



*S.A.No.702 of 2013 and
M.P.No.1 of 2013*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.702 of 2013

and

M.P.No.1 of 2013

1. Duraisamy
- 2.Krishnasamy Gounder (died)
- 3.Palanisamy
- 4.Subramani @ Duraisamy
- 5.Kuppayal
- 6.Palanisamy Gounder (died)
(Memo recorded, A6 died A7 already on record as the legal heir of the deceased A6)
- 7.Subramani @ Thangavel
(LR of A6)
- 8.Chinnasamy Gounder
- 9.Duraisamy
- 10.Appachi Gounder
- 11.Eswaramoorthy (died)
- 12.Sekar (died)



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13.Velusamy

14.Kannammal @ Nachammal

15.Saraswathi

(A2 died, A14 & A15 are brought as LR's of deceased A2, vide Court Order dated 18.08.2022 made in C.M.P.No.13627/2022)

16.Ponnammal

17.E.Venkatachalam

18.E.Thangaraj

(A11 died, A16 to A18 are brought on record as LR's of the deceased A11 vide Court order dated 18.08.2022 made in C.M.P.Nos.13723, 13724 & 13725 of 2022)

19.Pongodi

(A12 died, A19 brought on record as LR's of the deceased A12 vide Court Order dated 18.08.2022 made in C.M.P.Nos.13363, 13366 & 13367 of 2022)

... Appellants

Vs.

1.V.Krishnasamy (died)

2.The Government of Tamil Nadu

Rep. by District Collector

Erode District, Erode

Having office at Collectorate Buildings

Perundurai Road, Erode-11

3.The District Revenue Officer

Erode District

Having Office at Collectorate Buildings

Perundurai Road, Erode-11



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4.The Revenue Divisional Officer
Having Officer at Brough Road
Erode District
Erode.

5.The Tahsildar
Perundurai
Erode District.

6.Subramani @ Karuppusamy

7.Saravanan
(R1 died, RR7 & 8 are brought on record as legal heirs of the deceased
R1 vide Court order dated 18.08.2022 made in C.M.P.Nos.13411, 13413
& 13414 of 2022)

... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and decree dated 28.06.2010 made in A.S.No.15 of 2009 on the file of the Subordinate Judge Perundurai, reversing the finding of the judgment an decree dated 26.11.2008 made in O.S.No.528 of 2004 on the file of the District Munsif Court, Perundurai.

For Appellants : Mr.Ramaraj for Mr.Guruprasad

For Respondents

R1 : Died (Steps taken)

R2 to R5 : Mr.B.Tamil Nidhi
Additional Government Pleader

R6 to R8 : No appearance

JUDGMENT

The present appeal arises against the judgment and decree of the
Court of the Subordinate Judge at Perundurai in A.S.Nos.15 and 18 of



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2009. A.S.No.15 of 2009 arose out of the judgment and decree in O.S.No.528 of 2004. O.S.No.528 of 2004 is the suit filed by the appellants herein. A.S.No.18 of 2009 arose out of O.S.No.26 of 2004.

The relief sought for in the suit are as follows:-

2. It is the plaintiffs' claim that the properties are Grama natham properties. According to them, it was under the occupation of one Arumutha Gounder. He died leaving behind 3 sons (i)Appachi Gounder, (ii)Chinna Gounder and (iii)Periya Gounder. Chinna Gounder died leaving behind his son by name Muthuswamy Gounder. Periya Gounder left behind his wife Pongiammal and his son Arumutha Gounder. Three of them divided the property by way of a registered partition deed on 12.08.1919. This document had been filed as Ex.A1. Under the said document Appachi Gounder son of Arumutha Gounder, Muthuswamy Gounder son of Chinna Gounder and minor Arumutha gounder represented by his mother and natural guardian Pongiammal divided the suit schedule property into 3 schedules. 'A' schedule property was allotted to Appachi Gounder, 'B' schedule property was allotted to Muthuswamy Gounder and 'C' schedule property was allotted to minor



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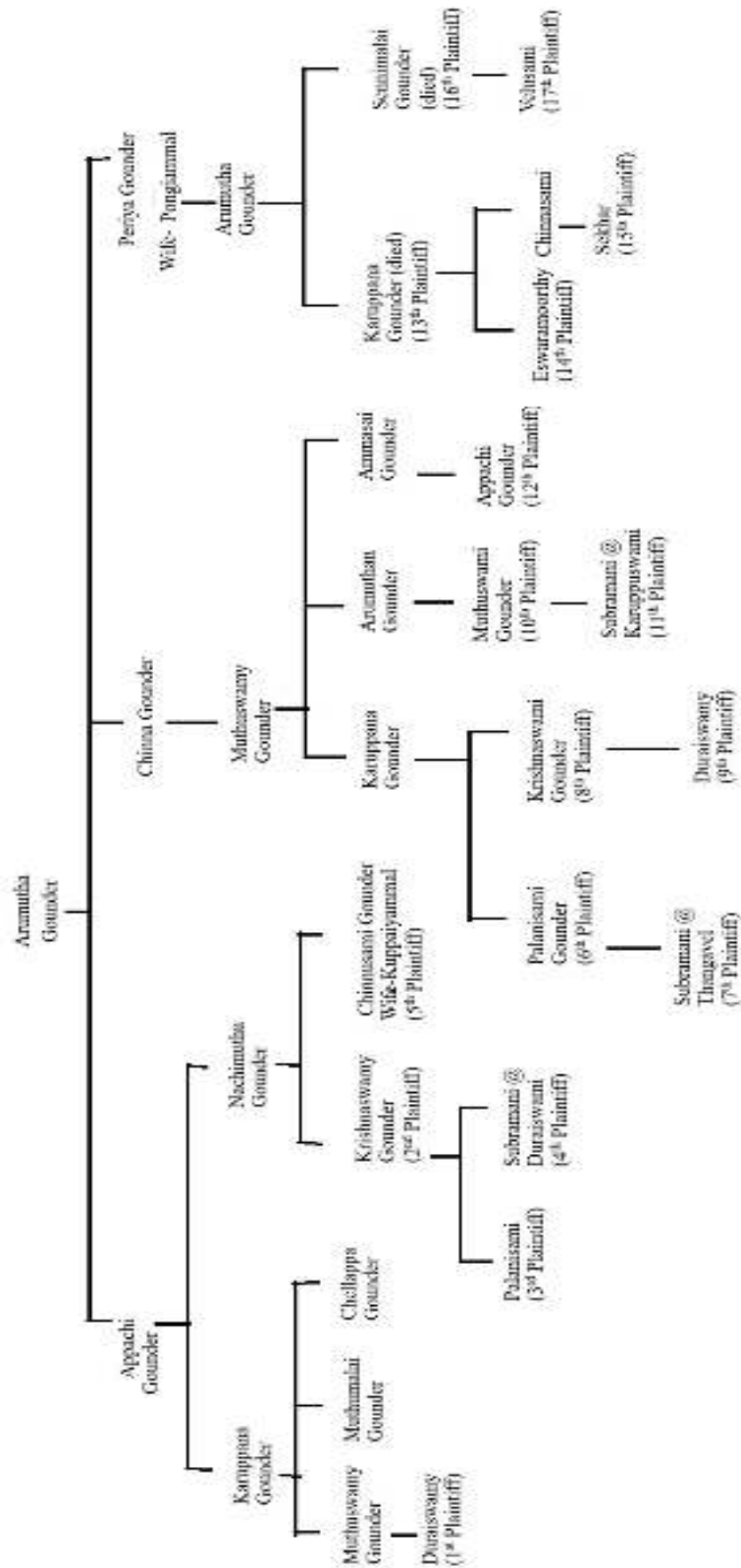
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Arumutha Gounder. 'A' schedule property was to an extent of 15 Anganams, 'B' schedule property was of 5 Anganams and 'C' schedule property was to an extent of 8 Anganams. In all the total extent being 28 Anganams. I have to point out here that 1 Anganams corresponds to 600 sq.ft and 28 Anganams comes to around 6800 sq.ft in all.

3. The 1st, 3rd and 4th plaintiffs are the great grand sons of Appachi Gounder. The 2nd plaintiff is the grand son of Appachi Gounder. The 5th plaintiff is the wife of Chinna Gounder. The second son of Arumutha Gounder, one Chinna Gounder died leaving behind his wife and only son Muthuswamy Gounder. The said Muthuswamy Gounder is also no more. The plaintiffs 6 to 12 are the legal heirs of the said Muthuswamy Gounder. Insofar as the plaintiffs 13 to 17 are concerned, they are the legal heirs of the aforesaid Periya Gounder and Pongiammal. For ready understanding of the case, the genealogy chart is set forth hereunder:



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4. Having divided the property into 3 schedules with specific boundaries in 1919, the descendants of the aforesaid 3 brothers divided the property again by way of a registered partition deed of the year 1932 and by this document 'A' schedule property was allotted to Karuppana Gounder and 'B' schedule property was given to Nachiyappa Gounder. For the next 40 years, there are no documents evidencing anything about the division between family. This is the because, the property is Grama natham. On this aspect more will be discussed in the later part of the judgment. On 15.07.1973, the following persons entered into a partition deed:

- 1) Karuppana Gounder son of Muthuswamy Gounder
- 2) Arumutha Gounder son of Muthuswamy gounder
- 3) Palanisamy Gounder son of Karuppana gounder
- 4) Chinnasami Gounder son of Karuppana Gounder
- 5) Muthuswamy Gounder son of Arumutha Gounder
- 6) Appachi Gounder son of Ammasai Gounder
- 7) Rasaiyal daughter of Ammasai Gounder
- 8) Mariyal daughter of Ammasai Gounder



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5. In this division, yet again properties were divided into 3 schedules. The 'A' schedule was allotted to Karuppana Gounder, Palanisamy and Chinna Gounder. 'B' schedule was allotted to Arumutha Gounder and Muthuswamy Gounder. 'C' schedule property was taken by the legal heirs of the Ammasai Gounder. Being a document prior to the survey, no survey numbers were given in the property. However, they were identifiable by way of the schedule of property given under the document.

6. The family of Muthuswamy Gounder and Chellappa Gounder divided the property under Ex.A4. It is for the first time in this document, the survey number had been given after the settlement proceedings. The survey number of the property is 138. In the division under this partition document, 'A' schedule property was allotted to Muthuswamy Gounder and Semalai Gounder. 'B' schedule property is not subject matter of the suit. 'A' schedule property alone is what they are concerned with and that has been allotted to Muthuswamy gounder and Semalai Gounder. The extent of property under this document is 11 cents. Subsequently, Muthuswamy Gounder, Sennimalai Gounder and



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Karuppana Gounder divided the property by way a partition document in which the 'B' schedule property was allotted to Muthuswamy Gounder.

The total extent involved is 6 cents and 386 sq.ft. Thereafter, on 01.10.1997 Muthuswamy Gounder and his family members namely his son Duraisamy, daughter Pushpathal and Saraswathi entered into the partition deed. In this division, 'B' schedule was allotted to Duraisamy.

7. A perusal of these documents would show that the Grama Natham lands had been continuously in possession and enjoyment of the family of Arumutha Gounder and his descendants from 1919 onwards and had been dealt within the family. The old survey number for the entire extent was 138, which on resurvey corresponds to 161. Pursuant to the natham survey, the property was divided as R.S.No.210/217, 210/19 and 210/20. As the Grama natham lands vest with the first occupier, the plaintiffs, who feared dispossession at the hands of a neighbour, who is the plaintiff in O.S.No.26 of 2004, filed the suit for the aforesaid reliefs.

8. According to them, the properties which were Grama natham



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lands had been classified as poramboke lands during the natham survey.

They further pleaded that, about 10 years before the suit, they had moved away from the property and taking advantage of their absence, the 5th defendant namely V.Krishnasamy attempted to dispossess them. Hence, they came forward with the suit. Prior to presentation of the plaint, they issued a notice under Section 80 of the Code of Civil Procedure and since there was no response from the concerned parties, they brought forth the suit.

9. The State respondents, though were served in the suit, remained *exparte*. The 5th defendant neighbour alone filed written statement. According to him, the classification of the revenue records had taken place long ago and that in view of the enjoyment of the 5th defendant, he became the absolute owner of the property. He would plead that he had filed the suit in O.S.No.26 of 2004 for permanent injunction and the present suit for declaration, mandatory injunction and permanent injunction is a counter blast. He would plead that he is in possession and enjoyment of the property in R.S.No.210/16 and had put up the construction over the same for which Government had also



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granted him patta. He would plead R.S.Nos.210/19 and 210/20 were lying vacant and therefore he has perfected his title for those properties also.

10. The learned trial Judge clubbed O.S.No.528 of 2004 along with O.S.No.26 of 2004 and directed common trial. He framed following issues in O.S.No.528 of 2004:

- “1. Whether the allegation that the plaintiffs have got right in this suit property is true?*
- 2. Whether the allegations of the defendant that the suit property is a government poramboke land and the resurvey proceedings known to the plaintiffs is true?*
- 3. Whether the plaintiffs are entitled for the relief of declaration as prayed for?*
- 4. Whether the plaintiff are entitled for the relief of mandatory injunction?*
- 5. What other relief, the plaintiff are entitled?”*

11. O.S.No.26 of 2004 is with respect to R.S.No.210/16. As this suit is concerned, the learned trial Judge came to the conclusion that it deserves dismissal, insofar as 'B' schedule, which is a subject matter of the suit in O.S.No.528 of 2004 is concerned. He decreed the suit with



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respect to 'A' schedule which is forged in S.No.210/16. The learned trial judge also decreed O.S.No.528 of 2004 as prayed for.

12. Aggrieved by the same, the 5th defendant in O.S.No.528 of 2004 who is the plaintiff in O.S.No.26 of 2004, preferred A.S.No.15 of 2009 and as against the decree in O.S.No.528 of 2004, he preferred A.S.No.18 of 2009.

13. The learned appellate Judge re-appreciated the evidence that had been presented before him and confirmed the judgment and decree in O.S.No.26 of 2004 but allowed the appeal preferred against O.S.No.528 of 2004.

14. No appeal has been preferred against the judgment and decree in A.S.No.18 of 2004 which confirmed the judgment and decree in O.S.26 of 2004 and therefore we need not deal with R.S.No.210/16. Insofar as the dismissal of their suit in O.S.No.528 of 2004, the plaintiffs are the appellants before me .



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15. I heard Mr.Ramaraj, the learned counsel representing Mr.Guruprasad. The private respondent though served did not appear in person or was represented by a counsel. Pending the appeal, Mr.Ramaraj, the learned counsel represented that Mr.V.Krishnasamy is no more therefore, he took out an application to bring on record the legal representatives of Mr.V.Krishnasamy and they were also impleaded as parties in C.M.P.Nos.13411, 13413 & 13414 of 2022 on 18.08.2022. Even after having been impleaded, they did not enter appearance in the appeal. I felt that it is not a case which can be conducted in *exparte* manner in the absence of any of the contesting party. Therefore I requested Mr.Tamil Needhi, the learned Additional Government Pleader to take notice on behalf of the respondents 1 to 4. I also called for the records to satisfy myself about the correctness of the judgment and decree.

16. This Court, did not admit the appeal, but had ordered notice regarding admission on 05.11.2013. Hence, I framed the following questions of law and I heard this appeal.

“a. Whether the appellate Court is right in reversing the well consider judgment of the trial Court in absence of



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any legally acceptable evidence?

b. Whether the first appellate Court is right in coming to an interference beyond the pleadings and evidence of the parties?

c. Whether the appellate Court followed the mandatory procedures postulated under Section 96 and Order 41 Rule 31 of CPC while reversing the well considered judgment of the trial Court?

d. Whether the appellate court is right in concluding that appellants had not proved their possession over the property when the same was established by appellants by way of the documents Exhibits P1 to 6?

e. Whether appellate Court is right in holding that classification of land by the Government from “Natham” to “Government poramboke” is correct when no notice was served on the appellants?

f. Whether appellate court is right in reversing the judgment of the trial court when the contention of the appellants was admitted in view of Section 58 of Evidence Act?”

g. Whether the Grama natham will vest with the Government or with the original occupant?

17. As the questions of law were intertwined, I heard the appeal on these questions. The aspect whether Grama Natham vests with the



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occupier or whether it vests with the Government have been settled very recently by a judgment of Division Bench of this Court in ***R.A.V.Kovil Annayya Charities, Rep. by its Managing Trustee, C.Narasimha Swamy Vs. District Collector, Collectorate Office, Tiruvallur and Others, (2024) 1 MLJ 21.*** A Division Bench had specifically held that the legal position Grama natham vest with the occupier has held the field for over a century and that the mere fact that in the resettlement Register, the Gramanatham lands are described as poramboke, it will not make them as Government property. The Bench had further held that those who are already in occupation of village natham or Grama natham lands become the absolute owners and they are having the right title and interest to dispose of the same. It further held that for the fact that the occupant's name is not reflected in natham adangal, it is not conclusive to prove that the lands belongs to the Government. This position has been prevailing right from the time of ***Palani Ammal Vs. L.Sethurama Aiyangar*** reported in ***AIR 1949 Mad 814*** and the view taken has been confirmed consistently by several Division Benches of this Court .

18. I would respectively apply the view taken by the recent



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Division Bench to the facts of this case. Mr.Tamil Needhi produced the 'A' Register of the village which shows that the property is a Grama Natham. At the same time, it is shown as Poramboke. Mr.Tamil Needhi would point out that it was only during the natham survey that correction was made and not earlier during re-survey in the year 1972 as alleged. According to him, it was not the Government which made a claim over the property but it was V.Krishnaswamy, the neighbour who wanted to take over the properties which are the subject matter of the suit. He would point out that whoever has been in occupation of the property had been granted patta in the year 1993. Krishnaswamy being in possession of the property bearing No.210/16 had been benefited with a patta. Since the plaintiff were not in physical possession of the properties namely R.S.No.210/17, 210/19 & 210/20, they were not granted patta.

19. He would point out that from revenue classification it is shown as poramboke. At the same time, he very fairly points out that insofar as the remarks at the last column of 'A' Register it is shown as “காலி இடம்”. Pending the trial of the suits in O.S.No.26 of 2004 and 528 of 2004, an Advocate Commissioner has been appointed in



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O.S.No.26 of 2004. He had submitted a report in O.S.No.26 of 2004 which was read in this suit as well. The Advocate Commissioner, in its report, had identified the property and had submitted the following report:

“தாவா இடமானது தென்வடல் ரோட்டின் கிழபுறம் உள்ளது. மேற்படி தாவா இடத்தில் வாதியின் வீட்டை "ஏ" என்று குறிப்பிட்டுள்ளேன். வாதியின் வீட்டின் பின்புறமாக காம்பவுண்டு சுவர் அமைந்துள்ளது. அந்த இடத்தில் சுமார் 8 அடி அகலத்தில் கருங்கற்களால் கட்டப்பட்டுள்ளது. வாதியின் வீட்டிற்கு தென்புறமாக புதிதாக கருங்கற்கள் கிடந்தன. அந்த இடத்தை "பி" என்று குறிப்பிட்டள்ளேன். தாவா வரை படத்தில் "சி" என்று குறிப்பிட்டுள்ள அனைத்து இடங்களும் பிரதிவாதிகளுக்கு பாத்தியப்பட்டதா என்று அங்கிருந்த பிரதிவாதிகள் கூறினார்கள். பிரதிவாதிகளுக்குப் பத்தியப்பட்டது என கூறும் இடத்தின் வரை படத்தில் "சி" என்று குறிப்பிட்டுள்ள இடத்தில் ஆடு, மாடுகள், எருமைகள் கட்டப்பட்டிருந்தன. அவ்விடங்கள் அனைத்தும் பழமையான சுவர்கள், அஸ்திவாரம், பழைய காரைகள், தின்னைப்படிகள் இருந்தன. அவ்விடத்தில் ஒரு ஆட்டாங்கல் ஒன்றும் இருந்தது அதை வரை படத்தில் குறிப்பிட்டுள்ளேன். அஸ்திவாரங்கள் தோண்டப்பட்டபோது வாதியின்



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வழக்குரைஞர் ஆட்சேபணை தெரிவிக்கப்பட்டது.

வாதியின் வீட்டின் முன்புறமாக ஒரு பாதீரும் காணப்பட்டது. அதை வரை படத்தில் "டி" என்று குறிப்பிட்டள்ளேன். வாதியின் வீட்டை ஒட்டினாற் போல் சாலை அமைந்துள்ளது. மேற்படி சாலை நான் முதல் முறையாக தாவா இடத்தை பார்வையிடும் போது இல்லை. 2-ம் முறையாக பார்வையிடும் போது மேற்படி சாலை காணப்பட்டது. அதை வரை படத்தில் "எப்" என்று குறிப்பிட்டுள்ளேன். அதே போல் பிரதிவாதிகளுக்குப் பாத்தியப்பட்டது இடம் என கூறும் "சி" என்ற இடத்தில் ஒரு புதிதாக அமைக்கப்பட்ட சாலை இருந்தது. மேற்படி இரண்டாம் முறை தாவா இடத்தை பார்வையிடும் போது இருந்தது. முதல் முறை செல்லும் போது இல்லை. அதை வரை படத்தில் "ஜி" என்று குறிப்பிட்டள்ளேன். பிரதிவாதிகளுக்குப் பாத்தியப்பட்டது என கூறும் இடம் வரை படத்தில் "சி" என்று காட்டப்பட்ட பகுதியை சுற்றியும் பழைய வீடுகள் இருந்ததற்கான அஸ்திவாரம் காணப்பட்டது. அதை வரை படத்தில் கோடிட்டு காட்டியுள்ளேன்.

வரை படத்தில் "எச்" என்று காட்டப்பட்டுள்ள பகுதியில் முதல் முறை செல்லும் போது புதிதாக தட்டுபோர் ஆரம்ப நிலையிலும், இரண்டாவது முறை பார்வையிடும் போது தட்டுபோர் முழுமை அடைந்தும் காணப்பட்டது. வாதியின் வீட்டிற்கு கிழபுறம், தென்புறம் உள்ள பகுதியில் புதர்களும்,



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மரங்களும் செடிகளும் வெட்டிச் சாய்ந்த நிலையில்
இருந்தன. இரண்டாவது முறை பார்வையிடும்
போது பாதி மரங்கள் முற்றிலும்
அகற்றப்பட்டு விட்டது."

20. In the report, the plaintiff that is referred to is Mr.V.Krishnaswamy and the defendants are the appellants before me namely the plaintiffs 1 to 17. The lower appellate Court did not go into the issue whether Grama natham vest with the Government or not, but had proceeded that since no patta had been granted to the plaintiff, they cannot be held to be in possession of the property.

21. As seen from the above, the Division Bench had specifically held that the mere fact that patta has not been granted does not mean the land becomes the land of the Government. The combined reading of Ex.A1 to Ex.A6 would show the predecessors in title of the plaintiffs had been in possession and enjoyment of the same, right from the year 1919 till 1997. The lower appellate Court has thrown much weight on the fact that no survey number had been found in Ex.sA1 to A3. However, a careful perusal of Ex.A1 to Ex.A3 would show that though survey



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numbers are not mentioned, the boundaries have been specifically mentioned and they tally with the Commissioner's plan that has been given as Ex.C2. It is pertinent to note that none of the parties have objected to the Commissioner's report and therefore, I am entitled to read the said document as a evidence in the suit.

22. The lower appellate Court had not appreciated Exs.A1 to A6 and plan Ex.C2. Had it done so, it would not have come to the conclusion that the property is incapable of identification, this is especially since survey numbers are found under Exs.A5 and A6.

23. In the light of the above discussion, I am of the view that the substantial questions of law should be answered in favour of the appellants. The appellants have proved that they are in occupation of R.S.Nos.210/17, 210/19 & 210/20 for over 100 years and the property being a Grama natham lands, it vests with the original occupier namely Arumutha gounder and his legal heirs are entitled to divide the property amongst themselves.



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24. In the light of the above discussion, the second appeal is allowed. The judgment and decree of the Court of the Subordinate Judge at Perundurai in A.S.No.15 of 2009 dated 28.06.2010 in setting aside the judgment and decree of the Court of the District Munsif at Perundurai in O.S.No.528 of 2004 dated 26.11.2008 is set aside. The judgment of the learned District Munsif, Perundurai in O.S.No.528 of 2004 dated 26.11.2008 stands restored.

25. This Court places on record its appreciation for the fair submissions that has been made by Mr.Tamil Needhi and also for production of the records before this Court, though his clients, the defendants 1 to 4, did not participate during trial proceedings.

26. Considering the fact that the Government Pleader has assisted this Court in disposal of the appeal, I am not inclined to impose any costs and the connected miscellaneous petition is closed.

18.03.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
dpa



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*S.A.No.702 of 2013 and
M.P.No.1 of 2013*

V.LAKSHMINARAYANAN, J.

dpa

To:

1. The District Munsif Court, Perundurai
2. The Subordinate Judge,
Perundurai.
3. The Section Officer,
Vernacular Section,
High Court of Madras.

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and
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