

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.11.2017

PRONOUNCED ON : 23.11.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1110 of 2001

1. Manickammal (Deceased)

2. Shantha

3. Subramanian

4. Chandra

5. Selvi

..Appellants/Plaintiffs 2 to6

(Appellants 2 to 5 are also recorded as Lrs of the deceased first appellant vide order of Court dated 22.11.2017 made in memo USR No.10272 in S.A.No.1110 of 2001)

Vs

1. R.Jayaraman (died)

2. J.Cheran

3. Jeyam Ammal

4. Mottai Ammal

5. Anjalai

6. Poochendu

7. J.Sozhan

8. J.Pandiyar

9. J.Senthamarai Kannan

..Respondents (Defendants 2,3 5 to8)

(RR7 to 9 are at Bharathi Street, Vettavalam - 606 754, Tiruvannamalai District recorded R2 as LR and RR7 to 9 brought on record as Lrs of the deceased R1 vide order of Court dated 09.09.2011 made in CMP Nos.785 and 786 of 2011 in S.A.No.1110 of 2001).

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 18.12.2000 passed in A.S.No.116 of 1997 on the file of the Additional Sub-Court, Thiruvannamalai, Thiruvannamalai District, reversing the judgment and decree dated 09.09.1997 passed in O.S.No.588 of 1987 on the file of the Additional District Munsif Court No.2, Thiruvannamalai.

For Appellant : Mrs.Jeevitha Ramani  
Nos.2 to 5 for Mr.A.Sivaji

For Respondent : Mr.P.Dinesh Kumar  
Nos.2 to R6 for Mr.J.Ramakrishnan

For Respondent : No appearance  
Nos.7 to 9

#### JUDGMENT

This second appeal is directed against the judgment and decree dated 18.12.2000 passed in A.S.No.116 of 1997 on the file of the Additional Sub-Court, Thiruvannamalai, Thiruvannamalai District, reversing the judgment and decree dated 09.09.1997 passed in O.S.No.588 of 1987 on the file of the Additional District Munsif Court No.2, Thiruvannamalai.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for declaration and permanent injunction.

4. The case of the plaintiffs, in brief, is that the suit property described in the plaint originally belonged to Annamalai and the third defendant had purchased the same from Annamalai Vahaira under a registered sale deed dated 12.05.1979 and after enjoying the same, the third defendant along with his father i.e. the second defendant conveyed the property to the plaintiffs by way of a registered sale deed dated 24.02.1986 for a valid consideration and accordingly, the plaintiffs have been in exclusive possession and enjoyment of the plaint schedule property as absolute owner by paying kist etc to the Government. The first defendant is the father of the second defendant and the second defendant is the father of the third defendant. On account of misunderstanding which had arisen between the parties in connection with Panchayat elections, the defendants demanded the plaintiffs to reconvey the plaint schedule property to them, for which, the plaintiffs had refused and thereby, getting infuriated by the same, the defendants attempted to trespass into the suit property unlawfully to which they are not entitled to and also questioned the title of the plaintiffs to the suit property and hence, the plaintiffs, left with no other alternative option, preferred the suit against the defendants for appropriate reliefs.

5. The case of the defendants, in brief, is that the suit is not maintainable either in law or on facts. It is false to state that the western boundary of the suit property is the Odai and on the other hand, the western property is the land owned by

the first defendant Raja. In other aspects, the description of the suit property is correct. The suit property originally belonged to Annamalai Vahaira, who conveyed the same to the third defendant under a registered sale deed dated 12.05.1979 and it is true that the second defendant and his son viz. the third defendant sold the said property to the plaintiffs under a registered sale deed dated 24.02.1986. On the east of Odai survey No.398/6A measuring an extent of 0.21 cents is situated and the same belongs to the first defendant. On the east of survey No.398/6A is situated survey No.398/6B measuring an extent of 0.68 cents, which was purchased by the third defendant from Annamalai vahaira and the title deeds pertaining to the property in dispute would make it clear that it is situated only to the east of Raja's land and not to the east of Odai and the same property involved in the suit was mortgaged in favour of the plaintiffs under a registered mortgage deed dated 27.06.1977 and in the said mortgage deed also, the property is described as situated to the east of Raja's land and therefore, the description of the property in the sale deed dated 24.02.1986 as situated to the east of Odai is a misdescription and taking advantage of the same, the plaintiffs are attempting to trespass into survey No.398/6A belonging to the first defendant and thereby, unlawfully attempting to annex the property in survey No.398/6A, which absolutely belonged to the first defendant and suppressing the sub divisions effected and also patta granted in favour of the first defendant in respect of the survey No.398/6A 0.21 cents, the plaintiffs have laid the false suit. The first defendant has not shown that the first defendant has joined in the execution of the sale deed dated 24.02.1986 in favour of the plaintiffs and therefore, the plaintiffs cannot claim any right, interest or title in respect of survey No.398/6A. The plaintiffs are in possession and enjoyment of survey No.398/6B 0.68 cents situated to the East of Raja's land from the date of mortgage deed dated 27.06.1977 and it is false to state that the defendants requested the plaintiffs to reconvey the suit property and the same had been refused by the plaintiffs. It is false to state that the defendants, on account of misunderstanding, attempted to interfere with the possession and enjoyment of the plaintiffs in respect of the suit property and hence, the plaintiffs cannot take advantage of misdescription of the western boundary in the sale deed dated 24.02.1986 and get the reliefs claimed in the suit and hence, the suit is liable to be dismissed.

6. In support of the plaintiffs' case, PWs 1 and 2 were examined and Exs.A1 to 18 were marked. On the side of the defendants' DWS1 and 2 were examined and Exs.B1 to 3 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to decree the suit as prayed for. On

appeal by the defendants, the first appellate Court was pleased to set aside the judgment and decree of the trial Court and accordingly, allowing the appeal preferred by the defendants, dismissed the suit laid by the plaintiffs. Aggrieved over the same, the present second appeal has come to be preferred.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration;

"(i) Whether the Lower Appellate Court committed error in law in not properly appreciating in entire evidence and the pleadings available in this case?

(ii) Whether the Lower Appellate Court right in law in not applying the decision in the Report in 1996 1 Law Weekly P.143 to the facts of the case, when the said decision will apply to the facts of the case?"

9. It is not in dispute that the plaintiffs had purchased the property from the third defendant along with the second defendant by way of a registered sale deed dated 24.02.1986, which has come to be marked as Ex.A2. It is also the case of the plaintiffs that the property purchased by them by way of Ex.A2 originally belonged to Annamalai Vahaira and the third defendant had purchased the same from Annamalai under a registered sale deed dated 12.05.1979 and the above said sale deed has come to be marked as Ex.A1. Now, according to the plaintiffs, by way of Ex.A2, they had been sold an extent of 0.68 cents in survey No.398/6 and the said property is stated to be situated to the east of Odai and accordingly, it is their case that they had purchased the property only situated to the east of Odai and as the defendants, on account of misunderstanding, attempted to deny the title of the plaintiffs to the suit property and also interfered with their possession and enjoyment, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

10. The conveyance of the property to the plaintiffs under Ex.A1 has not been disputed by the defendants. Equally, the case of the plaintiffs that the property originally belonged to Annamalai vahaira and that, they had sold the same to the third defendant by way of Ex.A1 has also not been controverted by the defendants. Now, according to the defendants, the plaintiffs had been sold the property in the suit survey number situated only to the east of Raja's land and not to the east of Odai and by mistake, the property described in Ex.A2 has been shown to be located to the east of Odai and the same is only a misdescription and further according to the defendants, the suit survey number has been subdivided as 398/6A and 398/6B and the property measuring 0.21 cents situated in survey No.398/6A belongs to the first defendant and only to the east of the land

of the first defendant, the plaintiffs had been conveyed the property in the suit survey number under Ex.A2 and the plaintiffs now cannot take advantage of misdescription that had crept in Ex.A2 and grab the property belonging to the first defendant and hence, the plaintiffs are not entitled to get the reliefs sought for.

11. From the rival contentions put forth by the respective parties, it is found that the dispute between the parties lies only with respect to the western boundary of the suit property. Therefore, it has to be seen as to what is the actual property purchased by the plaintiffs under Ex.A2. At the foremost, it is found that the plaintiffs have not described the suit property properly for claiming the reliefs sought for in the plaint. According to the plaint, the suit property is stated to be situated in Thiruvannamalai Registration District, Vettavelam Village, in Survey No.398/6A 0.68 cents and the plaintiffs claim the reliefs of declaration and permanent injunction as regards the above property as described in the plaint. Conveniently, the plaintiffs have suppressed the four boundaries, within which, the above said 0.68 cents is located in survey No.398/6. Even as per the documents produced and relied upon by the plaintiffs and marked as Exs.A10 to 18 Adangal extracts, and the testimony of P.W.1, it could be seen that the plaintiffs are very well aware that survey No.398/6 had been sub-divided as 398/6A and 398/6B, much prior to the institution of the suit and accordingly, it is found that all along for a long period the sub-divisions brought into effect in survey No.398/6 has been recognised by the revenue authorities and accordingly, they had been issuing necessary revenue records pertaining to the sub-divisions effected in the above said survey number. If that be so, when the plaintiffs have full knowledge that the survey No.398/6 had already been subdivided as stated above, it is for them to mention as to in which subdivision of survey No.398/6 they are claiming the reliefs sought for in the plaint. When the suit has been laid for necessary reliefs in respect of the immovable property i.e. where the subject matter of the suit is the immovable property, as per Order 7 Rule 3 CPC, the plaint shall contain a description of the property sufficient to identify it and in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers. When the description of the property given in the plaint is read in the light of the provisions contained under Order 7 Rule 3 CPC, it could be seen that the plaintiffs have not clearly described the property, so as to identify it with correct boundaries and also with correct survey numbers as had been demarcated in the record of settlement or the revenue survey by the revenue authorities. When to the knowledge of the plaintiffs the suit survey No.398/6 had been already subdivided, it is for the plaintiffs to give the clear description of the suit property as to in which

subdivision of the survey No.398/6 they are claiming the reliefs sought for in the plaint. If according to the plaintiffs, they are claiming the reliefs in respect of the particular subdivision effected in Survey No.398/6, accordingly, they should have given the description of the subdivisions effected in survey No.398/6 and furnished the subdivision number and also the boundaries, within which, the said subdivision is actually located. However, it is found that the plaintiffs have neither given the subdivision number effected in respect of the survey No.398/6 and also failed to furnish the boundaries, within which, according to them, the suit property is located, for which, they are claiming the reliefs in the suit. Therefore, it is seen that the plaintiffs claim to the suit property by giving a vague description of the suit property without giving correct subdivision number, boundaries etc., would only go to raise a high suspicion in the plaintiffs' case with reference to their claim of entitlement to the suit property as described in the plaint.

12. The main issue to be determined in this matter is whether the plaintiffs had purchased the property in the suit survey number located to the East of Odai or to the East of the first defendant's land.

13. As regards the determination of the above said issue, the Principles of law to be taken into consideration, according to the counsel for both the plaintiffs and the defendants are illuminated in the decisions reported in 1996 - 1 - L.W.443 (Mahalingam V. A.S.Narayanaswamy Iyer and five others) and 2013 (1) MWN (Civil) 206 ( S.Lakshmi and five others Vs. M.Tamilselvi and another). It is found that the decision reported in 1996-1-L.W.443 (Mahalingam V. A.S.Narayanaswamy Iyer and five others) had been cited before the Courts below. A reading of the above said decisions would go to show that when there is a dispute as regards the identity of the property given under a conveyance and for determining the said issue, the Court should taken into consideration, the intention of the parties concerned, as to what was the nature and location of the property intended to be conveyed under the particular conveyance. Therefore, it has to be seen that whether the defendants 2 & 3 had intended to convey the property to the plaintiffs under Ex.A2 situated to the east of Odai or situated to the East of the first defendant's land.

14. In this connection, the second plaintiff examined as PW1, even during the course of chief examination, has admitted that the boundaries of the suit property consisting of 68 cents are their land on the Southern side and Northern side, Odai on the Eastern side and Jayaraman's land on the western side. Thus, according to PW1, the above said 68 cents surrounded within the above said boundaries had been purchased by the first plaitniff's husband and accordingly, had been in possession and

enjoyment of the same continuously. Further, during the course of cross examination also, she has reiterated that the four boundaries of the suit property are their lands located on the southern and northern side, on the eastern side Odai is located and on the western side Jayaraman's land is located and she has also further reiterated the same, during the course of further cross examination. She has further testified that she does not know whether the suit property originally belonged to Annamalai and others and she does not know whether the third defendant had purchased the suit property during 1979 and further admitted that survey No.398/6B is situated to the east of survey No.398/6A and that to the east of Odai, Raman's land is situated. Therefore, even as per the above said admission of PW1, it is found that she has clearly admitted that the suit property is located only to the east of Jayaraman's land and Jayaraman is the second defendant. Therefore, it is found that the plaintiffs have not been conveyed the property to the east of Odai and on the other hand, conveyed the property only to the east of Jayaraman's land.

15. It is the admitted case of the parties that the suit property originally belonged to Annamalai and in this connection, the sale deed dated 12.05.1979 has been marked to show that Annamalai's minor son Kumaresan represented by his father Annamalai had alienated the suit property under the above said sale deed to the third defendant and in the description of the property in Ex.A1, it has been specifically recited that Kumaresan the vendor had acquired title to the property conveyed under the said document only by virtue of the settlement deed executed by Abirami and therefore, it could be seen that the third defendant would have acquired right only to the property of the settlor of Kumaresan, namely, Abirami by way of Ex.A1. The settlement deed executed by Abirami in favour of minor Kumaresan represented by his father Annamalai has been marked as Ex.B1 and a perusal of Ex.B1 would go to show that under the said document, the property situated to the East of Raja's land only had been settled. The said Raja is the first defendant accordingly, it is found that Kumaresan represented by his father, while selling the suit property acquired by him under Ex.B1 by way of Ex.A1 to the third defendant had also described the property as situated to the East of Jayaraman's land. Therefore, it is found that the plaintiff's predecessor in interest also while acquiring the property in dispute had only obtained the property situated to the East of the first defendant's land and accordingly, the third defendant would be entitled to convey only the property situated to the east of the first defendant's land and it is thus found that the third defendant would not be entitled to convey the property to the plaintiffs, to which, he is not entitled to. Admittedly, the first defendant Raja is not the executor of Ex.A2. It is only the third defendant and the second defendant, who had conveyed

the property to the plaintiffs by way of Ex.A2.

16. That apart, it is found that Kumaresan, the original owner of the property in dispute, had mortgaged the property acquired by him by way of the settlement deed marked as Ex.B1 in favour of the plaintiffs and the mortgage deed has been marked as Ex.B2. A perusal of Ex.B2 would go to show that Kumaresan represented by his father Annamalai had mortgaged the property acquired by him by way of the settlement deed Ex.B1 to the plaintiffs themselves and while describing the property mortgaged, it has been clearly recited in the description of the property as situated to the East of Raja's land and not to the East of the Odai. Therefore, it is found that the plaintiffs themselves are very well aware of the property, to which, Kumaresan is entitled to i.e. the suit property being located only to the East of Raja's land and accordingly to their knowledge, it is found that the plaintiffs had entered into a mortgage deed with him by way of Ex.B2. Accordingly, it is found that in the original settlement deed also marked as Ex.B1, the property is stated to be located only to the East of Raja's land and not to the East of Odai. As a corollary to the above said document, it is found that Kumaresan represented by his father Annamalai, while conveying the property covered under Exs.B1 & 2, by way of Ex.A1 had also described the property as having been acquired by him under the settlement deed Ex.B1 and accordingly, described the property conveyed therein to be situated to the East of Jayaraman's Land and not as situated to the East of Odai. Therefore, it is found that the predecessor's in title of the plaintiffs had valid right and title only to the property in the suit survey number situated to the East of the first defendant's land and not to the East of Odai and accordingly, it is found that they could not have validly conveyed any right or title to the plaintiffs under Ex.A2 to the property situated to the East of Odai and in such view of the matter, as rightly put forth by the defendants, it is found that in Ex.A2, the property has been wrongly misdescribed as situated to the East of Odai and when the parent title deeds do not indicate that the property is located to the East of Odai, on the other hand, they indicate that the property is located only to the East of the first defendant's land and when it has not been established that the predecessor in title of the plaintiffs had title to the property situated to the East of Odai as such, on the other hand, when it is found that they had right or title to the property only situated to the East of the first defendant's land, it is found that the parties would not have intended to convey the property situated to the East of Odai to the plaintiffs under Ex.A2 and equally, the plaintiffs also knowing fully well that the property purchased by them by way of Ex.A1 is only located to the East of the first defendant's land, as could be seen from Ex.B2, it is seen that the plaintiffs, taking advantage of the misdescription of the property given in

Ex.A2, seem to have laid the present false lis claiming the right or title to the property situated to the East of Odai. When the intention of the parties could be gathered from the above parent title deeds and further when the plaintiffs' predecessor in interest had no right or title to convey the property situated to the East of Odai and had only right and title to convey the property situated to the east of the first defendant's land, the contention of the plaintiffs that they had acquired right or title to the property situated to the East of Odai as such cannot be countenanced.

17. As adverted above, the suit survey number has been subdivided even well prior to the institution of the suit as survey Nos.398/6A and 368/6B, even PW1 has admitted that the western boundary is only the land of the first defendant. No material or proof has been placed by the plaintiffs to hold that the defendants 2 & 3, particularly, the third defendant, from whom, he had acquired title to the property by way of Ex.A2 had title to the property in Survey No.398/6A. On the other hand, it is found from Ex.B3 patta, for the survey No.398/6A, the revenue authority had granted patta only in favour of the defendants i.e. in favour of the Jayaraman S/o Raja for Survey No.396/6A and accordingly, it is found that despite the purchase of the property under Ex.A2, the plaintiffs are unable to acquire any patta for the subdivision No.398/6A.

18. However, it is argued by the plaintiff's counsel that the plaintiffs have established that survey No.398/6A is also in their possession and enjoyment by marking Adangal Extracts in the suit and based on the same, the Court should hold that inasmuch as the plaintiffs had purchased the property in survey No.398/6A also by way of Ex.A2, they are found to be in possession and enjoyment of the said property. However, merely on the basis of the Adangal extracts, it cannot be construed that the plaintiffs are in possession and enjoyment of the said property in accordance with law pursuant to Ex.A2. If that be so, no explanation is offered by them, as to how for the above said property, the patta had been granted to the defendants under Ex.B3. Therefore, the Adangal extracts by themselves would not confer valid possession of the property covered under survey No.398/6A in favour of the plaintiffs.

19. The plaintiffs knowing fully well about the above said reality, accordingly, had also not chosen to seek the reliefs of declaration and other reliefs in the suit by giving the correct subdivision of the suit survey number claiming that they are entitled to acquire the declaratory right both in respect of Survey Nos.398/6A & 398/6B and on the other hand, they have only described the suit property as survey No.398/6 measuring 68 cents and as seen above, they have also not mentioned the boundaries, within which, the said extent is located. Thus it is

found that the plaintiffs have suppressed the material facts to the Court while instituting the suit and has come forward with the suit claiming the reliefs for a larger extent than what they had acquired under Ex.A2 by taking advantage of the misdescription of the western boundary given in the said document. When the parent title deeds clearly point out that the predecessors in title of the plaintiffs have right and title only to the property situated to the East of the first defendant's land and when they could not have validly conveyed the property to the plaintiffs situated to the east of Odai, it is found that the intention of the parties would not have been to convey the property to the plaintiffs to the East of Odai and on the other hand, the intention of the parties would have been only to convey the properties situated to the East of the first defendant's land and the plaintiffs also had knowledge about the same and accordingly, it is found that the first appellate Court had rightly negatived the reliefs sought for by the plaintiffs by taking into account the intention of the parties at the time of the conveyance in question.

20. In the light of the above discussions, it is found that the other two decisions relied upon by the plaintiffs' counsel reported in 2016 (3) CTC 651 (Deccan Chronicle Holdings Ltd., Vs. Yes Bank Limited and ors) and 2017 (3) CTC 642 (Rajmohan Vs. Venkatachala Padayaachi (Deceased) and ten others) for the proposition that the parties cannot be permitted to adduce the evidence contrary to the recitals found in the documents as such in my considered opinion, would not be applicable to the facts and circumstances of the present case. When as per the decisions relied upon by the plaintiffs' counsel adverted supra, the intention of the parties has to be ascertained as to what had been really conveyed under Ex.A2 to the plaintiffs and when the same could be ascertained as discussed above, i.e. the intention of the parties being only to convey the property situated to the east of the first defendant's land, it is found that the first appellate Court has rightly negatived the reliefs sought for by the plaintiffs.

21. In the light of the above, I hold that the first appellate Court has properly appreciated the pleadings and the entire evidence on record in the right perspective both factual as well as the legal aspects and also rightly applied the principles of law enunciated in the decision reported in 1996-1-L.W.443 (Mahalingam Vs. A.S.Narayanaswamy Iyer and five others) to the facts and circumstances of the case and correctly held that the plaintiffs are not entitled to the reliefs sought for in the suit. Accordingly, the substantial questions of law formulated in this second appeal are answered against the plaintiffs and in favour of the defendants.

22. In conclusion, the second appeal fails and is accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sms

To

- 1.The Additional Sub-Court, Thiruvannamalai,
- 2.The Additional District Munsif Court No.2, Thiruvannamalai.

3.The Section Officer  
VR section HighCourt Madras

+1 cc to Mr.J.Ramakrishnan Advocate sr 83444  
+1 cc to Mr.A.Sivaji Advocate sr 83514

S. A.No.1110 of 2001

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