

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Delivered On: 05.02.2018
Reserved On: 25.01.2018
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.1555 of 1999

- 1.Ramalingam (Deceased)
- 2.Ganesan (Deceased)
- 3.Ramamurthy
- 4.Kanagarani
- 5.Jothy
- 6.Dhanalakshmi
- 7.Banumathi
- 8.Anjala
- 9.Elumalai

(Appellants 4 to 9 brought on record as LR's of the Deceased 2nd appellant vide order of this court dated 27/07/2017 made in CMP.No.11520 to 11522/2017 in SA.No.1555/1999 (GJJ))

- 10.Vasanthan
- 11.Parimala
- 12.Mohan
- 13.Kaviarasan
- 14.Dhanakottiammal

(Appellants 10 to 14 brought on record as Lrs of the deceased 1st appellant vide order of this court dated 27/07/2017 made in CMP.No.11523 to 11525/2017 in SA.No.1555/1999 (GJJ))

...Appellants/Defendants 1 to 3

Vs.

- 1.Renu Gounder
- 2.Ramachandran
- 3.Gopal

(R2 and R3 set ex-parte in the court below)

...Respondents/Plaintiff &
Defendants 4 & 5

Prayer:

Second Appeal filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 18.06.1999 and made in A.S.No.67 of 1998 on the file of the Additional District Judge, Tiruvannamalai, confirming the judgment and decree dated 27.02.1998 and made in O.S.No.815 of 1988 on the file of

Principal District Court, Tiruvannamalai.

Appellants : Mr.R.Siddharth
for M/s.T.R.Rajaraman
Respondents : Mr.Muruganandam
for Mr.V.Raghavachari

J U D G M E N T

The un-successful defendants 1 to 3 are the appellants herein. The first respondent/ plaintiff filed a suit in O.S.No.815 of 1988 for declaration of the title to the suit property and for permanent injunction restraining the defendants, their men, servants from interfering with the peaceful possession of the suit property.

2.The case of the first respondent/ plaintiff is as follows: The suit properties and other properties were the absolute properties of the plaintiff's father Ariya Gounder, item nos.2 to 6 being his ancestral properties while item no.1 was purchased by him from one Govindachetty vahairs under a registered sale deed dated 29.08.1940. The plaintiff further states that patta for item nos.1 to 3 is standing exclusively in the name of the plaintiff's father Ariya Gounder under the patta no.332 while the patta for item nos.4 to 6 stands jointly in the name of Ariya Gounder and Chinna Ariya Gounder under patta no.728. The plaintiff's father Ariya Gounder died intestate in or about 1965 leaving behind the plaintiff and his two brothers Ramachandran Gounder and Gopal Gounder/ defendants 4 and 5/ respondents 2 and 3 herein as his legal heirs. After the demise of Ariya Gounder, the plaintiff and his brothers/ defendants 4 and 5 orally effected partition in or about 1968, in which the suit properties fell to the share of the plaintiff. Ever since the date of oral partition, the plaintiff has been in exclusive possession and enjoyment of the suit properties paying kist and other revenue taxes to the Government.

3.The plaintiff further states that he has installed a 5 H.P.Electric Motor Pumpset in the well and he is irrigating his lands by taking water from the well. The defendants 1 to 3/ appellants herein are third parties and they have no manner of right, title or interest over the suit properties and they say that they would disturb the plaintiff's peaceful possession and enjoyment of the suit schedule properties and would trespass into the suit schedule properties. Hence, the plaintiff filed the suit for the relief stated above.

4.The case of the defendants is as follows: The defendants deny the fact that the suit properties and other properties were

absolute properties of the plaintiff's father Ariya Gounder, item nos.2 to 6 being his ancestral properties while item no.1 was purchased by him from one Govindachetty vahairs under a registered sale deed dated 29.08.1940. The defendants state that the plaintiff has filed a false, baseless and vexatious suit. The suit schedule properties are not the absolute properties of Ariya Gounder and he was not in possession and enjoyment of the suit properties. The plaintiff's father Ariya Gounder was not the purchaser under the sale deed dated 29.08.1940.

5.The plaintiff and defendants are pangalies. One Ariya Gounder was the common ancestor who had four sons namely, Ariya Gounder, Narayana Gounder, Mottaiya Gounder and Chinna Ariya Gounder, all of them were constituting members of the undivided Hindu joint family, owning, possessing and enjoying the vast extent of ancestral properties. From and out of the surplus income derived from the ancestral properties, the said Ariya Gounder (eldest son of the common ancestor Ariya Gounder) purchased item no.1 bearing S.No.394/9B - 0.88 acre under the registered sale deed dated 29.08.1940 for the benefit of the members of the joint family, including his brothers Narayana Gounder, Mottaiya Gounder and Chinna Ariya Gounder.

6.Since the said Ariya Gounder was the eldest brother, item no.1 of the suit schedule property was purchased in his name for the benefit of all the members of the joint family. As a matter of fact Dry S.No.394/9 totally measured 1.50 acres out of which the aforesaid Narayana Gounder purchased the Northern 0.62 acre and Dry S.No.394/2 - 1.04 acres (suit 2nd item) from and out of the surplus income of the aforesaid joint family, for the benefit of all the four brothers of the said joint family. Thus, item nos.1 to 3 of the suit schedule properties were purchased in the name of Ariya Gounder (paternal grandfather of the plaintiff and not father of the plaintiff) and his brother Narayana Gounder under the sale deeds dated 29.08.1940 and 22.06.1929.

7.Item nos.4 to 6 and several other properties including the properties bearing S.No.394/3 - 1.20 acres and S.No.394/10 - 1.18 acres were the ancestral joint family properties of the aforesaid Ariya Gounder and his brothers Narayana Gounder, Mottaiya Gounder and Chinna Ariya Gounder. All the aforesaid suit properties and other properties were treated and enjoyed as joint family properties by Ariya Gounder and his three brothers. Thus, item nos.1 to 3 of the suit properties were impressed with the character of ancestral joint family properties of the said Ariya Gounder and his three brothers. Consequently, they became entitled to undivided 1/4th share each in all the said properties including item nos.1 to 3 of the suit properties.

8.All the four brothers owned about 40 acres of ancestral joint family properties, including item nos.1 to 3 of the suit schedule properties and other properties as well. The said Ariya Gounder and his brothers orally divided their ancestral joint family properties in or about 1945. When the aforesaid family was jointly possessed, item nos.1 to 3 of the suit properties and two other items viz., S.No.394/3 - 1.20 acres and S.No.394/10 - 1.18 acres, all of which are adjacent and contiguous lands, were used as pasturage. The said four brothers used to graze their cattle in the said lands. Item nos.1 to 3 of the suit properties and two other items viz., S.No.394/3 and S.No.394/10 were never cultivated for the past several decades.

9.When the four brothers orally divided their ancestral joint family properties, they kept item nos.1 to 3 of the suit properties and the other two adjacent lands bearing S.No.394/3 and S.No.394/10 as their common pasture-lands, for the purpose of grazing their cattle. Ever since the date of partition the aforesaid four brothers had been jointly enjoying item nos.1 to 3 of the suit properties and two other items as pasture lands, by grazing their cattle. However, they had divided the other joint family properties into four shares and they have been cultivating their respective cultivable lands which they got by the said oral partition.

10.Item nos.1 to 3 of the suit schedule properties are the common and un-divided properties of the plaintiff and the defendants. The said Ariya Gounder and his brothers as well as their descendants including the plaintiff, the defendants and other sharers have been and are jointly enjoying item nos.1 to 3 of the suit properties and two other adjacent items bearing S.No.394/3 and S.No.394/10. Taking advantage of the similarity in the name of the plaintiff's father and grandfather Ariya Gounder, the plaintiff has falsely alleged in the plaint that his father purchased item no.1 of the suit schedule properties even though it was his paternal grandfather Ariya Gounder who purchased the said properties from and out of the joint family funds for the benefit of all the members of the said joint family including himself and his three brothers.

11.The plaintiff's father Ariya Gounder died intestate in or about 1965 leaving behind his un-divided 1/8th share in item nos.1 to 3 of the suit properties and the adjacent two lands as well as item nos.4 to 6 of the suit properties and some other properties. The plaintiff and his brothers divided only the divisible and cultivable lands viz., item nos.4 to 6 of the suit properties and some other properties which they succeeded from their father. The plaintiff and his brothers never divided item nos.1 to 3 of the suit properties and the other two items of

pasture lands and item nos.1 to 3 of the suit properties were never allotted to the plaintiff and he was never in exclusive possession and enjoyment of the said properties.

12.Since the plaintiff's father himself was entitled to only undivided 1/8th share in all the said pasture lands, including item nos.1 to 3 of the suit properties, the plaintiff and his brothers could not have divided and infact did not divide the said common pasture lands including item nos.1 to 3 of the suit properties. These defendants never claim any right over item nos.4 to 6 of the suit properties. The patta for item nos.1 to 3 jointly stands in the name of the plaintiff and the other sharers in patta no.1701.

13.The allegation that the defendants 1 to 3 have no manner of right over the suit properties and that they are laying false claim over the suit properties are false and baseless. As morefully set out supra item nos.1 to 3 of the suit properties and two other adjacent lands are the undivided common properties in which the plaintiff, the defendants and the other sharers are having undivided shares as morefully adverted to supra and all of them have been and are in joint possession and enjoyment of the said properties as their predecessors in title were paying kist due to the Government. Infact, the sharers, including the plaintiff and the defendants decided to sell the trees that are standing on the said pasture lands including item nos.1 to 3 to divide the sale proceeds amongst them in accordance with their respective quantum of share in the said properties and thereafter to divide the said common properties including item nos.1 to 3 amongst them. Thereafter, with a view to grab item nos.1 to 3 of the suit properties, the plaintiff has filed the vexatious suit against the defendants which is un-sustainable.

14.The lower Court believed the case of the first respondent/ plaintiff and held that item no.1 of the suit schedule property was purchased by his father and two other items were acquired through partition based on the sale deed and other revenue documents. The appellants/ defendants has not produced any documents to show that the properties were in possession and enjoyment as joint family properties and they were allotted for common purpose i.e., pasture lands were used by the joint family members. Therefore, the lower Court decreed the suit in favour of the plaintiff. Aggrieved by the

same, the appellants/ defendants 1 to 3 filed appeal before the lower Appellate Court and the lower Appellate Court dismissed the appeal and confirmed the order of the lower Court. As against the same, the present second appeal is filed.

15.At the time of admission, the following substantial questions of law were framed for consideration:

"1. When the evidence disclose that the suit items 1 to 3 were kept in common along with 2 other items for the purpose of grasing cattle and retaining them as pasture lands, is the learned Addl. District Judge right in confirming the decree of the trial court?

2. When the plaintiff has failed to establish the allotment of the suit properties viz. Items 1 to 3 either to him or to his family and further prove his exclusive possession over the suit properties is the learned Addl. District Judge right in confirming the decree of the trial court?

3. Is the learned Addl. District Judge in holding that the suit as framed is maintainable when the properties are joint family properties and the defendants are the co-owners along with the plaintiff?"

16. The learned counsel appearing for the appellants submitted that taking advantage of the similarity in name of the plaintiff's father and his grandfather, i.e., Ariya Gounder, the plaintiff has filed the suit for permanent injunction, though the properties were purchased by the plaintiff's grandfather Ariya Gounder for the benefit of the joint family and out of the income derived from the joint family. It is the admitted case of the appellants as well as the respondents that item no.1 of the property was purchased in the year 1940, however, the oral partition has taken place in and around 1945. That itself shows that item no.1 of the property was purchased by the plaintiff's grandfather who is the Kartha of the joint family. Apart from the above, the other two items stood in the name of the joint family members and were allotted for common usage of the joint family members.

17. The learned counsel appearing for the appellants further submitted that the plaintiff's father Ariya Gounder and his three brothers orally divided their ancestral joint family properties and they kept item nos.1 to 3 of the suit properties and the other two adjacent lands bearing S.No.394/3 and S.No.394/10 as their common pasture-lands, for the purpose of grazing their cattle. Ever since the date of partition the aforesaid four brothers had been jointly enjoying item nos.1 to 3 of the suit properties and two other items as pasture lands, by grazing their cattle. However, they had divided the other joint family properties into four shares and they have been cultivating their respective cultivable lands which they got by

the said oral partition.

18.The learned counsel appearing for the appellants further submitted that the evidence of P.W.2 who was examined on the side of the plaintiff and who is a resident of the said village categorically admitted that the name of the plaintiff's father is Ariya Gounder and also admitted that he did not know about when the plaintiff's father Ariya Gounder purchased the property and he categorically admitted that he has not attested the said documents and he did not know the exact date of the death of the plaintiff's grandfather Ariya Gounder. Hence, P.W.2's evidence itself shows that the properties in item nos.1 to 3 were common properties of the Hindu Joint family. Unless the plaintiff establish his title with regard to the suit properties, no declaratory relief can be granted based on the Revenue records.

19.In support of his contention, the learned counsel appearing for the appellant relied upon the following decisions:

(i) (2014) 1 L.W.926 (Singaravel Vs. Murugesu Udayar (Died) and others), the relevant portion of which reads as follows:

"13.In the cases cited above by the learned counsel for the appellant, the principle stated is where a party cannot be exact in asking for a relief, it is wiser to claim much rather than too little as a Judge does not give more than what the plaintiff requires. However, in the case on hand, the plaintiff has asked for relief of declaration of title based on an oral partition which has not been proved. When the plaintiff failed to establish the oral partition, based on which he has claimed title to the suit items, the relief of declaration cannot be granted and the Courts below also rightly pointed out that it is open to the plaintiff to sue only for partition. No doubt, it is a settled principle that when plaintiff claims a larger interest and is able to establish a lesser extent, to that extent, a decree can be granted. The plaintiff has established his title only regarding item No.7 and regarding the other items, his entitlement itself has to be proved. Therefore, the Court cannot grant a relief not specifically claimed in the plaint as granting a relief of partition would be a relief inconsistent with what has been pleaded."

(ii) (2015) 14 SCC 784 (H.Lakshmaiah Reddy and others Vs. L.Venkatesh Reddy), the relevant portion of which reads as follows:

"8.As rightly contended by the learned senior counsel appearing for the appellants, 1st defendant did not relinquish or release his right in respect of the half share in the suit property at any point of time and that is also not the case pleaded by the plaintiff. The assumption on the part of the High Court that as a result of the mutation, 1st defendant divested himself of the title and possession of half share in suit property is wrong. The mutation entries do not convey or extinguish any title and those entries are relevant only for the purpose of collection of land revenue. The observations of this Court in Balwant Singh case are relevant and are extracted below :

"21. We have considered the rival submissions and we are of the view that Mr Sanyal is right in his contention that the courts were not correct in assuming that as a result of Mutation No. 1311 dated 19-7-1954, Durga Devi lost her title from that date and possession also was given to the persons in whose favour mutation was effected. In Sawarni vs. Inder Kaur (1996) 6 SCC 223, Pattanaik, J., speaking for the Bench has clearly held as follows: (SCC p. 227, para 7)

'7. ... Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. The learned Additional District Judge was wholly in error in coming to a conclusion that mutation in favour of Inder Kaur conveys title in her favour. This erroneous conclusion has vitiated the entire judgment.'

22. Applying the above legal position, we hold that the widow had not divested herself of the title in the suit property as a result of Mutation No. 1311 dated 19-7-1954. The assumption on the part of the courts below that as a result of the mutation, the widow divested herself of the title and possession was wrong. If that be so, legally, she was in possession on the date of coming into force of the

Hindu Succession Act and she, as a full owner, had every right to deal with the suit properties in any manner she desired."

In the circumstances, we are of the opinion that the High Court erred in concluding that the 1st defendant by his conduct had acquiesced and divested himself of title of his half share in suit property and the said erroneous conclusion is liable to be set aside."

20.The learned counsel appearing for the appellants urged this Court that the revenue records does not create or extinguish title in order nor has it any presumptive value of title. Unless the first respondent/ plaintiff establish his title, the suit items 1 to 3 were acquired either by way of oral partition or by way of sale deed, mere showing of the revenue records will not entitle for declaratory relief. Accordingly, he prayed for allowing the second appeal.

21.The learned counsel appearing for the first respondent would submit that the plaintiff's father purchased item no.1 of property from Govindachetty vahairs under a registered sale deed dated 29.08.1940. After the purchase, the Revenue records were mutated in favour of the plaintiff's father and patta in respect of item nos.1 to 3 of the suit schedule property i.e., patta no.332 stood in the name of the plaintiff's father. The plaintiff's father died in the year 1965 leaving behind the plaintiff as well as the defendants 4 and 5 as his legal heirs. Thereafter, the plaintiff and the defendants 4 and 5 partitioned the property orally in the year 1968. Accordingly, the suit schedule properties were allotted in favour of the plaintiff. Thereafter, the plaintiff paid the kist and other revenue tax to the Government and enjoyed the property individually.

22.The learned counsel appearing for the first respondent would further submit that the first respondent/ plaintiff has installed a 5 H.P.Electric Motor Pumpset in the well and he is irrigating his lands by taking water from the well. Since the other defendants tried to interfere with the peaceful possession of the plaintiff's property, he filed a suit for declaration.

23.The learned counsel appearing for the first respondent/ plaintiff would further submit that the lower Court framed the following issues. The first issue is whether there was oral partition inbetween the plaintiff and his brothers in the year 1968, whether the defendants are entitled to enjoy item nos.1 to 3 of the suit schedule properties as joint family properties, whether the plaintiff is entitled to declaration, whether the

plaintiff is entitled to permanent injunction and for what title.

24.The learned counsel appearing for the first respondent/ plaintiff would further submit that the lower Court granted the relief in favour of the plaintiff after perusal of the entire records and the documents and held that item no.1 of the suit schedule property was purchased by his father and two other items were acquired through partition based on the sale deed and other revenue documents. The appellants/ defendants has not produced any documents to show that the properties were in possession and enjoyment as joint family properties and they were allotted for common purpose i.e., pasture lands were used by the joint family members.

25.The learned counsel appearing for the first respondent/ plaintiff would further submit that the presumption of correctness of an entry in revenue record cannot be rebutted by a statement in the written statement. Mere statement of fact in the written statement is not a rebuttal of presumption of correctness of an entry in the revenue record. The mutation of revenue records itself shows that the plaintiff is in possession of the property. Accordingly, he prayed for dismissal of the appeal.

26.In support of his argument the learned counsel appearing for the first respondent/ plaintiff relied upon the following decisions:

(i) (2002) 10 SCC 315 (Karewva and others Vs. Hussensab Khansaheb Wajantri and others), the relevant portion of which reads as follows:

"Learned counsel then urged that presumption of the correctness of an entry in the revenue record is a rebuttable presumption. The appellant rebutted the presumption by stating in his written statement that respondent No. 1 came into possession of the land on the basis of agreement for sale executed in the year 1972 and, therefore, the entry in the revenue record that the respondent was a tenant of the land in the year 1973 is incorrect. We do not dispute the legal position as stated by the learned counsel for the appellant, but the presumption of correctness of an entry in revenue record cannot be rebutted by a statement in the written statement. Mere statement of fact in the written statement is not a rebuttal of presumption of correctness of an entry in the revenue record. The respondent was recorded as a tenant in the revenue record in the year

1973 and under law the presumption is that the entry is correct. It was for the appellant to rebut the presumption by leading evidence. The appellant has not led any evidence to show that entry in the revenue record is Incorrect. We, therefore, do not find any merit in the contention."

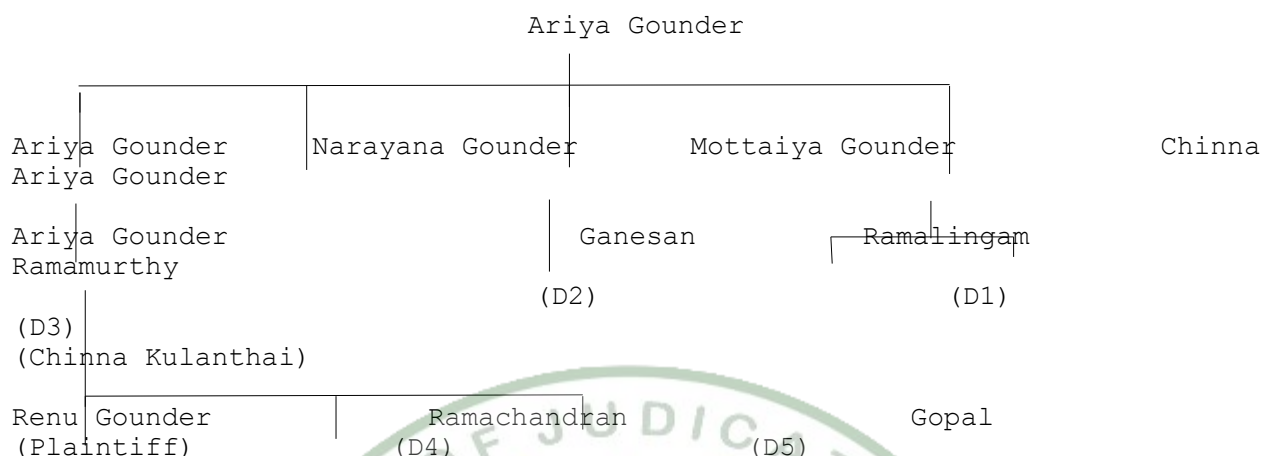
(ii) (2011) (3) MWN (Civil) 149 (Jagannathan Vs. Ramachandran), the relevant portion of which reads as follows:

"9. On the other hand, the appellant has pleaded that in the oral partition that took place in the family of the respondent/plaintiff, his father and brother were allotted eastern portion in S.No.106/5 of an extent 17 acres, northern portion in S.No.105/3, and 4 hertz in S.No.130/14 was allotted to the share of the respondent/plaintiff. As stated supra, both the parties, pleaded oral partition in or about the same time and according to the plaintiff, he was allotted the suit property and two others properties. To prove the same, the respondent/plaintiff marked Ex.A1-patta dated 22.9.1983, wherein, he was stated to be owner of the property in S.Nos.105/3A, 106/5A and 106/4B. The patta pass book was also issued in his favour, as evidenced by Ex.A2. The kist receipts from the year 1982 onwards would in addition probablize the case of the respondent/plaintiff that in the oral partition, the suit property was allotted to him and he was in possession and enjoyment of the same. The appellant also admitted in the statement that the property in S.No.106/5A and S.No.105/3A, were allotted to the respondent/plaintiff. The Exs.A1 and A2, also mentions about those properties in the name of the plaintiff. Therefore, when Exs.A1 and A2, viz., the patta and the patta pass book are in the name of the plaintiff and they mention not only the properties in S.Nos.106/5A and 105/3A, but also the suit property, the case of the respondent/plaintiff that the suit property was allotted to him under the oral partition is more probable and was also strengthened by the production of the kist receipts from the year 1982 onwards in the name of the respondent/plaintiff.

10. On the other hand, the appellant did not produce any document to prove possession of the property by his vendors earlier to 2000. The Ex.B1-sale deed and the patta issued in his name, adangal, kist receipts are subsequent to the filing of the suit. Though D.W.2, the father of the respondent/plaintiff has given evidence in support of the appellant, he did not state in his evidence what are the properties that were allotted to the share of the respondent/plaintiff, himself and his other sons and in Ex.B1- sale deed also, it was stated that the properties conveyed under Ex.B1, were allotted to the share of the father and the second item viz., the suit property was allotted to the share of the appellant's vendor Mr.Thiagarajan and he did not state that the first item of property in Ex.B1, was allotted to his share. Though the revenue records will not confer any title, having regard to the facts of the case, wherein, both the parties admitted that there was an oral partition in the family in or about 20 years earlier and immediately thereafter, the patta was transferred in the name of the respondent/ plaintiff and the respondent/ plaintiff was continuously paying the kist receipts in respect of the suit property from the year 1980, this aspect would itself prove that in the oral partition, the suit property was allotted to the share of the respondent/plaintiff and the case of the respondent is more probable than the case of the appellant. Hence, both the Courts below rightly held that the respondent/plaintiff has proved his case and decreed the suit and the substantial question of law is answered against the appellant."

27.Heard Mr.R.Siddharth, learned counsel appearing for the appellants and Mr.Muruganandam, learned counsel appearing for the first respondent.

28.For better appreciation, the genealogy of the plaintiff and the defendants is shown hereunder:



29.The genealogy shows some interesting point. The plaintiff's father's name is Ariya Gounder, his grandfather name is Ariya Gounder and his great grandfather name is also Ariya Gounder. Considering Ex.A1 along with the genealogy discloses that item no.1 was the lands purchased not by the plaintiff/ first respondent's father but it was purchased only by the plaintiff's grandfather.

30.It is admitted by both the parties that item nos.2 and 3 were ancestral properties and the same were enjoyed jointly by Ariya Gounder and his brothers Narayana Gounder, Mottaiya Gounder and Chinna Ariya Gounder. Through oral partition, item nos.2 and 3 were allotted to the share of the Ariya Gounder and then only, he purchased item no.1 which is adjacent to item nos.2 and 3. Moreover, item nos.2 and 3 were purchased by Narayana Gounder who is the brother of the plaintiff's grandfather on 22.06.1929 under Ex.B1. It clearly shows that item nos.1 to 3 are ancestral properties of the plaintiff and the properties belonged to the plaintiff's grandfather and his brothers.

31.Ex.A15 shows that the suit properties and other properties were divided long ago. Thereafter, one Chinna Kulandhai Gounder i.e., junior paternal uncle has sold his share to Mottaiya Gounder. Though Ex.A15 is not related to suit items, the properties mentioned in the written statement i.e., S.No.394/3 - 1.20 acres and S.No.394/10 - 1.18 acres were ancestral properties which were meant for common pasture properties and perusal of Ex.A15 clearly stated that those items were divided even prior to 1949. The recital of boundaries clearly establish that S.No.394/3 and S.No.394/10 were divided prior to 1949.

32.Ex.A2 is patta book which stands in the name of Ramachandra Gounder son of Ariya Gounder i.e., fourth defendant in the suit. Item nos.1 to 3 were mentioned as 'Vazhimarai'. In that the entire extent in Item nos.1 to 3 was mentioned in the name of Ramachandra Gounder. Ex.A3 patta was issued in the name of Ariya Gounder. Apart from the above, kist receipts were marked as Ex.A4 to Ex.A13. On perusal of Ex.B3 i.e., patta no.1701 stands in the name of Natesa Gounder who is the father of the third defendant and one Chinnathambi Gounder, Ramalingam and his father Mannu Gounder, Ganesan, his brother Karunanithi and their father Gopal and in the name of the plaintiff. In the patta, besides Item nos.1 to 3, two more items in S.No.394/3 and S.No.394/10 were mentioned. Since they were common properties, common patta was granted.

33.The learned counsel appearing for the appellants relied upon the decisions with regard to the effect of revenue records for proving the title. Mere mutation of property in the revenue records does not create any extinguished title nor has it any precipitative value of title in the absence of title deed and it is settled law that the revenue records will not confer any title and do not convey any extinguished title of the property unless the person claims through proper title deeds. Admittedly, the revenue records only establish the possessory rights and there is no corral decision relied upon by the learned counsel in respect of value of the revenue records.

34.However, in the present case, the first respondent/plaintiff acquired the property through oral partition and it is also admitted case that the brothers including the grandfather of plaintiff enjoyed the property as joint family property. Thereafter, they divided through oral partition. Accordingly, they partitioned the joint family properties and enjoyed separately after oral partition. There is some force in the argument of the learned counsel for the first respondent/plaintiff that after the oral partition, the plaintiff enjoyed the property by way of mutation of revenue records and the patta and other kist receipts which was marked as exhibits before the lower court proved that the plaintiff enjoyed the property after the oral partition in respect of item nos.1 to 3 and the said revenue records would probabilise the case of the first respondent/ plaintiff that in the oral partition the suit properties was allotted to him and he was in possession unless contrary is proved by the appellants/ defendants.

35.On perusal of the findings of the lower court as well as the lower Appellate Court, the first respondent/ plaintiff proved his possession by way of revenue records which were marked as A3 and A4 to A13. It is settled law that patta is only a document to show possession and it will not confer any title to the property. However in the present case, the revenue

record shows that joint patta was given to the plaintiff along with the other sharers in order to show that all the properties are joint family properties at the relevant point of time. Moreover, there were subsequent transaction in between the brothers. That itself shows that after the oral partition several properties were transferred into legal heirs of the great grandfather of Ariya Gounder.

36. On perusal of the entire documents marked before the lower Court, the appellants fail to prove that the suit items 1 to 3 were kept as common property for the Hindu undivided joint family. The property was already divided and the same was allotted to the plaintiff and the defendants 4 and 5 and particularly, suit item nos. 1 to 3 were allotted to the plaintiff/ first respondent herein. Accordingly, the plaintiff/ first respondent herein and his brothers paid the kist and the same were marked as Exhibits before the lower Court and the revenue receipts clearly establish that the suit item nos. 1 to 3 were already divided between the plaintiff's grandfather Ariya Gounder and his brothers; that suit item nos. 1 to 3 were allotted to the plaintiff/ first respondent's father.

37. In view of the above, the respondents 2 and 3 inherited item nos. 1 to 3 from their father by way of partition. The properties were inherited from his father. Thereafter, they were paying kist and other Revenue taxes to the Government. This itself shows that the plaintiff acquired title and possession. Hence, those properties were not common properties meant for the purpose of grazing cattle as claimed by the appellants.

38. Accordingly, the substantial questions of law are answered against the appellants. The second appeal fails and the same is dismissed. The judgment and decree dated 18.06.1999 and made in A.S.No.67 of 1998 on the file of the Additional District Judge, Tiruvannamalai, confirming the judgment and decree dated 27.02.1998 and made in O.S.No.815 of 1988 on the file of Principal District Court, Tiruvannamalai, is confirmed. In the circumstances of the case, the parties are directed to bear their own costs.

Sd/-
Assistant Registrar (CS II)

//True Copy//

Sub Assistant Registrar

pri

To

1.The Additional District Judge, Tiruvannamalai.

2.The Principal District Judge, Tiruvannamalai.

copy to

The Section Officer
VR Section,
High Court, Madras(+2 copies)

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S.A.No.1555 of 1999

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