

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.09.2014

DECIDED ON : 19.02.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

S.A.No.546 of 2011

Veerappa Asari  
S/o Murugappa Asari ... Appellant/ Defendant

-vs-

M.Subramani ... Respondent/ Plaintiff

Memorandum of Grounds of Second Appeal under Section 100 of the Civil Procedure Code, against the judgment and decree dated 11.02.2009 passed in A.S.No.9 of 2005 on the file of the learned Subordinate Judge, Ponneri, confirming the judgment and decree dated 29.10.2004 passed in O.S.No.177 of 1997 on the file of the learned District Munsif, Tiruvottiyur.

For Appellant :: Mr.S.Parthasarathy  
Senior Counsel for  
Mr.J.Ramakrishnan  
For Respondent :: Mr.R.Viduthalai  
Senior Counsel for  
M/s Sai, Bharath & Ilan

सत्यमेव जयते JUDGMENT

The unsuccessful defendant, aggrieved by the concurrent findings of the Courts below, has brought this second appeal. For convenience, the parties are referred to as per their litigative status in the suit.

2. The facts in brief leading to the filing of the second appeal are given as under:-

The plaintiff, who is the respondent herein, filed the suit for a declaration that he is the absolute owner of the suit 'B' schedule property covered in Survey No.1471/13, having an extent of 3.80 acres, situated at Madhavaram Firka Village, Saidapet Taluk and also for recovery of possession from the defendant, who is the appellant herein, after removing the superstructure put up on the 'B' schedule

property, on the ground that the 'A' schedule property, which originally belonged to the plaintiff's joint family, was taken over and maintained by the plaintiff by paying necessary kist and other charges to the concerned authority; that the 'A' schedule property covered an extent of 3.80 acres, for which patta originally stood in the name of Chellappa Naicker, however, the said patta has been subsequently transferred in favour of Deivasigamani, Thiripurasundari and Subramani, the plaintiff and that, out of 3.80 acres of land, the members of the plaintiff's joint family having sold 2.10 acres to third parties, the remaining 1.70 acres was taken over by the plaintiff. When the matter stood as above, the suit property was measured with the help of the surveyor and it was found that the defendant has trespassed into the 'B' schedule property, which forms part of 'A' schedule property. After finding that the defendant had trespassed into the 'B' schedule property illegally and put up a tiled house without taking permission from the concerned authority, the plaintiff filed the suit for the relief as stated above.

3. By filing a detailed written statement, the defendant specifically denied the case of the plaintiff that the entire extent of 'A' schedule property was originally belonging to the plaintiff's joint family and that the plaintiff took over and maintained the same. The defendant further denied the claim of the plaintiff that the patta originally stood in the name of Chellappa Naicker. On the other hand, it was stated that at the time of re-settlement of the suit village, the patta for 'A' schedule property i.e. the land in Survey No.1471/13, measuring an extent of 3.80 acres in Madhavaram Village, Saidapet Taluk, stood in the name of Murugappa Naicker, Seenupillai and Periya Govinda Naicker. The said three persons owned different extent of land covered in Survey No.1471/13, having an extent of 3.80 acres. But at no point of time, the entire extent of 3.80 acres belonged to any single person or single family. It was further stated that neither Murugappa Naicker, who is the maternal grandfather of the plaintiff nor Chellappa Naicker, who is the father of the plaintiff, had purchased any property in the suit village. Therefore, the claim of the plaintiff on the basis of patta obtained in the name of Chellappa Naicker would not confer any title for the entire extent of 3.80 acres in Survey No.1471/13. Further claim of the defendant was that the said Murugappa Naicker or his descendants i.e. the plaintiff and his brothers never possessed or enjoyed the entire extent of 3.80 acres in Survey No.1471/13 at any point of time, hence, the plaintiff's claim of the 'A' schedule property as his joint family property is totally false and untenable in law.

4. It was further claimed that the plaintiff got his share and separate possession of it, after filing a suit for partition of his

joint family property in O.S.No.361 of 1962 on the file of learned District Munsif, Poonamallee. However, in the said suit plaint, the extent of land in Survey No.1471/13 was mentioned as a lesser one and not the entire extent of 3.80 acres, as mentioned by the plaintiff, therefore, with a view to grab the property of others, the plaintiff has filed the present suit. Moreover, the above said proceedings would only reveal that the plaintiff and his brothers had already partitioned their family properties and as such, the plaintiff's claim is far from acceptance. That apart, the plaintiff, after passing of the partition decree, settled all the properties got by him under the partition decree in favour of his wife and his wife also had already sold out the same to various purchasers, therefore, the plaintiff does not have any property in his name, as such, the claim of the plaintiff that 'B' schedule property is part of 'A' schedule property is not valid in law. It was further averred that the plaintiff and his brothers originally owned only 2.10 acres in Survey No.1471/13, which was situated on the southern portion of the suit property and that the remaining extent of land were possessed by various persons. In addition thereto, it was further averred that on the demise of Kistapillai, his three sons, namely, Parthasarathy Pillai, Madhava Pillai and Gopal Pillai inherited two pieces of land in the said survey number. This is how the defendant has been in possession of the same, therefore, the plaintiff has no right to claim the said properties and thus he is not entitled to claim the relief as sought for.

5. On the pleadings and the materials placed before the trial Court, the learned trial Judge framed the following issues:-

- i. Whether the suit is barred by limitation?
- ii. Whether the plaintiff is entitled to remove the superstructure put up in 'B' schedule property?
- iii. Whether the defendant has been in possession of 'B' schedule property?"
- iv. Whether the plaintiff is entitled to declare the title of 'B' schedule property?
- v. To what relief?

The plaintiff examined himself as P.W.1 and marked 26 exhibits on his side and on the side of the defendant, two witnesses were examined and five exhibits were marked. The trial Court, by holding that the defendant has trespassed into the 'B' schedule property, dismissed the claim of the defendant. Aggrieved by the same, when first appeal was filed, the same was also dismissed. As against the same, the present second appeal has been filed.

6. This Court, at the time of admission, framed the following substantial questions of law:-

- '(1) When the plaintiff/respondent herein has failed to prove his title in respect of 3.80 acres of suit

land on the basis of best available evidence, whether the revenue records like patta can be heavily relied on by the trial Court as conferring title to decree the suit for declaration of title of 'A' and 'B' schedule properties?

(2) When the plaintiff's documents are only self-serving documents, whether in law the judgment and decree of the Courts below are not perverse in accepting the prayer for granting the decree of declaration?

(3) When the plaintiff has repeatedly claimed the suit property having an extent of 3.80 acres in Survey No.1471/13 on the basis of the settlement deed executed in favour of the plaintiff by his maternal grandfather, whether the non-production of the best available evidence would not non-suit the plaintiff for the relief of declaration?''

7. Arguing on the first substantial question of law, Mr.S.Parthasarathy, learned senior counsel appearing for the appellant/defendant contended that when the respondent/plaintiff has failed to prove his title in respect of the total extent of 3.80 acres of land with the help of the best available evidence, the Courts below ought not to have relied upon the patta as conferring title on the plaintiff to the suit land, namely, 'A' and 'B' schedule properties. Continuing his arguments, he has pleaded that the plaintiff and his brothers originally owned only 2.10 acres in Survey No.1471/13, which is situated on the southern portion of the suit property and the remainder portion of 1.70 acres having been owned and possessed by various persons belonging to various communities, namely, Periya Govinda Naicker and his family to an extent of 0.37 acre and Thirupathi Munusamy Naicker and his family owned two pieces of land measuring 0.56 acre and 0.51 acre. But Seenupillai died issueless and his brother Kistapillai inherited and became the full owner of the said two pieces of land measuring 0.56 acre and 0.51 acre in Survey No.1471/13. But the land to an extent of 0.56 acre is situated immediately on the north of the land owned by the plaintiff's family and the land to an extent of 0.51 acre is situated on the northern portion of Survey No.1471/13. However, on the demise of Kistapillai, his three sons, namely, Parthasarathy Pillai and Madhava Pillai and Gopal Pillai inherited the said 0.56 acre and 0.51 acre in Survey No.1471/13 along with other properties and subsequently they divided the family properties in which the southern piece of land measuring 0.56 acre and 0.17 acre out of 0.51 acre in the other piece of land in Survey No.1471/13 were allotted to Gopal Pillai. Similarly, Parthasarathy Pillai and Madhava Pillai got 0.17 acre each in Survey No.1471/13 together with other

properties. After sometime, Madhava Pillai died leaving his wife Mangalammal and daughter Pushpammal sold away an extent of 0.17 acre in Survey No.1471/13 to Gopai Pillai's daughter Amaravathi and one Elumalai, the adopted son of Madhava Pillai on 13.8.66. Thus, by the said acquisition, Amaravathi got 0.25½ acre out of the portion of 0.51 acre in the northern portion of Survey No.1471/13. Similarly, Elumalai also got 0.25½ acre out of 0.51 acre in Survey No.1471/13. Only thereafter, the said Amaravathi had given power of attorney to one Muthukrishna Mudaliar of Perambur of her land, namely, 0.25½ acre out of 0.51 acres in Survey No.1471/13, who in turn plotted out and sold to various purchasers and the 'B' schedule property is one among the plots thus sold by Muthukrishna Mudaliar on behalf of Amaravathi to this defendant. This is how the present defendant, after purchase of the 'B' schedule property, had put up the superstructure thereon by paying the house property tax etc., and continued to be in possession of the same. Therefore, the defendant is the absolute owner having title and possession of the 'B' schedule property and that the plaintiff has no manner of any right or title to 'B' schedule property.

8. Replying to the said contention, Mr.R.Viduthalai, learned senior counsel for the respondent/plaintiff, heavily contended that the claim of the defendant that he had purchased the suit 'B' schedule property under the sale deed, Ex.B1 dated 27.2.80 is wholly unacceptable, for two reasons. The 'B' schedule property claimed by the plaintiff in the suit is relating to Survey No.1471/13 having different boundaries and extent, whereas the property purchased by the defendant as shown in the sale deed dated 27.2.80 marked as Ex.B1 mentioned the number as Survey No.1478/3 with the boundaries as,

North by - Manickka Naicker and family land

South by - 20 feet road

West by - 2<sup>nd</sup> plot

East by - the land left for Gangaammal Koil and in between Survey No.1478/3 & Plot No.1, facing north 60 feet, south 60 feet, east 40 feet, west 40 feet totalling 2400 sq.ft. of vacant house site.

When the boundaries mentioned in the sale deed of the defendant do not tally with the boundaries of the suit schedule property, namely, 'B' schedule property, the defendant, after purchasing the land covered in Survey No.1478/3 under the sale deed Ex.B1 dated 27.2.80, had put up construction in the land covered in Survey No.1471/13 belonging to the plaintiff. This vital fact and truth have been admitted by the defendant himself before the trial Court, bringing the controversy to an end, deposing from his own mouth that the land purchased under the sale deed is different and the place of raising construction is different. This crucial admission made by the defendant that he had not put up construction with tiled roof in

his own land purchased under the sale deed dated 27.2.80 in Survey No.1478/3 has been duly considered by the trial Court as confirmed by the first appellate Court. Therefore, the contention made by the learned senior counsel for the defendant that the plaintiff has failed to prove his title in respect of the suit property on the basis of the best available evidence is far from acceptance.

9. Adding further, the learned senior counsel for the plaintiff has stated that the contention of the learned senior counsel for the defendant that both the Courts below have given more importance to the patta to decide the title of the suit property, namely, 'A' and 'B' schedule properties, is also untenable, for the reason that the trial Court, dealing with the core issue that the 'B' schedule property in which the defendant had put up the tiled roof by trespassing into the plaintiff's property, has rightly found that the defendant, who had purchased the land from his vendor/power holder of Amaravathi in Survey No.1478/3, leaving that portion, had put up construction by raising a tiled roof in Survey No.1471/13 belonging to the plaintiff and that the said finding was also confirmed by the first appellate Court. Therefore, the new contention raised by the defendant that the Courts below had given undue importance to the revenue records viz., patta as conferring title on the plaintiff is absolutely baseless, the learned senior counsel pleaded.

10. Again answering to the contention of the learned senior counsel for the defendant on the first substantial question of law that the revenue records like patta, etc., cannot be heavily relied by the Courts below, it was contended that as per Section 4 of the Tamil Nadu Patta Pass Book Act, 1986, the entries in the patta passbook and the certified copies of the entries in the patta passbook shall be presumed to be true and correct, until the contrary is proved or a new entry is lawfully substituted therefor, for the simple reason that Section 6 of the Act also envisages that the entries in the patta passbook issued by the Tahsildar as per Section 3 shall be prima facie evidence of title of the person in whose name the patta passbook has been issued to the parcels of land entered in the patta passbook.

11. Continuing his arguments, he has contended that a mere reading of Rule 4(4) of the Tamil Nadu Patta Passbook Rules shows that if a Tahsildar is satisfied that a dispute concerning ownership of patta is already pending in a court or issues are raised before him which impinge on personal laws or laws of succession and all the parties interested do not agree on the ownership in writing, he shall direct the concerned parties to obtain a ruling on the ownership from a competent civil Court having jurisdiction before changing the entries already recorded and existing with the various revenue records. But admittedly, in the instant case, the learned

senior counsel for the plaintiff pleaded that the plaintiff had already obtained a decree for declaration of his title with regard to the suit property covered in Survey No.1471/13. Therefore, by placing heavy reliance on the revenue records, the trial Court has declared the title of the suit property in favour of the plaintiff. In this context, he has pressed into service the ratio of this Court in C.Sabesan Chettiar (deceased) and his L.R's v. The District Revenue Officer, Coimbatore District and others, 2011 5 CTC 241.

12. I find merits in the submissions made by the learned senior counsel for the plaintiff. The reason is that when the plaintiff filed the suit for a declaration that he is the absolute owner of the 'B' schedule property and also sought a decree for recovery of possession from the defendant after removing the superstructure on the 'B' schedule property covered in Survey No.1471/13, the defendant, while stepping into the witness box before the trial Court, precisely, admitting the case of the plaintiff, brought the controversy to an end, by deposing that having purchased the land in Survey No.1478/3 under the sale deed Ex.B1 dated 27.2.80 from his vendor/power holder of Amaravathi, had put up construction in the land covered in another Survey No.1471/13. That apart, to undo the admission made by the defendant that he had put up construction in the plaintiff's land, he has also miserably failed to show that his vendor or their predecessors in title were in possession of the 'B' schedule property at any point of time. Therefore, the trial Court, with the help of the admission made by the defendant himself that he had put up construction only in the land bearing Survey No.1471/13 belonging to the plaintiff, had decreed the suit as prayed for. While doing so, the trial Court has also further found out from yet another admission of the defendant that he had not obtained any patta in respect of the suit property in his name. On the other hand, considering the patta having been issued by the revenue authorities in favour of the plaintiff with regard to the suit 'B' schedule property, which was again admitted by the defendant in his cross examination that Chellappa Naicker was conferred with the title to the suit property, the trial Court rejected the case of the defendant and accepted the case of the plaintiff on the basis of the revenue records viz., patta as conferring title to the suit 'B' schedule property.

13. The issue is not res integra as, on the plea of admission made under Section 58 of the Evidence Act, this Court had an occasion to consider a similar and identical issue in Second Appeal No.44 of 2014 dated 28.8.2014 (Selvamani v. Mohammed Famin), wherein, relying upon the judgment of the Apex Court in the case of M.Venkataramana Hebbar (Dead) by LR's v. M.Rajagopal Hebbar and others, (2007) 6 SCC 401, for the proposition that each denial by the other side should be specific, while so, it shall not be sufficient for the defendant in his written statement to deny

generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, this Court held that the admitted facts need not be proved by the other side. Similarly, in the present case, when the defendant himself has admitted during his cross examination that he had put up the construction in the plaintiff's property in Survey No.1471/13, the trial Court has rightly held in favour of the plaintiff.

14. Moreover, as mentioned already, when the boundaries shown in the sale deed of the defendant do not tally with the boundaries of the suit schedule property, namely, 'B' schedule property, since the defendant, after purchasing the land covered in Survey No.1478/3 under the sale deed Ex.B1 dated 27.2.80, had put up construction in the land covered in Survey No.1471/13 belonging to the plaintiff, and this vital fact and truth have been admitted by the defendant himself before the trial Court, bringing the controversy to an end, deposing from his own mouth that the land purchased under the sale deed is different and the place of raising construction is different, the trial Court, taking this crucial admission made by the defendant that he had not put up construction with tiled roof in his own land purchased under the sale deed dated 27.2.80 in Survey No.1478/3, has rejected the contention of the defendant and decreed the suit in favour of the plaintiff. The said findings of the trial Court have also been affirmed by the first appellate Court. Hence, finding no error or illegality in the judgments of the Courts below, the first substantial question of law is answered against the defendant.

15. Again arguing on the second substantial question of law that when the plaintiff's documents are only self serving testimonies, whether in law the judgments of the Courts below are not perverse in accepting the prayer for declaration, Mr.S.Parthasarathy, learned senior counsel for the defendant further contended that the plaintiff and his brothers family never possessed or enjoyed the entire extent of 3.80 acres of land in Survey No.1471/13 at any point of time, as they originally owned only 2.10 acres in Survey No.1471/13, which is situate on the southern portion of the suit property and the remainder extent of 1.70 acres of land having been owned and possessed by various persons belonging to various communities, namely, Periya Govinda Naicker and his family owning an extent of 0.37 acre, Thirupathi Munusamy Naicker and his family owning an extent of 0.26 acre and Seenupillai and his brother Kistapillai owning two pieces of land measuring 0.56 acre and 0.51 acre respectively. After sometime, when Seenupillai died issue less, his brother Kistapillai inherited and became the full owner of an extent of 0.56 acre and 0.51 acre in Survey No.1471/13. But the plaintiff had not produced any clinching or parental document to show that the entire extent of 3.80 acres

covered in Survey No.1471/13 is belonging to the plaintiff's family. While so, the judgments and decrees passed by the Courts below granting declaration in favour of the plaintiff are perverse, hence, the same should be interfered with.

16. Replying to the said contention, Mr.R.Viduthalai, learned senior counsel for the plaintiff, drawing the notice of the Court to yet another admission made by the defendant during his cross examination before the trial Court as to the ownership and possession of 3.80 acres of land in the aforesaid survey number by the plaintiff's family, further submitted that when the defendant had admitted that the entire 3.80 acres of land in Survey No.1471/13 is belonging to the plaintiff's family, he cannot find fault with the findings and conclusions reached by the trial Court, as confirmed by the first appellate Court, while granting the decree for declaration in respect of the suit 'B' schedule property covered in Survey No.1471/13.

17. To answer the said issue, it is pertinent to extract the relevant findings rendered by the trial Court on the admission made by the defendant, as follows:-

"மேலும் பிரதிவாதி தன் குறுக்கு விசாரணையில் தெளிவாக தான் கிரையம் வாங்கிய சர்வே எண் வேறு, வீடுகட்டியிருக்கும் சர்வே எண் வேறு என்றும், பிரிவுகள் ஏதம் இல்லை என்றும், சொத்து வரிகள் 1990-க்கு முன் வரி ரசீதுகள் ஏதம் இல்லை என்றும் சர்வே எண்.1478-3 - 1471க்கு தெற்கே உள்ளது என்பதும் தான் வீடு கட்டி 7 வருடத்திற்கு பிறகு இவ்வழக்கு தாக்கல் செய்யப்பட்டுவிட்டது என்றும், தான் கிரையம் பெற்றவரிடம் பத்திரம் உள்ளது என்றும் அதனைதான் தாக்கல் செய்யவில்லை என்றும் ஏற்றுக்கொண்டுள்ளார். 1980-ல் தான் பிரதிவாதி வீடு கட்டி சுவாதினத்தில் வந்தார் என்பதற்கும் ஆதாரமில்லை. மேலும் குறுக்கு விசாரணையில் 3.80 ஏக்கருக்கு செல்லப்பாநாயக்கர் பெயரில் பட்டா இருந்ததையும் பிரதிவாதி ஏற்றுக்கொண்டுள்ளார். ஆனால் அது முறையற்ற பட்டா என்கிறார். தனக்கு விற்பனாக்களுக்கு கிரையம் பெற்ற இடத்திற்கு பட்டா இல்லை என்றும், பட்டா வாதி பெயரில் உள்ளதையும் பிரதிவாதி சாட்சியப்படி ஏற்றுக்கொண்டுள்ளார். "

18. A mere reading of the above clearly shows that the trial Court, keeping in mind the admission made by the defendant during his cross examination that the patta has been issued in the name of Chellappa Naicker for an extent of 3.80 acres of land in Survey No.1471/13, rightly accepted the title of the plaintiff. Therefore, as contended by the learned senior counsel for the defendant, this Court does not find any perversity in the judgments of the Courts below. Accordingly, the second substantial question of law is also

answered against the defendant.

19. Arguing on the third substantial question of law, Mr.S.Parthasarathy, learned senior counsel for the defendant, contending that when the plaintiff claimed the entire extent of 3.80 acres of land on the basis of the settlement deed executed by his maternal grandfather, whether the non-production of the same would not non-suit the plaintiff for the relief of declaration, further submitted that even as per the version of the plaintiff, 2.40 acres of land was claimed to have been acquired from the partition suit, after selling 0.30 acres, it was claimed by the plaintiff that 2.10 acres belonged to them. But no title deed was filed. That apart, the best evidence of settlement deed claimed by the plaintiff was not even produced before both the Courts below. After some deliberations, the settlement deed has been obtained by the defendant, hence, the same may be permitted to be placed on record, since the settlement deed is the best evidence available to both parties and without reference to the settlement deed, the decrees passed by both the Courts below cannot be sustained, the learned senior counsel pleaded.

20. Mr.R.Viduthalai, learned senior counsel for the plaintiff, on the other hand, emphatically submitted that the said contention cannot be legally raised, since the declaration of title of the plaintiff to the suit property was based on an earlier decree passed by the competent civil Court in O.S.No.445 of 1987 dated 15.9.87. Continuing his arguments, the learned senior counsel Mr.R.Viduthalai for the plaintiff contended that in a suit for declaration of title, the burden always lies on the plaintiff to establish and make out a clear case for granting such a declaration. In the light of the above clear position, in the instant case, the plaintiff has discharged his burden to establish a clear case for granting the declaration with the consequential recovery of possession of the suit 'B' schedule property on the basis of the previous decree passed in O.S.No.445 of 1987 on 15.9.87. After discharging the burden by the plaintiff that the defendant had encroached into his property and put up a tiled house, the defendant clearly was unable to disprove such a prima facie case made out by the plaintiff. Therefore, both the Courts below have accepted the case of the plaintiff, in which event the concurrent findings of both the Courts below need not be interfered with, the learned senior counsel pleaded.

21. Here again, it must be mentioned that when the plaintiff filed the suit for declaration of title and for recovery of 'B' schedule property covered in Survey No.1471/13 forming an extent of 3.80 acres, out of which 40' x 60' with mangalore tiled small house bounded on the north, south, east and west and in the said suit, the defendant, having admitted that he had not put up construction with

mangalore tiled small house in his land purchased in Survey No.1478/3 under the sale deed dated 27.2.80, made it clear that he has put up construction in some other survey number. That goes to show that after purchasing the land in Survey No.1478/3 from his vendor/power agent of Amaravathi, he had put up construction in Survey No.1471/13, which admittedly belongs to the plaintiff. In fact, while considering the legal effect of admission made by the parties to the suit, the Apex Court in the case of Nagindas Ramdas v. Dalpatram Iccharam alias Brijram and others, AIR 1974 SC 471, has held as follows:-

'26....Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties.'

22. In an almost identical and similar circumstance, while considering the effect of admission under Order 12, Rule 6 of the Civil Procedure Code, following the observation of the Apex Court in the case of Karam Kapahi and others v. M/s Lal Chand Public Charitable Trust and another (2010) 4 SCC 753, I have held as follows:-

'38. In this connection, it may be noted that order 12 Rule 6 was amended by the Amendment Act of 1976. Prior to amendment the Rule read thus:

"6. Judgment on admissions. - Any party may, at any stage of a suit, where admissions of facts have been made, either on pleadings or otherwise, apply to the Court for such judgment or order as upon such admission he may be entitled to, without waiting for the determination of any other question between the parties and the Court may upon such application make such order or give such judgment, as the Court may think just."

39. In the 54th Law Commission Report, an amendment was suggested to enable the Court to give a judgment not only on the application of a party but on its own motion. It is thus clear that the

amendment was brought about to further the ends of justice and give these provisions a wider sweep by empowering judges to use it *`ex debito justitiae*, a Latin term, meaning a debt of justice. In our opinion the thrust of the amendment is that in an appropriate case, a party, on the admission of the other party, can press for judgment, as a matter of legal right. However, the Court always retains its discretion in the matter of pronouncing judgment."

5. On the present case being examined in the light of the principles laid down by the Apex Court governing the effect of admissions as adverted to above, it is seen that, admittedly, the plaintiff was originally owning the entire land in which the house of the plaintiff and that of the defendants situate. It is also an admitted fact that the defendants purchased an extent of land measuring East West 40' and North South 30' from the plaintiff's father on 28.11.1988 for a valid consideration of Rs.4,800/-. After the sale in their favour, the defendants constructed a hut in the suit property in a portion of the same and the rest is being enjoyed by them as garden. In respect of the disputed lane measuring about 4' in breadth lying on the northern side, based on their own sale deed dated 28.11.1988, the defendants could have satisfied the court by disproving the case of the plaintiff/appellant that the disputed 4' also was sold away by the plaintiff's father in favour of the defendants. When the plaintiff, who filed the suit for declaration and permanent injunction in respect of the suit property/lane, specifically made a claim that the suit lane with 4' breadth is being encroached upon by the defendants who have no title since the plaintiff's father did not sell the suit lane in favour of the defendants through the sale deed dated 28.11.1988, legally speaking, the plaintiff appellant has satisfactorily discharged his onus and, as a result, the burden shifts on the defendants to disprove the case of the plaintiff. Apart from that, the defendant, in his own admission before the trial court, would admit that the plaintiff

enjoys the house property and the vacant site surrounding the same. The second admission made by the defendant is further clear that in respect of the suit lane in S. No.615/4, the defendants had no right or title.

6. It is settled law that in a suit for title or permanent injunction, if the defendant comes to the witness box and admits the case of the plaintiff, the benefit of the said admission enures to the plaintiff. Section 33 of the Indian Evidence Act also states that evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states. Therefore, in this case, the admission made by the defendant is legally admissible against him."

Based on the above principles, when it is a clear case of admission made by the defendant before the trial Court that he had put up construction in some other survey number viz., in Survey No.1471/13, which admittedly belongs to the plaintiff, as per the principles behind Order 12, Rule 6, this Court has no hesitation to give its judgment accepting the admission of the defendant.

23. Secondly, the argument of the learned senior counsel for the defendant that the plaintiff has not established how he is still continuously enjoying the land having an extent of 3.80 acres in Survey No.1471/13 is wholly unnecessary, for, the issue that the plaintiff has proved his case that the 'B' schedule property having an extent of 40' x 60' is still forming part of his Survey No.1471/13 was at no point of time said to have been purchased either by the defendant or his vendors. Hence, the third substantial question of law is also answered against the defendant. In view of the above, this Court is of the view that it is unnecessary to deal with the other argument of the learned senior counsel for the defendant on the ambit of Sections 40 to 43 of the Evidence Act.

24. Curiously, at the second appellate stage, M.P.No.2 of 2011 has been filed by the defendant to produce 17 documents, namely, settlement deed dated 6.10.23, partition deed dated 2.6.79, sale deed, sale certificate, etc., on the ground that though the exhibits B-1 to B-5 were marked before the trial Court, due to oversight and inadvertence, the aforesaid documents could not be marked. However, it was argued that if the above documents are allowed to be placed on record, all the additional documents will prove that the suit

properties are belonging to the defendant. Adding further, the learned senior counsel submitted that these documents are very much necessary to decide the long pending lis. Pleading further, Mr.S.Parthasarathy contended that these documents will have a material bearing on the crucial issue involved in this second appeal and will also assist this Court to arrive at a just decision in the case, therefore, ignoring the long delay, these documents should be taken on record.

25. Mr.R.Viduthalai, learned senior counsel for the plaintiff, raising heavy objections, submitted that the additional documents now sought to be produced after a period of more than 15 years of the filing of the suit in the year 1997, that too at the second appeal stage, should not be entertained, since the defendant had not produced the said documents either before the trial Court or before the first appellate Court, when he has suffered repeated downfall. That apart, the jurisdiction of the appellate Court to receive additional evidence is also very limited, on this score also sought for rejection of the belated prayer.

26. As already mentioned by this Court, when the plaintiff filed the suit for declaration of title of the 'B' schedule property and also for recovery of possession from the defendant, the settlement deed dated 5.10.23, partition deed dated 2.6.79, sale deed dated 1.8.66, final decree passed in I.A.No.180 of 1965 in O.S.No.361 of 1962 dated 22.7.66 were all available with the defendant. When the defendant also had chosen to file Exs.B1 to B5 before the trial court, this Court is unable to see why these documents were not placed before the trial Court or at least before the first appellate Court. Therefore, the reasons adduced for marking the 17 documents as new documents do not impress this Court to let them in fresh evidence, as this would procrastinate the issue further. The time lag in the matter under consideration is also enormous and the additional evidence sought to be produced after a period of more than 15 years of the filing of the suit, cannot be accepted, in view of the ratio laid down by the judgment of the Apex Court in the case of N.Kamalam v. Ayyasamy, (2001) 7 SCC 503. Now the suit instituted in the year 1997 having been decreed in favour of the plaintiff by the trial Court and the first appeal also came to be dismissed in favour of the plaintiff, the petition for producing additional evidence at such a belated stage cannot be entertained. Hence, this Court is not inclined to entertain the said petition and accordingly, M.P.No.2 of 2011 is dismissed as unnecessary.

27. For all the foregoing reasons, finding no error or illegality in the judgments of the Courts below, the second appeal fails and it is dismissed. Consequently, interim order stands vacated and the M.P.No.1 of 2011 is also dismissed. However, there is no order as to costs.

Sd/-

Asst.Registrar (CS II )

/true copy/

Sub Asst. Registrar

ss

To

1. The Subordinate Judge  
Ponneri
2. The District Munsif  
Thiruvottiyur

Copy to

The Section Officer  
VR Section,  
High Court, madrs

1 cc to Mr.J. Ramakrishnan, Advocate, Sr. 9067

1 cc to M/s. Sai, Bharath & Ilan, Advocate, sr. 9063

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S.A.No.546 of 2011

KSJ (OC)  
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