IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

SA.No.60 of 2003 (F)

AGAINST THE JUDGMENT IN AS NO.109/2000 of SUB COURT, NEDUMANGAD
DATED 08-04-2002

AGAINST THE JUDGMENT IN OS 652/1996 of ADDL. MUNSIFF COURT, NEDUMANGAD DATED 28-02-2000

APPELLANT/RESPONDENT/PLAINTIFF:

JAYAPRAKASH, S/O. GOVINDAN,
RESIDING AT KUNNIL VEEDU, ANACHAL KEECHERY MURI
VAMANAPURAM VILLAGE, NEDUMANGADE, TRIVANDRUM DISTRICT.

BY ADV. SRI.R.S.KALKURA

RESPONDENTS/APPELLANT/DEFENDANT:

RAJAN S/O. GOPALAN, RESIDING AT
THOPPIL VEEDU, PAZHAYA KUNNUMMEL DESOM
VAMANAPURAM VILLAGE, NEDUMANGADE, TRIVANDRUM DISTRICT.

* <u>ADDL. R2 TO R4 IMPLEADED</u>

ADDL.R2: INDIRA, THOPPIL VEEDU,
PAZHAYA KUNNUMMEL DESOM,
VAMANAPURAM VILLAGE,
NEDUMANGAD, TRIVANDRUM

ADDL.R3: TRESSIA, D/O. LATE RAJAN, THOPPIL VEEDU,
PAZHAYA KUNNUMMEL DESOM,
VAMANAPURAM VILLAGE,
NEDUMANGAD, TRIVANDRUM

ADDL.R4: ANEESHA, D/O.LATE RAJAN, THOPPIL VEEDU,
PAZHAYA KUNNUMMEL DESOM,
VAMANAPURAM VILLAGE,
NEDUMANGAD, TRIVANDRUM

*ADDL. R2 TO R4 IMPLEADED AS THE LR'S OF THE DECEASED RESPONDENT VIDE ORDER DATED 10.12.2007 IN I.A.NO.1457/2007.

ADDL.R2 TO 4 BY ADV. SRI.B.RAGUNATHAN
ADDL.R2 TO 4 BY ADV. SRI.V.V.MATHEW
ADDL.R2 TO 4 BY ADV. SRI.R.SRINATH

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 12-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ALEXANDER THOMAS, J.

S.A.No.60 Of 2003

Dated this the 12th day of October, 2015.

J U D G M E N T

The above captioned Second Appeal arises out of the impugned judgment and decree rendered in Appeal Suit, A.S.No. 109/2000 on the file of the Subordinate Judge's Court, Nedumangad, which arose out of the impugned judgment and decree rendered on 28.2.2000 in Original Suit, O.S.No.652/1996 by the Addl. Munsiff's Court, Nedumangad. The said suit was filed by the plaintiff/appellant herein for declaration of title and possession and consequential injunction. The suit was decreed in favour of the plaintiff. Aggrieved by the same, the unsuccessful defendant therein had preferred the aforementioned Appeal Suit, which was allowed by the lower appellate court, resulting in the reversal of the judgment and decree rendered in the Original Suit and the consequential dismissal of the Suit. It is aggrieved by the impugned judgment and decree rendered by the lower appellate court in the aforestated Appeal Suit, that the plaintiff has chosen to institute this Second Appeal.

2. The plaint averments may be summarised as follows:- That the plaint schedule property coming to 19 cents of property situated in Survey No.4065/1 of Vamanapuram Village, Nedumangad Taluk, Thiruvananthapuram District, belongs to one Ranganayaki, which she obtained as per Ext.A-1 patta dated 4.4.1970 as per patta certificate No.6991/70. That while she was in enjoyment and possession of the said property, she alienated the same to the plaintiff as per Ext.A-5 sale deed No.1850/1996 of SRO, Vamanapuram, executed on 10.6.1996. That eversince the execution of the said sale deed, the plaintiff was in absolute possession and enjoyment of the said property and that he has been in remittance of the revenue tax as discernible from Ext.A-6, etc. That the plaint schedule property has well defined and identifiable boundaries on all four sides, consisting of Vamanapuram river on the northern boundary, a pathway at the eastern side, thodu on the western side and the defendant's property is on southern side. That

the defendant's property, which is situated on the southern side of the plaint schedule property, is situated at a higher level of 4 feet from the plaint schedule property and and the boundary separating the plaint schedule property with the the defendant's property is aged around 40 to 50 years. That the defendant's property is situated in survey No.50/2-1 of Vamanapuram village and the defendant has no manner of right or possession over the plaint schedule property at any point of time. That recently the defendant had attempted to trespass into the plaint schedule property by demolishing its southern boundary on the pretext that the property of the defendant in his possession in survey No.50/2-1 is deficit in extent and that the said deficit in extent is comprised in the plaint schedule property, etc. Accordingly, the plaintiff instituted Original Suit, O.S.No.652/1996 before the Addl. Munsiff's Court, Nedumangad, with the relief seeking a decree declaring plaintiff's title and possession over the plaint schedule property and also seeking a permanent injunction to restrain and prohibit the defendant from trespassing into the plaint schedule property or from demolishing its boundaries or from putting up of any new boundary in such a manner as extending into the plaint schedule property or from committing any waste/damage over the plaint schedule property.

3. The defendant contended in the written statement that the suit is not maintainable and that the plaintiff has no ownership and possession over the 19 cents of plaint schedule property situated in survey No.4065/1. That the plaint schedule property is in the possession and enjoyment of the defendant, in continuation of the possession and enjoyment of the same by his predecessors-in- interest. That the plaint schedule property was in the ownership and possession of one Sri.Ramachandran Bhagavathar right from the the year 1934 AD (1110 ME) onwards. That as per the sale deed executed dated 30.7.1984 the said Sri.Ramachandran Bhagavathar and his children sold the plaint schedule property to one Sri.Sukumaran, and later as per sale deed executed on 30.6.1986, the said Sri.Sukumaran sold the said property to one Smt.Vasanthi, who is the sister of the defendant and the said

Vasanthi in turn sold the plaint schedule property along with her other properties to the defendant as per Ext.B-1 sale deed No.1350/88 executed on 18.11.1988. That eversince then, the defendant is in possession of the plaint schedule property along with other properties. The plaint schedule property is river puramboke lying contiguous to the defendant's registered holding as a single compact plot with well defined boundaries. That neither the plaintiff nor anybody has got any title or possession over the plaint schedule property. That the plaintiff has filed the suit only on the basis of support of some concocted and fabricated documents. That the plaintiff's predecessor-in-interest has never got any extent of property near to the plaint schedule property. That the predecessor-in-interest of the plaintiff has secured a false patta certificate in respect of the plaint schedule property and that actually the property has been in possession and enjoyment of the defendant's predecessors-in- interest and thereafter, at present, the same is in the possession and enjoyment of the defendant. That he has perfected title over the said plaint schedule property against the claim of the plaintiff's predecessor-in-interest, by long and uninterrupted, hostile to the plaintiff 's predecessor-in-interest, etc.

4. The plaintiff adduced evidence through the oral testimony of PWs 1 to 3 and had produced Exts.A-1 to A-7 on his side. The defendant adduced evidence thorough DWs 1 and 2 and marked Exts.B-1 to B-3 documents. Two commissions were appointed by the trial court at the instance of the plaintiff and the first commission report is marked as Ext.C-1 along with Ext.C-1(a) rough plan. The second commission report has been marked as Ext.C-2 along with Ext.C-2(a), which is the plan prepared by the Taluk Surveyor concerned. It is also relevant to note that before the lower appellate court, the respondent herein/defendant had produced Exts.B-4 to B-7 as additional documnets.

5. Based on the pleadings, the trial court had framed the following issues:

"1. Whether the suit is maintainable ?
2. Who is in possession and enjoyment of the plaint schedule property ? Whether it is the plaintiff as pleaded by him or the defendant as contended by him ?
3. Whether the declaration prayed for is allowable ?
4. Whether the injunction prayed for is allowable ?
5. Reliefs and costs."

6. The trial court found all the issues fully in favour of the plaintiff and had decreed the suit in favour of the plaintiff. The lower appellate court has completely reversed the findings in the judgment of the trial court and has allowed the appeal suit and has consequently dismissed the Original Suit.

7. While admitting this Second Appeal, this Court had framed the following question of law:

> "(1) Does not a patta issued by the Government authorities admittedly in respect of puramboke land confer title to the person to whom it is assigned?"

8. Heard Sri.R.S.Kalkura and Smt.R.Bindu, learned Advocates appearing for the appellant herein/plaintiff and Sri.B.Raghunathan, learned Advocate appearing for the respondent herein/defendant.

9. It is common ground that Smt.Ranganayaki, who is the predecessor-in-interest of the plaintiff, is the only daughter of one Sri.Ramachandran Bhagavathar, who is the predecessor-in-interest in respect of the defendant's property. The plaintiff's precise and cogent case is that Ranganayaki had remitted tharavila/land value in respect of 19 cents of property comprised in the plaint schedule

as per Ext.A-2 on 26.6.1951. Pursuant thereto on 28.6.1962 she was issued provisional patta as per Rule 9(2) of the Land Assignment Rules. That later, she paid land tax in respect of the said property on 27.1.1965 as evident from Ext.A-3. Still further, the competent revenue authorities concerned had issued patta to Ranganayaki as per the Land Assignment Rules on 4.4.1970 as evident from Ext.A-1. Thereafter, Ranganayaki had paid the land revenue in respect of this property on 28.4.1970 as evident from Ext.A-4. Though there is a condition in Ext.A-1 patta dated 4.4.1970 that the area of 19 cents of property is subject to remission after survey and demarcation, mutation in respect of the property was duly allowed by the competent revenue authorities concerned as discernible from Ext.A-4 dated 28.4.1970 in so far as land tax was duly permitted to be collected from Ranganayaki and Sy.No.4065/1 of Vamanapuram Village in respect of 19 cents has been clearly shown therein. In view of the said grant of patta as per the Land Assignment Act and the Land Assignment Rules framed thereunder in favour of Ranganayaki, she had thus secured lawful ownership and possession for the said property. That thus the said property was in her absolute ownership and possession and it is on the basis of clear title that she conveyed entirety of the property comprising of 19 cents in Sy.No.4065/1 of Vamanapuram Village in favour of the plaintiff as per Ext.A-5 sale deed dated 10.6.1996 executed in the SRO, Vamanapuram in favour of the plaintiff. Competent Revenue authorities concerned also allowed mutation in respect of that property fully in favour of the plaintiff as evident from Ext.A-6 and the land tax was duly collected from the plaintiff in respect of the said property as per Ext.A-6 on 1.7.1996. Ranganayaki was also issued Non Encumbrance Certificate for the property for the period from 1972 onwards as evident from Ext.A-7 dated 24.11.1982. Thereafter, the plaintiff was having absolute ownership and possession over the said property and that he was continuing enjoyment of the said property and that the defendant made an attempt to demolish the mud wall boundary separating the plaint schedule property from the defendant's property and tried to intrude into the property, etc.

10. The defendant's case is that he secured the title and possession over 74 cents of property covered by Ext.B1 sale deed from one Vasanthy, who in turn purchased the said property from one Sri.Sukumaran and the said Sri.Sukumaran purchased the said property from Sri.Ramachandran Bhagavathar and his sons. It is also the case of the defendant that although the total extent of registered holding in Ext.B-1 is only 74 cents, some puramboke land appurtenant thereto is also included in the said conveyance. It is also the contention raised on behalf of the defendant that Ranganayaki, daughter of Ramachandran Bhagavathar, had never secured any patta for the plaint schedule property and that Exts.A-1 to A-4 are fabricated documents which are created only to aid the execution of Ext.A-5 sale deed by Ranganayaki in favour of the plaintiff. It is also specifically contended by the defendant that the northern boundary of his Ext.B-1 property is the Vamanapuram River. Further it is the defendant's specific case as borne out by his evidence that based on Ext.B-1 sale deed dated 18.11.1988, he had also been duly paying land tax to the revenue authorities as evident

from Ext.B-2 dated 14.8.1996. Exts.B-1 & B-2 show that registered land holding of the defendant coming to exactly 74 cents comprised of 64 cents lying in Sy.No.50/2-1 of Vamanapuram Village and additional 10 cents of property in Sy.No.47/4-1 of Vamanapuram Village and that thus the properties comprised in Ext.B-1 are lying contiguous to each other. It is also the defendant's specific case that there is no property lying to the southern side of Vamanapuram River which is having Sy.No.4065/1 and further that the plaint schedule property comprised in Sy.No.4065/1 is actually lying on the northern side of the Vamanapuram River. The learned counsel appearing for the respondent has raised certain specific contention to urge that the very foundation of Exts.A-1 to A-4 documents are based on fabrication and falsification of documents. The details in respect of these specific aspects of the contentions sought to be raised by the learned counsel for the respondent will be dealt with at a subsequent stage of this judgment after dealing with the issues that were considered by both the courts below.

11. On a consideration of the judgments of the courts below, this Court is of the considered opinion that the considered view taken by the trial court that Exts.A-1 to A-4 documents clearly and unequivocally would prove title and possession in respect of the plaint schedule property by Ranganayaki is correct and tenable (as stated herein above the contention now sought to be raised by the learned counsel for the respondent that those documents are false and fabricated will be considered later). Ext.A-2 is the document which shows that the tharavila/land value was duly remitted by Ranganayaki on 26.6.1951; the provisional patta was duly issued to her in respect of this property on 28.6.1962; land tax was collected from her as per Ext.A-3 on 27.1.1965; the final patta in respect of this property was duly issued to her on 4.4.1970; land tax was collected from her on 28.4.1970 as per Ext.A-4 and Ext.A-7 dated 24.12.1982 shows that Ranganayaki was granted Non-encumbrance Certificate/Non-liability Certificate by the competent statutory authority concerned in respect of the property. These original documents would clearly and

unambiguously show that Ranganayaki had obtained patta in respect of the said property as per the provisions contained in the Land Assignment Act and the Land Assignment Rules framed thereunder. Thereafter, she in turn conveyed the property to the plaintiff as per Ext.A-5 sale deed dated 10.6.1996 and the property was mutated in favour of the plaintiff as evident from Ext.A-6 tax receipt dated 1.7.1998. True, that the sub division survey number in respect of the said property has not been shown in Ext.A-2 dated 26.6.1951 and Ext.A1 dated 4.4.1970. But the main survey division number as well as the sub division number in respect of the property in Sy.No.4065/1 has been clearly shown in Exts.A-3 and A-4. Before the court below, there has not been any effective challenge mounted by the defendant to attack the veracity or genuineness of Exts.A-1 to A-4 documents except making a generalised and vague plea in the written statement that the defendant's predecessor-in-interest had obtained a falsified patta in respect of the property. Not even proper suggestions are sought to be made even in the cross-examination of PW1, through whom Exts.A-1 to

A-4 documents were marked. Therefore, in the light of these aspects, the trial court was fully justified in holding that the predecessor-in-interest of the plaintiff had valid title and possession to convey the said property to the plaintiff as per Ext.A-5 sale deed executed on 10.6.1996.

12. Though the defendant had raised a specific contention that there is no property having Sy.No.4065/1 which is situated on the southern side of the Vamanapuram River, no evidentiary materials have been adduced by the defendant to remotely probabilise any such scenario. On the other hand, the Advocate Commissioner, who submitted Ext.C-2 report, has clearly deposed as PW3, that he could measure out and identify the plaint schedule property on the basis of title deed of the petitioner and the official survey plan of the Survey Department through the assistance of the Taluk Surveyor concerned. PW3, the Advocate Commissioner, has specifically deposed that the plaint schedule property and the defendant's property are lying on two different levels and that the defendant's property is 3-4 feet higher than the plaint schedule

property and that a mud wall for about 3-4 feet height is clearly seen discernible for about a length and that therefore he could identify these two properties as being in two different plots. True, that PW3 has clearly deposed that he could not find any survey stones in the location concerned, but, he has clearly and cogently deposed before the trial court that plaint schedule property in Sy.No.4065/1 was identified through the assistance of Taluk Surveyor with the help of survey stone situated in Sy.No.4065/1 in a property other than the plaint schedule property. The Taluk Surveyor has also prepared Ext.C-2(a) plan which was produced along with Ext.C-2 report which clearly shows that the Taluk Surveyor could identify 19 cents of property in the plaint schedule property and further that the said 19 cents of property consists of 6.25 cents of property in Sy.No.4065/1which borders the Vamanapuram River and which has been substantially denuded by soil erosion caused by the attack of the river and the balance area of 12.75 cents of land in Sy.No.4065/1 alone is effectively form part of the land area therein. The Taluk Surveyor has shown the plaint schedule property as lying in two pieces; one which is the denuded portion coming to 6.25 cents of land which is shown in violet colour and the balance 12.75 cents of land which has been given yellow colour in Ext.C-2(a) plan. If the defendant wanted to challenge the aforestated clear identification made in respect of the plaint schedule property by the Taluk Surveyor as evident from Ext.C-2(a), the defendant could have adduced at least some evidence to show that the plaint schedule property in Sy.No.4065/1 was actually lying on the northern side of Vamanapuram River. Except the oral assertion of the defendant, he has not made any feeble attempt to produce any cogent evidence in that regard. Therefore, this Court is of the considered opinion that the trial court was fully justified in placing reliance on the identification of the plaint schedule property done cogently with the assistance of the Taluk Surveyor concerned on the basis of survey plan as evident from Ext.C-2(a) plan prepared as well as the deposition of PW3 (Advocate Commissioner).

13. It is also relevant to note that the defendant has clearly

admitted that he has no property whatsoever which is lying in Sy.No.4065/1. The defendant's specific case is that the only property that he possess in the locality concerned are those referred to in Ext.B1 sale deed and Ext.B2 tax receipt. The total extent of registered land holding comprised in Exts.B-1 & B-2 is 64 cents comprised n Sy.No.50/2-1 and another 10 cents of land in Sy.No.47/4-1. The Advocate Commissioner (PW3) in his Ext.C-2 report has clearly identified 64 cents of defendant's property with the help of Taluk Surveyor as discernible from Ext.C-2(a) plan prepared by the Taluk Surveyor. Therein it is clear that the defendant has 64 cents of land in Sy.No.50/2-1 which is comprised on the southern side of the plaint schedule property and it is contiguous thereto and further he has 8.25 cents of land in Sy.No.50/2-1. The former component of 64 cents of defendant's property is given blue colour and the latter component of 8.25 cents of defendant's property is shown in a different colour in Ext.C-2(a). The former component in Ext.C-2(a) comprising of 64 cents in Sy.No.50/2-1 clearly tallies with the extent of 64 cents mentioned in Ext.B-2 land tax receipt, in so far as its survey number is Sy.No.50/2. However, the latter component of defendant's property in Ext.C-2(a) comprising of 8.25 cents of land in Sy.No.50/2-1 does not appear to tally with the 10 cents of land in Ext.B-2 receipt in so far as the survey number shown in Ext.B-2 with the 10 cents of property in Sy.No.47/4-1. Be that as it may, the projected case of the defendant is that the total extent of registered land holding in Ext.B1 is 74 cents and that he has no land in the locality in question other than the land described in Ext.B-1. If the defendant's case that by virtue of Ext.B-1 document he was having possession even in respect of plaint schedule property is accepted, then it would amount to holding that the defendant's total extent of registered holding would come to 93 cents of land (74 cents + 19 cents =93). True, that there was a recital in the sale deeds, other than Ext.B-2, as discernible from Ext.B-1 & B-3 that the land sought to be conveyed through such transaction is not only registered holding specifically but also the puramboke land appurtenant thereto. If that be so, it is for the defendant to show that he is having lawful possession over the excess 19 cents of property. Even according to him the recital in Ext.B-1 & B-3 sale deed documents are in respect of the puramboke land. The defendant has no case that he could establish adverse possession over such Government puramboke land. Be that as it may, the only other manner the defendant would have asserted his possessory right over such excess land (other than the registered holding covered by Ext.B-1) is by establishing adverse possession. In the instant case, both the courts below have held that the defendant miserably failed to cogently plead and prove adverse possession in this case. Even going by the case set up by the plaintiff, the plaint schedule property was river puramboke land at one point of time. Later, it has come out in evidence on the basis of original documents as per Exts.A-1 to A-4 that Ranganayaki had paid tharavila/land value and had later secured patta in respect of the said 19 cents of property as evident from Ext.A-1, etc. Therefore, once patta has been duly issued to the predecessor-in-interest of the plaintiff she could validly claim ownership and possession of the property in question as evident from Exts.A-1 to A-4 documents. The lower appellate court appears to be fully swayed by fact that the sale deed documents show that northern boundary of the property is Vamanapuram River and therefore, on this basis the lower appellate court came to the conclusion that as even northern boundary of the defendant's property as evident form Ext.B-1 sale deed is Vamanapuram River, the defendant is having lawful possession of the properties in question which also includes the plaint schedule property, etc. This approach of the lower appellate court is not correct and proper. Merely because it is cited in Ext.B1 sale deed that the northern boundary of the defendant's property is Vamanapuram River, it does not necessarily amount to sufficient and convincing proof on the basis of preponderance of probability that the defendant was having lawful possession over the plaint schedule property. Even going by the total extent of land actually in the holding of the defendant as evident from Ext.C-2(a) plan, it can be seen that the Taluk Surveyor has clearly identified that the defendant is having possession over the total holding of 72.5 cents of land (64 cents + 8.5 cents = 72.5 cents).

So deficit in that regard is only 1.5 cents. In Ext.C-2 report given by the Advocate Commissioner, the aforestated property comes to 72.25 cents (64 cents + 8.25 cents = 72.25 cents). As to how the deficit of 1.25 cents suffered by the defendant compared to Ext.B-1 or as to how the survey number of the two components of his property as per Ext.C-2(a) and Ext.B-2 are different are all matters for which only the defendant alone can explain. This, he has not done, either in pleadings or in evidence. But the essential fact of the matter remains that the defendant is having possession of about 72.5 cents or 72.25 cents of land in the locality and his specific case is that he does not have any other land other than covered by Ext.B-1. If the plea of the defendant is allowed, it would amount to his having more than 93 cents of property. But crucially the defendant has admitted that he has no property in Sy.No.4065/1. Moreover, the plaint schedule property is no longer puramboke property, but patta land since 28.6.1962. Therefore, from this perspective also, this Court is of the considered opinion that the trial court was fully justified in coming to the conclusion that the case of the plaintiff is tenable and sustainable.

14. The approach made by the lower appellate court that the plaintiff failed to adduce any evidence to show as to how his predecessor-in-interest, Ranganayaki, got possession over the plaint schedule property, etc., is not tenable and sustainable. Exts.A-1 to A-4 are the original of the documents which clearly show the transaction as to how Ranganayaki had obtained assignment of the property by the Governmental authorities as per the provisions of the Land Acquisition Act and the Land Acquisition Rules framed thereunder. This Court is of the considered opinion that the trial court is fully justified in holding that the predecessor-in-interest had valid title and possession to convey the said property to the plaintiff as per Ext.A-5. So also, another ground on which the lower appellate court has interfered with the judgment of the trial court is that the non-examination of Ranganayaki by the plaintiff is totally fatal to the plaintiff's case. When the original documents as discernible from Exts.A-1 to A-6 have been produced by the plaintiffs and the same has not been subjected to any serious challenge even by way of concrete and cogent suggestions by the

defendant during cross-examination of the plaintiff as PW1, through whom those documents were marked, it cannot be said that non-examination of Ranganayaki, the predecessor-in-interest of the plaintiff, is in anyway detrimental or fatal to the case of the plaintiff. The lower appellate court has held in page 26 of the impugned judgment that the plaint schedule property and the defendant's property are not lying separately and both properties are lying as contiguous plots, etc. Both the Advocate Commissioners, in their Exts.C-1 & C-2 reports have clearly found on their inspection that the plaint schedule property and the defendant's property are lying at two different levels and separated by a mud wall. The survey number of the plaintiff's property is 4065/1 whereas that of the defendant is 50/2-1 as evident from Ext.C-2. Both the Commissioners opined in their reports (Exts.C-1 & C-2) as well as in the depositions that the properties form two different plots. The Taluk surveyor has also clearly identified these separate properties on the basis of the documents including official survey records. Ext.C-2(a) plan prepared by the official Taluk

Surveyor with the help of official survey records has clearly identified and marked these separate properties. The trial court was fully satisfied that the basis of such sufficient evidence pertaining to the property clearly prove that these properties are separate and lying in two different levels and separated by a mud wall, etc. When these overall and clinching materials and the considered view taken by the trial court are taken into consideration, it was not proper for the lower appellate court to make a total divergent view on the clinching materials and to come to a divergent view that these properties are not lying separately, etc. Therefore, this view taken by the lower appellate court is not tenable and proper. This Court is of the considered opinion that the view rendered by the trial court is correct and tenable, taking into account the overall facts and circumstances that has emerged in this case.

15. The learned counsel appearing for the respondent has also contended that Exts.A-1 to A-4 documents are fabricated and falsified documents in view of the following aspects:

(i) That going by the recital in Ext.A-5 sale deed dated 10.6.1996, Ranganayaki (predecessor-in-interest of the plaintiff) who was aged 53 in 1996 and going by the admitted documents she could have been hardly 14 years in the year 1951 on the date of Ext.A-2 dated 20.6.1951. Therefore, this would lead to a clear and clinching inference that Ext.A-2 document is fabricated and false.

(ii) No survey sub division number was shown in Ext.A-1 patta dated 4.4.1970 or in the provisional patta dated 28.6.1962, even though survey sub division number is shown in Ext.A-3 tax receipt dated 27.1.1965. So, the omission to show the survey sub division number in Ext.A-1 patta dated 4.4.1970 would clearly point a finger towards unreliability of Ext.A-1 patta.

(iii) There is no signature of the assignee either in Ext.A-1 patta even though the signature of the assignee is shown in the provisional patta dated 28.6.1962.

(iv) No documents whatsoever has been produced by the plaintiff to show that Ranganayaki has actually paid the land tax from 1951 up to 1964 or for the subsequent period beyond 27.1.1965 (date of issuance of Ext.A-3) up to 1970 and thereafter up to 1996 (year referred to in Ext.A-6).

(v) Pattadhar number shown in Ext.A-5 sale deed as 6816 is different from Exts.A-1, A-3 and A-4.

(vi) The varying types of signatures in Exts.A-1 and A-2 on the one hand and Ext.A-5 sale deed on the other would also clearly point a strong finger regarding the unreliability of these documents.

It is to be noted that Exts.A-1 to A-4 documents have been produced by the plaintiff along with plaint instituted on 18.10.1996. Other than making a generalised allegation in the written statement that the predecessor-in-interest of the plaintiff has secured a falsified and fabricated patta, no cogent and precise averments have been made by the defendant in his written statement to even feebly show as to the factual basis for such assertion. So also, not even a feeble attempt has been made either to challenge the veracity of these documents of the plaintiff either at the time of cross-examination of the plaintiff as PW1, through whom Ext.A series documents have been produced. The defendant has not bothered even to call for and examine any of the officials concerned either in the Revenue authorities like the Survey Officer, Villager Officer, Thahsildar, etc., to buttress any of these aspects to show that any of the documents in any way are unreliable. It is also relevant to note that even during the arguments raised before the trial court as well as the lower appellate court the defendant has not sought to advance any such contention as the one presently sought to be raised by the learned counsel appearing for the respondent herein. Therefore, in the absence of such clear and cogent pleadings or in the absence of any such evidence or arguments that have been raised before the courts below, this Court need not countenance any of the present arguments now sought to be raised by the learned counsel for the respondent for the first time and that too, in Second Appeal. True, the age of Ranganayaki is shown as 53 as on 10.6.1996 (date of execution of Ext.A-5 sale deed). If the defendant had made any attempt before the trial court, the plaintiff would have been alerted on the basis of such contention and the plaintiff could have then sought to adduce some material evidence to show as to the correct age of the predecessor-in-interest. The possibility of erroneously showing the pattadhar number of Rangnayaki in the sale deed cannot be ruled out. Under the circumstances, merely on the basis of such recitals in Ext.A-5 sale deed dated 10.6.1996, it cannot be stated that Exts.A-1 to A-4 are per se false and fabricated.

16. True, that the sub division survey number is not fully shown in Ext.A-1 even though the same has been shown in Ext.A-3. In the absence of alerting the plaintiff about the basis of such a contention the plaintiff has been disabled from adducing any evidence to explain as to how survey sub division number was omitted to be noticed in Ext.A-1 dated 4.4.1970. All official acts are ordinarily presumed to be done in the proper course of such official transactions of the State authorities. Therefore, the

presumption in this regard is in favour of these official documents. In this view of the matter, this Court is not prepared to countenance such arguments now sought to be raised for the first time by the respondent. For the same reason, this Court is of the considered opinion that arguments of the respondent regarding the absence of signature of the assignee in Ext.A-1 by itself will not in any way vitiate the reliability or genuineness of that document. True, that the plaintiff has not produced any documents to show that Ranganayaki had actually paid land tax except Ext.A-3 dated 27.1.1965 and Ext.A-4 dated 28.4.1970. In the ordinary course of official business of the Revenue Department it is only to be presumed that the Revenue authorities concerned would have accepted the tax on 27.1.1965 as per Ext.A-3, only if the tax for the prior periods have been paid by the assessee concerned. So also, the acceptance of land tax as per Ext.A-4 would also point out that the Revenue authorities was fully satisfied that Ranganayaki had paid all the due tax amount for the period earlier to 28.4.1970. This would also result in equally holding that the Revenue authorities concerned have accepted the land tax from the plaintiff as per Ext.A-6 dated 1.7.1998 on the satisfaction that all the land tax due in respect of the property had been duly cleared by the person concerned for the period prior to one covered by Ext.A-6. So merely because the plaintiff could not produce documents other than Exts.A-3, A-4 and A-7 in respect of land tax receipts does not in any manner throw clear inference that the land tax due in respect of the property is not paid and therefore Ext.A-1 granted patta is vitiated for want of payment of the land tax due in respect of that property, etc. It is to be noted that Ext.A-2 is issued on 26.6.1951 and the provisional patta was issued on 28.6.1962 and the pakka patta is issued on 4.4.1970 as per Ext.A-1 whereas Ext.A-5 sale deed is executed by Ranganayaki on 10.6.1996. Therefore, the varying styles of signatures for these different periods by itself will not lead to any conclusive inference for the court to conclude that signatures are false or that the documents are falsified, etc. In the absence of any such suggestion at least at the cross-examination of the plaintiff, the respondent cannot be permitted to raise such arguments at this belated stage and that too, in Second Appeal. For these reasons, this Court is of the considered opinion that the contention raised by the learned counsel appearing for the respondent regarding the case of fabrication, etc., cannot be countenanced and is overruled.

17. Learned counsel for the respondent would also contend that the identity of the plaint schedule property has not been properly made by the Advocate Commissioner and that the omission to examine the Taluk Surveyor as a witness in this case by the plaintiff would be vital to the case of the plaintiff regarding identification of the property is concerned. Learned counsel for the respondent would also contend that the Sy.No.4065/1 of the properties to the southern side of the Vamanapuram River and that the plaint schedule property in Sy.No.4065/1 is only in respect of the property which are lying to the northern side of the Vamanapuram River. This Court has earlier dealt with the clear materials like Ext.C-2(a) plan prepared by none other than the Taluk Surveyor with the help of official survey records. PW3 has

also clearly stated that though there are no survey stones in the location of the property concerned, he has properly and effectively identified the property with the help of Taluk Surveyor on the basis of survey stone in Sy.No.4065/1 in a property, which was lying in a property other than the plaint schedule property. Therefore, it cannot be said that the identity of the property has not been properly made by the Advocate Commissioner with the help of Taluk Surveyor concerned. In the facts and circumstances of the case, this Court is of the considered opinion that there is no effective challenge against the veracity or correctness of Ext.C-2(a) plan prepared by the Taluk Surveyor. Therefore, merely because Taluk Surveyor was not examined as a witness in this case will not lead to any conclusion that there has not been proper identification of the property concerned. As regards the contention of the defendant regarding the absence of any property in Sy.No.4065/1 on the southern side of Vamanapurm River concerned, other than the oral assertion made by the defendant (DW1) during his deposition, the defendant has not moved his little finger to call for any of the easily available evidence concerned from the Survey Department or any other Revenue officials concerned to even remotely suggest a case that there is no property in Sy.No.4065/1 on the southern side of Vamanapuram River and that Sy.No.4065/1 is lying on the northern side of Vamanapuram River. In the absence of any such attempt made by the defendant, this Court is of he considered opinion that the trial court was fully justified in placing reliance on identification of the property with the Taluk Surveyor concerned.

18. In the light of these aspects, this Court is of the considered opinion that Exts.A-1 to A-4 are reliable and cogent documents on the basis of which the trial court was fully justified in coming to the considered conclusion that the predecessor-in-interest of the plaintiff had valid title and possession over the property in question. Accordingly, the question framed by this Court at the time of admission of the Second Appeal is answered affirmatively in favour of the plaintiff.

19. In view of these reasons, the impugned judgment and decree dated 8.4.2002 of the Subordinate Judge's court, Nedumangad in A.S.No.109/2000 is set aside. The judgment and decree dated 28.2.2000 of the Additional Munsiff's Court, Nedumangad in O.S.No.652/1996 is restored.

Accordingly, the Second Appeal stands allowed as prayed for. There will be no order as to costs.

ALEXANDER THOMAS,
Judge.

bkn/-