

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2015

CORAM

THE HON'BLE MS. JUSTICE R. MALA

S.A.No.1019 of 2007

and

M.P.No.1 of 2007

Date of Reserving the Judgment 27.04.2015	Date of Pronouncing the Judgment 30.04.2015
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1.V.N.Krishnasamy
S/o.Narayana Gounder

2.K.Dakshinamoorthy
S/o.V.N.Krishnasamy ... Appellants/Respondents/Defendants

Vs

E.S.Vasudevan
S/o.D.Subramaniam ... Respondent/Appellant/Plaintiff

Prayer:

Second appeal filed under Section 100 of CPC against the judgment and decree dated 29.06.2007 made in A.S.No.76 of 2004 on the file of the Sub-Court, Bhavani, reversing the judgment and decree dated 25.10.2004 in O.S.No.684 of 2004 on the file of the Second Additional District Munsif Court, Bhavani.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.S.Parthasarathy, Senior Counsel
for Mr.J.Ramakrishnan

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J U D G M E N T

The second appeal arises out of the judgment and decree dated 29.06.2004 made in A.S.No.76 of 2004 on the file of the Sub-Court, Bhavani, reversing the judgment and decree dated 25.10.2004 made in O.S.No.684 of 2004 on the file of the Second Additional District Munsif Court, Bhavani.

2. The averments made in the plaint are as follows:-

(a) By virtue of the Will, dated 11.07.2001, the maternal grandfather of the plaintiff namely, Theivasigamani Gounder had bequeathed the suit properties in favour of the plaintiff. The said Theivasigamani Gounder died on 18.09.2003. After the death of his grandfather, the plaintiff had become the absolute owner of the suit properties and had been in peaceful possession and enjoyment of the same.

(b) The first defendant is the step mother's son of the said Theivasigamani Gounder and the second defendant is the son of the first defendant. The defendants own their house and lands adjacent to the suit properties. The first defendant and the said Theivasigamani Gounder had partitioned their family properties and so, the defendants had no right in the present suit properties.

(c) While so, after the death of the plaintiff's grandfather viz., Theivasigamani Gounder, the defendants attempted to interfere with the plaintiff's peaceful possession and enjoyment of the suit properties and hence, the plaintiff was forced to prefer a complaint against the defendants and file a suit for permanent injunction.

3. The gist and essence of the written statement filed by the defendants is as follows:

(a) The claim made by the plaintiff that his grandfather Theivasigamani Gounder had bequeathed the suit properties in his favour as per the Will dated 11.07.2001 is denied. At the time of execution of the Will, Theivasigamani Gounder was not the owner of Survey No.976/4 and the Will did not cover the Survey No.976/4. So, the plaintiff has no right, title or interest over the said Survey number.

(b) The allegation that the defendants are demanding the plaintiff to sell the suit properties is denied. Though the properties in Survey No.976/4 originally belonged to the said Theivasigamani Gounder as per the partition deed dated 11.01.1943, in the year 1976, he sold those properties to the first defendant for a sum of Rs.10,000/- and put him in possession of the same. So, the first defendant has been in possession of the property openly, peacefully, continuously without interruption and in assertion of his title for nearly 3 decades and he has prescribed his title to the same by adverse possession. Thus, except the properties in Survey No.976/4, the defendants are not concerned with other properties referred to in the suit.

4. The Learned Trial Judge after considering the averments both in the plaint and written statement and arguments on either side counsel, has framed necessary issues and on perusing the oral and documentary evidence viz., P.W.1, P.W.2, D.W.1, D.W.2 and Exs.A1 to A25 and Exs.B1 to B17, decreed the suit in respect of first item of the suit property and dismissed the suit in respect of the second

item of the suit property. Aggrieved against the judgment and decree passed by the trial court in respect of second item of the suit property, the plaintiff preferred an appeal in A.S.No.76 of 2004 on the file of the Sub-Court, Bhavani.

5. The learned First Appellate Court has considered the arguments advanced on either side and framed necessary point for consideration and reversed the Judgment and Decree passed by the Trial Court and allowed the appeal. Against the Decree and Judgment passed by the first Appellate Court, the present second appeal has been preferred by the defendants/appellants.

6. At the time of the admission, the following question of law has been framed.

(i) Whether the first appellate Court has committed an error of law in decreeing the suit for injunction in respect of R.S.No.976/4 even though the said survey number has not been included in the Will, dated 11.07.2001 (Ex.A.1) as well as in the Partition Deed, dated 12.04.2001 (Ex.B.4) especially when the defendants have denied the title of the plaintiff over the suit property?

Substantial Question of Law (i):

7. The learned counsel appearing for the appellants would submit that the respondent herein as plaintiff had filed the suit in O.S.No.684 of 2004 for permanent injunction in respect of two items of the suit properties viz., the property in Survey No.971/5 and the property in Survey No.976/4. The appellant herein had no objection for granting injunction in respondent of first item of the suit property viz., the property in Survey No.971/5. The Trial Court also granted injunction in respect of the said property. However, as regards the second item of the suit properties viz., property in Survey No.976/4, the property was originally owned by one Narayana Gounder who had one son named Theivasigamani Gounder through his first wife and another son named Krishnasamy through his second wife, who is the first defendant/appellant herein. There was a partition between the family under Ex.A.3/Partition Deed, dated 09.01.1943. As per the said partition, the 'A' scheduled property was allotted to Narayana Gounder, 'B' schedule property was allotted to Theivasigamani Gounder and the 'C' scheduled property was allotted in favour of Krishnasamy. Thereafter, Theivasigamani Gounder purchased the 'A' scheduled property from Narayana Gounder under Ex.A.4/Sale Deed, dated 12.01.1943 which is in respect of the second item of the suit scheduled property namely, the property in Survey No.976/4.

8. While so, on 12.04.2001, under Ex.B.4/Partition Deed, there was a partition among Theivasigamani Gounder and his two sons namely Jayagopal and Kanagaraj. As per the said partition, the 'A' scheduled property was allotted in favour of Theivasigamani Gounder, who in

turn bequeathed the properties in favour of his grandson viz., the plaintiff/respondent herein under Ex.A.1/Will, dated 11.07.2001. The said Theivasigamani Gounder died on 18.09.2003. Immediately, the Will came into effect and the plaintiff/respondent took possession of the suit property. Since the appellants herein interfered with the plaintiff/respondent's possession, he was forced to file the suit for permanent injunction.

9. The learned counsel appearing for the appellants would submit that neither in Ex.B.4/Partition Deed, dated 12.04.2001 nor in Ex.A.1/Will, dated 11.07.2001, there is hardly any mention about the properties in Survey No.976/4 because in the year 1976, Theivasigamani Gounder had orally sold the second item of the suit scheduled property to the first defendant/first appellant Krishnasamy, for a sum of Rs.10,000/-. So, the appellant is in possession and enjoyment of the property in Survey No.976/4 under the patta No.272. The appellants had also filed Ex.B.2/Complaint Receipt, Ex.B.3/Farmers Id, Ex.B.5 to Ex.B.10/Patta Receipts and Ex.B.11 to Ex.B.17/Adangal to prove their possession. Those documentary evidences were not properly appreciated by the Trial Court and hence, the learned counsel for the appellants prayed for setting aside the judgment and decree of the lower appellate court. The learned counsel would further contend that the Trial Court has rightly considered and dismissed the suit in respect of the second item of the property in Survey No.976/4, whereas the first appellate Court without properly considering the same has allowed the appeal. The learned counsel would also submit that in the pleading, the respondent/plaintiff has not disclosed the Exs.A.3, A.4 and B.4. Thus, the respondent have not come to the Court with clean hands. Further, the Trial Court has not considered the Exs.B.1, B.3 and B.5 to B.17, which would prove that the appellants are in possession of the second item of the suit property. Hence, the learned counsel for the appellants prayed for setting aside the judgment of the first appellate Court.

10. To substantiate his argument, the learned counsel for the appellants relied upon the following decisions:

- (1) 2008 (6) CTC 237, Anathula Sudhakar v. P.Buchi Reddy (Dead) by LRs. and others.
- (2) 1998-1-L.W.101, G.Selvamani and others v. The District Revenue Officer, Thanjavur and Others.
- (3) (1994) 1 Supreme Court Cases 1, S.P.Chengalvaraya Naidu (Dead) by LRs v. Jagannath (Dead) by LRs and Others.
- (4) 2000 (1) MLJ 373, V.G.Loganathan v. M.Balakrishnan and another.

11. Resisting the same, the learned Senior counsel appearing for the respondent would submit that the first appellant is none other

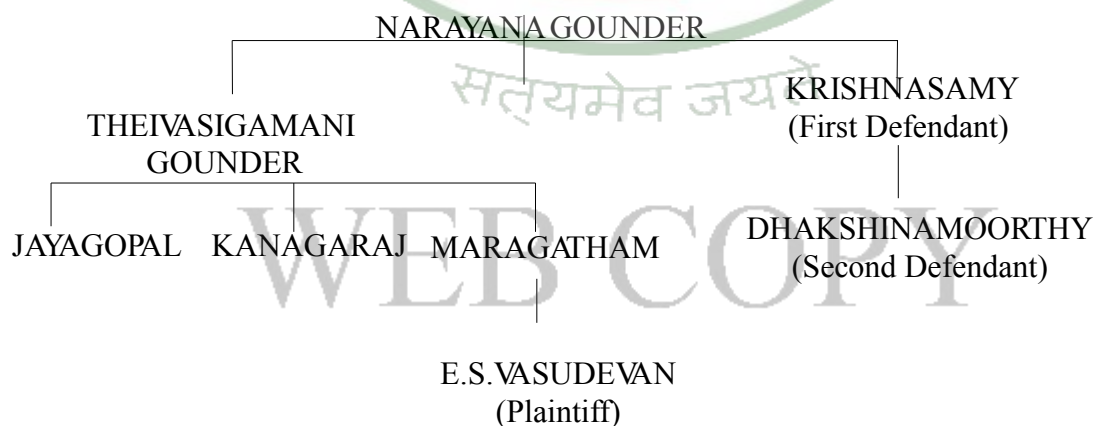
than the maternal grandfather of the respondent herein. Under the Ex.A.3/Partition Deed, dated 09.01.1943, the first appellant was given the 'C' scheduled property. It is an admitted fact that the 'A' scheduled property was purchased by Theivasigamani Gounder. During his life time, the said Theivasigamani Gounder had mortgaged the property under Ex.A.12/Mortgage Deed, dated 11.03.1996. So, the claim of the appellants that the said Theivasigamani Gounder had orally sold the property to the first appellant is false. The Patta and Adangal furnished by the appellants viz., Exs.B.1, B.3, B.5 to B.17 relates to the 30 cents in Survey No.976/4 which was allotted to him under Ex.A.3/Partition Deed, by which partition took place between himself, his brother and his father. The first appellate Court has considered the same in proper perspective and came to the correct conclusion. Hence, the learned Senior counsel for the respondent prayed for the dismissal of the appeal.

12. The learned Senior counsel for the respondent would further submit that the suit for permanent injunction is maintainable. To substantiate his argument, the learned Senior counsel for the respondent relied upon the following decisions:

- (1) 2013 (1) MWN (Civil) 334, Vijayan @ Arokkiyasamy and another v. Angammal and another.
- (2) 2014 (4) CTC 618, Jayanthi and another v. Dr.K.Selvaraj and others.
- (3) 1998-1-L.W.590, James v. Y.Davidson.

13. Considered the rival submissions made by both sides and perused the typed set of papers.

14. For the sake of convenience, the Genealogy tree is incorporated hereunder:



15. The admitted facts are that the suit properties originally belong to one Narayana Gounder who had two sons viz., one Theivasigamani

Gounder born through his first wife and the other Krishnasamy (first defendant/first appellant) born through his second wife. As per the Ex.A.3/Partition Deed, dated 09.01.1943, the property measuring about 1 acre and 19 cents in Survey No.976/4 was partitioned and the 'A' scheduled property was allotted to Narayana Gounder, 'B' scheduled property was allotted to Theivasigamani Gounder and the 'C' scheduled property was allotted to Krishnasamy. Each of them were allotted with 30 cents in Survey No.976/4 and the balance 29 cents in the said Survey number were kept in common. As per Ex.A.4/Sale Deed, dated 12.01.1943, Theivasigamani Gounder had purchased the properties allotted to Narayana Gounder. So, after the said purchase, Theivasigamani Gounder is entitled to more than 80 cents in Survey No.976/4. In the Ex.A.6/Patta, it was stated as Hect 0.33.00. The 'A' register has been marked as Ex.A.7, the Field Measurement Plan has been marked as Ex.A.8 and the kist receipts were marked as Ex.A.9 to Ex.A.15.

16. Further, there was also a partition among Theivasigamani Gounder and his two sons namely, Jayagopal and Kanagaraj, vide EX.B.4/Partition Deed, dated 12.04.2001. As per the said partition, the 'A' scheduled property was allotted in favour of Theivasigamani Gounder, who in turn executed Ex.A.1/Will, dated 11.07.2001 bequeathing the properties in favour of his grandson through his daughter Tmt.Maragatham viz., the plaintiff/respondent herein. The said Theivasigamani Gounder died on 18.09.2003, which was evidenced by Ex.A.2/Death Certificate dated 29.09.2003. To prove the Ex.A.1/Will, dated 11.07.2001, P.W.2/Kathirvel was examined. Thus, it is proved that the Ex.A.1/Will through which Theivasigamani Gounder had bequeathed the properties in favour of his grandson born through his daughter was executed while the testator was in sound state of mind.

17. It is true that neither in Ex.B.4/Partition Deed, dated 12.04.2001 nor in Ex.A.1/Will, dated 11.07.2001, there is hardly any mention about the properties in Survey No.976/4. However, to correlate the old survey number with the new survey number, Ex.A.7/'A' register and Ex.A.8/Plan has been marked. The patta has also been marked as Ex.A.6. So, as per the Ex.A.6, patta No.602, since the testator died, the plaintiff/respondent has got the properties as legate and since then, he is in possession and enjoyment of the same. But, the defendants/appellants attempted to interfere with his possession and hence, he gave a complaint under Ex.A.17. The receipt of the complaint is marked as Ex.A.16 and the house tax receipt is marked as Ex.A.18.

18. On the other hand, it was contended by the appellants that the first appellant had purchased the properties orally from Theivasigamani Gounder in the year 1976 for a sum of Rs.10,000/-. However, both the Courts below had rightly held that the oral sale is false. It is pertinent to note that the said Theivasigamani Gounder had purchased the properties from the first appellant/first

defendant under Ex.A.24/Sale deed, dated 13.07.1975, which is a registered sale deed. So, it is unbelievable that the first appellant had purchased the property orally for a sum of Rs.10,000/-.

19. In this regard, the learned Senior Counsel appearing for the respondent relied upon the decision reported in 1998-1-L.W.590, James v. Y.Davidson, wherein it was held that the relief of injunction is as owner or qua-owner. When once it was held that no title could pass under an oral sale, the question of upholding his possession as owner will not arise.

20. Considering the facts of the present case in the light of the abovesaid decision, it is appropriate to consider Section 54 of the Transfer of Property Act, wherein the ingredients of oral sale has been stipulated. As per Section 54 of the Transfer of Property Act, transfer in the case of a tangible immovable property of the value of one hundred rupees and upwards must be necessarily registered. Below the value of hundred rupees can be orally sold and the necessary ingredient is the handing over of the properties to the purchaser. In the instant case, even though the first appellant had stated that he has purchased the property as early as in the year 1976, he has not filed any scrap of paper to show that he was put in possession, patta changed in his name and he paid the kist and that his name finds place in the Adangal. Even though the appellants herein had filed the Exs.B.5 and B.6, it relates to patta No.602 and it was filed only after the filing of the suit, viz., 12.05.2004. So, no reliance can be placed on Exs.B.5 and B.6.

21. It is also true that the appellant herein had filed Ex.B.11 to Ex.B.17. However, those documents pertain to the 30 cents of land owned by the first appellant in Survey No.976/4, which was allotted under Ex.A.3/Partition Deed, dated 09.01.1943. So, the first appellate Court has rightly rejected the claim made by the appellant. Per contra, the respondent herein had filed documents to show that since his maternal grand father died, he got the property as legate and he has also filed documents to show that the mutation of revenue records were made, the kists were paid by him and also the complaint preferred by him since the appellant interfered with his peaceful possession. Further, as already stated, during his life time, Theivasigamani Gounder had mortgaged the disputed property vide Ex.A.21/Mortgage Deed, dated 11.03.1996. Furthermore, Ex.A.19/Fertilizer Id card which stands in the name of the Theivasigamani Gounder has been filed wherein the second item of the suit property has been mentioned. So, all the above evidences would clearly prove that the respondent/plaintiff alone is in possession and enjoyment of the property in question. So, the oral sale put forth by the appellant is false.

22. Thus, I am of the view that the oral sale put forth by the appellant in the year 1976 is unacceptable.

23. The next contention raised by the learned counsel for the appellants is that it is necessary to seek for the prayer of declaration of title in order to seek for the prayer for injunction. To substantiate the said argument, the learned counsel relied upon the decision reported in 2008 (6) CTC 237, Anathula Sudhakar v. P.Buchi Reddy (Dead) by LR's. and others, wherein it was held that under what circumstances the suit for bare injunction is maintainable. It is appropriate to incorporate paragraph 17 of the said decision:

"17. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under :

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case."

24. Per contra, the learned Senior Counsel appearing for the respondent relied upon the decision reported in 2013 (1) MWN (Civil) 334, Vijayan @ Arokkiyasamy and another v. Angammal and another, wherein the decision of the Hon'ble Apex Court made in the case of Anathula Sudhakar v. P.Buchi Reddy (Dead) by LRs. and others has been relied upon and it was held therein that in the cases where it does not involve any complicated question of title, the suit for bare injunction is maintainable. It is appropriate to incorporate paragraph 8 of the said decision:

"8. In this regards, it shall be appropriate to make reference to the relevant provisions of law. The relevant provisions are Sections 6, 34 & 37 of the Specific Relief Act. In a suit under Section 6 of the Specific Relief Act, question of title need not be gone into. So far as the declaratory Suits in respect of immovable property are concerned, Section 34, makes the relief a discretionary one subject to a negative qualification that, in a case where the Plaintiff could have asked for a consequential relief in addition to declaration and the Plaintiff has failed to seek such a consequential relief, the Court shall deny the discretionary relief of declaration. But no such corresponding Proviso is found in Section 37, dealing with the relief of injunction in respect of immovable properties. Hence, the guidelines issued by the Hon'ble Supreme Court in the above said judgment should be taken only as a guidelines for the sake of convenience of the Court for the proper exercise of the discretion in granting the relief of injunction. Even in the above said judgment of the Hon'ble Supreme Court, it has not been held that the Suit for bare injunction is not maintainable and it should be dismissed in toto. What has been observed therein is that in cases wherein complicated issues of title have arisen, the

Plaintiff should be directed to file a more comprehensive Suit for declaration and other reliefs. Even in the said case dealt with by the Hon'ble Supreme Court, ultimately the Court granted liberty to the Plaintiff therein to file a Suit for declaration and consequential relief by making the following observations:

"Nothing stated herein or by the Courts below shall be construed as expression of any opinion regarding title, in any future Suit for declaration and consequential reliefs that may be filed by the Appellants, in accordance with law".

25. For the very same proposition, the learned Senior counsel for the respondent relied upon the decision reported in 2014 (4) CTC 618, Jayanthi and another v. Dr.K.Selvaraj and others, wherein also the decision of the Hon'ble Apex Court made in the case of Anathula Sudhakar v. P.Buchi Reddy (Dead) by LR's. and others has been relied upon. It is appropriate to incorporate paragraph 8.1 of the said decision:

"8.1. It is not the case where the plaintiff does not have possession. Though it is a suit for injunction simpliciter, the issue of title is not directly and substantially in issue, so far as defendants 1 to 3 are concerned. It is a case where there are necessary pleadings with regard to title. The parties have been permitted to lead evidence on title. The issue regarding title is simple and straight-forward. Therefore, it is possible to decide the issue regarding title even though the suit is filed for injunction. As per the norms laid down in the above case, this case would be an exception to the normal rule that question of title will not be decided in a suit for injunction. The plaintiff having clear title and possession, suing for injunction, should not be driven to costlier and more cumbersome remedy of suit for declaration, merely because the defendants 1 to 3 make a claim, when they are legally estopped from making any claim."

As per the decision reported in 2008 (6) CTC 237, Anathula Sudhakar v. P.Buchi Reddy (Dead) by LR's. and others, persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. It was further held in the said decision that the court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case. In the present case on hand, prayer for injunction itself is sufficient and there is no necessity for filing the suit for declaration because the respondent herein has clearly established his title over the property through documentary

evidenc.

26. The next contention raised by the learned counsel for the appellants is that since the respondent herein has filed the suit for injunction, he ought to have filed the Adangal to prove his cultivation. The non-filing of the said document is fatal to the case of the respondent. To substantiate the said argument, the learned counsel for the appellants relied upon the decision reported in 1998-1-L.W.101, G.Selvamani and others v. The District Revenue Officer, Thanjavur and Others, wherein it was held that the best evidence to prove cultivation is to produce the Adangal extract. It is appropriate to incorporate paragraph 7 of the said decision:

"7. I have perused the records of the Revenue Court. The receipts produced by the Second respondent are all half size papers of the same size and same quality. When two different persons had issued the receipts for the lease amount for different years, it is not known as to how the receipts can be of the same size. The second respondent has stated in the written statement filed in the civil suit that he has to given 22 kalams of kuruvai paddy and 20 kalams of samba paddy as the lease amount. But all the receipts produced by the second respondent reveal the measuring of only 20 kalams of paddy. This also created a doubt to the effect that all the receipts have been prepared on one day. There is no explanation as to why the balance of 22 kalams was not measured all along. Further when the second respondent is a tenant since 1978 or 1979 he has not filed any application before the Record of Tenancy Officer till 1990. The application has been filed only after the petitioner had issued notice for redemption. This conduct would clearly establish that the assignee of the mortgagee is trying to enjoy the mortgaged property as much as possible or in the alternative is trying to deprive the legal representatives of the mortgagor from recovery of possession by way of redemption. The best evidence to establish the cultivation is the adangal extract. When the second respondent had been cultivating the land for nearly 12 years prior to the filing of the application before the Record of Tenancy Officer, he has failed to produce any adangal extract to establish his cultivation. In the absence of any adangal extract, the certificate issued by the Village Administrative Officer cannot be accepted, since it can be procured at any time."

27. It is true that to prove the possession, Adangal is necessary. In the instant case, the respondent has clearly stated as to how he got the property of his grandfather and derived the title under Ex.A.1/Will, dated 11.07.2001. The respondent has also filed documents to show that the mutation of revenue records were made and the kists were paid by him to prove that he is in enjoyment of the property. So, the argument advanced by the learned counsel for the

appellants in this regard, does not merit acceptance.

28. The learned counsel for the appellants also contended that the non-disclosure of Ex.B.4/Partition Deed, dated 12.04.2001 is fatal to the case of the respondent. To substantiate the same, the learned counsel relied upon the following decisions:

28.1. In the decision reported in (1994) 1 Supreme Court Cases 1, S.P.Chengalvaraya Naidu (Dead) by LRs v. Jagannath (Dead) by LRs and Others, it was held that the decree obtained by non-disclosure of the relevant documents amounted to fraud on the Court and the decree so obtained is liable to be set aside. It is appropriate to incorporate the relevant portion in paragraph 6 of the said decision:

"6.Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants- defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

28.2. In the decision of this Court reported in 2000 (1) MLJ 373, V.G.Loganathan v. M.Balakrishnan and another, it was held that the person coming to Court not disclosing all materials and not producing all documents is guilty of playing fraud on the Court. It is appropriate to incorporate paragraphs 17, 18 and 19 of the said decision:

"17. From the facts stated above, it is clear that by suppressing real facts before Court first respondent has obtained an undue advantage by filing collusive suit and forcibly dispossessed third person who was admittedly in possession of the building. I make it clear that I am not concerned about the right of petitioner whether he is licensee or only lessee. I am only pointing out that petitioner was in possession/occupation of the building.

18. When first respondent has suppressed material facts before Court and Court was also misled by that misrepresentation or fraud, I feel that it is a fit case to set aside the judgment and also orders in all the interlocutory applications.

19. As was held in (S. P. Chengalvaraya Naidu v. Jagannath), a fraud is an act of deliberate deception with the design of securing something by taking unfair advantage

of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Their Lordships in the earlier portion of the judgment in para 5, have held thus :

" The Courts of law are meant for imparting Justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the Court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation."

It is further held in that case that the party who comes to Court has to disclose all materials and produce all the documents and without any information to gain advantage that will amount to guilt playing fraud on Court as well as on the opposite party."

29. The said contention raised by the appellants does not hold good because in the plaint, the plaintiff has clearly explained about how he had inherited the property and the during the course of the Trial, he has filled all the documentary evidences to explain how his grandfather inherited the 80 cents of land in Survey No.976/4. In such circumstances, the respondent herein has derived the title only under Ex.A.1/Will, dated 11.07.2001. It is also pertinent to note that the first appellant herein is none other than the junior maternal grandfather of the respondent/plaintiff, who has wantonly suppressed the fact and pleaded oral sale. So, the non-disclosure of Exs.A.3, A.4 and B.4 is not fatal to the case of the respondent.

30. The learned counsel for the appellant also vehemently contended that the total extent of land in Survey No.976/4 has been wrongly mentioned as 1 acre 10 cents. The total extent of land in Survey No.976/4 is 1 acre 19 cents and out of the said extent of land, 30 cents each has been allotted to Narayana Gounder and his two sons viz., Theivasigamani Gounder and Krishnasamy and the balance extent of 29 cents were kept in common. Thereafter, Theivasigamani Gounder also purchased the share of Narayana Gounder. So, the total extent of land owned by Theivasigamani Gounder would be nearly 80 cents and not more than that. But in the description of the property, it has been mentioned as 1 acre 10 cents. In that it was specifically mentioned as Hectare 0.33.00 in respect of new survey number 976/4. Thus, it comes to nearly 81.5 cents. Furthermore, in the description of the property, the other survey numbers has also been mentioned.

Thus, the contention raised by the learned counsel for the appellants that the extent of land has been wrongly mentioned does not merit acceptance.

31. Considering all the above said facts and circumstances, the following inference can be arrived at:

(i) The suit for bare injunction is maintainable.

(ii) The Ex.A.1/Will, dated 11.07.2001 has been proved by way of examining P.W.2/Kathirvel.

(iii) The oral sale pleaded by the first appellant is unacceptable, as the revenue records would clearly indicate that the respondent is in possession and enjoyment of the suit scheduled property.

(iv) The documents Exs.B.1, B.3, B.5 to B.17 pertains to the property allotted to the first appellant under Ex.A.3/Partition Deed, dated 09.01.1943.

32. Thus, I am of the view that the first appellate Court has come to the correct conclusion after considering the oral and documentary evidences and the finding of the first appellate Court does not warrant interference by this Court. Hence, the judgment and decree of the first appellate Court is hereby confirmed. Consequently, the second appeal is dismissed with costs.

33. In fine,

(a) The Second Appeal is dismissed with costs throughout.

(b) The judgment and decree passed by the first appellate Court is confirmed.

(c) Consequently, connected miscellaneous petition is closed.

s/d-
सत्यमेव जयते

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1.The Sub-Court, Bhavani.

2.The Second Additional District Munsif Court, Bhavani.

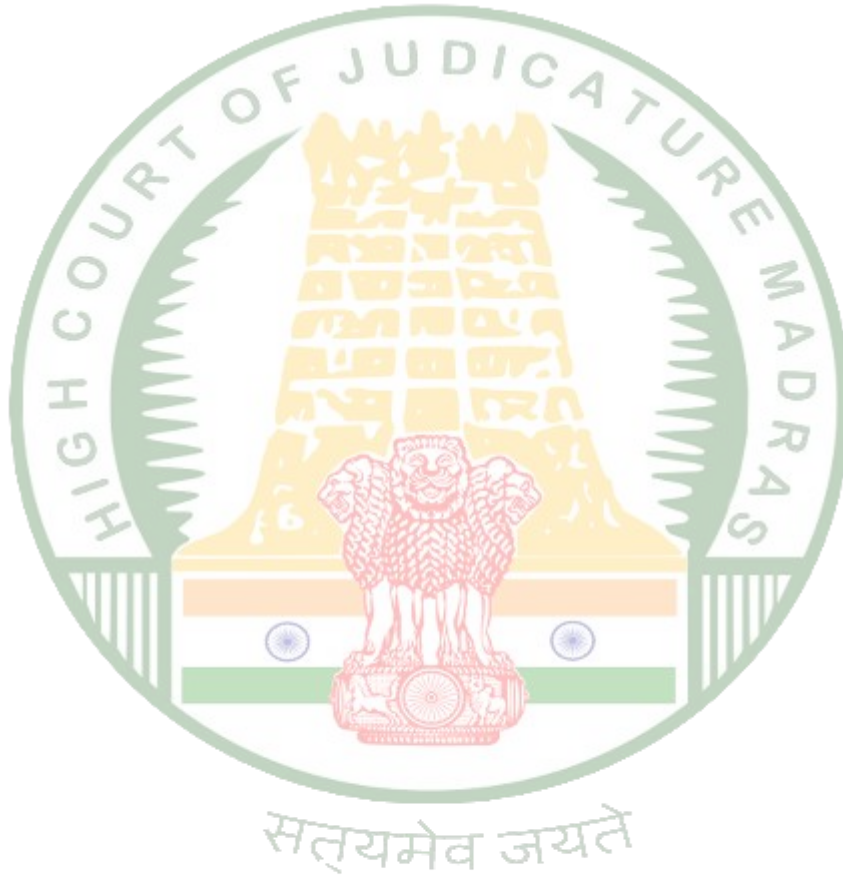
3.The Record Keeper, V.R.Section, High Court, Chennai.

+ 1 cc to Mr.N.Manokaran, Advocate SR 24671

+ 1 cc to Mr.J.Ramakrishnan, Advocat3, SR 24194

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S.A.No.1019 of 2007



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