandrasekaran regarding the Plaintiff Schedule.

11.12.1963 O.S.A. Nos. 49 of 1960 and 60 of 1959 were decided, confirming Padmini Chandrasekaran's right and entitlement to her father's (N. Selvarajalou Chetty) business, jewellery and insurance policies.

30.03.1966 The Will of Somasundaram Chettiar was probated. 11.12.1972 Padmini Chandrasekaran created and executed a deed of trust for M/s. N. Selvarajalou Chetty Trust ('the Trust'). 30.09.1975 Padmini Chandrasekaran executed the will and testament concerning the movable and immovable properties held by her ('the Will').

Through the said Will, Padmini Chandrasekaran bequeathed the properties to the Trust and a few individuals. The relevant clause for the purpose of the present Civil Appeal reads thus:

"I bequeath to Sri Vinayagamurthy, son of Natesan Chettiar, residing at No. 122, P.V. Koil Street, Royapuram, Madras, land in survey No. 170/2, 0.75 cents out of 5 Acres, 15 cents. As he has got children. I went my Executors to sell the said property viz. 75 cents and deposit the sale proceeds into a long terms Fixed Deposit and to pay interest alone to Vinayagamurti and after his life time, the Fixed Deposit, the Principal amount shall be taken by his children in equal share." 07.06.1980 Padmini Chandrasekaran died.

24.02.1992 V Arumuga Chandran/Defendant No.2, in his stated capacity as Power of Agent of S. Sarvothaman/Defendant No.1, executed sale deeds in favour of Defendant Nos. 3 to 28.10.1995 The Will dated 30.09.1975 was probated in O.P. No. 117 of 1981.

12.03.1998 C.S. No. 504 of 1998 was filed by M/s N. Selvarajalou Chetty Trust represented by its Trustees (1) Mr. H.B.N. Chetty, I.A.S.(Retd.), (2) Shri N.C. Raghavachari and (3) Shri R. Krishnamoorthy against (1) S. Sarvothaman, (2) V. Arumuga Chandran, (3) Ganapatha, (4) Marsilal, (5) Davichand, (6) Hari Singh and (7) M. Ramachandran.

4. The plaintiff prays – i. For a declaration that the four sale deeds dated 24.02.1992 executed by the second defendant in favour of Defendant Nos. 3 to 6 relating to the Plaintiff Schedule are void in law and cannot confer any rights on Defendant Nos. 3 to 6.

ii. For possession of the Plaintiff Schedule.

iii. For permanent injunction restraining the defendants not to deal with the Plaintiff Schedule in any manner.

5. The parties and the suit property are not new to litigation. The record discloses that the earlier civil suit was filed by the late Padmini Chandrasekaran as early as 1952, and the Plaintiff Schedule was offered as surety for the realisation of the claim of the late Padmini Chandrasekaran.

6. In a nutshell, the case of the plaintiff is that (i) the late Padmini Chandrasekaran, by virtue of the sale order dated 04.05.1962, read with the sale deed dated 25.09.1963, has become the absolute owner; (ii) the acquisition of right and title to the Plaintiff Schedule is through court auction and by the sale deed executed by the Advocate Commissioner; (iii) the court sale order dated 04.05.1962 and the sale deed dated 25.09.1963 have become final; (iv) the Will dated 30.05.1962, executed by the late Somasundaram Chettiar, cannot and could not have bequeathed any right or title to S. Sarvothaman/Defendant No.1 concerning the Plaintiff Schedule; (v) through the Will dated 30.09.1975, the late Padmini Chandrasekaran bequeathed properties to the Trust and a few individuals; (vi) the Trust is represented by the Trustees and is a party to the sale deed (Exhibit-P8), the first defendant cannot convey right or title through Defendant No.2 in favour of Defendant Nos. 3 to 6 for the Plaintiff Schedule; (vii) the cause of action refers to a few publications made in Daily Thanthi, The Hindu, and Indian Express, and perceived interference with the right and title of the plaintiff; (viii) the tenor of the plaintiff claims the right and title to the Plaintiff Schedule through the late Padmini Chandrasekaran in favour of the first plaintiff-Trust.

7. Before the learned Single Judge, as the record would disclose, the first defendant remained *ex parte*, and so was Defendant No.2.

8. Defendant Nos. 3 to 6/purchasers filed the written statement and assert (i) right and title to the property on the narrative that the late Somasundaram Chettiar purchased the Plaintiff Schedule through a registered sale deed No. 323 of 1929; (ii) the late Somasundaram Chettiar, on 30.05.1962, willed the property in favour of his adopted son, i.e., Defendant No.1; (iii) neither the Trust existed, nor the Plaintiff Schedule stood vested in the Trust; (iv) Defendant Nos. 3 to 6 are unaware of the encumbrances and purchase of property in court sale by the late Padmini Chandrasekaran; (v) the late Somasundaram Chettiar is not a party to the court auction sale deed (Exhibit-P8), and the LRs of the late Somasundaram Chettiar were not represented; (vi) therefore, the sale deed dated 25.09.1963 (Exhibit-P8) does not convey the title in favour of the late Padmini Chandrasekaran against the right and title of Defendant No. 1.

9. The first defendant during the pendency of O.S.A. No. 230 of 2007 has filed a Written Statement. Considering the challenge and for more than one valid and legal reason, we deem it unnecessary to

delve into the stand taken by the first defendant.

10. The learned Single Judge tried the following issues in C.S. No. 504 of 1998:

“7. The following issues are framed for consideration:

- (1) Whether Padmini Chandrasekaran has got title to the suit property?
- (2) Whether the 1st defendant had inherited the property in accordance with law?
- (3) Whether the 1st defendant's forefather has got any title to the suit property?
- (4) Whether the Trust is entitled to the property in order to have the relief asked for?
- (5) Whether the plaintiff is entitled to the relief prayed for?”

11. In the detailed Judgment dated 18.09.2006 in C.S. No. 504 of 1998, it was noted that the Trustee, Dr. H.B.N. Shetty, is the arm of the testatrix, i.e., the late Padmini Chandrasekaran, and has a substantial right to deal with the suit property. In the circumstances of the case, such course can be permitted by setting aside the sale deeds dated 24.02.1992 in favour of Defendant Nos. 3 to 6 and give effect to the Will of the testatrix. As an answer to Issue No.2, it has been held that Defendant No.1 does not have the right or title to the Plaintiff Schedule to convey to Defendant Nos. 3 to 6. This finding is crucial to the course adopted by the learned Single Judge in moulding the relief in favour of the executor for the benefit of Vinayagamurthy and his children. The court sale of the Plaintiff Schedule was held on 04.05.1962 in favour of the late Padmini Chandrasekaran. The Advocate Commissioner executed the resultant sale deed on 06.03.1963 in favour of the late Padmini Chandrasekaran. Thus, the right and title to the Plaintiff Schedule through the process of court and law stood transferred and vested with the late Padmini Chandrasekaran. Further, the execution of the sale deed dates back to the sale held on 04.05.1962, and the interregnum events, i.e., execution of the Will dated 30.05.1962 in favour of Defendant No.1 and the demise of Somasundaram on 14.06.1962 will not convey right and title to Defendant No.1 for the Plaintiff Schedule.

12. The learned Single Judge holds that the Plaintiff Schedule being a vacant plot of land, the possession follows the title, and the contention of adverse possession is untenable and does not arise. It is also noted that, in the peculiar circumstances of the case, it is unnecessary to direct Dr. H.B.N. Shetty, Trustee of the Trust, to file another suit for setting aside the sale in favour of Defendant Nos. 3 to 6. The crucial circumstance noted for moulding the relief is that a few executors have passed away, and the surviving executor is fairly aged. Therefore, the reliefs have been moulded as follows:

“56. Plaintiff Trust is not entitled to any decree. But the remedy is moulded for reasons mentioned supra, in passing a decree in favour of Mr. H.B.N.Shetty in his capacity as executor of Will, for

(i) setting aside the sale deeds in favour of defendants 3 to 6 by the 1st defendant relating to the suit property (through the 2nd defendant as Power Agent).

(ii) permanent injunction restraining the defendants 3 to 6 from in any manner dealing with the suit property and permanent injunction restraining the defendants from putting up any construction over the suit property; and for

(iii) a direction to the above executors of Will to execute the terms found in para 10 of Ex.P-3 Will of Mrs. Padmini Chandrasekaran (which was already probated) and as found therein.”

13. Defendant Nos. 3 to 6, aggrieved by the judgement and decree filed O.S.A. No. 230 of 2007 before the Division Bench. The Division Bench, through the impugned Judgment dated 08.09.2016, dismissed the appeals.

14. The gist of the confirming findings of the impugned Judgment is that (i) the suit property was purchased by the late Padmini Chandrasekaran by virtue of a sale deed dated 26.09.1963, and subsequently, executed a will dated 30.09.1975. Thus, Ms. Padmini Chandrasekaran had derived a right, title, and interest of the suit property; (ii) the execution of the Trust resulted in the appointment of Sri. R. Krishnamoorthy and Dr. HBN Shetty as the executors of the Will, and the Will has been duly probated; (iii) as the purchase was a consequence of a court auction sale dated 04.05.1962, Defendant No. 1 had no saleable right over the Plaint Schedule without challenging the court auction sale. The Plaint Schedule was purchased by the late Padmini Chandrasekaran in the court auction through sale deed dated 26.09.1963. Thus, the sale deeds dated 24.02.1992 executed in favour of Defendants Nos. 3 to 6 by Defendant No. 1 through Defendant No. 2 are nothing but void; (iv) since the executors were appointed to administer the late Padmini Chandrasekaran's estate, the Trust does not have any right, title and interest over the suit property. Therefore, it is concluded that the learned Single Judge rightly moulded the relief and granted a decree in favour of Mr. HBN Shetty – one of the executors – for the benefit of Vinayagamurthy and his children. Hence, this Civil Appeal at the instance of Defendant Nos. 1 to 3.

15. Shri R. Basant, learned Senior Counsel appearing for Defendant Nos. 3 to 6, contends that the impugned judgments are wholly illegal and are contrary to well-established principles of law in moulding the relief by a court. The plaintiff in a suit for declaration stands or fails on the case pleaded and proved. The consideration of the right and title of Defendant Nos. 3 to 6, claimed through Defendant No.1, is unnecessary because the first plaintiff failed to derive right and title through Ex. P8. No relief could be granted to the executors of the Will. Defendant Nos. 3 to 6 would certainly reply and contest in a properly instituted suit by the executors of the late Padmini Chandrasekaran. Further, it is argued that the failure to challenge the sale order dated 04.05.1962 and the sale deed dated 25.09.1963 in favour of the late Padmini Chandrasekaran would not materially affect Defendant Nos. 3 to 6 or facilitate moulding the relief by the impugned judgements. Issue No.2 should not have been taken up for consideration, where the relief moulded in favour of the plaintiff is illegal and untenable. Consequently, C.S. No. 504 of 1998 should have been dismissed, leaving the token to the executors of the late Padmini Chandrasekaran to work out the prayers as the arm of the testatrix. Defendant Nos. 3 to 6 are in possession of the property, and

the possession establishes the enjoyment and also the right of the first defendant to the Plaint Schedule. He relied on the principles laid down in *Pasupuleti Venkateswarlu v. Motor and General Traders*<sup>1</sup> and *Shivanna and others v. BS Puttamadaiah*<sup>2</sup> to buttress his arguments on the illegality of the moulded relief.

16. Shri Dama Seshadri Naidu, learned Senior Counsel appearing for the first respondent, contends that the moulding of relief in the peculiar circumstances of the case is available and no exception in law or fact could be taken against the discretion exercised by the learned Single Judge and the Division Bench. It is argued that moulding of relief is available to the Court, 1 (1975) 1 SCC 770 2 (2023) SCC OnLine SC 1969 and Defendant Nos.3 to 6, having been confronted with the court sale order dated 04.05.1962 and sale deed dated 25.09.1963, cannot raise a ground against the moulding of relief. He comments to the court to appreciate the legal character of trust and the role of trustees and executors. In the case on hand, Plaintiff Nos. 2 to 4 are not only Trustees to the Trust but executors to the Will of the late Padmini Chandrasekaran. It is argued that the failure to mould the relief would lead to the defeat of the bequeath made by the late Padmini Chandrasekaran in favour of Vinayagamurthy and his children. Expecting the beneficiaries to institute a suit would be a third suit with respect to the same property. Defendant Nos. 3 to 6, having joined the issue with the plaintiff on the manner of deriving title to the Plaint Schedule, are estopped from raising an objection to the relief in the peculiar facts of the case. He lastly contends that, in the exercise of this Court's jurisdiction under Article 136 of the Constitution of India, this Court examines all aspects and would decide whether the moulding of relief should be interfered with or not.

17. We have taken note of the contentions and perused the record.

18. This Court, for brief and simple consideration, preferred to chronologically set out the major events and circumstances admitted by the parties and the issues on which the learned Single Judge and the Division Bench rendered a decision. Therefore, the circumstances are not once again adverted to in detail.

19. To sum up, we noticed that the late Somasundaram Chettiar offered the properties, including the Plaint Schedule, as surety for the realisation of the amounts decreed in favour of the late Padmini Chandrasekaran. The surety offered by the late Somasundaram Chettiar was put in the execution for the decree in favour of the late Padmini Chandrasekaran. On 04.05.1962, the Plaint Schedule was purchased by the late Padmini Chandrasekaran through court auction. Late Somasundaram Chettiar was alive when the court sale was conducted. Thereafter, he bequeathed the Plaint Schedule in favour of S. Sarvothaman/Defendant No.1. The subtlety is appreciated firstly from the case of the plaintiff, i.e., the court sale order dated 04.05.1962 has become final and a sale deed was executed on 25.09.1963 in favour of the late Padmini Chandrasekaran. As long as the court sale and the sale deed remain intact, Defendant No.1 cannot and could not have claimed any right and title to the Plaint Schedule as an adopted son through the Will dated 30.05.1962, as probated on 30.03.1966. Through legal, valid and binding documents, the Plaint Schedule stood transferred in favour of the late Padmini Chandrasekaran. The findings of the learned Single Judge and the Division Bench are categorical and available in the case's facts and circumstances. The argument for the appellant is that moulding of relief by the impugned judgments is illegal.

20. The concept of moulding of relief refers to the ability of a court to modify or shape a relief sought by a party in a legal proceeding based on the circumstances of the case and the facts established after a full-fledged trial. The principle enables the court to grant appropriate remedies even if the relief requested in the pleading is not exact or could not be considered by the court or changed circumstances have rendered the relief obsolete. The court aims that justice is served while taking into account the evolving nature of a case. The above road map is pursued by a court based on the notion of flexibility in relief, equitable jurisdiction, and is tempered by judicial discretion. When moulding the relief, the court considers the issues and circumstances established during the full-fledged trial, looks at shortening the litigation, and then in its perspective, renders complete justice to the issue at hand. The converse of the above is that the moulded relief should not take the aggrieved party by surprise or cause prejudice. The relief is moulded as an exception and not as a matter of course.

21. The Defendant Nos. 3 to 6 do not question the competence of the court to mould the relief. The argument proceeds on the basis that in the circumstances of the case, moulding the relief in favour of the executors of the Will is illegal.

22. The issues in C.S. No. 504 of 1998 have been set out supra. It is admitted that two of the Trustees and also the executors of the Will of the late Padmini Chandrasekaran died. Late Padmini Chandrasekaran died issueless and desired to provide testamentary succession to the properties held by her in two portions, i.e., one in favour of the Trust and the other in favour of the individuals. The Plaintiff Schedule has been bequeathed in favour of Vinayagamurthy and his children. The executors are Dr. H.B.N. Shetty and Shri R. Krishnamoorthy. One of the executors had died, and Dr. H.B.N. Shetty/Plaintiff No. 2 was fairly aged. It is in this background the learned Single Judge, in the judgment dated 18.09.2006, has given the following reasons:

“49. The subject is very clear that 1st defendant has no title in suit property so as to convey it to defendants 3 to 6 and that is why it was found earlier that the sale in favour of defendants 3 to 6 is liable to be set aside.

50. Simply because H.B. N. Shetty, who happened to be the trustee of the plaintiff trust, filing the suit, is it necessary for him to file another suit in order to get a decree for setting aside the sale of defendants 3 to 6 of suit property and in order to oblige the terms of the Will of the testatrix, who was found as a real owner of the property. In my opinion, especially in the present facts and circumstances of the case, it is unnecessary to make him to go in for another suit, after a lapse of 8 years. After all H.B.N.Shetty, the executor himself is very aged (more than 80 years). As some of the

executors passed away and some resigned and when H.B.N.Shetty himself is very old, it may not be desirable to make him or other executor to file another suit.

51. If the law permits, then the suit can be decreed in favour of H.B.N.Shetty in his different capacity as executor of the Will of Padmini, the real owner.

XXX XXX XXX

54. As mentioned supra, Mr. H.B.N.Shetty sitting in the Arm of Testatrix undoubtedly had a substantial right to deal with suit property which can be done only after setting aside the sale in favour of defendants 3 to 6, which was held supra as invalid one. This finding was arrived only after keen contest between parties. Thus H.B.N.Shetty although filed the suit representing the Trust, when found holding capacity as executor of testatrix to execute a sale deed in order to implement the other terms of the Will, shall have to be clothed with a decree setting aside the sale in favour of defendants 3 to 6.”

23. The Division Bench through the impugned judgment confirmed the findings.

24. In the Civil Appeal, the consideration is not whether relief should be moulded or not, but the consideration would be whether moulding of relief in the circumstances of the case is tenable or warrants interference by this Court. The title and ownership acquired by the late Padmini Chandrasekaran on a full-fledged trial in the second round of litigation in the present proceedings have been accepted by the impugned judgments. The prayer to have the relief of declaration in favour of the Trust through the Trustees was not accepted. The court found that the Trust cannot claim the relief of declaration vis-à-vis the Plaintiff Schedule. The court also found that the testatrix made an independent disposition in favour of Vinayagamurthy and his children in the Plaintiff Schedule. The executor proved the entitlement of the late Padmini Chandrasekaran vis-à-vis the Plaintiff Schedule. Simultaneously, the claim of Defendant Nos. 3 to 6 through Defendant No. 1 is illegal and unsustainable. The findings on Issue No. 2 in the judgement of the learned Single Judge enable the moulding of relief even after answering Issue Nos. 4 and 5 against the first plaintiff. The issues have been agitated by the parties concerned in a full-fledged trial; however, the description of the plaintiff and the narrative in the plaint for claiming right and title to the Plaintiff Schedule is not accepted by the impugned judgements. While giving effect to these findings, in our considered view, the learned Single Judge and the Division Bench have appreciated the effect of finding on Issue No. 2. The objections of Defendant Nos. 3 to 6 that Somasundaram Chettiar died and his LRs were not represented in the sale deed are found to be factually incorrect by the impugned judgements. The non-challenge to the court sale and allowing the sale deed to remain intact would militate against even a strong plea, which could be stated in the next round of litigation. As a result, a fresh round of litigation for the same property, by applying judicious discretion, is avoided. In other words, the impugned judgments have exercised discretion in moulding the relief compatible and commensurate with the circumstances of the case. It is in nobody's interest except Defendant Nos. 3 to 6 to prolong the litigation by leaving it open to the parties to get into another round of litigation. Therefore, the argument of Defendants Nos. 3 to 6 on the moulding of relief by the impugned judgements is an abstract objection. On careful scrutiny of preceding circumstances and the averments established by the parties, we are of the view that no exception is made out and the argument of Defendant Nos. 3 to 6 is accordingly rejected. We are not referring to the precedents on the point since the core consideration in any given case is the setting in which the parties agitate the issues and findings recorded by the court, finally resulting in the moulding of relief. We may hasten to add that the court of first instance, while exercising the discretion to mould the relief, juxtaposes the consideration with the established conditions of the original relief becoming inappropriate or



shortening the litigation and enabling rendering complete justice between the parties. The scrutiny on the moulding of relief by the appellate court tests the exercise of discretion by the trial court, but not in all cases, sit in the very armchair of the court which moulded the relief and re-examine every detail unless prejudice and grave injustice are pointed out against the moulding of relief. In a further appeal on the moulding of relief, the examination by the second appellate court ought to be minimal and not unsettle the settled. In our considered view, the moulding of relief, in this case, is to shorten the litigation and not subject the Plaintiff Schedule to vagaries of certain and uncertain documents. We are in complete agreement with the findings recorded by the impugned judgements.

25. For the above reasons and after careful consideration of the record, we see no error or infirmity warranting our interference under Article 136 of the Constitution of India. The Civil Appeal fails and is accordingly dismissed with costs of Rs. 1,00,000/- (Rupees one lakh only) payable to the Legal Aid Services Authority of the Madras High Court within four weeks from today. Pending applications, if any, shall stand disposed of.

.....J. [PANKAJ MITHAL] .....J. [S.V.N. BHATTI] New Delhi;

March 25, 2025.