

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.07.2018

Delivered on :29.08.2018

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.Nos.53 and 54 of 2018
and
C.M.P.Nos.1023, 1024, 10738
and 10739 of 2018

S.A.No.53 of 2018:-

1.S.Dallas
2.S.Pappa
3.S.Dayala Mary
4.S.Vimala
5.Allen David ... Appellants/Appellants/Defendants

Vs.

A.S.Rani Clementia ... Respondent/Respondent/Plaintiff

S.A.No.54 of 2018:-

1.S.Pappa
2.S.Dallas
3.S.Dayala Mary
4.S.Vimala ... Appellants/Appellants/Plaintiffs

Vs.

1.A.S.Rani Clementia ... 1st Respondent/1st Respondent/
1st Defendant

2.A.S.Raimond ... 2nd Respondent/2nd Respondent/
2nd Defendant

Prayer in both the S.As.:- Second Appeals filed under Section 100 C.P.C., against the judgment and decree, dated 28.11.2017, made in A.S.Nos.20 and 21 of 2015, on the file of Additional District Court, Chengalpattu, confirming the judgment and decree, dated 02.06.2015, made in O.S.No.220 of 2009 and

O.S.No.358 of 2012, on the file of Subordinate Court, Tambaram.

For Appellants : Mr.G.R.Lakshmanan
(in both the S.As.)

For Respondents : Mr.A.R.Nixon
(in both the S.As.)

COMMON JUDGMENT

The appellants in S.A.No.53 of 2018 are the defendants in O.S.No.220 of 2009 and the appellants in S.A.No.54 of 2018 are the plaintiffs in O.S.No.358 of 2012. The appellants 1 to 4 in S.A.No.53 of 2018 and the appellants in S.A.No.54 of 2018 are one and the same. The respondent in S.A.No.53 of 2018 and the first respondent in S.A.No.54 of 2018 are one and the same. The fifth appellant in S.A.No.53 of 2018 is the fifth defendant in O.S.No.220 of 2009. The second respondent in S.A.No.54 of 2018 is the second defendant in O.S.No.358 of 2012.

2.Since the issues involved in both the Second Appeals are interlinked and the parties in both the appeals are one and the same, they are heard together and disposed of by this common judgment.

3.The parties are referred to as per their rank in O.S.No.220 of 2009.

4.The plaintiff filed O.S.No.220 2009 for declaration of title to the suit schedule property; recovery of possession of 'B' Schedule property to the plaintiff by removing the illegal and unauthorized construction put up by the defendants in 'B' Schedule property; permanent injunction restraining the defendants from interfering with her peaceful possession and enjoyment of the suit schedule property; and to restrain the defendants, their men, agents, representatives or anybody acting on their behalf from damaging the suit schedule property in any manner, more particularly, by putting up any construction in the suit property.

5.The defendants 1 to 4 in O.S.No.220 of 2009 filed O.S.No.823 of 2007 before the District Munsif Court, Alandur, for permanent injunction restraining the plaintiff in O.S.No.220 of 2009 and the second respondent in S.A.No.54 of 2018 from any manner of trespassing into 'A' Schedule property and not to interfere with their possession and enjoyment of the suit property.

6.The case of the plaintiff:-

The suit property measuring an extent of 3052 sq.ft.

in Patta No.73, S.No.40, was in continuous and uninterrupted possession of the plaintiff. The said property was assigned to the plaintiff by the Assistant Settlement Officer, Tiruvannamalai, vide proceedings dated 06.02.1987. By the said proceedings, the Assistant Settlement Officer acknowledged the possession and enjoyment of the plaintiff with Kudivaram right prior to the appointed day, i.e., 15.02.1965. The appointed date is prescribed by the Act 30 of 1963 and the plaintiff is entitled to Ground Rent Patta as per Section 13(1) of the Tamil Nadu Minor Inam (Abolition and Conversion into Ryotwari) Act, 1963 [hereinafter referred to as 'the Act']. Based on the said proceedings, Patta No.73 was issued by the Assistant Settlement Officer, Tiruvannamalai, on 25.01.1988 to the plaintiff in respect of the suit property. The plaintiff obtained sanction on 31.07.1990 from the Cantonment Executive Officer to put up a construction. The plaintiff is paying property tax and other charges to the authorities in her name. The defendants have no right over the suit schedule property. The plaintiff granted leave and licence to the defendants to occupy an extent of 800 sq.ft., on the rear side of the property described in 'B' Schedule. When the defendants attempted to put up a thatched superstructure in the 'B' Schedule property, the plaintiff lodged a complaint to the police on 03.12.2001 and again on 14.02.2002, but the police did not take any action. The defendants are influential persons with money and muscle power. The defendants started to dig pits adjacent to the superstructure of the plaintiff with an intention to put up new superstructure, which resulted in damaging the foundation of the plaintiff's property. While so, the defendants filed O.S.No.823 of 2007 before the District Munsif Court, Alandur, for a bare injunction making false and frivolous allegations. The defendants were permitted to reside in 'B' Schedule property only under leave and licence. They are not entitled to put up any illegal construction in the suit property. The plaintiff is the absolute owner of the suit property and the defendants have to hand over vacant possession to the plaintiff. Hence, the plaintiff filed the suit for the relief stated above.

7.The first defendant filed written statement and the same was adopted by the defendants 2 to 5. According to the defendants, they have already filed O.S.No.823 of 2007 on the file of the District Munsif Court, Alandur, for permanent injunction. The plaintiff entered appearance and filed written statement. In spite of the said suit, the plaintiff has furnished wrong particulars in the present suit in order to gain over the defendants' suit schedule property fraudulently. The suit property belonged to Inamdar Portuguese Church Arch Bishop, Mylapore. The defendants' father Sabastian was in occupation of the property from the year 1964 till his death on 29.12.1969. After his death, the defendants as legal heirs of Sabastian, are

in absolute possession and enjoyment as true owners of the suit property without any hindrance. The plaintiff and her brother are permissive occupier to an extent of 17' x 20' out of 4554 sq.ft., under the defendants. The permission granted to them was cancelled and thereafter, the defendants filed O.S.No.823 of 2007 before the District Munsif Court, Alandur, for permanent injunction. The Patta filed by the plaintiff is a fabricated one. The plaintiff has not put up any construction in the suit property after obtaining proper sanction on 31.07.1990 and the plaintiff is not in possession of suit property as owner by paying taxes and charges to the concerned authorities. The plaintiff has no right, title or interest in the suit property. The suit property is the absolute property of the defendants' father Sabastian from the year 1964 and the suit property was assessed for property tax by the Cantonment Board. Electricity service connection has been given to the suit property in the name of the first defendant. All the revenue records are in the name of the defendants. The plaintiff and her brother obtained forged property tax from the Cantonment Board and it was cancelled on the complaint to the Executive Officer. When the plaintiff and her brother tried to interfere with the defendants' possession and enjoyment on 26.10.2007, the defendants 1 to 4 filed O.S.No.823 of 2007 before the District Munsif Court, Alandur, for permanent injunction. All the documents filed by the plaintiff are fabricated and therefore, prayed for dismissal of the suit.

8.The defendants filed additional written statement and have stated that the Court fee paid is not correct. The plaintiff has not produced any document of title for her physical possession of the suit property from 1987 to till date as absolute owner and has not specifically stated in her pleadings as to the date of trespass by the defendants and the construction made thereon.

9.The case of the first defendant in O.S.No.823 of 2007 as plaintiff is that of the same as averred in the written statement filed in O.S.No.220 of 2009.

10.The case of the plaintiffs in O.S.No.823 of 2007 as defendants is that of the same as stated in the plaint in O.S.No.220 of 2009.

11.In both the suits, separate issues were framed. The trial in O.S.No.823 of 2007 was commenced. At part-heard stage, the said suit was transferred to the Subordinate Court, Tambaram and re-numbered as O.S.No.358 of 2012 to be tried along with O.S.No.220 of 2009. The evidence recorded as P.W.1 in O.S.No.823 of 2007 was treated as D.W.1 - Defendants' side evidence. 52 documents were marked as Exs.B.1 to B.52 and D.W.2 to D.W.7 were examined. The plaintiff herself examined as P.W.1

and 43 documents were marked as Exs.A.1 to A.43.

12.The learned Trial Judge considering the pleadings, oral and documentary evidence, decreed the suit in O.S.No.220 of 2009 filed by the plaintiff and dismissed O.S.No.358 of 2012 filed by the defendants holding that the plaintiff has proved her title by oral and documentary evidence and she is entitled for the relief as prayed for and the defendants have no documents to prove their case.

13.Against the said common judgment and decree dated 02.06.2015, the defendants have filed A.S.Nos.20 and 21 of 2015 before the Additional District Court, Chengalpattu.

14.The learned first appellate Judge framed necessary points for consideration. The learned first appellate Judge considering the materials on record, the judgment of the Trial Court, arguments of the counsel for the parties and the judgments relied on by them, dismissed both the appeals confirming the judgment and decree of the Trial Court.

15.Against the said common judgment and decree dated 28.11.2017, the present Second Appeals are filed by the defendants.

16.The learned counsel for the appellants/defendants contended that the learned first appellate Judge misconstrued the evidence of the respondent/plaintiff as P.W.1 and Exs.A.1 to A.43. The learned first appellate Judge failed to consider the evidence let in on behalf of the appellants/defendants through D.W.1 to D.W.7 and the documents marked as Exs.B.1 to B.52. The learned first appellate Judge erroneously accepted the documents of the respondent/plaintiff and rejected the documents of the appellants/defendants. The appellants' / defendants' father Sabastian was permitted to occupy the suit property on Ground Rent under the Church Arch Bishop, St. Thomas Mount during the year 1964. The appellants/defendants are paying property tax to the Executive Officer, St. Thomas Mount, Cantonment Board, Chennai - 16, without the respondent's / plaintiff's or any bodies interruption. The appellants/defendants are in peaceful possession and enjoyment of the suit property from 1964. The learned first appellate Judge failed to consider that the suit is barred by limitation. At the time of issuance of Patta by the Assistant Settlement Officer, the respondent/plaintiff was aware of the fact that the appellants/defendants are in possession of the suit property and limitation starts from that date. The appellants/defendants have given permission to the respondent/plaintiff to occupy 'B' schedule property and the learned first appellate Judge failed to consider this fact in proper perspective. The respondent/plaintiff filed O.S.No.220

of 2009 for recovery of possession after going through the averments made in the plaint filed by the defendants in O.S.No.358 of 2012. The Court below failed to see that the defendants filed appeal against the order of Assistant Settlement Officer, Tiruvannamalai, and the said appeal is pending. The order of the Assistant Settlement Officer is against the provisions of the Act, which was passed based on misrepresentation of facts, false claims and without any evidence.

17.The Assistant Settlement Officer conducted enquiry only in the year 1987 i.e., more than 22 years after the appointed date [15.02.1965]. On that date, the defendants' / appellants' father only was in possession of the suit property and his claim could not be rejected. The defendants/appellants alone are entitled to get Ground Rent Patta as per the provisions of the Act.

18.The learned counsel for the appellants relied on the judgments, which were relied on before the first appellate Court and the judgment of the Hon'ble Apex Court in P.R.Deshpande Vs. Maruti Balaram Haibatti reported in 1998 (6) SCC 507, wherein at Paragraph No.8, it has been held as follows:-

'8.The doctrine of election is based on the rule of estoppel - the principle that one cannot approbate and reprobate inheres in it. Doctrine of estoppel by election is one of the species of estoppel in Pais (or equitable estoppel) which is a rule in equity. By that rule a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had (vide Black's Law Dictionary, 5th Edn.).'

19.The learned counsel for the respondent/plaintiff contended that the Ground Rent Patta was issued to the respondent/plaintiff by the Assistant Settlement Officer, Tiruvannamalai, based on her possession. Patta was granted after due enquiry and the same was marked as Ex.A.3. Based on the Patta, the respondent/plaintiff got plan approval and has put up superstructure. The said property was assessed for property tax and she is paying all the taxes to the authority and electricity service connection is in her name. The Official of the Church has given a Certificate that respondent/plaintiff is in possession of the suit property. The appellants/defendants have not produced any document to prove their ownership. The first appellant in S.A.No.53 of 2018, who was examined as D.W.1, has admitted that the appellants/defendants did not have any document of title and they are trying to get Patta for the past 8 years. D.W.1 has

admitted that the Cantonment Board, Chennai - 16 by Ex.A.34 issued notice to the appellants/defendants to demolish the unauthorized construction and also admitted as per Ex.A.36, the unauthorized construction was demolished and removed by the Cantonment Board, Chennai - 16. D.W.2 - Rev. Fr. Thomas J.Mundackal has deposed that the second defendant is not a member of the Church. The Church maintains a Register containing the names of persons, who are in possession of the land. D.W.2 admitted that the respondent/plaintiff was in possession of the documents at the time of settlement. Patta was issued to persons, who were in possession of the land for 40 years. Patta was granted to the respondent/plaintiff in Block No.42. This clearly shows that the respondent/plaintiff was in possession of the land at the time of issuance of Patta and Patta was rightly issued to the respondent/plaintiff. D.W.3 Village Administrative Officer admitted that the Assistant Settlement Officer enquired with regard to the persons, who were in possession of the land and issued Patta. The Patta was issued to the respondent/plaintiff as she was in possession of the land. No Patta was issued to Sabastian, father of the appellants/defendants. The documents filed by the respondent/plaintiff as well as D.W.2 and D.W.3 examined on behalf of the appellants/defendants also categorically stated that the Patta was issued to the respondent/plaintiff after due enquiry as she was in possession of the suit property. The Courts below have appreciated the evidence and documents and the judgments relied on by the parties and delivered the judgment in favour of the respondent/plaintiff. The findings of the Courts below are finding of fact and no substantial question of law arises for consideration in these Second Appeals.

20.The learned counsel for the respondent relied on the judgments, which were relied on before the first appellate Court and the following judgments.

(i) Ram Rattan and others Vs. State of Uttar Pradesh reported in 1977 (1) SCC 188, wherein at Paragraph No.4, it has been held as follows:-

''4. It is well settled that a true owner has every right to dispossess or throw out a trespasser, while the trespasser is in the act or process of trespassing, and has not accomplished his possession, but this right is not available to the true owner if the trespasser has been successful in accomplishing his possession to the knowledge of the true owner. In such circumstances the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies available under the law. In view of the clear finding of the High Court that the complainant Ram

Khelawan even after encroachment had established his possession over the land in dispute for two to three weeks before the occurrence, for the purpose of criminal law, the complainant must be treated to be in actual physical possession of the land so as to have a right of private defence to defend his possession even against the true owner.''

(ii) Maria Margadia Sequeria Fernandes and others Vs. Erasmo Jack De Sequeria (D) Tr. Lrs. & Others reported in 2012 (3) LW 111, wherein at Paragraph No.96, it has been held as follows:-

''96.The respondent's suit for injunction against the true owner - the appellant was not maintainable, particularly when it was established beyond doubt that the respondent was only a caretaker and he ought to have given possession of the premises to the true owner of the suit property on demand. Admittedly, the respondent does not claim any title over the suit property and he had not filed any proceedings disputing the title of the appellant.''

(iii) State of A.P. and Others Vs. Star Bone Mill and Fertiliser Co. reported in 2013 (2) CTC 347, wherein at Paragraph No.13, it has been held as follows:-

''13.The principle enshrined in Section 110 of the Evidence Act, is based on public policy with the object of preventing persons from committing breach of peace by taking law into their own hands, however good their title over the land in question may be. It is for this purpose, that the provisions of Section 6 of the Specific Relief Act, 1963, Section 145 of Code of Criminal Procedure, 1973, and Sections 154 and 158 of Indian Penal Code, 1860, were enacted. All the aforesaid provisions have the same object. The said presumption is read under Section 114 of the Evidence Act, and applies only in a case where there is either no proof, or very little proof of ownership on either side. The maxim "possession follows title" is applicable in cases where proof of actual possession cannot reasonably be expected, for instance, in the case of waste lands, or where nothing is known about possession one-way or another. Presumption of title as a result of possession, can arise only where facts disclose that no title vests in any party. Possession of the Plaintiff is not prima facie wrongful, and title of the Plaintiff is not proved. It certainly does not mean that because a man has title over some land, he is necessarily in possession of it. It infact means, that if at any time a man with title was in possession of the said property, the law allows the presumption that such possession was in continuation of the title vested in

him. A person must establish that he has continued possession of the suit property, while the other side claiming title, must make out a case of trespass/encroachment etc. Where the apparent title is with the Plaintiffs, it is incumbent upon the Defendant, that in order to displace this claim of apparent title and to establish beneficial title in himself, he must establish by way of satisfactory evidence, circumstances that favour his version. Even, a Revenue Record is not a document of title. It merely raises a presumption in regard to possession. Presumption of possession and/or continuity thereof, both forward and backward, can also be raised under Section 110 of the Evidence Act.''

21. In both S.A.Nos.53 and 54 of 2018, the appellants/defendants have filed C.M.P.Nos.10738 and 10739 of 2018 under Order 41 Rule 27 r/w. Section 151 of C.P.C., to receive the notarized photocopy of the proceedings of the enquiry report of the Assistant Settlement Officer, Tiruvannamalai, bearing No.Nil, dated 06.12.1987, as an additional document. According to the appellants/defendants, the Assistant Settlement Officer conducted prior enquiry and the prior enquiry report is not available with them, as the same was fraudulently omitted to be served on their father. The appellants/defendants obtained the original from another person, who was granted Patta in the same Inam Estate. The appellants/defendants are filing photocopy of the said proceedings duly notarized. The original enquiry report is handed over to the counsel and notarized copy may be compared with original and notarized photocopy may be received and marked as additional document.

22. The respondent/plaintiff filed counter affidavit and contended that the appellants/defendants have not given any reason for not filing and marking the said document before the Courts below. Third party documents cannot be received in the second appeal for comparison of same with other documents and prayed for dismissal of the appeals.

23. I have heard the learned counsel appearing for the parties and perused the materials available on record.

24. As far as C.M.P.Nos.10738 and 10739 of 2018 are concerned, the appellants/defendants have not given any reason for not filing the document before the Courts below. In the affidavit filed in support of the petitions, they have not stated when they came to know about the said document and when they got the original from the third party. Additional document can be received in the appeal by the appellate Court as per Order 41 Rule 27 C.P.C., only when condition prescribed in the

said Rule is satisfied by the person, who is producing the document to be marked as additional document.

25. At this juncture, it is relevant to extract Order 41 Rule 27 C.P.C.

'27. Production of additional evidence in Appellate Court. - (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whether additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.'

26. The appellants/defendants have not satisfied any of the conditions contemplated in the said Rule. In view of the same, the said C.M.Ps. are dismissed as devoid of merits.

27. The defendants 1 to 4 have filed the suit in O.S.No.358 of 2012 for permanent injunction. According to the defendants, they are the absolute owners of the suit property and they permitted the respondent/plaintiff to occupy the 'B' schedule property, which is part of 'A' schedule property. In view of the attitude of the respondent/plaintiff and her brother, the appellants/defendants cancelled the permission given to them. The respondent/plaintiff tried to encroach 'A' Schedule property on 26.10.2007 and the appellants/defendants prevented the same and filed the suit for permanent injunction.

28. The respondent/plaintiff filed O.S.No.220 of 2009 against the appellants/defendants for declaration of title; recovery of possession; and permanent injunction. According to the respondent/plaintiff, she is the absolute owner of 3052 sq.ft. at Door No.4/39 P, St. Patric Church Road, 3rd Lane, St. Thomas Mount, Chennai - 16. She permitted the appellants/defendants to occupy 800 sq.ft. in the rear side of 'A' Schedule property. The appellants/defendants put up

unauthorized thatched construction and subsequently, tried to put up new construction by digging pits, which damaged the construction of the respondent's / plaintiff's building. The respondent/plaintiff gave complaint to the police, but the police did not take any action.

29. According to the respondent/plaintiff, the appellants/defendants threatened her and hence, she has filed the suit. Both the Courts below accepted the evidence of P.W.1 and the documents filed by her and holding that the respondent/plaintiff is owner of the suit property, decreed the suit in O.S.No.220 of 2009 filed by the respondent/plaintiff and dismissed the suit in O.S.No.358 of 2012 filed by the appellants/defendants.

30. These Second Appeals were not admitted by this Court. By consent of both the learned counsel for the appellants as well as the respondents, the second appeals were taken up for final hearing.

31. The points to be determined in the Second Appeals are,

- 1) Whether the respondent/plaintiff proved her title and she is entitled to recovery of possession and for permanent injunction?
- 2) Whether the appellants/defendants are entitled to permanent injunction as claimed for in the suit filed by them?

32. Points (1) and (2):-

Both the respondent/plaintiff and the appellants/defendants claimed that they are the owners of 'A' Schedule property and permitted the other party to occupy 'B' Schedule property, which is a portion of 'A' Schedule property. Both have not produced any acceptable evidence to substantiate this contention.

32.1. Firstly, it has to be decided, who is the owner of 'A' Schedule property. The respondent/plaintiff filed suit for declaration of title, recovery of possession and permanent injunction, whereas the defendants 1 to 4 filed suit for permanent injunction only. When the title of the appellants/defendants is disputed by the respondent/plaintiff, the suit for bare injunction without the relief of declaration is not maintainable. As far as the title of the suit property is concerned, the respondent/plaintiff has produced Ex.A.1, Land Measurement Document issued by the Deputy Inspector, Land Survey, Saidapet, dated 13.03.1987, Ex.A.3, order issued by the Assistant Settlement Officer, Tiruvannamalai, dated 06.12.1987, Ex.A.6, Patta No.73 in the name of the respondent/plaintiff and Ex.A.7, Ownership Certificate issued by St. Antony's Church, Alandur, dated 11.10.1988. Both the respondent/plaintiff and

the appellants/defendants admitted that the suit properties and other properties were originally belonged to Portuguese Church under the control of Arch Bishop, Mylapore.

32.2.According to the appellants/defendants, the Arch Bishop permitted their father Sabastian to occupy the land on Ground Rent in the year 1964 and their father obtained necessary permission from the CEO, Cantonment Board, to put up superstructure and was in possession till his death in the year 1969.

32.3.According to the appellants/defendants, after the death of their father, as legal representatives, they were in possession and enjoyment of the suit property. The appellants/defendants have not produced any document to substantiate their claim. On the other hand, the respondent/plaintiff has produced Ex.A.7, Ownership Certificate issued by St. Antony's Church, Alandur, dated 11.10.1988, stating that she is the owner of the suit property. Rev. Fr. Thomas J.Mundackal was examined as D.W.2 by the appellants/defendants. D.W.2 categorically stated that the second respondent in S.A.No.54 of 2018 is not a member of Church. He also deposed that Patta was issued to the persons, who were in occupation of respective portion of the land for 40 years. Patta was issued to the respondent/plaintiff, as she had possessed settlement document on that day. He has further deposed that as per the permission given by Fr. Mathew Veetikan, Patta was issued to the persons in occupation and the respondent/plaintiff was given Patta for Block No.42. Similarly, D.W.3 Village Administrative Officer also deposed that after measuring the land, Patta would be issued to the persons in occupation of the land. According to D.W.3, Patta was issued to the respondent/plaintiff and no Patta was issued to Sabastian.

32.4.From the documents referred to above as well as the evidence of the respondent/plaintiff as P.W.1 and the evidence of D.W.2 and D.W.3, it is clear that the respondent/plaintiff has proved her title to the suit property. Both the respondent/plaintiff and the appellants/defendants have produced documents for having paid the property tax and other statutory dues. The respondent/plaintiff has produced notices Ex.A.27, dated 08.05.2010, Ex.A.34, dated 30.03.2010 and Ex.A.36, dated 18.05.2010, issued by the CEO, Cantonment Board, Chennai - 16 under Sections 320 and 248(1) of the Cantonment Act, 2006, to the first defendant. The first defendant as D.W.1 has admitted that the Cantonment Board has issued the said notices for demolition of unauthorized construction put up by the appellants/defendants. He also admitted that as per Ex.A.36, dated 18.05.2010, the Cantonment Board demolished and removed the unauthorized construction. He deposed that even though the

plan was obtained by their father, his sister constructed a house without any permission and therefore, the construction was demolished. The appellants/defendants have not produced any document to show their title. D.W.1 admitted that the appellants/defendants are not in possession of any document of title.

32.5.The contention of the learned counsel for the appellants/defendants that Patta is not a document of title and both the Courts below erred in relying on Exs.B.3 and B.6 and erroneously held that the respondent/plaintiff is owner of the suit property, is without any merits. The Ground Rent Patta issued by the Assistant Settlement Officer, Tiruvannamalai, as per the provisions of the Act is the only document of title to the person, to whom such Patta is issued.

32.6.It is well settled that the claim of a person having better title has to be accepted. In the present cases, the respondent/plaintiff has produced Exs.A.1, A.3 and A.6, Proceedings of the Assistant Settlement Officer and the Patta to prove her title. In addition to that, the Church, which was owner of the larger extent of land including the suit property, has issued Ex.A.7, dated 11.10.1988, Ownership Certificate issued by St. Antony's Church, Alandur, stating that the respondent/plaintiff is the owner of the suit property. As per Ex.A.16, dated 19.11.2004 Rev. Fr. Thomas Mundackal, who is in-charge of the properties of Church, who was examined as D.W.2 has written to Cantonment Board that the appellants/defendants have put up unauthorized construction.

32.7.Both the Trial Court as well as the first appellate Court have considered each and every document filed by the appellants as well as the respondents and oral and documentary evidence let in by them and both the Courts have held that the respondent/plaintiff proved her title and she is owner of the suit property. Both the Courts have held that the appellants/defendants have failed to prove their title and they are not owners of the suit property and decreed the suit filed by the respondent/plaintiff and dismissed the suit filed by the appellants/defendants and dismissed both the first appeals filed by the appellants/defendants. In view of such concurrent finding of facts, the appellants are not entitled to the relief of permanent injunction against the respondent/plaintiff, who is the owner of the suit property.

33.In view of the above facts, the judgments relied on by the learned counsel for the appellants/defendants do not advance the case of the appellants/defendants. The judgments relied on by the learned counsel for the respondent/plaintiff are applicable to the facts of the case.

34.For the above reasons, no substantial question of law arises for consideration in the Second Appeals. Hence, both the Second Appeals are dismissed, confirming the judgments and decrees passed by the Courts below. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

TO

1.The Additional District Judge,
Chengalpattu.

2.The Subordinate Judge,
Tambaram.

3.The Record Keeper,
Vernacular Section,
High Court,
Chennai.

+1cc to Mr.A.R.Nixon, Advocate, S.R.No. 59769

S.A.Nos.53 and 54 of 2018

NM(CO)
GN(25/09/2018)



WEB COPY