



S.A.No.717 of 1999

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved On:
27.11.2025

Pronounced On:
05.02.2026

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.717 of 1999

Chinnappa Reddy (died)

2.Elumalai

3.Moorthy

4.Neela

5.Murugesan

6.Kumar

.. Appellants

(Sole appellant died. A2 to A6 are brought on record as LRS of the deceased sole appellant vide order of this Court dated 20.06.2024 made in CMP.Nos.12237, 12240 and 12241 of 2024 in SA.No.717 of 1999)

Vs.

1.Dharani Reddy (died)

2.Kamsalammal (died)

3.Saradambal (died)

4.Muniammal

5.Tamil Selvi



S.A.No.717 of 1999

6.Elumalai

7.Sumithra

.. Respondents

(RR 1 to 3 died. RR 4 to 7 are brought on record as LRS of the deceased R1 vide order of this Court dated 16.10.2025 made in CMP.Nos.6876, 6877 & 6878 of 2020 in SA.No.717 of 1999)

Prayer: Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree passed in AS.No.71 of 1994 on the file of the Sub Court, Ranipet, dated 13.11.1998 dismissing the appeal and confirming the judgment and decree of the District Munsif Court, Sholingur, in OS.No.575 of 1983 dated 30.06.1994.

For Appellants : Mr.A.E.Ravichandran
For RR 4 to 7 : Mr.S.Chandrabose

J U D G M E N T

The 3rd defendant, who has lost in the Courts below is the appellant.

2.For the sake of convenience, the parties shall be referred as per their rank in the suit.

3.The 1st respondent / plaintiff presented OS.No.575 of 1983, on the file of the District Munsif Court at Sholinghur. Originally, the suit had been filed for declaration of title, permanent injunction and for recovery of possession. Pending the suit, as the plaintiff had taken possession on



S.A.No.717 of 1999

the strength of an *exparte* decree, the suit was amended to the relief of permanent injunction.

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4.The case of the plaintiff is that the four items mentioned in the suit schedule property are his ancestral properties. They are comprised in Patta No.211. Apart from the schedule mentioned properties, the family of the plaintiff owned several other properties ancestrally. These properties were divided in a partition amongst the family members. The suit properties were allotted to the share of the plaintiff's father, one Chinnappa Reddy. The plaintiff and his father constituted a joint Hindu family. After the demise of his father, the plaintiff inherited the entire estate and has been in exclusive possession and enjoyment of the properties.

5.Due to drought conditions, the plaintiff moved away from the village to eke out his living. Taking advantage of the same, the defendants 1 & 2, who are the distant relatives of the plaintiff, alienated the property in favour of the 3rd defendant. The plaintiff learnt that the 3rd defendant had persuaded the defendants 1 & 2 to execute a sale deed in his favour, with an evil intention, of purchasing litigation. The plaintiff added that the sale deed is improper and illegal.



S.A.No.717 of 1999

rd

6.He alleged that, taking advantage of the sale deed, the 3rd defendant trespassed into the suit property and started cultivating the same in October, 1982. On his return to the village, the plaintiff was shocked by the turn of events. He questioned the illegal acts of the defendants. They turned a deaf ear and ignored his claim. He pleaded neither do the defendants nor did the father of the defendants 1 & 2, one, Sanjeeviraya Reddy have right, title or interest over the suit properties. The plaintiff added that the defendants 1 & 2 had left the village 30 years ago and settled in Manthangal Village. He asserted that the defendants never enjoyed the suit properties and that the 3rd defendant was aware of the same, yet, he proceeded to get the documents executed in his favour. He alleged that the 3rd defendant is not a law abiding citizen and hence, the plaintiff was constrained to institute the suit in order to protect his possession. He stated that the 3rd defendant, having trespassed into the property, had deprived him of his property, while enriching himself. Hence, he sought for mesne profits, from October, 1982.

7.Summons were served on the defendants. The 3rd defendant filed a written statement. This statement was adopted by the defendants 1 & 2.



S.A.No.717 of 1999

8.The defendants denied the existence of the ancestral property and the constitution of a joint family between the plaintiff and his father. He also denied exclusive possession by the plaintiff over the property. He pleaded that the property belonged to, one, Sanjeeviraya Reddy. He had bequeathed the suit property in favour of defendants 1 & 2, on 05.02.1973. The defendants 1 & 2, having absolute right and title over the property, after the demise of Sanjeeviraya Reddy, sold the property to the 3rd defendant. The sale is evidenced by the sale deed dated 25.10.1982. On and from the date of the sale, the 3rd defendant has been in open, continuous and uninterrupted peaceful possession and enjoyment of the property. Hence, he has crystallized his right by adverse possession.

9.Pending the suit, the defendants were set *exparte* and a decree was passed on 27.03.1984. Taking advantage of the *exparte* decree, the plaintiff presented OEP.No.109 of 1985, on the file of the learned District Munsif at Sholingur. Delivery was ordered by the Court and the plaintiff took possession of the property on 25.01.1985.

10.On an application filed by the defendants to set aside the *exparte* decree, the same came to be allowed on 20.03.1991, restoring the parties to the position that prevailed prior to 27.03.1984. As the plaintiff



S.A.No.717 of 1999

had taken possession of the property pursuant to the execution of the *exparte* decree, he amended the plaint from the relief of the recovery of possession and sought the relief of declaration and permanent injunction and retained the relief of recovery of possession in the alternate. To this amended plaint, the 3rd defendant filed an additional written statement, specifically with respect to the 4th item of the suit schedule mentioned property. He pleaded that the plaintiff is not entitled to 1/4th share in the 4th item.

11.The 3rd defendant also denied that delivery was taken by the plaintiff through Court in OEP.No.109 of 1985. He asserted that he continues to be in possession and enjoyment of the property, right from the date of purchase from defendants 1 & 2. Yet again, the 3rd defendant filed another written statement. He reiterated the contention that possession was not taken pursuant to OEP.No.109 of 1985, and pleaded that the plaintiff is not entitled to permanent injunction under any circumstances, as the defendants continued to be in possession of the same.

12.The learned District Munsif framed as many as 10 issues and in addition, framed two other issues. They are as follows:-



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S.A.No.717 of 1999

“1. வழக்குரை பின் இணைப்ப, சொத்துக்களில்
வாதிக்கு உரிமையுள்ளதா?

2. 5.2.73 தேதியிட்ட உயில் சாசனம் உண்மையானதா?

3. 25.10.82 தேதியிட்ட கிரயப் பத்திரம் செல்லத்
தக்கதா மற்றும் அது வாதியை கட்டுப்படுத்துமா?

4. வழக்குரை பின் இணைப்ப, சொத்துக்களில் 3ம்
பிரதிவாதிக்கு உரிமையுள்ளதா?

5. வழக்குரை பின் இணைப்ப, சொத்துக்களில் 3ம்
பிரதிவாதியும் மற்றும் அவருடைய முதாதையர்களும்
தங்களுடைய உரிமையை எதிர்நிலை உடமையில் மூலம்
தக்க வைத்துக் கொண்டுள்ளார்களா?

6.வாதியால் வழக்குரையில் கோரப்பட்டுள்ள ஆக்கிரமிப்பு
உண்மையானதா?

7.வழக்குரை பின் இணைப்பு சொத்துக்களில் வாதிக்கு
வழக்குரையில் கோரி உள்ளபடி விளம்புகை பரிகாரம்
கிடைக்கக் கூடியதா?

8.வழக்குரை பின் இணைப்ப, சொத்துக்களை
பிரதிவாதியிடமிருந்து சுவாதீனம் பெறுவதற்கு வாதிக்கு
உரிமையுள்ளதா?



S.A.No.717 of 1999

9.வாதிக்கு வழக்குரையில் கோரியுள்ளபடி பிரதிவாதிகளிடமிருந்து இடைக் கால வருமானம் பெறுவதற்கு உரிமையுள்ளதா?

10.வழக்குரை பின் இணைப்பு சொத்துக்கள் வாதியின் சுவாதீனத்திலும் மற்றும் அனுபவத்திலும் உள்ளதா?"

கருதல் எழுவினா:

11.வாதிக்கு வழக்குரையில் கோரியுள்ளபடி நிரந்தர உறுத்துக்கட்டளை கிடைக்கக்கூடியதா?

12.வாதிக்கு இவ்வழக்கில் முடிவான பரிகாரம் என்ன?"

13.On the side of the plaintiff, he examined himself as PW1 and the Village Assistant, who assisted the Bailiff to take possession of the property, pursuant to the order of delivery as PW2. The 3rd defendant on his part, examined himself as DW1, and his neighbour and his in-law as DW2.

14.After analyzing the oral and documentary evidence, the Trial Court came to the following conclusions:-

(i)The 3rd defendant has not proved his title to the property;



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S.A.No.717 of 1999

(ii)The plaintiff, by filing Exs.A3 to A15, had shown that his father has been in possession and enjoyment of the property;

(iii)The “WILL” had not been proved by the defendants in accordance with law;

(iv)Possession having been taken by the plaintiff through the process of Court, he is entitled to the decree of permanent injunction;

(v)The plaintiff was relegated to a separate proceeding to calculate mesne profits.

15.Consequent to this discussion, the Trial Court decreed the suit for title and granted the relief of permanent injunction.

16.Aggrieved by the same, the defendants preferred a regular appeal before the learned Subordinate Judge at Ranipet. This appeal was received as AS.No.71 of 1994. In that appeal, the learned Judge came to the following conclusions:-

(i)The property found under Ex.B3 is not found under Ex.B1 and therefore, the defendants does not have title to the property;



S.A.No.717 of 1999

(ii)The plaintiff's predecessors have been found to be in possession and enjoyment of the property by virtue of Ex.A1;

(iii)The “WILL” projected by the defendants had not been proved in a manner known to law and consequently, the sale deed executed in favour of the 3rd defendant is invalid.

17.Having come to these findings, the Appellate Judge confirmed the judgment and decree of the learned District Munsif.

18.Aggrieved by the same, the defendants have preferred the present Second Appeal.

19.This Court by an order dated 11.06.1999, ordered notice of motion in the appeal. It also granted interim stay of dispossession. Pending the appeal, the original parties to the appeal passed away. Hence, this Court dismissed the appeal as abated on 28.03.2018. Thereafter, applications were filed to set aside the order of dismissal; to condone the delay in filing the application to set aside abatement; to set aside the abatement caused and bring on record the legal representatives of the deceased appellant as well as the 1st respondent. Those applications came



S.A.No.717 of 1999

to be allowed on 16.10.2025 and the appeal was listed for hearing today.

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20.I heard Mr.A.E.Ravichandran for the appellants and Mr.S.Chandrabose for the contesting respondents.

21.Noticing that the second appeal had not been admitted, the appeal was admitted on the following substantial questions of law:-

“1)In a suit for declaration of title, possession and injunction, is it not the duty of the plaintiff to prove his title?

2)Whether the plaintiff is entitled to retain the benefits of the exparte decree dated 27.03.1984, when the same had been set aside by the Trial Court on 20.03.1991?

3)Are the Courts below correct in decreeing a suit for declaration of title and recovery of possession, solely based upon the revenue receipts?

4)Is the plea of the defendant that physical possession was not taken pursuant to the order of the Court in O.E.P.No.109 of 1985 tenable?”



S.A.No.717 of 1999

22.As the questions of law are inextricably connected, they were heard together and disposed of by this judgment.

23.Mr.A.E.Ravichandran urged that in a suit for title and possession, it is the duty of the plaintiff to prove his title and that he cannot rely on the weaknesses of the defendant's case. He urged that the Courts below should have dismissed the suit taking note of Exs.B1 to B8, filed by the defendants, which point out to the right and enjoyment of the defendants 1 & 2 over the property and the transfer of title from them to the appellant. He pleaded that Order XLI Rule 31 of the Code of Civil Procedure, 1908, is mandatory and that the same had not been followed by the Lower Appellate Court. He pointed out Exs.A1 to A22 are merely kist receipts and they cannot reflect title and exclusive possession of the property by the plaintiff, as the predecessor in title of the vendor of the defendants, Sanjeeviraya Reddy, was the elder brother of the plaintiff's father Chinnappa Reddy. He pleaded that the judgment and decree of the Trial Court as well as the Lower Appellate Court are perverse and hence, sought for the appeal to be allowed.

24.Mr.S.Chandrabose, appearing for the respondents / plaintiff urged that the defendants have not proved their title to the property. He



S.A.No.717 of 1999

submitted that Exs.A3 to A15 prove that the plaintiff's father was in possession of the property and that it was only after appreciation of the said fact, the Court below had decreed the suit. He pointed out that, being a case of concurrent findings of fact, this Court should loathe to interfere with the judgment and decree of the Courts below and that the appeal must be dismissed with costs.

25.I have gone through the records and carefully considered the submissions of both sides.

26.While Mr.S.Chandrabose is right that, in matters of concurrent findings of the Courts below, interference should normally not be done, there are few exceptions to the same. If the findings are perverse or if they are so unreasonable that no Judge could have arrived at such a conclusion or are based on no evidence or are conjectures and surmises, this Court can certainly interfere. Interference in a second appeal is also permissible if the Lower Courts had over-looked or ignored a significant piece of evidence or if they had misread the documentary and oral evidences which would have likely lead to an opposite conclusion. In addition, if the findings are based on fundamental errors of law and in utter disregard to the settled principles of law, then the Second Appellate



S.A.No.717 of 1999

Court can interfere under Section 100 of the Code.

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27.The plea of Mr.S.Chandrabose that, in all cases of concurrent findings, this Court should not interfere is too wide a proportion. He himself accepted that such a view would do violence to the very purpose for which Section 100 had been incorporated into the Code of Civil Procedure. The Second Appellate Court does not act as a third Court of facts. The First Appellate Court is the last Court of facts and law. The Second Appellate Court's role is only to correct the errors of law, that are substantial and material to the outcome of the case. Substantial questions of law under Section 100 must be a question of law that is substantial between the parties and cannot be construed as a substantial question of general importance. Having appraised myself of the scope of my jurisdiction, I shall now deal with the present appeal.

28.Mr.A.E.Ravichandran attempted to plead that the appellant continued to be in possession despite the order of delivery dated 25.01.1985. I am unable to agree to the said contention. The plaintiff had filed the execution petition and had taken delivery of the property and the same had been recorded by the Court. When an Officer of the Court has filed a report before the Court stating that delivery has been handed over,



S.A.No.717 of 1999

it immediately attracts the presumption under Section 114 of the Indian Evidence Act, 1872.

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29.The presumption that the Court must draw is that official acts are performed regularly. This does not mean that a person alleging that the delivery was only a paper delivery cannot substantiate the same. The presumption is a rebuttable presumption. A person pleading paper delivery should take a definite and specific stand alleging fraud and should prove the same. At the time of pleading that the delivery was a fraudulent act, the requirements of Order VI Rule 4 of Code of Civil Procedure have to be strictly complied. There is no such plea in any of the statements or additional written statement filed by the defendants. Hence, I am unable to accede to the plea of Mr.A.E.Ravichandran. The aforesaid position of law has been settled by a judgment of this Court in ***C.Ramasami Vs. Kuruva Boyan, (1991) 1 LW 244 (Mad)***. I merely have to apply the same to reject this plea of the appellant.

30.Having concluded that the plaintiff has taken delivery of the property, I now have to see whether he is entitled to the decree of permanent injunction as granted by the Courts below.



S.A.No.717 of 1999

31.Both the Courts below, had passed their judgment on the premises that the defendants have not proved their title and, consequently, the plaintiff would be entitled to a decree. They have also come to a conclusion that the plaintiff is in possession of the property as he had taken delivery of the same on 25.01.1985, pursuant to the order of the Court in OEP.No.109 of 1985.

32.It is a well established principle of law that once an *exparte* decree is set aside, the plaintiff cannot retain the benefits that flow from such a decree. The effect of setting aside an *exparte* decree is to restore the parties to the position, that existed prior to the passing, of the same. In fact, the suit itself is restored to its original position for a fresh hearing on merits. Section 144 of the Code directs that once a decree is set aside, any advantage or benefit that had been acquired by the plaintiff through the process of execution of the *exparte* decree must be restored to the defendants. Once the decree is set aside by the Court, it ceases to exist in the eye of law. In fine, the law prevents a party from benefiting from a judgment that has been nullified. This is in order to ensure procedural fairness on the merits of the case. Section 144 merely recognizes the power that the Courts already possesses, to do justice to the parties *ex debito justitiae*. Such power inheres in a Court. This power is merely



S.A.No.717 of 1999

recognized by the Code under that provision.

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33.A perusal of the judgments of the Courts below points out that they have placed heavy reliance upon the taking of the possession by the plaintiff in OEP.No.109 of 1985. They have not taken note of the fact that an *exparte* decree passed on 27.03.1984 was set aside by the very Court on 20.03.1991. The Trial Court has commented that, as the defendants have not file any application seeking for restoration, the plaintiff is entitled to a decree of injunction. Such a finding cannot but be held to be perverse.

34.Now turning to the main plea of Mr.A.E.Ravichandran that the plaintiff has to prove his title to the property and he cannot rely upon the weaknesses of the defendants, this is a fundamental principle of law. In suits for declaration of title or for the relief of possession or injunction, the plaintiff has to prove his case. This is because, a declaration by a Court does not create a new right in a litigant, but merely recognizes the title, which is asserted to by the plaintiff and denied by the defendants.

35.As rightly contended by Mr.A.E.Ravichandran, this principle has been settled consistently by the Courts. A reading of the judgment of



S.A.No.717 of 1999

the Trial Court and the Lower Appellate Court shows that the Courts placed emphasis on the failure of the defendants to prove their title to grant the plaintiff a decree. Such an approach in the opinion of this Court is perverse. The plaintiff has to independently demonstrate a superior title than that of the defendants or an unimpeachable right to the property in order to succeed in a suit for declaration. Even if the defendants' case is weak, or inconsistent, or if the defendants remained *ex parte*, it does not mean that the plaintiff is automatically entitled to a judgment or decree in his favour.

36.It is the duty of the plaintiff to discharge the burden of proof with clear, cogent and convincing evidence. This principle is based on two famous latin maxims,

- (i) *actori incumbit onus probandi* – the burden of proof lies on the plaintiff; and
- (ii) *affirmatis est probare* – he who affirms must prove.

37.Now, let me look at the pleadings and evidences let in by the plaintiff. It has been pleaded by the plaintiff that the properties are ancestral properties and are all comprised in Patta No.211. This Court is alive to the fact that in case of ancestral properties, a Court cannot insist



S.A.No.717 of 1999

upon the title deeds, in all cases. Courts are presented with situations where the property might have come down in the family, generation after generation, without any document evidencing the same. In such cases, it is on the basis of other documents that the Court will decide whether the plaintiff has better title or not. Though the plaintiff has asserted that patta had been standing in the name of his father and himself, and also furnished the patta number, the said patta had not been produced before this Court. The reason for its non production has not been explained.

38.The second plea of the plaintiff was that the property had been partitioned between the plaintiff's father Chinnappa Reddy and his brother, Sanjeeviraya Reddy. However, the plaintiff had not let in any oral or documentary evidence to show that such a partition had taken place. In paragraph No.4 of the plaint, the plaintiff alleged that he came across the property, after the death of his father, but in the oral evidence, he has deposed that the property had been allotted to him in the partition between himself and his brothers. The lack of pleading by the plaintiff regarding the partition between him and his brothers need not detain this Court much. This is because, the suit arises from a mofussil area, and it has been settled from the time the British entered this country that pleadings in mofussil areas are to be construed liberally. I have to



S.A.No.717 of 1999

reiterate that, the primary goal of procedural law is to advance justice and not to obstruct it on mere technical grounds. If the substance of the pleading is clear and no prejudice is caused to the opposite side, the Court can ignore the technicalities.

39.Proceeding further, the plaintiff, apart from examining himself had not examined any other person from his family or related to the family in order to substantiate the partition either between his father and uncle or between himself and his brothers. *Ipsi dixit* of the plaintiff alone is insufficient to prove an earlier partition, especially, when it has been denied by the defendants in specific terms.

40.The plaintiff had exhibited as many as 22 documents. Exs.A16 to A22 have all come into existence after the plaintiff obtained an *exparte* decree on 27.03.1984 and had taken delivery pursuant thereto on 25.01.1985. The revenue authorities are bound to mutate the records once a declaratory decree is granted by a Court. I have already pointed out that the *exparte* decree has been set aside by the Trial Court on 20.03.1991. Hence, two circumstances, namely the *exparte* decree having been set aside and since Exs.A16 to A22 have come into existence after the suit had been presented on 09.09.1983, those documents cannot be utilized to



S.A.No.717 of 1999

conclude on the plaintiff's title.

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41.The documents filed under Exs.A1 & A2 point out that for the fasli year 1367 corresponding to 1958 CE, the revenue records stood in the name of two persons, Sanjeeviraya Reddy and Govindaraja Reddy. The plaintiff, in the course of his evidence, stated that Sanjeeviraya Reddy is his uncle. Therefore, the Court can still come to the conclusion that, being the eldest member of the family, the documents stood in the name of Sanjeeviraya Reddy, Govindaraja Reddy and Chinnappa Reddy, the father of the plaintiff.

42.As to who is Govindaraja Reddy has not been explained by the plaintiff. Apart from this, Exs.A3 to A15 are all kist receipts, which stand in the name of the plaintiff's father, Chinnappa Reddy. A Kist receipt is a revenue receipt showing proof of payment of land revenue to the Government. By themselves, kist receipts do not bear much of weight. Along with the kist receipts, the plaintiff ought to have produced the patta and chitta to substantiate his case. Chitta is again a land revenue document and is more descriptive than the kist. The revenue authorities record the owner's name, the extent of land, the survey number and the sub-division, classification of the land into nanjai (wet) or punjai (dry),



S.A.No.717 of 1999

location details and the information regarding the applicable land revenue payment. Atleast till 2015, chitta, patta and kist were been issued separately. It was only post 2015 that the Government of Tamil Nadu merged the chitta with patta. When the suit was tried in the 1980's, the revenue department was issuing separate revenue documents, but the plaintiff unfortunately, claims title on the basis of kist alone.

43.It is too well settled, but I have to reiterate for the purpose of this case that entries in revenue records like Chitta, Jamabandhi or mutation entries, do not confer or extinguish title to a property. These records as stated above are primarily maintained only for the purpose of collection of land revenue.

44.These records might help in a claim for possession like in a suit for bare injunction and evidence historical use of the property, but they do not confer title. If a judgment is required for this fundamental proposition, it is the case of ***Prahlad Pradhan and others Vs. Sonu Kumhar and others, (2019) 10 SCC 259***. Justice Indu Malhotra held:-

“5. The contention raised by the appellants is that since Mangal Kumhar was the recorded tenant in the suit property as per the



S.A.No.717 of 1999

Survey Settlement of 1964, the suit property was his self-acquired property. The said contention is legally misconceived since entries in the revenue records do not confer title to a property, nor do they have any presumptive value on the title. They only enable the person in whose favour mutation is recorded, to pay the land revenue in respect of the land in question. [Bhimabai Mahadeo Kambekar v. Arthur Import & Export Co., (2019) 3 SCC 191 : (2019) 2 SCC (Civ) 21; Narasamma v. State of Karnataka, (2009) 5 SCC 591 : (2009) 2 SCC (Civ) 582; Balwant Singh v. Daulat Singh, (1997) 7 SCC 137; Sawarni v. Inder Kaur, (1996) 6 SCC 223] As a consequence, merely because Mangal Kumhar's name was recorded in the Survey Settlement of 1964 as a recorded tenant in the suit property, it would not make him the sole and exclusive owner of the suit property.”

45.Hence, the view of the Trial Court and the Lower Appellate Court that by production of Exs.A3 to A15, the plaintiff has proved his title to the property are perverse findings and contrary to settled position of law laid down by the Supreme Court.



S.A.No.717 of 1999

46.Now turning to the plea of Mr.A.E.Ravichandran that he has better title to the property, by virtue of Ex.B3 read with Ex.B1, is concerned, this plea too, in my view is unacceptable. The Lower appellate Court has given a finding that the properties conveyed under Ex.B3 are not found under Ex.B1.

47.The suit relates to Survey Nos.435/90, 428/2, 428/4 and 428/1 of Banavaram Village, Arakkonam Taluk, erstwhile North Arcot District. A perusal of Ex.B1 shows that Sanjeeviraya Reddy had purchased the properties comprised in Patta No.351 in Survey No.435/92, 435/96 and 435/89 of Banavaram Village, Arakkonam Taluk. It is only in Ex.B2 that Survey No.428/2, 428/4 and 435/90 are mentioned. As to how Sanjeeviraya Reddy got title to these properties is not mentioned. A “WILL” or testament is not a title deed. When the specific plea of the defendant is that he secured possession of the property under Ex.B2, the parent deed of which is Ex.B1, and when a perusal of Ex.B1 shows that it does not cover the suit properties, I am not in a position to accept Mr.A.E.Ravichandran’s plea on better title.

48.I do not agree with Mr.A.E.Ravichandran that the defendant has better title to the property. This too is covered by the Latin Maxim “*nemo*



S.A.No.717 of 1999

plus iuris ad alium transferre potest quam ipse haberet”- one cannot transfer to another more rights than they have. When the properties are not covered under Ex.B1, the sale of the same under Ex.B2 in favour of the 3rd defendant of those items of the property, cannot convey title to him.

49.The documents filed by both sides point out that the properties have been jointly held in the family of Sanjeeviraya Reddy and Chinnappa Reddy. Hence, the findings in this appeal will not affect the plaintiff in case he seeks the relief for partition. He shall initiate a separate partition action, if it is so open to him.

50.In the light of the above discussion, the substantial questions of law are answered in the following:-

- (i)It is the duty of the plaintiff in a suit for title to prove her / his title and cannot rely upon the weaknesses in the case of the defendant;
- (ii)The plaintiff having failed to prove the title and having kept away from the Court, the document on the basis of which he presented the suit is not entitled to succeed;
- (iii)The plaintiff having taken possession under an *exparte*



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S.A.No.717 of 1999

decree, is not entitled to retain possession, once the *exparte* decree is set aside;

(iv) The revenue records produced by the plaintiff cannot be used in a suit for title, to declare his title to the property.

51. In fine, the Second Appeal is allowed. The judgment and decree passed by the learned Subordinate Judge, Ranipet, in AS.No.71 of 1994 dated 13.11.1998, in confirming the judgment and decree of the District Munsif Court, Sholingur, in OS.No.575 of 1983 dated 30.06.1994, are set aside. The suit shall stand dismissed. The appellants were entitled to take re-delivery of the property, the moment the *exparte* decree dated 27.03.1984 was set aside. As the suit itself stands dismissed, the Trial Court without waiting for an application from the third defendant, shall ensure that re-delivery is granted to him. The taking of possession by the defendants pursuant to this order cannot be a defense, in case, the plaintiff presents a properly framed suit for partition. As the parties are closely related, I am not inclined to impose costs.

05.02.2026

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Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

26/28



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S.A.No.717 of 1999

To

- 1.The Subordinate Judge,
Sub Court, Ranipet.
- 2.The District Munsif,
District Munsif Court,
Sholingur.



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S.A.No.717 of 1999

V.LAKSHMINARAYANAN, J.

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S.A.No.717 of 1999

05.02.2026