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Reserved on:12.07.2016
Delivered on:14.07.2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.07.2016

Coram:

THE HONOURABLE MS.JUSTICE R.MALA

S.A(MD)No.375 of 2011
and
M.P(MD)Nos.1, 2 of 2011
and 1 of 2012

Paramasivan .. Appellant/Appellant/Plaintiff
vs.

Pandian @ Vellaiah Pandian ..Respondent/Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgement and Decree passed in A.S.No.41 of 2010 on the file of the Sub-Court, Kovilpatti, dated 06.04.2011 as confirming the judgment and decree passed in O.S.No.273 of 2008, dated 13.07.2010 on the file of the District Munsif Court, Kovilpatti.

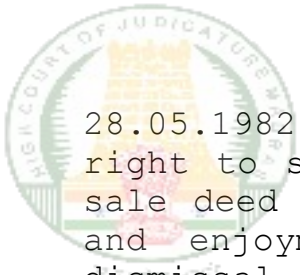
For Appellant : Mr.S.Meenakshi Sundaram
For Respondent : Mr.P.Pethu Rajesh

JUDGMENT

The plaintiff has filed this Second Appeal, challenging the decree and judgment passed in A.S.No.41 of 2010, dated 06.04.2011, on the file of the Subordinate Court, Kovilpatti by confirming the decree and judgment passed in O.S.No.273 of 2008, dated 13.07.2010, on the file of the District Munsif Court, Kovilpatti.

2. The appellant, as plaintiff, has filed a suit in O.S.No.273 of 2008 for declaration of title and for consequential injunction in respect of S.NO.7/2 in the plaint schedule property from one Muthammal on 03.02.1990. From that date onwards, he is in possession and enjoyment of the same, after making mutation of the revenue records. On 22.10.2008, the defendant, without any right over the property, attempted to interfere with his peaceful possession and enjoyment. Hence, he was constrained to file a suit for the above said relief.

<https://hcservices.courts.gov.in/hcservices> Respondent, as defendant, filed a detailed written statement stating that the suit property is his ancestral property. He sold the same in favour of one Muthammal on



28.05.1982 only 90 cents, out of 70 Ares. Hence, Muthammal has no right to sell the property, what she was not purchased under the sale deed dated 28.05.1982. The defendant alone is in possession and enjoyment of the suit property. Hence, he prayed for dismissal.

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4. The plaintiff filed a reply statement for the written statement filed by the defendant stating that the entire suit property comprised in S.No.7/2A has been sold to him. From the date of purchase, he is in possession and enjoyment of the suit property and before this, his predecessor viz., Muthammal enjoyed the suit property with the stated boundaries. Therefore, the boundaries will prevail over the extent. Hence, he prayed for a decree.

5. The trial Court, after framing necessary issues, granted decree only in respect of Ex.B.1 and on appeal, that has been confirmed by the first Appellate Court.

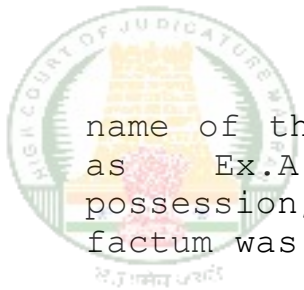
6. Against the judgment and decree passed by the first Appellate Court, the plaintiff filed this Second Appeal and raised the following Substantial Questions of Law:

"A) Whether the Courts below are right in law in restricting the relief with regard to 90 cents mechanically accepting the version of the respondent even without advertent the very recitals under Ex.B2 and there is no contra evidence adduced by the respondent overwhelming the documentary evidence produced by the appellant?

B) Whether the judgment and decree of the Courts below are vitiated in granting the decree as such without advertent the settled principles of law that boundary will prevail over extent in case of any discrepancy with measurements, especially under Exs.A1 and B1 there are two measurements, however the boundaries remains the same?"

7. Further, during the pendency of the Second Appeal, M.P.(MD) No.1 of 2012 has been filed by the appellant/plaintiff under Order 41 Rule 27 of the Code of Civil Procedure for reception of original document of Ex.B.1. Since the learned Counsel appearing for the respondent has no objection for marking the original document, it was received and marked as Ex.A.19.

8. The learned Counsel appearing for the appellant/plaintiff would submit that the properties were owned by the defendant's father and the defendant sold the suit property under Ex.B.1/A.19 on 28.05.1982 to Muthammal, from whom under Ex.A.1, the defendant herein purchased the property. After purchase by his vendor Muthammal, patta has been issued in her name. Then, after Ex.A.1 has been executed, patta has also been changed in the



name of the plaintiff/appellant. Kist receipts have been marked as Ex.A.3, chitta has been marked as Ex.A.5 and to prove his possession, Adangal has been marked as Ex.A.6 to Ex.A.18. This factum was not considered by the trial Court.

9. The learned Counsel appearing for the appellant/plaintiff would submit that the boundary will prevail over the extent, if there is any discrepancy in the extent. It vests under the dictum of "the vendor has no right to alienate the property, what he was not purchased." But Ex.B.1 is the parent document for the plaintiff/appellant and the original document is Ex.A.1. In that, it was specifically mentioned as Kayathar Sub-Divison, Raja Puthukudi Village, comprised in S.No.7/2, 70 ares out of 1 Acre 40 Hectare = 1.73 Acres. The boundaries have been mentioned as South of plaintiff's land; West of Duraikannu Vagaiyara's land; North of Muthiah and Isakki Muthu's shares and East of Pattanam road.

10. While pursuing Exs.B.1 and A.1, it show that the family was owned 1.40 Hectares of land, in which northern half share i.e., 70 Ares have been allotted to the respondent and southern 70 Ares have been allotted to his brothers Muthiah and Isakki Muthu and he has sold the northern portion allotted to him and he has not retained any portion. That factum was not considered by both the Courts below. Further he would submit that if there is any discrepancy in the extent, the boundaries will prevail over the extent. In support of his contentions, the learned Counsel for the appellant/plaintiff relied upon the following decisions:

(i) In *Roohnisha Beevi and Others Vs. A.M.M.Mahudu Mohamed and Others* reported in (1998)1 LW 244, wherein the Honourable Supreme Court has held as follows:

17.Ex.B.13 is a sale deed in respect of Kallappoo Magan thottam taken in the name of the third defendant's father. The Commissioner has also noted a row of trees, which is like a boundary on NSRQ line and all these trees are more than 40 years old. Kallappoo Magan Thottam is described under Ex.B.13 as having an area of more than 5 acres. In fact, the area covers the yellow marked portion (3 acres and 46 cents) and OPQRSN plot. Third defendant also has no case that under Ex.B.13, any portion of Pattanathu Maraikkar Thootam is included therein, even though he has a case that the properties are covered in S.No.256 also. So, the identification made by the Commissioner that the plaint property is ABTGHPOA plot is to be accepted. Courts below, for dismissing the suit, have said that the plaintiffs have title only for 3 acres 15 cents, and they cannot claim anything more. That is not the way to identify a portion of land. When the same is covered by boundaries. In 1955 K.L.T.647 (*Devan Krishnan Kartha V. Kochu Mohamed Pariathu*), a question came as to how to identify a



property when there is a misdescription a learned Judge of the Kerala High Court said thus:-

"The evidence supplied by boundaries, extent, survey numbers and lekhoms forms the determining factors when the identity of the property is put in issue. If all these factors harmonise there is little difficulty to identify the property in dispute. But when some of them are in conflict with the rest as when the extent and survey numbers do not agree with the boundaries usually the boundaries predominate, and the rest is regarded as erroneous or inaccurate descriptions.

(In Tamil Nadu 'lekhom' is known as pymash number).

The said principle was accepted in the subsequent decision reported in 1957 K.L.T. 742 (Full Bench) (Ouseph Chacko V. Krishna Pillai Govinda Pillai.)

18. In A.I.R. 1986 Kerala 236 (chumar V Narayanan Nair), learned Judge said thus:-

"Where on a construction of a document transferring title to hold a property, it is clear that the intention of the parties was to transfer a parcel of land within well defined boundaries, any erroneous statement of survey number or omission to state it should be rejected as false demonstratis."

If this principle is applied, merely because Exx.A.1 and A.2 make mention of only a lesser extent, and if in fact, within the boundaries a larger area is included, plaintiffs will be entitled to the same. Regarding the boundaries, the finding of the Courts below is that Exx.A.1 and A.2 properties tally with the present plaint description. The finding of the Courts below that the plaintiffs have not proved title to 5 acres 18 cents therefore, cannot be accepted. The further finding that the property has not been identified is also not correct. Exx.A.12, A.17 and A.22 also prove that plaintiffs predecessor had patta for the property covered by Exx.A.1 and A.2 and are paying kist.

(ii) In *Ramaiya Asari Vs. Ramakrishna Naicker alias Kollimalai Naicker* and another reported in (2000)3 MLJ 327, wherein this Court has held as follows:

14. In the *Palestine Kupat am Bank Co-operative Society Ltd., V. Government of Palestine*, A.I.R. 1948 P.C. 207: 62 L.W. 21, it has been held that where in the case of a grant of land there is a conflict between the description by boundaries and the area mentioned in the grant, the principle of preferring the description by fixed boundaries to the conflicting description by area should be applied in the construction of the grant, and the statement as to area should be rejected as false demonstration.



15. The same principle has been enunciated in *The church of South India Trust Association* through its power of Attorney Agents Rev. C.E. Soundiraraj V. Rja Ambrose, (1978)2 MLJ 620. In the second the decisions it is stated that the subject-matter of the grant would depend on the intention of the parties as expressed in the relevant conveyance deed. Where the deed sets out the extent and measurements correctly, there can be no difficulty in determining the subject-matter of the grant. But where no measurements are given or the extent mentioned in the deed is either vague or is only a rough and ready approximation, one has to look to other indications in the deed in order to fix the identity of the property which is the subject of the grant. If the deed in question sets out the boundaries will have to be accepted as a clear reflection of the intention of the grantor and they will conclude not only the exact positioning of the property conveyed, but also its true extent. The boundaries given in the deed will also, in such cases, prevail over the measurement given in the deed, if these are given as approximations.

(iii) In *Kuppuswami Naidu Vs. Krishnasami Naidu* reported in 2004 (5) CTC 344, this Court has held as follows:

"10. On the other hand, it is contended by the learned counsel for the respondent/defendant that though the sale deed was executed on 15.3.1940 in favour of the Nanjama Naidu with reference to 2 acres, the measurements and boundaries are correctly mentioned. In the subsequent sale deed, which is executed on 17.6.1982 in favour of the defendant, the boundaries mentioned in Ex.A3 would prevail over the measurements given in the sale deed executed in the year 1940. The main contention urged by the counsel for the appellant is that the lower Court as well as the Appellate Court, instead of considering the validity of the sale deed executed in favour of the defendant, had gone in to the question whether the plea of adverse possession is correct or not and as such, the judgments impugned are wrong.

This contention, in my view, is untenable. Admittedly, Ex.A3 sale deed executed by the Nanjama Naidu in favour of the defendant contains the boundaries as well as the extent as 2.25 acres. The question of adverse possession, of course, is incidentally referred to by the Appellate Court. But, the trial Court would elaborately consider the point with reference to the possession of the extent of area viz., 2.25 acres by the appellant/plaintiff on the basis of Ex.A3, by observing that the measurement in Ex.A2, which was executed in favour of Nanjama Naidu, is wrongly given



as 2 acres and as such, the document Ex.A3, which contains correct particulars and boundaries as well as the extent, has to be taken as true document. In order to substantiate this submission, the learned counsel for the respondent herein would cite the decision reported in *Ramaiya Asari v. Ramakrishna Naicker @ Kollimalai Naiker and Anr.*, 2003 (3) MLJ 327. In this context, it should be relevant to refer the observation, which is as follows :

"Whether the deed sets out the extent and measurements correctly, there can be no difficulty in determining the subject-matter of the grant. But where no measurements are given or the extent mentioned in the deed is either vague or is only a rough and ready approximation, one has to look to other indications in the deed in order to fix the identity of the property which is the subject of the grant. If the deed in question sets out the boundaries of the property conveyed, then these boundaries will have to be accepted as a clear reflection of the intention of the grantor and they will conclude not only the exact positioning of the property conveyed, but also its true extent. The boundaries given in the deed will also, in such cases, prevail over the measurement given in the deed, if these are given as approximations."

This observation, in my view, would apply in all force to the present case. According to the defendant, the extent of area in Ex,A2 has been approximately given, though the boundaries were correct. The same boundaries were mentioned in Ex.A3, which was executed in the year 1982 and found as 2 acres 25 cents with the same boundaries. Under those circumstances, the plaintiff cannot claim recovery of possession, as the materials available on record would indicate that the defendant is the title holder of entire extent of 2.25 cents with these boundaries by virtue of the sale deed dated 17.6.1982. Therefore, I do not find any merit in the appeal and in the substantial questions of law. Accordingly, the appeal fails and the same is dismissed."

(iv) In *Thiruvengadachari represented by his Power of Attorney Agent, R.Villalan Vs. Nagarajan and another* reported in 2007(1) CTC 577, wherein this Court has held as follows:

"9. The fourth reasoning of the appellate Court for setting aside Exs A1 and A2 is that the extent mentioned in Exs A1 and A2 exceeds by one acre 12 cents to that of the property scheduled to the plaint. But in Exs A1 and A2 four boundaries have been given. Even if there is any discrepancy in the extent, only the boundary will prevail. So this reasoning will not also hold any water."

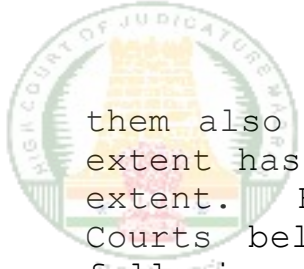


(v) In *N.Valliammal (dead) and another Vs. M.Kanniah and others* reported in 2016(2) CTC 77, wherein this Court has held as follows:

"21. Now turning to the facts of the case, the Appellant has to lose these Appeals mainly on two grounds. As has been dealt with by the Courts below, it is common knowledge that when the property is described by means of Survey Number and four boundaries though, there is some discrepancy in the extent of the land, four boundaries would prevail upon the extent of the land. Here, in this case, admittedly, under Exs.A.1 & A.2, Mrs.N.Valliammal, had purchased 1 acre 36 cents in one single survey number. Had it been true that she retained any portion out of the said land owned by her, the portion so retained by her should have been mentioned in the four boundaries at least as one of the four boundaries of the property which was covered under the General Power of Attorney. But, a perusal of the General Power of Attorney would go to show that the entire extent purchased under Exs.A.1 & A.2 is covered in the General Power of Attorney by means of four boundaries. Thus, the extent of the land purchased under Exs.A.1 & A.2 is 1 acre 36 cents. Though, the Deed of General Power of Attorney mentions the extent of the land as 1 acre 21 cents, going by the four boundaries in the Deed of General Power of Attorney, it is crystal clear that Mrs.N.Valliammal and her sons had not retained any portion of the land covered under Exs.A.1 & A.2. In other words, the land covered under Exs.A.1 & A.2 with the specific four boundaries are the one and the same mentioned in the Deed of Power of Attorney given by Mrs.N.Valliammal and her sons to the Power Agent to sell the property. Therefore, though, there is some discrepancy in respect of the extent of the land, that will not prevail upon as the four boundaries will prevail upon."

and would submit that the boundaries will prevail over the extent and prayed for setting aside the decrees and judgments passed by both the Courts below.

11. Resisting the same, the learned Counsel appearing for the respondent would submit that in Ex.B.1/A.19, it was specifically mentioned that S.No.7/2 northern 70 ares, as in which he sold only 90 cents and that boundaries have been stated as South of plaintiff's land; West of Duraikannu Vagaiyara's land; North of Menthepolu's land; East of Kkiki Muthu's shares and East of Pattanam road. If so, there is a specific boundary and extent had been given, there is a *ratio decidendi* on which decisions have been relied upon by



them also have no applicability, because if there is approximate extent has been given, then only boundaries will prevail over the extent. Further, that has been rightly considered by both the Courts below. For the above proposition, he relied upon the following decisions:

(i) In *the Church of South India Trust Association through its Power of Attorney Agents Rev.C.E.Soundiraraj and another V. Raja Ambrose (died) and another* reported in 1978 MLJ 620, this Court has held as follows:

"6. The principle of construction of grants made under instruments in writing seems to be now well-settled not only in this country, but in many other systems as well. The principle accords with common sense and might be stated, broadly, thus: The subject-matter of the grant would depend on the intention of the parties as expressed in the relative conveyance deed. Where the deed sets out the extent and measurements correctly, there can be no difficulty in determining the subject-matter of the grant. But where no measurements are given or the extent mentioned in the deed is either vague or is only a rough and ready approximation, one has to look to other indications in the deed in order to fix the identity of the property which is the subject of the grant. If the deed in question sets out the boundaries of the property conveyed, then these boundaries will have to be accepted as a clear reflection of the intention of the grantor and they will conclude not only the exact positioning of the property conveyed, but also its true extent. The boundaries given in the deed will also, in such cases, prevail over the measurements given in the deed, if these are given as approximations."

(ii) In *M.Rajagopal Mudaliar V. K.R.Venkataraman by power agent K.G.Ramanathan* reported in (2002)1 MLJ 529, this Court has held as follows:

11. Reliance is also placed on *Dina Malar V. Tiruchirapalli Municipality*, (1984)2 MLJ 306, that only in the absence of definite materials to show the actual extent intended to be sold the boundaries should outweigh the doubtful extent mentioned in the document. If the recitals in the document and the circumstances of the case show that a lesser extent only was conveyed than the area covered by the boundaries and there is clear evidence as to the intention of the parties with reference to the extent conveyed, then the extent should prevail over the boundaries. This decision is also applicable to the case on hand.

These lower appellate Court misdirected itself and although number of decisions were cited, they were not properly understood. When the respondent had



purchased only 32 feet x 75 feet and there is no ambiguity in the measurements, it is not necessary to go into the question of boundaries or the intention of the parties. D.W.2 is the vendor of the appellant as well as the respondent and his evidence only supported the case of the appellant. There is no reason to discard the testimony of D.W.2. The boundary description in the other document was relied upon to show that Sankara Naidu could not have retained any property after conveying under Ex.A.1. Simply because there was some omission in the reference of boundaries, it cannot be concluded that the vendor namely, D.W.2 had no right to convey the property. As adverted to, when the theory of adverse possession has been rejected by the lower appellate Court the case of the respondent mainly depends upon the sale deed, wherein a specific extent above has been conveyed and under the circumstances, the respondent is not entitled to claim more than that taking shelter under the boundaries. The finding of the lower appellate Court is based on mere surmise and conjecture and there was erroneous application of law and, as such, interference is called for."

(iii) In *Sarangapani Vs. Kalidoss and Another* reported in (2011) 6 MLJ 29, this Court has held as follows:

"40. As rightly concluded by the first appellate Court, the appellant/defendant never made any attempt to get the Patta in his name or he never exercised any act of ownership by dealing with the property, nor was there any declaration by them at any time that he was the owners of the property. In this circumstance, as rightly observed in the above cited decision, the first appellate Court has perfectly justified in holding that the possession of the appellant/defendant will not tantamount to adverse possession and there is no question of prescription of title by the appellant/defendant."

(iv) In an unreported judgment in *Hariram Sundaravel Vs. Seethalakshmiammal and another* made in S.A.No.423 of 1996, dated 28.12.2006, this Court has held as follows:

"28. The aforesaid verdict supports the case of the plaintiff, as it highlights the fact that simply because, a person purchased a property from the common owner, he cannot assume common passage unless, it is indicated so in any document. Here, while selling the property to the first defendant, the original owner as revealed by Ex.A.2, specifically stated that the pathway to the east of the property sold to the first defendant is in the possession of the original vendor and thereby, unambiguously and unequivocally, without giving room for any double-entendre stated that it was not a common



passage at all which was dedicated for the use of the first defendant. The subsequent contact as delineated above would also show that in various other subsequent documents also, they never intended the suit property as the one dedicated for the common usage of all the purchasers."

(v) In an unreported judgment in *Mohammed Yusuf and another Vs. Ameer Maideen* made in S.A.No.742 of 2000, dated 21.01.2008, this Court has held as follows:

"21. The learned Counsel for the plaintiff would convincingly and correctly argue that when linear measurements of the manai settled as well as linear measurements of the built portion there on are found set out, the question of referring to the boundaries does not arise at all. In support of his contention, he would rely on the decision of this Court in *M.Rajagopal Mudaliar V. K.R.Venkataraman* by power agent K.G.Ramanathan reported in (2002)1 MLJ 529. An excerpt from it would run thus:

It has been held in *Church of S.I.T.A. V. Raja Ambrose*, (1978) MLJ 620 as follows:

"Where the deed sets out the extent and measurements correctly there can be no difficulty in determining the subject matter of the grant. But where no measurements are given or the extent determining the subject matter of the grant. But where no measurements are given or the extent mentioned in the deed is either vague or is only a rough and approximation, one has to look to other indications in the deed in order to fix the identity of the property which is the subject of the grant. If the deed in question sets out the boundaries of the property conveyed, then these boundaries will have to be accepted as a clear reflection of the intention of the grantor and they will concluded not only the exact positioning of the property conveyed, but also is true extent". These decisions are applicable to the case on hand.

The lower appellate Court misdirected itself and although number of decisions were cited, they were not properly understood. When the respondent had purchased only 32 feet x 75 feet and there is no ambiguity in the measurements, it is not necessary to go into the question of boundaries or the intention of the parties. D.W.2 is the vendor of the appellant as well as the respondent and his evidence only supported the case of the appellant. There is no reason to discard the testimony of D.W.2. The boundary description in the other document was relied upon to sow that Sankara Naidu could not have retained any property after conveying ~~undisputed~~ ^{undisputed} ~~in~~ ⁱⁿ ~~the~~ ^{the} ~~case~~ ^{case} 1. Simply because there was some omission in the reference of boundaries, it cannot be concluded that the vendor namely D.W.2 had no right to convey the



property. As adverted to, when the theory of adverse possession has been rejected by the lower appellate Court the case of the respondent mainly depends upon the sale deed, wherein a specific extent above has been conveyed and under circumstances, the respondent is not entitled to claim more than taking shelter under the boundaries. The finding of the lower appellate Court is based on mere surmise and conjecture and there was erroneous application of law, as such interference is called for."

22. It is therefore clear from the decision of this Court that when linear measurements are clearly found set out the question of referring to boundaries would not arise."

(vi) He also relied upon paragraph No.26 of the unreported judgment in *Seethalakshmiammal Vs. Hariram Sundaravel and another* made in in Rev.P.(MD)No.52 of 2007 in S.A.No.423 of 1996, dated 10.03.2008 and he prayed for dismissal.

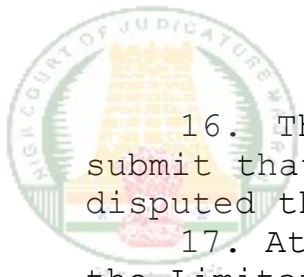
12. The learned Counsel for the respondent would submit that in the plaint in paragraph No.3, he would submit that he is in possession and enjoyment of the suit property for more than 18 years and derived his title by adverse possession. Once, he has not admitted the title of the defendant, he is not entitled to prescribe the title by adverse possession. For that reason, he relied upon the decision in *Sarangapani Vs. Kalidoss and Another* reported in (2011)6 MLJ 29 and he would rely upon paragraph No.40. In that it was stated that the person who claiming adverse possession, must admit the tile of his real owner.

13. Considering the rival submissions made by both sides and a perusal of the entire typed-set of papers, it would reveal that the respondent is the owner of the property, from whom the vendor of this appellant has purchased the property under Ex.B.1=Ex.A.19 The only question that has to be decided by this Court is as to whether the defendant sold the property measuring 90 cents out of 0.70.0 Ares out of 1.40.0 Hectares, or the entire northern 0.70.0 Ares out of 1.40.0 Hectare. It is pertinent to note that one of the boundaries is his brothers Muthiah's and Issaki's share. It is pertinent to note that the total extent available to the family is 1.40.0 Hectare, out of which, northern 70 Acres have been allotted to this defendant/respondent. Southern portion has been allotted to Muthiah and Issaki. If really he sold a portion of 90 cents out of 0.70.0 Ares, he must retain the remaining portion of the property and hence it must be one of the boundary for the property. At this juncture, it is appropriate to consider the decision in *N.Valliammal (dead) and another Vs. M.Kanniah and others* reported in 2016(2) CTC 77 relied upon by the learned Counsel for the appellant. It is squarely applicable to the facts of the present case.



14. On a perusal of Ex.B.1=Ex.A.19, it shows that the respondent has not retained any portion of the property in the survey number, since none of the boundary has been shown as the portion retained by him. But the survey number and the four boundaries are one and the same in Ex.A.1 and Ex.B.1 = Ex.A.19. In Ex.A.19 and Ex.B.1, it was stated as 90 cents. But the boundary is same as mentioned in Ex.A.1. But in that, the extent has been mentioned as 1 Acre 73 cents, but whereas in this ground reality only 1 Acre 8 cents is available. So, there is a discrepancy in this extent. If really the intention of the vendor that he has sold a portion of his property and retaining the remaining portion, one of the boundary must be his property, which he has retained. But in Ex.A.19 = Ex.B.1, he has not stated that he retained a portion of his property. In such circumstances, I am of the view that the *ratio decidendi* in *N.Valliammal (dead) and another Vs. M.Kanniah and others* reported in 2016(2) CTC 77 is squarely applicable to the facts of the present case.

15. Furthermore, it is pertinent to note that as per the revenue records, only 43 Ares has been mentioned. Even in fasli 1392, 43 Acres has been mentioned. In Ex.A.2 - chitta, Exs.A.4 and A.5 - patta and chitta, the total extent is mentioned as 43 Ares. But originally, the entire property is in possession and enjoyment of the plaintiff/appellant herein. In such circumstances, I am of the view that the boundary alone will prevail over the extent. As already stated, the defendant/respondent was under impression that he was in possession of 70 Ares and sold the same. But even in the document, there was an interpolation of 90 cents. But when the plaintiff purchased the property, in that it was stated as 70 Areas. Muthammal has purchased 90 cents with the stated boundaries and it is mentioned that on ground reality only 1 Acre 8 cents is available. So at the time of alienating the property under Ex.B.1 = Ex.A.19, the respondent was not retained any portion of the property in the survey number. He sold the entire property what he was in possession to Muthammal and that has been sold by Muthammal in favour of the plaintiff/appellant herein. He is in possession and enjoyment from the date of purchase under Ex.A.1 and that has been evidenced by patta and adangal. The respondent has not claimed any right. Only he filed a computer joint patta viz., Ex.B.2 issued on 16.09.2008 after filing of the suit. Since the respondent has sold his property what he possessed under Ex.B.1=Ex.A.19, he has not retained any portion of the property. Since there is a discrepancy in the extent of the property, the boundaries will prevail over the extent. Hence, the decisions relied upon by the learned Counsel for the respondent are not applicable to the facts of the present case. In such circumstances, I am of the view that the boundaries will prevail over the extent. That factum was not considered by both the Courts below and the appellant is entitled to declaration of title and injunction.



16. The learned Counsel appearing for the respondent would submit that the plaintiff cannot claim adverse possession, once he disputed the title to the respondent/defendant.

17. At this juncture, this Court has to consider Section 27 of the Limitation Act, which is as follows:

"27. Extinguishment of right to property: At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

18. The plaintiff purchased the property under Ex.A.1 dated 03.02.1990. From that date onwards, he is in possession and enjoyment of the property. As per Section 27 of the Limitation Act, the right to the property of the respondent is extinguished, since the appellant is in possession for more than 12 years. Because, he himself pleaded and argued that Muthammal purchased the property from the respondent in the year 1982 and she was in possession and enjoyment till this appellant purchased the same under Ex.A.1 dated 03.02.1990. From that date onwards, he is in possession and enjoyment of the property. The respondent/defendant has not retained any portion of the property in the survey number. In such circumstances, the decisions relied upon by the learned Counsel for the respondent in *Sarangapani Vs. Kalidoss and Another* reported in (2011)6 MLJ 29; in S.A.No.423 of 1996 and the Review Application (MD)No.52 of 2007, are not applicable to the facts of the present case. But both the Courts below have not considered this aspect that there is a discrepancy in the extent and the appellant is in possession and enjoyment of the property what he purchased from Muthammal i.e., who purchased the same from the respondent. Once there is a discrepancy in the measurement, only boundaries will prevail over the extent. So the Substantial Questions of Law A and B answered accordingly.

19. In view of the answer given to the Substantial Questions of Law A and B as discussed supra, the respondent has sold the entire property what was in his possession under Ex.A.19 = Ex.B.1 in the year 1982 to one Muthammal, who in turn sold to the plaintiff/appellant herein under Ex.A.1 on 03.02.1990. From that date onwards, the appellant herein is in possession and enjoyment of the same after mutation of revenue records. That has been evidenced by Exs.A.2, A.3, A.4, A.5 and A.18 and his possession also proved by way of documents Exs.A.6 to A.17 ie., adangal. In that it was shown that he is in possession and enjoyment of 43 Ares, that means 1 Acre 8 cents. So I am of the view that both the Courts below have not considered this aspect in a proper and perspective manner. Hence, the judgment and decree of both the Courts below is set aside as unsustainable and hereby set aside. Consequently, the Second Appeal is allowed.



20. In fine,

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(i) the Second Appeal is allowed;

(ii) the judgment and decree passed by the first Appellate Court in A.S.No.41 of 2010, on the file of the Subordinate Court, Kovilpatti, dated 06.04.2011 and the judgment and decree passed by the trial Court in O.S.No.273 of 2008, on the file of the District Munsif Court, Kovilpatti, dated 13.07.2010 are hereby set aside;

(iii) the suit in O.S.No.273 of 2008, on the file of the District Munsif Court, Kovilpatti, has been decreed as prayed for declaring that the plaintiff is the owner of the suit property and also entitled to permanent injunction restraining the defendant, their men, servants from interfering with his peaceful possession and enjoyment of the suit schedule property; and

(iv) both parties are directed to bear their own costs. Consequently, the connected Miscellaneous Petitions are all closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub-Assistant Registrar

To

1.The Subordinate Judge, Kovilpatti.

2.The District Munsif , Kovilpatti.

3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai

+One cc to Mr.S.Meenakshi Sundaram, Advocate, SR.No.36422

+One cc to Mr.P.Pethu Rajesh, Advocate, SR.no.37221

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RL/6C/14P/SKS/RR/SARII/26/7/2016

PRE-DELIVERY JUDGMENT MADE IN
S.A(MD)No.375 of 2011