

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2017

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THE HON'BLE MR. JUSTICE T.MATHIVANAN

S.A.Nos.1275 and 1276 of 2013

S.A.Nos.1275 of 2013

1.N.Manoharan
2.Chandrasekaran ..Appellants/Defendants

Vs.

1.T.S.Mariappan
2.Saraswathy
3.Kavitha
4.Dharani ... Respondents/Plaintiffs

Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 20.12.2012 and made in A.S.No.1 of 2011 on the file of the Court of Subordinate Judge, Dharapuram, Tiruppur District, Confirming the judgment and decree dated 30.10.2010 and made in O.S.No.469 of 1994 on the file of the Court of the District Munsif, Dharapuram.

S.A.Nos.1276 of 2013

1.N.Manoharan
2.Chandrasekaran ..Appellants/Plaintiffs

Vs.

1.T.S.Mariappan
2.Saraswathy
3.Kavitha
4.Dharani
5.Thamiarasi
6.Paramasivam
7.R.Soundararajan
8.Damodharan
9.Balakrishnan
10. The Commissioner

Dharapuram Municipality
Dharapuram Town, Dharapuram Taluk
Tiruppur District

11.K.Thangavel S/o. Karuppusamy Gounder
12.K.Thangavel S/o. Muthusamy Gounder ..Respondents/Defendants

Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 20.12.2012 and made in A.S.No.2 of 2011 on the file of the Court of Subordinate Judge, Dharapuram, Tiruppur District, Confirming the judgment and decree dated 30.10.2010 and made in O.S.No.454 of 1991 on the file of the Court of the District Munsif, Dharapuram.

For Appellants
in both the second
appeals : Mr.S.V.Jayaraman
Senior Counsel
for Mr.N.Srinivasan

For Respondents: Mr.M.L.Dennis for R1 to R4
Mr.P.Baskaran for R5 & R7,
in both the second appeals
in AS.1276/13

R6,8 to 10 : No appearance

COMMON JUDGMENT

These two memorandum of second appeals have been directed against the common judgment dated 20.12.2012 and made in the appeals in A.S.Nos 1 and 2 of 2011 on the file of the learned Principal Subordinate Judge, Dharapuram.

2. The appellants in both the second appeals are the appellants in the appeals in A.S.No.1 and 2 of 2011 on the file of the Principal Subordinate, Dharapouram. They are the defendants in O.S.No.469 of 1994 and the plaintiffs in the suit in O.S.No.454 of 1991. The respondents herein are the respondents in both the appeals viz., A.S.No.1 and 2 of 2011 and the plaintiffs in the suit in O.S.No.469 of 1994 and the defendants in the suit in O.S.No.454 of 1991.

3. The appellants 1 and 2 had filed a suit in O.S.No.454 of 1991 on the file of the District Munsif, Dharapuram, Erode District, as against the respondents herein seeking the relief of declaration and for recovery of possession. The first respondent and one Krishnan (since deceased) had filed another suit in O.S.No.469 of 1991 as against the appellants 1 and 2 and thereby sought the relief of declaration of their title to the suit property described in the plaint schedule therein and for the consequential relief of permanent injunction. They had also sought the alternative relief of permanent injunction as against the appellants restraining them from interfering with their peaceful possession and enjoyment of the suit property described therein.

4. Defendants 1,2,6,7,8,12 and 13, who are the Respondents 1, 2,6,7,8,12 and 13 in A.S.No.2 of 2011, had contested the suit by filing their respective written statements. During the pendency of the suit, the second respondent had passed away. Therefore, in view of the order passed by the trial Court dated 14.08.2009 and made in the application in I.A.No.792 of 2009, the defendants 2 to 5, who are the respondents 2, 3 and 4 herein, have been impleaded as legal representatives of the deceased second respondent.

5. Insofar as the other suit in O.S.No.469 of 1994 is concerned, the appellants 1 and 2 in S.A.No.1275 of 2013, being the defendants, had contested the suit by filing their written statement. Both the suits were consolidated together, tried jointly and disposed of in a common judgment on 30.10.2010 by the trial Court.

6. Insofar as the suit in O.S.No.454 of 1991 is concerned, the trial Court had decreed the suit partly in respect of 6.45 acres comprised in S.Nos.385/1C1, 385/1C2 and 385/1C3. The suit in respect of the remaining portion was dismissed. In respect of the other suit in O.S.No.469 of 1994, the trial Court had granted the decree of declaration in respect of 3.05 acres comprised in S.No.385/1B and the consequential relief of injunction was also granted in respect of the above said extent and the suit, in respect of the remaining extent was dismissed.

7. Having been aggrieved by the judgment pronounced in the suit in O.S.No.454 of 1991 and O.S.No.469 of 1994, the appellants herein, being the plaintiffs in the suit in O.S.No.454 of 1991 and the defendants in the suit in O.S.No.469 of 1994, had preferred two appeals in A.S.No.1 and 2 of 2011. The defendants in the suit in O.S.No.454 of 1991 had preferred an appeal in A.S.No.40 of 2011. Similarly, the plaintiffs in the suit in O.S.No.469 of 1994, who are the defendants 1 and 2 in the suit in O.S.No.454 of 1991, had filed another appeal in A.S.No.41 of 2011. All the four appeals were clubbed together, heard jointly and disposed of in a common judgment dated 20.12.2012 and thereby the first appellate Court had confirmed the judgment and decree passed in O.S.No.454 of 1991 and O.S.No.469 of 1994 by the trial Court and in consequence thereof, all the four appeals were dismissed.

8. Challenging the correctness of the judgment dated 20.12.2012, the appellants in A.S.Nos.1 and 2 of 2011, who are the plaintiffs in O.S.No.454 of 1991 and the defendants in O.S.No.469 of 1994 stand before this Court with these second appeals.

9. Before we go into the merits of the case, it is significant to note here that both these second appeals have not been admitted. However, it is trite to say that the appeals can be admitted by the High Court provided it involves a substantial question of law. Sub-section (1) of Section 100 CPC envisages that save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

10. Mr.S.V.Jeyaraman, learned senior counsel appearing on behalf of the appellant has contended that as contemplated under Sub-section (3) of Section 100 of the Code of Civil Procedure, where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question. He has also drawn the attention of this Court to the provisions of Sub-section (5) of Section 100 CPC wherein it is stated that the appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question.

11. But, Mr.M.L.Dennis, learned counsel appearing for the respondents 1 to 4, has contended that no such substantial question of law was involved in these appeals and since the Courts below had given concurrent findings on appreciation of the evidences, both oral and documentary, as well as on the facts situations arose out of the suits, the appeals should be dismissed at the threshold.

12. According to Mr.S.V.Jayaraman, the common substantial questions of law raised in Clauses (c) (d) (g) (h), (j) and (k) of the memorandum of appeals are very much relevant. The above substantial questions of law are enumerated as under:

1) Is not the lower appellate Court wrong in not framing the correct point for determination as per Order 41 Rule 25 CPC?

2) Are the Courts below correct and justified in ignoring the laid proposition that boundaries will prevail over the extent, while deciding the suit?

3) Is it necessary for the plaintiffs to prove their possession when the suit is based on the title?

4) Are the courts below correct and justified in holding that the plaintiffs in the suit in O.S.No.454 of 1991 are estopped?

5) Are the courts below correct and justified in holding that the suit is barred by limitation in view of the provisions of Section 14 of the Survey and Boundaries Act, especially when no notification has been issued or published under that Act?

6) Will not Section 4 of the Transfer of Property Act apply to the facts of the Case?

13. Obviously both the trial Court as well as the first appellate Court have given concurrent findings decreeing the suits in O.S.No.454 of 1991 and 469 of 1994 in part. The Supreme Court in Ram Lal & Anr vs Phagua & Ors reported in 2005 (5) CTC 282 (SC) has held that the High Court can interfere in exercise of second appellate jurisdiction with unreasonable and unjust findings of courts below if such Court has not appreciated the findings properly. This Court (Madras High Court), in Poora Mosque and Madra-Se-Ahmadia Tirupathur v. Ganesan and others reported in (2006) (1) MLJ 361 (mad), has held that if no substantial question of law is involved in second appeal, concurrent findings of the lower courts cannot be interfered with. With this backdrop, let us enter into the merits of the case.

14. As aforestated in the opening paragraphs, the appellants herein are the plaintiffs in the suit in O.S.No.454 of 1991 and defendants in the suit in O.S.No.469 of 1994. Since they are the appellants in both the appeals, for easy reference and for the sake of convenience they may hereinafter be referred to as the appellants and the respondents in both the appeals be referred to as the respondents wherever the context so required.

15. In the suit in O.S.No.454 of 1991, the appellants have claimed absolute right and title over the extent of 7 acres 36 cents under Ex.A1 sale deed dated 23.09.1976 of which they have also sought for recovery of possession in respect of the extent of 91 cents, which is allegedly in the possession of the respondents. The respondents 1 and 2, being the brothers, had jointly claimed rights and title over the extent of 3 acres 12 ½ cents under the sale deed marked as Ex.B5 dated 31.05.1978. But the Courts below have decreed the suit in O.S.No.454 of 1991 in respect 6 acre and 45 cents, instead of 7 acre and 36 cents. The courts have also decreed the suit O.S.No.469 of 1994 declaring that the respondents are only entitled to 3 acres and 0.05 cents and not 3 acres 12 ½ cents.

16. The case of the appellants is that they had purchased 7.36 acres comprised in S.No.385/1 for a total consideration of Rs.31,000/- under a registered sale deed dated 23.09.1976. They have also admitted that after their purchase they did not measure the exact extent of the suit property. They have further admitted that the respondents land is lying proximity, they had/have been in possession of their respective land approximately with in the wall described boundaries.

17. While so, the Tahsildar of Dharapuram had surveyed and subdivided the land, which was in the possession of the plaintiffs and assigned sub-division number as 385/1C and issued patta on 17.05.1980 in respect of 6 acres 45 cents. According to the appellants though they are entitled to 7 acre and 36 cents as per their title deed dated 23.09.1976, the Tahsildar, after sub-division had issued patta on 17.05.1980 in respect of 6 acre and 45 cents. That on 20.10.1991, the appellants to know that the remaining area measuring 0.91 cents has been in the possession of the respondents 1 and 2. When they had approached the respondents, they had agreed to measure their respective properties with the assistance of a Taluk Surveyor. Accordingly, they had presented an application on 28.10.1991 before the Tahsildar, Dharapuram to measure the properties and to ascertain and fix their land measuring 7.36 cents. As stated in the earlier paragraphs, it is the specific case of the appellants that the deficit portion of 0.90 cents has been in the possession of the respondents 1 and 2.

18. During the pendency of the suit, some third parties had formed layout under the name and style of "Geetha Nagar" on the western side of the suit property and they had begun to sell the plots, which includes the portion of the suit property lying on the tail end of the southern side i.e., on the east west direction. The defendants 6 to 10 and 12 and 13 had purchased the portion of the properties belonging to the plaintiffs. Besides this, while forming the layout under the name and style of Geetha Nagar, the portion allotted for the common usage including the portion of the plaintiffs' property, was entrusted with the 11th defendant i.e., the Commissioner of Dharapuram Municipality. Some portions belonged to the plaintiffs was also entrusted with the 11th defendant. The plaintiffs have therefore claimed the relief of recovery of possession in respect of 0.91 cents, which is said to have been lying on the northern side of the plaint plan (Ex.A4) shown as A, B, C, D, E, F and G from the respondents 1 and 2. As per the case of the appellants, the Advocate Commissioner had visited the suit property and measured the same with the assistance of the surveyor and identified the extent of 91 cents belonged to the plaintiffs. According to the

Commissioner's report and plan (Exs.C1 to C13), the disputed 91 cents, which is said to be in the possession of the respondents 1 and 2, is comprised in S.Nos.385/1B, 385/1A, 385/1D and 385/D.

19. Respondents 1 and 2 / defendants 1 and 2 had filed their written statement, additional written statements and amended written statements on various occasions. While refuting the allegations made in the plaint, they have agreed that the appellants had purchaed an extent of 7.36 acres of land comprised in S.No.385 /1 under a registered sale deed dated 23.09.1976. According to them, the larger extent of the land comprised in S.No.385 was originally belonged to one Rangasamy Pillai. Out of the larger extent of the land, a portion measuring 3.12 ½ cents was sold out ot one Chinnasamy Naicker on 09.05.1960 by Rangasamy Pillai. Though the extent of the land was wrongly mentioned in the said sale deed, the boundaries were clearly carved out. The southern boundary of the land purchaesd by Chinnasamy Naicker was clearly stated in the sale deed dated 09.05.1960. Though the extent of the land was wrongly mentioned as 2.66 cents, the actual extent which was sold out to Chinnasamy Naicker was 3.12 ½ cents. However, the vendor Rangasamy Pillai had never raised his objection. Therefore, Chinnasamy Naicker had been in possession and enjoyment of the property measuring 3.12 ½ acres, which was purchased by him on 09.05.1960 against the interest of others and therefore, he had prescribed title by way of adverse possession. The respondents 1 and 2 have stated that they had purchased the extent of 3.12 ½ acres from the heirs of the Chinnasamy Naicker within the specific boundaries under a registered sale deed dated 31.05.1978 and after their purchase, they have been in possession and enjoyment of the said extent of land within the specific boundaries.

20. In the sale deed dated 23.09.1976, which was purchased by appelallants 1 and 2, the defendants property has been shown as their northern boundary. The respondents 1 and 2 have specifically stated that though the appellants had purchased 7.36 acres comprised in S.No.385/1 within the specific boundaries, the acutal extent which was sold out was only 6.45 acres. After their purchase they had applied for sub-division of their property comprised in S.No.385/1. Based on their application , the Tahsildar, Dharmapuri, had sub-divided the property on 17.05.1980. Accordingly, the land comprised in S.No.385/1 was sub-divided into 4 compartments as A, B, C and D.

SI	Sub-Division No.	Extent	Name of the Plot owners
A	385/1A	8 Acres 0.03 cents	Shanmugasundaram and others
B	385/1B	3 Acres 0.05 cents	Respondents 1 and 2
C	385/1C	6 Acres 45 cents	Appellants 1 and 2
D	385/1D	0.50 cents	Raju Chettiar and Varadharaj Assari

21. This fact was let known to the appellants on 17.05.1980 informing them that as per their sale deed dated 23.09.1976, they are entitled only to an extent of 06.45 acres and thereafter, the appellants had never raised any objection or filed any appeal before the concerned Revenue Authority for seeking appropriate remedy.

22. Again the appellants had applied before the Tahsildar, Dharapuram to sub-divide the extent of 6.45 cents comprised in S.No.385/1C into four further compartments on 30.03.1982 as 385/1C, 385/1C1, 385/1C2 and 385/1C3. That on 30.03.1982, the appellants were aware of the fact that they are entitled only to an extent of 6.45 acres. The respondents have also stated that the appellants had divided their landed property into plots and they had also applied before the Dharapuram Municipality for getting planning approval. Even at that point of time also, they had agreed that they were entitled to only 06.45 acres alone. It appears from the records that the appellants had made several applications before the trial Court in the suit in O.S.No.454 of 1991 to appoint an Advocate Commissioner and the Advocate Commissioners had also inspected the property and filed their reports along with the plan which have been marked before the trial Court as Exs.C1 to C13.

23. The respondents have contended that it is absolutely false to state that the Geetha Nagar was formed only during the suit in O.S.No.454 of 1991. In fact, Geetha Nagar was formed as early as in the year 1985 and the site was divided into several plots and subsequently sold out to the purchasers. Geetha Nagar was also recognized by the appropriate Government authority on 30.12.1985. Further, the owners of the Geetha Nagar had entrusted the common area along with the possession with the Commissioner of Dharapuram on 19.08.1991. The defendants have therefore contended that the suit filed by the appellants was barred by limitation.

24. The respondents 5, 6, 7, who are the defendants in the suit in O.S.No.454 of 1991, have contended, in their respective written statements that the 5th respondent/6th defendant had purchased Plot No.65 measuring 2612 sq.ft from Geetha Nagar layout owned by one Ramasamy Chettiar, who got the property as per the final decree passed in I.A.No.430 of 1995 in the suit in O.S.No.196 of 1994 on the file of Dharamapuram Sub-Court. According to 5th respondent /6th defendant, she had purchased this property measuring 2612 sq.ft (Plot No.65) from one Kuppusamy, who is the power of attorney agent of the said Ramasamy Chettiar. After his purchase, he had put up a construction in the said Plot No.65 and subsequently he has been in possession and enjoyment of the same. She would further contend that there is no nexus between the house site purchased by her and the suit property. Similarly, the sixth respondent/seventh defendant had purchased Plot No.66 measuring 3047 sq.ft under a registered sale deed dated 24.10.2001 within the specific boundaries from the layout named after Geetha Nagar, and after his purchase He has also contended that after the purchase, he had put up a construction and subsequently residing therein and since he is a bonafide purchase for value, the appellants cannot claim any right over his property. The seventh respondent/eighth defendant had also purchased Plot No.77 measuring 2734 sq.ft in Geetha Nagar for valuable consideration and he had also put up a construction and residing therein and that the appellants cannot claim any right over his property.

25. It is to be noted that Defendants 9, 10 and 11 have not contested the suit. The respondents 11 and 12, who are the defendants 12 and 13 in the suit in O.S.No.454 of 1991, have almost adopted the written statement filed by the defendants 1 and 2. They have also contended that the other persons who had purchased the plots in Geetha Nagar have not been impleaded in the suit and therefore, the suit, according to them, is bad for non-joinder of necessary parties. Insofar as the respondents 11 and 12/defendants 12 and 13 are concerned, they had sold a portion in S.No.385/2 along with a superstructure. The appellants have not claimed any relief in respect of the property comprised in S.No.385/2. They have also contended that the suit itself is barred by limitation. They have further contended that in view of the order passed by this Court (High Court) in W.P.No.16757/1997 and C.R.P.No.992 of 1997, the respondents/defendants 1 and 2 had sold out the properties which is absolutely belonged to them. The appellants have therefore got no semblance of right to claim title over the property belonged to the respondents 1 and 2/defendants 1 and 2. According to the respondents 11 and 12 /defendants 12 and 13, the appellants have not clearly stated in their plaint about the defendant who is in actual possession of the disputed portion of

the land measuring 0.92 cents, which is said to be comprised in S.No.385/1A, 385/1B, 385/1D and 385/2. 13th defendant has stated that he had purchased his property comprised in S.No.385/2 and after spending a sum of Rs.20 lakhs he had put up a house therein and in fact, the first appellant/first plaintiff had also purchased a housesite in Plot No.5 from Geetha Nagar on 30.11.2000 and therefore, the appellants have got no right to maintain the suit as against the respondents/defendants.

26. Mr.S.V.Jayaraman, the learned senior counsel. who is appearing on behalf of the appellants in both the appeals, has submitted that though several substantial questions of law were raised on behalf of the appellants, the entire case has been revolving around the following two major points:

1. Question of Limitation; and
2. Question of Estoppel.

In this connection, he has invited the attention of this Court to Paragraph Nos.68, 69, 72 and 73 of the trial Court's judgment wherein the learned trial Judge had elaborately dealt with these issues. The learned senior counsel has also submitted that the learned trial Judge as well as the first appellate Court Judge have miserably failed to consider the fact that no gazette publication was made in respect of re-survey made by the concerned revenue authorities and in respect of issuance of patta in favour of the appellants for the lesser extent of 6 acres 45 cents. He has continued further that admittedly the appellants had purchased the property under Ex.A1 on 23.09.1976. With reference to this fact, the learned senior counsel has maintained that since no gazette publication was issued as required under Section 14 of the Tamil Nadu Survey and Boundaries Act, 1923, (hereinafter may be referred to as "the Act"), the finding of the Courts below that the suit was barred by limitation was erroneous and further the lower courts, without appreciating the evidences and the relevant provisions of law under Section 115 of the Evidence Act, had erroneously found that the appellants were estopped from claiming right over the property in dispute as they had kept quiet for a number of years without raising their objection over the issuance of patta in respect of lesser extent. In order to support his contention, the learned senior counsel has placed reliance upon an unreported judgment in S.A.Nos.581 to 583 of 2000, which was decided by this Court on 29.07.2009. This Court has gone through the above cited judgment.

27. The learned Judge, at the time of admission of the second appeal, had formulated the following substantial questions of law, in the above cited case:

"Whether the trial and appellate courts are correct in holding the measurements given in latter document of recent origin can have an over riding effect to the documents of title of the predecessors in interest of the respondent herein? "

28. While dealing with this substantial quesiton of law, the learned Judge has made reference to the provisions of Sections 9, 10, 13 and 14 of the Act. In Paragraph No.21, the leanred Judge has observed as under:

"21. From the above sections of Tamil Nadu Survey and Boundaries Act, it is clear that when the survey of any land or boundary, which has been notified under section 5, the Survey Officer shall notify the fact in the District Gazette and a copy of such notification shall be posted in the village to which the survey relates and under section 14 of the Act, any person deeming himself aggrieved by the determination of any boundary should institute a suit within three years from the date of notification under section 13 to set aside or to modify the said determination."

Paragraph No.22 is also very relevant, which is extracted hereunder:

"22. In the case on hand, the appellants have not filed any suit to set aside the determination of the boundary with regard to the suit property. Therefore, having failed to file any suit to set aside the determination of the boundary, the appellants cannot now question the determination of the survey made in favour of the respondents."

Having given due consideration to the above cited judgment, this Court is of view that the observation made by the learned Judge in the above cited second appeals, which were decided on 29.07.2009, is not in favour of the appellants, but in fact in favour of the respondents herein.

29. Chapter two of the Survey and Boundaries Act, 1923, encompass Sections 5 to 16. This chapter is exclusively dealing with Survey of Government Lands. Section 5 contemplates that the State Government may direct the survey of government land or of any boundary of such land.

It envisages that the State Government or, subject to the control of the State Government, any officer or authority to whom this power may be delegated by it may,

by notification, order a survey of any Government land or of any boundary of such land or of the boundary forming the common limit of Government land and land that is not Government land.

30. From the provisions of Section 5 of the Act it is thus made clear that any officer or authority to whom the power may be delegated by notification may order a survey of Government land or of any boundary of such land or of the boundary forming the common limit of Government land and the land that is not Government land. It is to be noted that he may also be empowered to survey the land that is not the Government land. These words are to be underlined.

31. Insofar as the case on hand is concerned, the provisions of Sections 13 and 14 are relevant. Section 13 is extracted as under:

13. Completion of demarcation to be notified.-
When the survey of any land or boundary which has been notified under Section 5 has been completed in accordance with the orders passed under Sections 9,10,11, 12-A or 12-B the survey officer shall notify the fact in the District Gazette and a copy of such notification shall be pasted in the village chavadi, if any, of the village to which the survey relates; unless the survey so notified is modified by a decree of Civil Court under the provisions of Section 14, the record of the survey shall be conclusive proof that the boundaries determined and recorded therein have been correctly determined and recorded.

From the above context it is understood that when the survey of any land or boundary which has been notified under Section 5 has been completed, the survey officers shall notify the fact in the District Gazette and a copy of the notification shall be pasted in the village chavadi, if any, of the village to which the survey relates. It is also understood that unless the survey so notified is modified by a decree of Civil Court under the provisions of Section 14, the record of the survey have been conclusive proof that the boundaries determined and recorded therein have been correctly determined and recorded.

32. Section 14 of the Act reads as under:

14. Institution of a suit in Civil Court within three years to establish rights claimed in respect of the boundary of the property surveyed.-

Any person deeming himself aggrieved by the determination of any boundary under Sections 9,10,11,12-A or 12-B may, subject to the provisions of Parts II and III of the Limitation Act, 1963 (Central Act 36 of 1963) institute a suit within three years

from the date of the notification under Section 13 to set aside or modify the said determination and survey shall, if necessary, be altered in accordance with the final decree in the suit and the alteration, if any, shall be noted in the record. The plaintiff in such suit shall join as parties to it all persons whom he has reason to believe to be interested in the boundary which is the subject of the suit.

33. As per the provisions of Sec.13 of the Act, it is mandatory on the part of the survey officers to notify the fact in the District Gazette. Section 13 of the Act also further stipulates that unless the survey so notified is modified by a decree of Civil Court under the provisions of Section 14, the record of the survey shall be conclusive proof that the boundaries determined and recorded therein have been correctly determined and recorded.

34. On coming to the present case on hand, it is an admitted fact that as per the sale deed dated 23.09.1976, the appellants have purchased the property measuring 7.36 acres. But on 17.05.1980, the Tahsildar of Dharapuram had surveyed their property and sub-divided and the patta in this connection was also issued in their favour on the same date for the lesser extent of 6 acres 45 cents. From the candid admission of the appellants in Paragraph 5 of their plaint, there is reason to presume that though they have purchased 7 acres 36 cents under Ex.A1 dated 23.09.1976, patta was issued in respect of 6 acres 45 cents on 17.05.1980. Contrary to their own admission, what they have further stated in Paragraph 5 is, that on 20.10.1991, they came to know that the remaining extent of 0.91 cents has been in possession and enjoyment of the respondents 1 and 2. The contention of the appellants is not discernible, because according to them they have purchased 7.36 acres on 23.09.1976. In this connection, they have also stated that after their purchase, they never opted to measure the exact extent of the property, which was purchased by them, but they have been in possession and enjoyment of the actual extent within the specific boundaries. When such being the case, it is not open for them to come and say that they came to know only on 20.10.1991 that their deficit extent of 0.91 cents has been in possession and enjoyment of the respondents 1 and 2.

35. It is also an admitted fact that they never filed any appeal challenging the determination of boundaries and issuance of patta in their favour on 17.05.1980. With reference to this the learned senior counsel Mr.S.V.Jayaraman, has contended that the revenue authorities had not made any gazette publication as contemplated under Section 13 of the Act and therefore, the suit was deemed to be filed within the time under the general law.

According to Mr.S.V.Jayaraman, Section 14 of the Act would not made applicable in this case instead Article 65 of the Limitation Act, 1963 alone would be made applicable.

36. The contention of the learned senior counsel for the appellants, is not able to be countenanced. As aforestated in the earlier paragraphs, the District Gazette publication under Section 13 of the Act is a mandatory one. As rightly argued by Mr.M.L.Denis, the learned counsel for the respondents, the revenue authorities have not been impleaded in the suit so as to summon them to come and explain their position as to whether any District Gazette publication was effected or not. Even the appellants have not taken any effective steps to summon the records relating to the survey made by the Tahsildar of Dharapuram on 17.05.1980. Under this circumstance, this Court is of the view that it is not for the appellant to say that the District Gazette publication was not effected under Section 13 of the Act. It is an established fact that virtually appellants have not challenged the determination of boundaries made by the revenue authorities on 17.05.1980 and due to this reason they are estopped from filing the suit claiming declaration and recovery of possession.

37. If really the appellants are aggrieved by the Act of the revenue authorities, they should have taken steps to file the suit to modify the survey notified under the provisions of Section 13 of the Act. The record of survey shall be conclusive proof that the boundaries determined and recorded therein have been accordingly determined and recorded. Since there was laxity and acquiescence on the part of the appellants, it shall be concluded that the patta issued in favour of the appellants on 17.05.1980 has been correctly issued in respect of 6.45 acres though they have purchased 7.36 acres as per their sale deed under Ex.A1.

38. The learned trial Judge, on appreciation of evidences, both oral and documentary, in Paragraph No.68 and 59, has found that PW1, had specifically admitted in his cross-examination that the fact of deficit extent of 91 cents was known to him even as early as in the year 1981 and 1982. He has also admitted in his cross-examination that he had neither preferred any appeal nor revision challenging the patta issued on 17.05.1980 in respect of 6.45 cents within the period of three years. Therefore, the learned trial Judge has found that the suit O.S.No.454 of 1991 was barred by limitation as contemplated under Section 14 of the Act.

39. With reference to principle of estoppel, the learned trial Judge has also given a finding that the appellants were aware of the fact that the patta was issued in respect of 6

acres 45 cents in their favour as early as in the year 1981, but they had actually filed the suit in O.S.No.454 of 1991 in the year 1991 i.e., after 10 years. Since they had failed to object the survey and determination of boundaries made by the Tahsildar of Dharapuram within the period of three years, the appellants are estopped from claiming any right over the alleged deficit area of 0.91 cents. The trial Court has also found that the appellants are also estopped from maintaining the suit for recovery of possession in respect of the said 91 cents. In support of his contention, the learned trial Judge has made reference to the decision of this Court in Venkataraman and others vs. N.Muthuswamy Naidu and others reported in 2010 (4) CTC 640. In the above cited case, during the settlement proceedings revenue entries were mutated in favour of the defendant. The plaintiff therein had failed to raise any objection before the authorities even though they had knowledge about the mutation of revenue entries. It was held therein that the plaintiff ought to have raised his objection, otherwise he is estopped from claiming any right over the property.

40. The ratio applied in the above cited decision is also made applicable to the present case on hand. Mr.M.L.Denis, learned counsel appearing for the respondents 1 to 4, while advancing his argument, has invited the attention of this court to Exs.A2. Ex.A2 is the proceedings of the Tahsildar, Dharapuram in MDR 110/79-80/dated Nil 5/80. As per his proceedings the following sub-divisions were effected in respect of S.No.385/1 in Chitravuthanpalayam Village, Dharapuram Taluk:

புல எண்	உட்பிரிவு எண்	விஸ்திரணம் தீர்வை ஏ. செ.	தீர்வை	பட்டாதாரர் பெயர்
385.1	385.1௭	8.03	6.50	சண்முகசுந்தரம் 1. ராமசாமிசெட்டியார் 2. நாராயணசெட்டியார் 3.
	385.1பி	3.05	2.17	டி.எம்.மாரியப்பன் 1. டி.எம்.கிருஷ்ணன் 2.
	385.1சி	6.45	5.22	என்.மனோகரன் 1. என்.சந்திரசேகரன் 2.
	385.1டி	0.50	0.47	ராஜு செட்டியார்
		18/03	14/60	

41. It is revealed from the above Tabular column that the appellants were issued with the patta in respect of 6.45 acres comprised in Sub-Division No.385/1c and the respondents 1 and 2 were issued with patta in respect of 3.05 acres comprised in Sub-Division No.385/1B. Ex.A2 had never been challenged by the appellants within the stipulated period of three years as contemplated under Section 14 of the Act.

42. Under this circumstance, this Court endorses the view taken by the Court below that the appellants are entitled to only 6.45 acres in S.No.385/1C and not more than that. The first appellate Court has also given its concurrent findings in accordance with the finding given by the learned trial Judge. Though the learned senior counsel Mr.S.V.Jayaraman has argued that the above mentioned common substantial questions of law have arisen in these second appeals, this Court is of view that no such substantial questions of law arise for the determination of the appeals and therefore, the appeals are deserved to be dismissed.

In the result, these appeals are dismissed and the judgment and decree dated 20.12.2012 and made in A.S.No.1 and 2 of 2011 on the file of the Court of Subordinate Judge, Dharapuram, Tiruppur District, Confirming the judgment and decree dated 30.10.2010 and made in O.S.No.469 of 1994 and O.S.No.454 of 1991 on the file of the Court of the District Munsif, Dharapuram are confirmed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gpa

To

1. The Subordinate Judge,
Dharapuram, Tiruppur District

2. The District Munsif, Dharapuram.

+1cc to Mr.N. Srinivasan, Advocate, S.R.No.12376

+2ccs to Mr.M.L. Denis, Advocate, S.R.No.12358

TM(CO)

EU 24.3.17

S.A.Nos.1275 and 1276 of 2013